

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

CRIMINAL APPEAL NO. 17 OF 2014

Namdeo Kerappa Garale

..Appellant

Versus

State of Maharashtra

..Respondent

Ms. Vilasini B. i/b. Mr. Jaydeep D. Mane for Appellant.

Ms. M. M. Deshmukh, APP for State/Respondent.

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

**RESERVED ON : 02nd MARCH 2022.
PRONOUNCED ON : 09th MARCH 2022.**

JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. The Appellant has challenged the Judgment and order dated 29/05/2013 passed by the learned Additional Sessions Judge, Pandharpur in Sessions Case No. 90 of 2011, whereby the Appellant who was the sole accused was convicted for commission of the offence punishable under section 302 of the Indian Penal Code (for short 'IPC') and was sentenced to suffer Life Imprisonment and to pay a fine of Rs.1000/- and in default of payment of fine to undergo further R.I. for one month. He was also

convicted for the offence punishable U/s.506 of IPC and was sentenced to suffer R.I. for three months and to pay a fine of Rs.500/- and in default of payment of fine to suffer further S.I. for 15 days. Both the sentences were directed to run concurrently. The set off U/s.428 of Cr.p.c. was granted.

2. Heard Ms. Vilasini B., learned counsel for the Appellant and Ms. Deshmukh, learned APP for the State.

3. The Appellant was convicted for committing murder of one Kisan Bandgar. The F.I.R. was lodged by his son in law Nivrutti Aldar. He was examined as PW-3. He has stated that the Appellant and the deceased were having their lands in Zapachiwadi. The Appellant had two wives Meena and Vimal. His relations with his first wife Meena were strained because of his second marriage. He used to beat her. The deceased had tried to separate their quarrel, but the Appellant did not like it and had assaulted the deceased. The deceased, in the past, had lodged a complaint against the Appellant at Sangola police station. The Appellant was arrested and then released. The Appellant used to sell the utensils from his

house. The first wife Meena had gone to stay with her parents and before going she had kept the utensils in the house of the deceased. The Appellant did not like that also and on all these counts he was holding grudge against the deceased. The incident had taken place on 30/09/2011. One Rajaram Aldar came to the informant-PW-3 and told him that the Appellant had given a blow of axe on the deceased which caused his murder. The informant-PW-3 and others rushed to the spot. They found the deceased lying in a pool of blood. There were injuries on his head and cheek. The axe was embedded in his skull. The people around there told the informant that the Appellant had committed that act. Therefore, PW-3 went to the police station and lodged this F.I.R. The F.I.R. is produced at Exh.12.

In his cross-examination there was nothing of any serious consequence. The minor omissions do not really affect his evidence. In any case, he is not the eye witness to the incident. He has spoken mainly about the past quarrel.

4. In this context, PW-16 Arjun Khadtare was examined. He

was a Head Constable on duty at Sangola police station on 28/08/2010. He had registered an N.C. complaint No.1606 of 2010 for the offence punishable under sections 323, 504 and 506 of IPC against the Appellant, at the instance of the deceased in respect of the incident which had taken place on 28/08/2010.

5. PW-17 Vinod Patil, another Head Constable, had deposed about another N.C. complaint bearing No.1621 of 2010 under the same sections, lodged by the deceased against the Appellant on 01/09/2010. Both these N.C. complaints are produced on record at Exh.39 & 44. This witness had also initiated Chapter proceedings against the Appellant in the year 2010. Thus, there was history of enmity between the deceased and the Appellant.

