

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

CRIMINAL APPEAL NO.697 OF 2016

Sopan Sudam Pagare	... Appellant
Versus	
The State of Maharashtra	... Respondent

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Mr. Shailesh Kharat, Advocate (appointed), a/w. Nasreen Ayubi, for the Appellant.

Ms. Veera Shinde, APP, for the Respondent-State.

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**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

RESERVED ON : 07th MARCH, 2022

PRONOUNCED ON : 11th MARCH, 2022

JUDGMENT : [*PER SARANG V. KOTWAL, J.*]

1 The Appellant has challenged the judgment and order dated 29.6.2016 passed by the Additional Sessions Judge, Nashik in Sessions Case No.44/2014. The Appellant was convicted for commission of offence punishable under Section 302 of the Indian Penal Code and he was sentenced to suffer life imprisonment and to pay a fine of Rs.1,000/-; and in default, to suffer simple imprisonment for one month. The Appellant was

also convicted for commission of offence punishable under Section 307 of the Indian Penal Code and was sentenced to suffer R.I. for seven years and to pay a fine of Rs.1,000/-; and in default, to suffer simple imprisonment for one month. The Appellant was granted set off as per Section 428 of Code of Criminal Procedure, 1973. Both the sentences were directed to run concurrently.

2 Heard Shri Shailesh Kharat, learned counsel for the Appellant and Ms. Veera Shinde, learned APP for the State.

3 The prosecution case is reflected in the charge framed in this case. At about 8.30 p.m. on 15.10.2013 there was some quarrel between the Appellant on one hand and Vishal Chaudhari (the deceased in this case) as well as Vijay Ippar (the injured in this case) on the other. Because of this quarrel, in the night between 15.10.2013 and 16.10.2013 at about 1.30 a.m., the Appellant pulled a wooden bar from the toilet and gave blows with the same to both Vijay and Vishal on their heads. This incident took place in barrack No.3, circle No.6 of Nashik Road Central Prison. Because of this commotion, the other

prisoners woke up. Both the injured were removed for medical treatment. Vishal Chaudhari succumbed to his injuries at about 7.15 a.m. on 16.10.2013. The injured Vijay Ippar was admitted to the hospital. The Appellant was already in the prison as an under-trial prisoner in another case. He was arrested in this case. The FIR was lodged by one Shivram Bhil who was working as a Security Guard in Nashik Road Central Prison. The investigation was conducted and the case was committed to the Court of Sessions.

4 The prosecution examined ten witnesses. The defence of the Appellant was of total denial. After recording the evidence and the statement of the Appellant under Section 313 of Cr.P.C., the arguments were heard by the learned Judge. He passed the impugned judgment and order convicting and sentencing the Appellant, as mentioned earlier.

5 The most important witness in this case is PW-5 Vijay Ippar, who was the injured himself. He has stated that he himself, the deceased Vishal Chaudhari and the Appellant were detained in barrack No.3, circle No.6 of Nashik Jail. On

15.10.2013, there was a quarrel between the Appellant and this witness because the Appellant had torn a page from his notebook. The quarrel started on a petty issue, but, it escalated further. Abuses were given by the Appellant. Vishal Chaudhari also questioned the Appellant. Thus, there was quarrel between the Appellant on one hand and this witness and Vishal on the other. That quarrel took place at about 8.30 p.m. in the evening. During the night, PW-5 was sleeping. He heard some noise. He woke up. He saw that the Appellant was assaulting Vishal by a wooden rod. PW-5 also shouted. The Appellant assaulted PW-5 also on his head with the wooden rod. PW-5 became unconscious. When he regained consciousness, he saw that he was admitted to J.J. Hospital. His statement was recorded on 12.12.2013. He identified the wooden rod – article No.7, which was the murder weapon. He also identified other articles, viz., clothes, blanket etc.. Because of this assault, the deceased succumbed to his injuries.

In the cross-examination, he admitted that he was convicted for commission of offence punishable under Section

302 of IPC. When the incident took place, the Appellant was an under-trial prisoner. Vishal Chaudhari was also an under-trial prisoner. There were about 50 to 60 other persons in that barrack. According to him, there used to be watchman on duty during night time. He was cross-examined about possession of a notebook and whether it was with him in violation of any rule. In respect of the incident, he has stated that when he woke up, the Appellant had already assaulted Vishal by that wooden rod and when PW-5 shouted the Appellant also assaulted him by the same rod which was in his hand. He denied the suggestion that he suffered the injuries because of a fall.

