

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 550 OF 2014

Vicky Amar Gomes	]	
Age – 30 years, Occ.: Labour	]	
Address : Vegetable Market,	]	
Shukravar Peth, Pune.	]	
[At present Yerawada Jail, Pune]	]	... Appellant

V/s.

The State of Maharashtra	]	
Copy to be served on the	]	
Public Prosecutor High Court of Bombay	]	... Respondent

Mr.Hrishikesh Chavan, Appointed Advocate for Appellant.
Ms.G.P. Mulekar, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 6th March 2023.
PRONOUNCED ON : 28th March 2023.**

JUDGMENT (Per : A.S. Gadkari, J.) :

1. Appellant has impugned Judgment and Order dated 8th May 2014 passed in Sessions Case No. 735 of 2012 by the learned Additional Sessions Judge, Pune, convicting him under Sections 302 and 509 of Indian Penal Code (for short, "I.P.C.") and is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- for the offence punishable under Section 302 of I.P.C., to undergo simple imprisonment for

three months and to pay fine of Rs.1,000/- for the offence punishable under Section 509 of I.P.C.. The Trial Court has directed that, both the sentences shall run concurrently.

2. Heard Mr.Hrishikesh Chavan, learned Advocate appointed to represent Appellant and to assist the Court and Ms.G.P. Mulekar, learned A.P.P for Respondent-State. Perused entire record.

3. Shorn of unnecessary details the prosecution case in brief is as under :-

(i) The informant Smt.Kajal A. Kamble (PW-1) with her husband Ajay Kamble (deceased) and son Yash was residing on a footpath near Thorla Shaikhsalla Darga. She was in the vocation of collecting scrap. Her husband (deceased) was working as a waiter. As she had no house, she was residing on the footpath. Appellant was also residing there. Appellant was pestering informant to marry with him by leaving her husband. He on various occasions told informant (PW-1) that, he will maintain her. PW-1 had told Appellant that, she will not leave her husband. On that count there used to be quarrels between her husband (deceased) and Appellant. The persons residing near Darga therefore drove them away. Thereafter PW-1, deceased and their son went to reside in the vicinity of Shani Mandir situated near Shaniwarwada, Pune. They were sleeping on otla/ota of a shoe shop. The Appellant continued to quarrel with them and pestering informant to marry with him.

(ii) In the night of 28th May 2012 at about 11.00 pm informant (PW-1), her husband (deceased) and her son Yash took their dinner on the said ota of shoe shop. Thereafter a quarrel took place between the husband (deceased) of informant (PW-1) and Appellant for the aforesaid reasons and thereafter the Appellant threatened deceased that, 'he will teach a lesson' and went to sleep on the other side of the road.

(iii) At about 5.00 to 5.30 am on 29th May 2012 Appellant awakened the informant (PW-1) from the sleep and asked her to come along with him to sleep. The informant refused to the same. Appellant thereafter brought a big stone and hurled it on the head of deceased. The husband of PW-1 suffered severe injuries and started writhing. The informant started shouting for help. Appellant gave a kick on her abdomen and pushed her son. As nobody was present there, no one came for help.

(iv) Informant rushed to Kasba Police Chowky and narrated the incident to Police Head Constable Shri Ramchandra G. Danane (PW-4), who was on duty at the said time. Appellant also rushed behind the informant (PW-1) and reached Police Chowky. PW-4 asked the Appellant his name to which he replied as 'Vicky Amar Gomes'. At that time PW-4 noticed blood stains on his pant and chappal. PW-4 detained the Appellant with the help of his staff and proceeded to the spot of incident. At the spot of incident Ajay Kamble was lying on a quilt and blood was oozing from his head. He immediately called a mobile vehicle and took Ajay Kamble to Sassoon

Hospital, where the doctors examined him and declared dead before admission.

(v) Informant (PW-1) lodged the First Information Report (Exh.22). She also put her thumb impression on the printed form of F.I.R. (Exh.23). The investigation of the said crime was handed over to Police Inspector Shri. Dnyaneshwar B. Bhosale (PW-8), then attached to Faraskhana Police Station, Pune. He visited the spot of incident. He conducted Inquest Panchanama (Exh.26) in presence of Sudhakar Deshmukh (PW-2). He arrested Appellant in presence of Sunil Khude (PW-7) and seized clothes of Appellant by effecting Seizure Panchanama dated 29th May 2012 (Exh.25A). The said Panchanama was effected in presence of two panch witnesses, namely, Dagadu Shendkar (PW-3) and Mr.Sunil Khude (PW-7). The said two witnesses did not support prosecution case and were declared hostile and therefore the Seizure Panchanama has been proved by the Investigating Officer (PW-8).