6. The main evidence in this case is in the form of eye witnesses. PW-9 Devappa Aldar is an eye witness. He has deposed about the same reason for dispute between the deceased and the Appellant as discussed herein above. On the day of incident at 1.30p.m. he was taking his sheep for grazing. He had reached between the house of Jaywant Waghmode and Sukhkdeo Chavan

while going towards the field of the deceased. At that time, he saw the Appellant with his axe. The Appellant asked this witness to keep quiet. The Appellant went towards the house of Lavate. PW-9 heard shouts. He rushed towards Lavate's house. There he saw the Appellant giving blow of axe on the head of the deceased. He was trying to pull out the axe from the head of the deceased, but it was firmly embedded in the skull. Vithal Lavate came there and asked the Appellant to stop. Jaywant Lavate also came there. He also told the Appellant to stop assaulting. The Appellant went away by threatening the witnesses with a knife. The deceased was lying at the spot in the pool of blood. He had suffered head injury. This witness PW-9 came back to his locality and informed his nephew Rajaram, who in turn, called PW-3. All of them came back to the spot. There is an important omission from his police statement. In the police statement the fact that he had seen the accused giving blow on the head of deceased is not mentioned. That was the only omission. But he had seen the appellant trying to take out axe from the head. Thus, his presence at the scene at the time of incident is sufficiently established.

7. PW-12 Vithal Lawate is another eye witness. He has stated that, at the time of incident, at around 1.30p.m. he heard shouts. He came out to see the commotion. He saw that the appellant was trying to remove axe which was embedded in the head of the deceased. The deceased was lying there. Jaywant Waghmode also reached there at that time. The appellant threatened them with a knife and then he went away. He is cross-examined about the Appellant's two wives and about the Appellant's dispute with the deceased. Beyond that, his cross-examination is insignificant.

8. PW-13 Jaywant Lawate is also an eye witness. His presence is spoken by PW-9 and PW-12. He has narrated the incident in the same manner as is narrated by PW-9 and PW-12. In his evidence also there was an omission from his police statement about this witness having seen the Appellant giving blow of axe to the deceased. But the Appellant's presence near the deceased and the Appellant trying to take out the axe is consistently deposed.

9. PW-14 Jaywant Waghmode is another eye witness. His

land was near the land of the deceased. He has spoken about the past history between the appellant and deceased. At about 1.30p.m. on that day, he heard the shouts from his house. He went there. He saw that the Appellant was trying to remove the axe from the head of the deceased. This witness rushed there. The other witnesses Jaywant and Vitthal had come there. The Appellant threatened all of them. Jaywant told the accused to leave the deceased. He is cross-examined about the Appellant having strained relations with the villagers.

10. Apart from these main witnesses, the other witnesses are not that important. PW-1 Shankar Aldar was a pancha for inquest panchanama. PW-2 Suresh Pandhare was pancha for spot panchanama. PW-4 Arun Shinde was A.S.I. attached to Sangola police station. He had taken down the complaint given by PW-3. PW-5 Nandkumar Dighe was a pancha for arrest panchanama of the Appellant, who was arrested on 30/09/2011 itself.

11. PW-6 Dr. Mulani Akbar had conducted the postmortem examination. There were four injuries. One was major injury on left

parieto occipital region of scalp with fracture of skull and brain matter was oozing out. There was another C.L.W. of the size 12 x 6cm. on the left side of the angle of mandible. There was a C.L.W. on left forearm and abrasion to right knee. The cause of death was mentioned as "Death due to asphyxia due to head injury". The postmortem notes were produced on record a Exh.21.

12. PW-7 Sopan Sargar was a pancha for seizure of clothes of the deceased, as well as, the axe which was embedded in the head of the deceased.

13. PW-8 Govind Kengar was the village Kotwal. At about 2 to 2.15p.m. on that day, he had gone to Tahsildar office of Sangola. The Appellant was there. He told this witness that he had committed murder of the deceased Kisan and was going towards Sangola. Both of them took a ride in a jeep to go towards Sangola. The police apprehended the Appellant at Sangola.

14. PW-10 Fulchand Sanap was a carrier of articles who had carried the articles for C.A. examination.

15. PW-11 Subhash Chavan was a pancha. In his presence the

Appellant showed his willingness to produce his clothes and the knife which he had thrown in the bushes near his house. The articles were recovered under the panchanama.

