

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.361 OF 2013

Hiraman Rama Bhoje
Aged 25 years,
R/o. Aslodagoan,
Post- Chirhalmal, Tal. Kaprada,
Kaprada Police Station,
Dist. Balsad, Gujarat State
At present at Nashik Road Central
Prison, Nashik

.... Appellant
(Orig. Accused)

versus

State of Maharashtra
Through Senior P.I.
Adgoan Police Station
Tal. & District Nashik

... Respondent

.....

- Ms. Ameeta Kuttirishnan, Appointed Advocate for Appellant.
- Ms. G.P. Mulekar, APP for State/Respondent.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : 30th MARCH, 2022

JUDGMENT (PER : SARANG V. KOTWAL, J.)

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1. The Appellant has challenged the Judgment and Order
dated 08/02/2013 passed by the Sessions Judge, Nasik, in

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Sessions Case No.244 of 2012. By the impugned Judgment and Order the Appellant was convicted for commission of offence punishable under section 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life with a fine of Rs.500/- and in default to suffer rigorous imprisonment of one month. The Appellant was granted benefit of set off under section 428 of Cr.P.C.

2. Heard Ms. Ameeta Kuttirishnan, learned counsel for the Appellant and Ms.G.P Mulekar, learned APP for the State.
3. The prosecution case in brief is as follows:

The prosecution case is in respect of murder of one Lahu Sitaram Dhanangare. The date of incident is 08/09/2012 at about 03.30 a.m. in the field of PW.1 Balasaheb Shinde. The prosecution case is that the Appellant was friend of one Anu Raut. She complained to the Appellant that the deceased Lahu was insisting her to have physical relations with him. On her complaint, the Appellant got angry and said that he would finish

the deceased. He went to the place where the deceased Lahu was sleeping and gave blow of axe on his head and committed his murder. P.W.1 was informed about the incident. He came to the spot and lodged his FIR. The investigation was carried out. The Appellant was arrested. His blood stained clothes were recovered. Charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined five witnesses. P.W.1 Balasaheb Tolaji Shinde, was the first informant. P.W.2 Chhabi Laxman Pawar was the sister of the deceased. She claimed to be an eyewitness to the incident. P.W.3 Anu Rajiram Raut was examined to explain the relationship of the Appellant with her and to establish the motive to commit murder. She has also spoken about the threatening words uttered by the Appellant. P.W.4 Dr. Shital Sarang Patil had conducted the post-mortem examination on the deceased and P.W.5 Sitaram Shankar Kolhe was the Investigating Officer.

5. The defence of the Appellant was of total denial. In

addition, in his written statement u/s 313 of Cr.P.C. he has stated that there were two groups of labourers. One was brought by him and the other was brought by the deceased. There were disputes between these two groups. P.W.2 Chhabi Pawar wanted to be included in the Appellant's group. The Appellant had refused and therefore she was angry with the Appellant. P.W.3 Anu Raut was insisting that the Appellant should marry her. Her proposal was declined by him and therefore she was angry. The Appellant was already married and had a son at that time. Because of this Anu held grudge and deposed against him. Gulab, Chhabi all were relatives of Anu. Therefore Anu and Chhabi had deposed against him.

6. Learned counsel for the Appellant submitted that the deposition of this sole eyewitness P.W.2 is not reliable. Bare reading of her deposition indicates that she was not a reliable witness. She could not have witnessed the incident. She had implicated the Appellant falsely as mentioned in the statement given by the Appellant.

7. She further submitted that, the P.W.3 Anu Raut was holding grudge against the Appellant. In any case she had not seen the incident. Her evidence is material only in respect of the words uttered by the Appellant. However, even her evidence suffers from infirmity. The prosecution has not examined any of the witnesses who had slept near the deceased. They would have been natural witnesses. P.W.1's FIR shows that neither of the witnesses P.W.2 and P.W.3 could have seen the incident. She submitted the corroborative piece of evidence in the form of C.A. Report is not material because the blood group on the clothes of the accused was inconclusive.

8. Learned APP on the other hand relied on the deposition of P.W.2 and P.W.3. She submitted that the statements were recorded without any delay and therefore their statements assume importance. She also relied on the corroborative circumstances to support the prosecution case.