6 PW-3 Shivram Bhil was one of the Security Guards in Nashik Road Central Prison. When he was taking his round at the time of incident, he heard noise from barrack No.3 of circle No.6. He heard the noise at about 1.10 a.m.. He rushed there. He saw that 10 to 12 people had gathered there. The Appellant was present with a wooden plank in his hand. One Pawar removed that plank from the Appellant. PW-3 then took it from Pawar and kept it outside the barrack. He made enquiries and

came to know about the incident. He informed his superiors. The injured were taken to hospital. The Appellant was taken into custody and was kept in a separate cell. PW-3 was asked to lodge the FIR. Accordingly, he lodged his FIR, which is produced on record at Exhibit-15.

In the cross-examination, he stated that, when he reached the spot of incident i.e. barrack No.3; he found that half of the prisoners were asleep and the others were awake. He identified the wooden plank i.e. article No.7.

7 The other important witnesses are PW-2 Govind Pawar and PW-4 Uttam Dhage. Both of them were present in that barrack. They were both convicts. PW-2 Govind Pawar has stated that at the time of incident there were 52 under-trial prisoners and 3 convicted prisoners in barrack No.3. The convicted prisoners were given duty to serve as Watchmen for that particular barrack. He was knowing the Appellant, the injured and the deceased. He has described the incident about tearing of page of the notebook of the injured Vijay Ippar. PW-2 had intervened in the quarrel. He had seen the Appellant going

to the toilet at about 1.00 a.m. to 1.30 a.m. in that barrack. After ten minutes, he saw the Appellant standing near Vijay and Vishal, who had suffered injuries. The Appellant was standing there with a wooden rod in his hand. PW-2, then shouted for help. Then the others came there. He has identified Article No.7 – the wooden rod. Though, he has narrated about the incident to this extent, he was declared hostile because in the police statement given by him, he had stated that he had actually seen the Appellant giving the blows to Vijay and Vishal. This particular statement was shown to the witness. He denied having stated so before the police. The cross-examination on behalf of the Appellant of this witness was not of any serious significance.

8 PW-4 Uttam Dhage was another Watchman. He was also a convict and was given duty of Watchman in that barrack. He has deposed about the quarrel which had taken place at around 8.00 p.m.. In the night he heard a loud noise at about 1.00 a.m. He saw that Vishal and Vijay had sustained bleeding injuries and the Appellant was standing near them with a wooden plank with nails on it. He removed the wooden rod

from the Appellant and it was handed over to the Security Guard. The injured were taken to hospital. This witness has also identified the Article No.7 i.e. the wooden rod.

In the cross-examination, he denied the suggestion that because of pressure of the jail authorities he was deposing falsely. However, he admitted that the police had not recorded his statement and whatever he was deposing was for the first time.

9 The medical evidence in this case consists of depositions of PW-6 Dr. Nilkantha Sasane, PW-7 Dr. Jayashree Chirmade and PW-9 Dr. Kapileshwar Chaudhari. PW-6 Dr. Neelkanth produced the case papers at Exhibit-43 in this case. PW-7 Dr. Chirmade was attached to the Civil Hospital as a Medical Officer. She examined the injured Vijay Ippar and found that there was one CLW over right frontal region of the size 2 cm x 3 cm x 3 cm and swelling and blackening of both eyes. There was evidence of skull fracture, extra dural Haematoma and subarachnoid hemorrhage. In short, the injuries were quite serious. Vijay was then referred to J.J. Hospital for further

examination. She also examined Vishal Chaudhari. PW-7 had mentioned the cause of death as 'head injury'. The medical papers show that Vishal had CLW over occipital region and he was semi-conscious. At about 7.15 a.m. he died.

The dead body was sent to Dhule for postmortem examination. PW-9 Dr. Kapileshwar Chaudhari conducted the postmortem examination. There were two injuries on the head and contusion over right eye. There was skull fracture and the cause of death was mentioned as 'head injury'.

10 PW-1 Purnanand Purane was a pancha for spot-panchnama, seizure of clothes of the accused and seizure of deceased's blanket.

11 PW-8 Khagendra Tembhekar was attached to Nashik City police station at the relevant time as A.P.I.. He had recorded the FIR and then assigned the investigation to Rokade for investigating this case. A.P.I. Rokade, who is examined as PW-10, investigated the case. He conducted various panchnamas, seized various articles and recorded the statements. The articles were

sent for chemical analysis. In the cross-examination, he has admitted that he has not prepared the panchnama of spot from where the wooden plank was removed.

12 The C.A. report showed that the blood found on most of the Articles, including the wooden rod was human blood, but, it was inconclusive. The blood groups of the Appellant as well as the deceased could not be determined.

13 Shri Kharat, learned counsel for the Appellant made following submissions :

- i. There were about 52 prisoners in the barrack and none of them is examined, except the injured PW-5 Vijay Ippar. The Appellant bringing that rod from a toilet block is not conclusively proved by the prosecution as PW-2 Govind Pawar has not supported the prosecution case on that aspect. He has not even identified the rod. Bringing rod from the toilet is an omission from the police statements of the witnesses.