(vi) Dr.Amol Shinde (PW-6) conducted autopsy on the dead body of Ajay Kamble. Dr.Amol Shinde was working as Assistant Professor at Department of Forensic Medicine, B.J. Medical College, Pune at the relevant time. On external examination, he found tattoo mark over right forearm ventrally as 'माँ' and 'अजय'. He also noticed second tattoo mark over right side of chest as 'S.A.'. He noticed following external injuries which are recorded in column No. 17 of Postmortem Report.

- “(1) Laceration present over right eyebrow laterally, 2 x 1 cm. x bone deep, irregular, reddish.*
- (2) Laceration present over right ear pinna, 6 x 2 cm. x bone deep, irregular reddish.*
- (3) Contusion abrasion over right temporal, frontal, and zygomatic region, 10.5 cm. x 5.5 cm., irregular reddish.”*

On internal examination he noticed injuries within head as mentioned in column No.19, corresponding to injury Nos.1 to 3 in column No.17. They were as follows :-

- “(1) Under scalp haematoma present over right frontal and temporal regions, irregular reddish.*
- (2) Depressed fracture present over right temporal region, 4 x 3 cm. irregular reddish, with multiple, fracture lines radiating towards middle and anterior cranial fossa.*
- (3) Menivages, dura intact.*
About 50 ml. subdural hemorrhage present over right, cerebral hemisplene reddish.
Thin layer of subarachnoid hemorrhages present over both cevebral hemispleves, irregular reddish.
Brain intact, congested oedematous.”

After conducting postmortem examination he gave opinion that, death due to ‘Head injury (homicidal assault). He accordingly prepared Postmortem Examination Report (Exh.40). He opined that, the above noted injuries were possible by a stone (Article 6).

In his examination-in-chief itself he has clarified that, in the Postmortem Report (Exh.40) name of dead body was mentioned as ‘Ajay

Sunil Kamble'. That on 2nd July 2012 police gave letter for correction of name of dead body as 'Baban Khandu Lokare' and accordingly the name of dead body was changed in the Postmortem Report as well as in Advance Certificate (Exh.41).

(vii) PW-8 recorded statement of various witnesses and after receipt of Chemical Analyzer's Report from Forensic Science Laboratory and completion of investigation submitted chargesheet in the Court of Judicial Magistrate First Class (Court No.2), Pune. The learned J.M.F.C. in turn committed the case to the Court of Sessions as the offence punishable under Section 302 of I.P.C. is exclusively triable by the Court of Sessions.

(viii) The Trial Court framed charge against the Appellant below Exh.2. It was read over and explained to him in vernacular language to which he pleaded not guilty and claimed to be tried. The defence of the Appellant was of total denial and false implication. The prosecution in support of its case examined in all 8 witnesses. After recording of the evidence of prosecution witnesses, the statement of Appellant as contemplated under Section 313 of Cr.P.C. was recorded below Exh.61.

From the cross examination of the material witnesses, it can be discerned that, the defence of the Appellant was of two fold. One that, the deceased was assaulted by unknown person and in the alternative, the deceased was harassing PW-1 and assaulted her with a knife and therefore she killed him by the said stone (Article 6) and thereafter she lodged false

complaint to save herself.

(ix) As noted earlier, the Trial Court by its impugned Judgment and Order has convicted the Appellant under Section 302 and 509 of I.P.C. and has sentenced him accordingly.

4. Mr.Chavan, learned Advocate for Appellant submitted that, the PW-4 in his cross-examination has admitted that, after the PW-1 came to Police Station for giving information, he recorded it in the 'Khabari Book' and thereafter issued letter to Sassoon Hospital for treatment of injured. That the registration of F.I.R. and naming the Appellant therein is a concocted and doubtful document. That, there is a serious doubt with respect of identity of the deceased. He submitted that, Dr.Amol Shinde (PW-6) in his testimony has admitted that, initially in his Postmortem Report (Exh.40) the name of dead body was mentioned as "Ajay Sunil Kamble". However, at the request of father of deceased namely Khandu Lokare, the police requested concerned witness to change name of the dead body as "Baban Khandu Lokare". Thus there is serious doubt about the identity of the deceased. He submitted that, Police have not examined Khandu Lokare though he has been cited as witness. In support of his contention he relied on a decision of this Court in the case of *Ashraf Hussain Shah Vs. State of Maharashtra, reported in 1996 Cri.L.J. 3147*. That, there were other tattoo marks on the dead body of the deceased showing that, the deceased was a devotee of lord Shiva. He submitted that, it is difficult to accept the theory of prosecution that the

deceased was husband of PW-1. That, there is no material to show the fact that, PW-1 was infact the wife of deceased, as she even did not claim body of the deceased. Her deposition is not reliable to accept the fact that, she was present at the scene of offence. That, the testimony of PW-1, who is purportedly an eye witness to the alleged incident is not reliable and needs to be kept aside from consideration. Her evidence does not inspire confidence. He therefore submitted that, the present Appeal may be allowed by acquitting Appellant from all the charges.