9. We have considered these submissions. PW.4 Dr.Shital Patil had conducted the post-mortem examination. She had noticed following injuries;

- (i) A large wound on right temporo occipital region of the size 12 x 6 cm, slanting downwards towards right ear. Brain matter was exposed. Right side ear pinna was sharply divided except right ear lobe.
- (ii) There was fracture of right parietal and right occipital bone.

The cause of death was 'Neurogenic shock due to head injury'. She had opined that the injury was possible with an axe.

Thus there is no doubt that the deceased had died homicidal death. To prove that the Appellant had committed this offence, the prosecution had relied on the evidence of PW.2 and PW.3 as mentioned earlier.

10. PW.2 Chhabi Pawar has deposed that the deceased Lahu was her brother in relation. The incident had occurred in field of Shinde at village Adgaon. At that time she was residing in a hut in that field along with her brother Gulab, his wife Manjula and PW.3 Anu Raut. The deceased had brought of all them to work in the field of Shinde. They were about 20 labourers. At the relevant time, these four persons including PW.2 were sleeping in the hut. According to her, the Appellant came there and slept next to Anu Raut, because they were having close friendship, which was going on since past 1 ½ years. He used to come to meet Anu. At about 03.30 a.m., Anu complained to the Appellant about Lahu troubling her. The Appellant then said that he would finish Lahu. According to the PW.2 she had heard this conversation. Her deposition mentions that she had seen the Appellant assaulting Lahu with an axe on his head. The axe was lying in the shed itself. She has further stated that, after the assault, the Appellant ran away from the field after throwing the axe on one Surtya.

11. In her cross-examination she has admitted that the

deceased Lahu and Anu were having physical relationship. At the relevant time Anu was engaged with one Kisan Rathod. But that engagement was broken because of the Anu's relationship with the deceased. Then Anu was engaged with one Irsha Rama Gailaya. Irsha, Ramesh-brother of Irsha and Kisan Rathod had quarreled with the deceased because of this relationship. She has further admitted that she reached the spot on hearing hue and cry. She further admitted that at the time of incident, she, Anu, Manjula and Gulab were sleeping in their hut and that they reached the spot of occurrence after 10-15 minutes of the incident. She had admitted that the owner of the field had come to the spot of occurrence. The deceased Lahu's group was working in the field of Shinde and the Appellant's group was working in the field of one Rikame.

12. PW.3 Anu Rajiram Raut has deposed that at the relevant time she was residing with Chhabi, Gulab and Gulab's wife. She admitted that she was having relationship with the Appellant. On the date of incident she had complained to the Appellant about Lahu harassing her. At that time she was sleeping next to Chhabi.

According to her, when she complained to the Appellant about the deceased, the Appellant reacted by saying that he would finish Lahu. After that this witness went to sleep and the Appellant left the hut. After some time she came to know that Lahu was murdered. In the cross-examination she has admitted about her physical relations with the deceased. She has admitted that her engagement with Kisan was broken due to this relationship with the deceased Lahu. After that, she had got engaged with Irsha Gailya. She has deposed that the deceased Lahu harassed her for keeping physical relations with him. The Appellant was a married man with a son. She used to tell the Appellant to marry her.

13. PW.1 Balasaheb Tolaji Shinde was the owner of field where the incident had occurred. He has deposed that there were 19 labourers in his group. They were residing in the shed on the said land. He received a phone call at about 03.34 a.m. on 08/09/2012 about the incident. The phone call was made by one Pintu Tulshiram More. He informed that somebody had assaulted Lahu with an axe. PW.1 rushed to the spot. He saw that Lahu was

lying in the shed in the pool of blood. PW.1 then informed his brother, who was an advocate and then police were informed. The police arrived at the spot. PW.1 lodged his FIR at Adgaon Police Station. The FIR is produced on record at Ex.12. He has stated that after reaching the police station, he came to know that the Appellant had assaulted Lahu. He knew Gulab Pawar, his wife Manjula Pawar, PW.2 Chhabi Pawar and PW.3 Anu Raut. They were working in his field and were residing in the field. He showed the spot to the police.