- ii. PW-5 Vijay Ippar is not a reliable witness. Though the prosecution case is that more than one blow was given, PW-5's cross-examination shows that when he woke up the deceased was already assaulted by the Appellant. The injuries are also possible by fall.
- iii. The evidence of the Watchmen, who were themselves the convicts, is not trustworthy and they were all deposing as they were under pressure from the jail authorities.
- iv. PW-2 Govind Pawar, PW-4 Uttam Dhage and PW-5 Vijay Ippar themselves were convicted in different offences. PW-2 Govind Pawar and PW-4 Uttam Dhage were already serving their sentences post conviction.
- v. The prosecution has not established the blood group on the rod as being that of the deceased or the injured PW-5 Vijay Ippar. Therefore, that is not an incriminating piece of circumstance.
- vi. No panchnama was carried out and no investigation was made to find out from where that wooden rod was brought

by the Appellant. The evidence in that behalf is weak.

14 On the other hand, learned APP submitted that the injured eye witness PW-5 Vijay Ippar has sufficiently proved the case against the Appellant. His evidence cannot be lightly brushed aside. The other witnesses PW-2 Govind Pawar and PW-4 Uttam Dhage are also natural witnesses. Since these three witnesses, i.e. PW-5, PW-2 & PW-4, have sufficiently proved the case, there was no necessity to examine any other person from that barrack.

15 We have considered these submissions. As discussed earlier, the prosecution case rests heavily on the deposition of PW-5 Vijay Ippar who himself was injured in the incident. His deposition about the prior incident which had taken place at about 8.30 p.m. on the previous evening is sufficiently corroborated by PW-2 Govind Pawar and PW-4 Uttam Dhage, who had intervened in the quarrel. Their evidence to that extent is not shaken by their cross-examination. All of them are the natural witnesses. PW-5 Vijay Ippar was joined by the deceased in confronting the Appellant.

16 After the first incident of quarrel, this incident had taken place in the night at about 1.30 a.m. when the prisoners including Vijay and Vishal were sleeping. At this point of time the Appellant brought that heavy wooden rod from the toilet and gave blows on the deceased Vishal as well as on the injured Vijay. The blows were given when both of them were sleeping. After the blow was given to Vishal, Vijay woke up and then the Appellant gave a blow on his head as well. Therefore, though PW-5 Vijay Ippar had not seen the actual blow given by the Appellant on the deceased's head, he is certain about the blow given on his own head by the Appellant. His evidence, therefore, is sufficiently trustworthy. He himself has suffered very serious injuries, including skull fracture for which he had to be treated in J.J. Hospital. His injuries were grievous and life threatening.

17 The Appellant was the only person who was standing with weapon and who could have committed these acts of causing assault on the injured as well as on the deceased. This part of PW-5 Vijay Ippar's evidence is sufficiently corroborated by PW-2 Govind Pawar and PW-4 Uttam Dhage. Though, there is

some doubt about PW-2 Govind Pawar's deposition as to whether he had actually seen the assault, leaving aside his evidence to that extent, his presence at the spot and his version that he saw the Appellant near both the injured with a weapon in his hand is sufficiently proved.

18 There is no such infirmity in PW-4 Uttam Dhage's version and he sufficiently corroborates PW-5 Vijay Ippar's deposition. Both, PW-2 Govind Pawar and PW-4 Uttam Dhage, had rushed to the spot on hearing the commotion. Both of them had seen the Appellant standing near the injured with wooden rod in his hand. There is no reason to discard their evidence.

19 Thus, the evidence of PW-2 Govind Pawar, PW-4 Uttam Dhage and PW-5 Vijay Ippar together sufficiently prove the prosecution case beyond reasonable doubt against the Appellant.

20 The medical evidence shows that the deceased had died because of the head injury, which was quite possible by the wooden rod used by the Appellant. Even the injured PW-5 Vijay Ippar had suffered very serious injury on his head.

21 Though, the investigating agency has not carried out any investigation regarding the part of toilet from where the wooden rod was removed, the very fact that the Appellant was found with that wooden rod near both the injured shows that he had actually used it. This is an incriminating piece of circumstance. Therefore, not carrying out panchnama of the toilet block, will not make much difference to the prosecution case. The evidence shows that the Appellant has committed this offence with pre-meditation, preparation, intention and knowledge.

22 From the above discussion, it is clear that the prosecution has proved its case beyond all reasonable doubt. The impugned judgment and order passed by the trial Judge, therefore, need not be interfered with. The Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)

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PRAKASHRAO
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Deshmane (PS)

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