16. PW-17 Vinod Patil carried out initial part of the investigation. He had also spoken about the previous N.C. complaint lodged by the deceased.

17. PW-18 A.P.I. Nandkumar Khadkikar was the investigating officer. He has carried out the investigation.

18. The defence of the appellant was that of total denial. No other specific defence was taken by the Appellant. The C.A. report shows that there was human blood on the shirt of the appellant, but no blood was found on other clothes and on knife produced by the appellant. The blood of 'O' group was found on the clothes of the deceased.

19. Learned counsel for the Appellant submitted that the evidence of the eye witnesses is not true. There is inconsistency in their depositions. She submitted that, none from the family members of the deceased is examined. The prosecution has

suppressed the evidence of material witnesses. The recovery of clothes and knife is innocuous and does not connect those articles with the incident. The villagers were angry with the appellant and, therefore, the eye witnesses who were also holding grudge against the Appellant have implicated the Appellant falsely. Learned counsel submitted that, it could be a case of grave and sudden provocation as it has come on record that the Appellant used to get angry. She relied on the Judgment of the Hon'ble Supreme Court in the case of *Kandaswamy Ramaraj Versus The State by Inspector of Police, CBCID*¹, wherein, the Hon'ble Supreme Court considered the history and temperament of the Appellant therein and it was held that having been deprived of the power of self-control upon sudden provocation by the children, without intention or premeditation he had committed murder. Learned counsel submitted that, same principle should apply to the facts of the present case.

20. Learned APP, on the other hand, relied on the evidence of eye witnesses. She submitted that, it is a case of direct evidence. The depositions are consistent. The Appellant had gone towards the

¹ Criminal Appeal No. 259 of 2015 Decided on 07/22/2019.

deceased with an axe and thus, he had all the intention to commit murder of the deceased. The motive is sufficiently established.

21. We have considered these submissions, as well as, evidence on record. Having perused the depositions of the eye witnesses carefully, we are satisfied that their evidence is consistent, cogent and reliable. The presence of eye witnesses is mentioned by each other. They have corroborated the depositions of each other. Even the utterance of the eye witness is consistent with other eye witness. There is absolutely no inconsistency between the depositions of these eye witnesses. They are natural eye witnesses. They were present in the vicinity and they had immediately rushed to the spot on hearing the shouts; by that time, the blow was given and the Appellant was trying to remove the axe embedded in the skull of the deceased. The Appellant threatened all of them and then went away from the spot. No evidence is brought on record to show as to why these witnesses would implicate the appellant falsely.

22. The prosecution has also proved the motive behind

murder. There has been constant incidents between the Appellant and the deceased as mentioned earlier. In the past, the deceased had lodged N.C. complaints against the Appellant. Those N.C. complaints and Chapter proceedings are duly proved by the prosecution by examining the police officers. On each of these occasions, the appellant had assaulted the deceased.

23. There is another circumstance against the appellant in the form of extrajudicial confession made to the village kotwal. In the cross-examination of that witness PW-8, the defence had not been successful to shatter his evidence. This is another incriminating piece of circumstance against the appellant.

24. So far as recovery of clothes and knife is concerned, that is a weak piece of evidence because the blood group of the blood stains on the shirt of the appellant is not established. There was no blood found on the knife and other clothes. The knife was not actually used in the incident, but was used to threaten the witnesses.

25. We are unable to agree with the submissions of learned

counsel for the appellant that the incident could have occurred because of grave and sudden provocation and only one fatal blow was given. The manner in which the blow was given shows clear intention of the appellant to commit murder of the deceased. The appellant had gone towards the deceased with an axe. Therefore, there was preparation, premeditation and actual execution of his intention to commit murder of the deceased. Thus, the prosecution has proved the case against the appellant beyond reasonable doubt. There is no reason to interfere with the impugned Judgment and order.

26. The Appeal is, therefore, dismissed.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)