14. In the cross-examination he has admitted that when he reached the spot, Gulab, his wife Manjula, PW.2 Chhabi, PW.3 Anu, and Pintu were present there. But neither of them informed him as to who had assaulted Lahu. He had never seen the Appellant at his field before the occurrence. He admitted that, on enquiry PW.2 Chhabi and Gulab told him about the incident. He was informed that some unknown person had assaulted the deceased. The FIR at Ex.12 also mentions that some unknown person had assaulted the deceased.

15. Apart from this oral evidence, the spot panchanama is important, which shows that the incident had taken place in the shed. The axe was lying at the spot itself. The map shows that the shed was different and the hut was different.

16. The clothes of the Appellant were seized and sent for chemical examination. However, the blood group was found 'inconclusive'. The blood group of the deceased was of 'A' group and the blood group of the Appellant was 'B' group. The Appellant's clothes were recovered and seized on 08/09/2012, which were kept near the wall of the shed in the field. This is the material evidence against the Appellant.

17. We have examined this evidence in the light of submissions. As mentioned earlier, the prosecution has heavily relied on the evidence of P.W.2. Therefore this evidence needs to be examined carefully. First of all, she claims to be an eyewitness to the incident. But the incident had not occurred in the hut, where

she was sleeping. She has not stated that she followed the Appellant outside her hut. It is not brought on record that from her hut; the spot of incident near the shed was clearly visible or not. Importantly, in the cross-examination she has admitted that she had gone to the spot after hearing commotion. This admission destroys her evidence. It was not possible for her to see the incident. Because she went there only on hearing the commotion after 15 to 20 minutes of assault. Her evidence is not consistent and is not reliable. The Court has to be completely satisfied that her evidence does not suffer from any infirmities. Her version is only to a certain extent supported by P.W.3 Anu Raut. Neither Gulab nor his wife Manjula is examined.

18. More importantly, as admitted by P.W.1, when he reached the spot, he made enquiries with the P.W.2 as well, but even at that time, he was told that the assault was made by an unknown person. Therefore at the very first instance, P.W.2 had neither told about witnessing the incident nor she had named the Appellant as the assailant of the deceased. If the prosecution wanted to rely on

her evidence, her evidence should have been free from any doubt. But as can be seen, her evidence is far from satisfactory. Therefore she cannot be relied on to convict the Appellant.

19. Even P.W.3 Anu's evidence is not free from doubt. She has admitted the reason why there was possibility of false implication. She has admitted that she wanted to marry the Appellant, who had refused. She was in the hut when the Appellant had uttered the threatening words before her. Then her conduct of going to sleep immediately appears rather unnatural. Her version is not corroborated by any other witness. It was possible to examine Gulab, but he was not examined. The other witness was P.W.2 Chhabi, but as discussed she is not a reliable witness. Therefore P.W.3 and her evidence is not supported by any other witness.

20. More than these two witnesses, there were 7 to 8 labourers who were sleeping next to the deceased and their evidence would have been crucial in this case. Not a single such labourer is examined. The investigation was carried out

immediately and the trial concluded within a reasonable time. No explanation is offered as to why none of these labourers who were sleeping next to the deceased and who could have been the best possible witnesses, was examined by the prosecution. There is no other corroborative piece of evidence because the blood group on the clothes of deceased is described as 'inconclusive'. The murder weapon was found at the spot itself. P.W.2 and P.W.3 have not deposed that the Appellant was carrying any weapon. Therefore from where that weapon was taken, has not been explained by the prosecution.

21.. Taking over all view of the matter and the evidence, the prosecution has not proved its case beyond reasonable doubt. Benefit of the doubt naturally goes to the Appellant.

22. Hence, the following order :

ORDER

(i) The Appeal is allowed.

- (ii) The Judgment and Order dated 08/02/2013 passed by the Sessions Judge, Nasik, in Sessions Case No.244 of 2012 is set aside.
- (iii) The Appellant is acquitted of all the charges.
- (iv) The Appellant is in custody. He shall be released forthwith, if not required in any other case. The fine amount, if paid, shall be refunded to him.
- (v) The Appellant shall execute P.R. Bond before the trial Court under section 437A of Cr.PC. in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one or two sureties, in the like amount, within six weeks from today.
- (vi) The Appointed Advocate shall be paid her professional fees according to rules.
- (vii) Appeal is disposed of.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)