



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.34 OF 2020**

Rajendra @ Rajabhau Chhama Kale,  
Age : 42 years, Occ. Labour,  
r/o. Wadji Road, Terkheda, Tq. Washi,  
Dist. Osmanabad

..Appellant

Vs.

The State of Maharashtra,  
Through Anand Nagar Police Station,  
Osamanabad

..Respondent

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Mr.G.J.Kore, Advocate for appellant  
Mrs.Uma Bhosale, APP for respondent  
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**CORAM : R.G.AVACHAT AND  
NEERAJ P. DHOTE, JJ.  
DATE : MARCH 20, 2024**

**JUDGMENT (PER R.G.AVACHAT, J.) :-**

The challenge in this appeal is to the judgment and order of conviction and consequential sentence passed by learned Addl. Sessions Judge, Bhoom (trial court), in Sessions Case No.21 of 2017. Vide the impugned judgment and order, the appellant has been convicted for the offences punishable under Sections 302 and 324 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- and R.I. for two years and to pay fine of Rs.1,000/-, respectively, with default stipulations. The appellant is, therefore, before us in this appeal.

2. PW 1 - Chhaya (informant) married Bappa Kale (deceased) long back. The couple was blessed with two children. The informant has two brothers-in-law, Rajendra @ Rajabhau (appellant) and Ramdas (PW 3). The parents-in-law of the informant are there. All the three brothers were married and blessed with children. All of them were residing in the neighbourhood of each other at village Terkheda, Tq. Washi, Dist. Osmanabad.

3. Bappa (deceased) had herd of 40 goats. He would rear them. The appellant was addicted to alcohol. He (appellant) was jealous of the progress and prosperity of his brother Bappa (deceased). On 08.04.2017, the appellant came drunk. The informant along with her children and husband (deceased) were taking dinner in the court-yard of their house. The appellant picked up quarrel with the deceased over money and property. Some argument and manhandling took place between the two. The appellant went home and returned with a tommy (iron rod). The appellant rushed towards the person of the deceased with tommy. The informant intervened and removed it from his hands. The appellant, thereupon, fished out a long knife from his pocket and assaulted Bappa (deceased) on his chest. Ramdas (PW 3) intervened. The appellant too assaulted on his (Ramdas) left arm

with knife. The appellant, thereafter, fled away. The informant secured an ambulance service and rushed her husband and brother-in-law to the Government Hospital, Osmanabad. Her husband was declared dead on admission to the hospital. She, therefore, lodged the First Information Report (Exh.27). Crime vide C.R. No.62 of 2017, came to be registered with Yermala Police Station for the offences punishable under Sections 302 and 324 of Indian Penal Code. Inquest panhnama (Exh 37) was conducted. Mortal remains of the deceased was subjected to post mortem examination. The scene of offence panchnama (Exh.40) was drawn. Clothes on the person of the deceased were taken charge of. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the appellant was proceeded against by filing charge sheet before the learned Judicial Magistrate, First Class, Washi. Learned Magistrate committed the case to the court of Additional Sessions Judge, Bhoom, Dist.Osmanabad.

4. The trial Court framed Charge (Exh.13). The appellant pleaded not guilty. It is his defence that the informant had extra-marital relationship with her brother-in-law (PW 3 – Ramdas). There was, therefore, quarrel between the deceased and Ramdas. The

deceased died in the said quarrel. The informant and Ramdas took disadvantage thereof to falsely implicate the appellant in the crime in question with further motive to grab his property.

5. To establish the charge, the prosecution examined eight witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case, convicted the appellant and consequentially sentenced, as stated above.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellant would submit that the the prosecution evidence is inconsistent. He first drawn our attention to the oral evidence of the informant (PW 1 - Chhaya) and the FIR, wherein, it has been stated that the appellant ran away with knife. He then invited our attention to the scene of offence panchnama (Exh.40) to indicate that the knife was seized from the scene of offence. He would further submit that the informant being widow of the deceased, ought to have accompanied the decease in ambulance. She followed the ambulance to the hospital. He would further submit that though the informant claimed to have made a call from the cell-phone of one Bhima Kale, said Bhima Kale has not been examined. The oral evidence of the son of the deceased is

inconsistent with the evidence of his mother. The son was just nine years of age at the relevant time. He being a child witness must have been tutored to give evidence against the appellant. According to learned counsel, the appellant was not home. The record indicates that he surrendered before the police about fortnight after the incident. He would further submit that according to the informant, her brother-in-law (PW 3 – Ramdas) arrived at the scene of offence on hearing cries, while Ramdas, in his evidence, testified to have been present when the incident took place. Learned counsel would submit that the appellant has been in jail since day one of his arrest. The case of the prosecution is doubtful. He, therefore, urged for allowing the appeal.

8. Learned APP would, on the other hand, support the impugned judgment and order.

9. Considered the submissions advanced. Perused the evidence on record. Also gone through the judgment impugned herein.

10. Let us advert to the evidence on record and appreciate the same.

Bappa (deceased), Rajendra (appellant) and Ramdas (PW 3) were the brothers. Their parents were alive. All the three brothers were married and blessed with children. All of them were residing separately, but in the neighbourhood of each other. The appellant was addicted to alcohol. Bappa (deceased) would rear she-goats as profession. His wife (informant) was serving with a fire-crackers manufacturing unit. Admittedly, the incident took place little past 08.30 p.m. on 08.04.2017.