5. Ms.Mulekar, learned A.P.P. for Respondent-State opposed the appeal and submitted that, there was a tattoo by name 'Ajay' on the body of the deceased. PW-1 i.e. wife of deceased is an eye witness to the incident and therefore the identity of deceased has been proved beyond doubt. She submitted that, the Spot Panchanama (Exh.24) fully supports the version of PW-1. That at the time of drawing of Seizure Panchanama (Exh.31) of the clothes of Appellant, blood stains were found on it, which are proved to be of human origin by the Chemical Analyzer. She therefore submitted that, there are no merits in the appeal and it may be dismissed.

6. The facts stated in para Nos.3(i) to (vi) are deduced from the testimonies in chief of the said relevant witnesses and as per record are admitted facts.

7. In the cross-examination of PW-1 suggestions were put to her that, at the time of Inquest Panchanama she had stated to police that, her

husband was assaulted by unknown person; that her husband was harassing her and assaulted her by knife, therefore she killed him with a stone, have been categorically denied by her. In rest of her cross-examination nothing beneficial to the defence have been elicited and brought on record. Her ocular version that, on the fateful day the Appellant assaulted deceased with a stone on his head between 5.00 to 5.30 am has gone unchallenged. Perusal of testimony of PW-1 clearly reveals that, she is a reliable witness and her testimony is trustworthy.

8. PW-3 and PW-7 who are Panch Witnesses to the personal search Seizure of Clothes Panchanama (Exh.31) have been declared hostile. The said Seizure Panchanama has therefore been proved by the Investigating Officer (PW-8).

As noted earlier, the injuries suffered by deceased by the weapon/stone (Article 6) have been in great detail stated by Dr. Amol Shinde (PW-6), who had conducted autopsy on the dead body. The said witness has in unequivocal terms stated that, the injuries suffered by deceased Ajay Kamble were possible by stone (Article 6).

9. As far as identity of deceased is concerned, PW-1 in her testimony has stated that, deceased Ajay was her husband and she along with her husband and son Yash were sleeping on the ota of shoe shop near Shaniwarwada. She has specifically stated the fact of assault by Appellant on Ajay on the date of alleged incident to PW-4, immediately after occurrence of

the said incident. Though subsequently at the instance of father of deceased namely Khandu Lokare, PW-6 changed the name of dead body in the Postmortem Report from 'Ajay Sunil Kamble' to 'Baban Khandu Lokare', according to us the identity of the dead body has been duly established by the prosecution. PW-1 had married with Ajay Sunil Kamble. It may a probability that, the deceased had told and disclosed his name as 'Ajay Sunil Kamble' to PW-1 at the time of marriage and was residing with her at the said place by adopting the said identity. Merely because Khandu Lokare has not been examined by the prosecution, it gives no benefit to the Appellant and makes no difference for identification of dead body of deceased. Thus, according to us, identification of dead body has been duly established by the prosecution of 'Ajay Sunil Kamble' for whose murder the Appellant has been tried. The decision relied upon by the learned Advocate for Appellant materially differs from the facts in the case in hand and therefore is of no avail to him.

10. There is one more circumstance against the Appellant i.e. the extra judicial confession given by the Appellant to Ramchandra G. Danane (PW-4) at the Police Chowki. After the assault by Appellant on the deceased when the PW-1 immediately rushed to nearby Police Chowki, Appellant followed her and told PW-4 that he had assaulted Ajay with a stone. PW-4 had noticed blood stains on the pant and chappal of Appellant there itself. The said extra judicial confession given by the Appellant has been duly

corroborated by other circumstances such as the Chemical Analyzer's Report of the clothes and chappal of Appellant. The Chemical Analyzer in his Report (Exh.62) stated that, the full pant and chappal of Appellant were stains with blood of human origin, however its grouping was inconclusive. Appellant has not offered any explanation for having blood stains of human origin on his clothes.

11. The alleged contradictions and/or omissions pointed out by the learned Advocate for Appellant are minor in nature and do not go to the root of the case. According to us there is more than sufficient evidence available on record to show clear indictment of Appellant in the present crime.

12. After perusing entire record and the impugned Judgment and Order, we find that, there is no error committed by the Trial Court while convicting and sentencing the Appellant.

Appeal being *dehors* of merits is accordingly dismissed.

13. Before parting with the Judgment, we would like to place on record a word of appreciation for the efforts put in by Mr.Hrishikesh Chavan, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant as he was thoroughly prepared in the matter and rendered proper assistance to the Court.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]