11. PW 4 - Dr. Satish was serving with Civil Hospital. Osmanabad. He conducted post-mortem examination on the mortal remains of Bappa (deceased). He noticed following injuries on the person of the deceased:-

External injuries :-

- (i) Stab injury size 8 x 4 cm. x up to heart deep, elliptical in shape seen at the left lateral side chest below left nipple, extending from mid axillary line to mid clavicular line obliquely, directed from left to right, perforating upper lobe of left lung and left atrium of heart. There was fracture to 4<sup>th</sup> and 5<sup>th</sup> rib on left side noted as the injury side.

Internal injuries :-

- (i) Left sided pleural tear noted of size 6 x 3 cm.

(ii) Left upper lobe laceration noted about size of 8x2x3 cm. corresponding to stab injury.

(iii) Pericardium tear noted along left upper side 5x½ cm.

(iv) Laceration of left atrium base, noted of size 5 x ½ cm.

PW 4 – Dr. Satish further observed that all the above injuries were ante-mortem, caused within 6 to 18 hours prior to examination. According to him, the cause of death of Bappa is “*stab injury penetrating to left lung and left atrium of heart.*”

12. The deceased met with homicidal death, is undisputed. The question is, whether the appellant is author thereof. The informant (PW 1 – Chaaya) testified that the appellant was addicted to alcohol. He (appellant) was jealous of the progress and prosperity of his brother Bappa (deceased). On 08.04.2017, the appellant came drunk. The informant along with her children and husband (deceased) were taking dinner in the court-yard of their house. The appellant picked up quarrel with the deceased over money and property. Some argument and manhandling took place between the two. The appellant went home and returned with a tommy (iron rod). The appellant rushed towards the person of the deceased. The

informant intervened and removed it from his hands. The appellant, thereupon, fished out a long knife from his pocket and assaulted Bappa (deceased) on his chest. Ramdas (PW 3) intervened. The appellant too assaulted on his left arm with knife. The appellant, thereafter, fled away. The informant secured an ambulance service and rushed her husband and brother-in-law to the Government Hospital, Osmanabad.

13. Although the informant (PW 1 - Chaaya) was subjected to searching cross-examination, close reading thereof would indicate that nothing could be elicited therefrom, which would help the appellant in his defence. She denied to have had illicit relationship with Ramdas (PW 3). She also denied that quarrel took place between Bappa (deceased) and Ramdas (PW 3) over her relationship with Ramdas and in the same quarrel, Bappa died. The FIR (Exh.27) corresponds with the oral evidence of PW 1 - Chaaya/informant. As such, her substantive evidence has been corroborated with her FIR (Exh.27).

14. Although Bhima Kale from whose cell-phone the informant had made phone-call for securing ambulance service, was not examined, it has been admitted that Bappa (deceased) was rushed to the hospital in ambulance. He was accompanied by her

brother-in-law Ramdas. The informant had not accompanied her husband - Bappa (deceased) to the hospital in ambulance, is not such a fact so as to render her oral evidence unreliable. Admittedly, she followed the ambulance to the hospital.

15. PW 2 - Vishal, son of Bappa (deceased) and the informant, was nine years of age, while the incident took place. It is in his evidence that by 08.30 p.m. on the fateful day, he was taking dinner with his parents. He testified that there was scuffle between the appellant and his father (Bappa). The appellant then went home and returned with a tommy. His mother snatched the tommy from the appellant. The appellant, thereafter, fished out a big knife and assaulted on the chest of his father. On hearing cries, Bhima Kale arrived. His another uncle, Ramdas, questioned the appellant, as to why did he assault Bappa. Thereupon, the appellant gave blow of knife on the hand of his uncle (Ramdas). Though this witness was also subjected to searching cross-examination, we find that nothing has been brought on record so as to render the prosecution case doubtful.

16. PW 3 - Ramdas, real brother of the appellant and Bappa (deceased), testified on the lines of the evidence of PW 1 - Chaaya (informant) and PW 2 - Vishal. His evidence indicates that there was

heated exchange of words between the appellant and the deceased. Scuffle took place between the two. The appellant went to his house and brought a tommy and a knife. Chhaya (PW 1) snatched the tommy from the hands of the appellant. Chhaya (PW 1) and her family members raised hue and cry. Hence, this witness went out of his house and saw that the appellant gave blow of knife on the left side rib-cage of Bappa. Bappa fell on the ground. This witness (Ramdas) asked the appellant as to why did he beat Bappa. Thereupon, the appellant inflicted a knife-blow on his left arm. The appellant then left. It is further in his evidence that he rushed Bappa (deceased) to Government Hospital in ambulance. Bappa was declared dead. He (Ramdas) too was provided medical treatment.

PW 3 – Ramdas admitted in his cross-examination that his police statement was not read over to him after it was recorded. He denied to have extra-marital relationship with the informant (PW 1). He denied that he had quarrel with the deceased and as a result thereof, the deceased died.

17. PW 3 – Ramdas is injured witness. His evidence stands on higher pedestal. PW 5 – Dr.Santosh examined him in Government Hospital at Osmanabad. The Medico-Legal Certificate of Ramdas is at Exh.35. Same suggests him to have suffered stab injury over left

arm with a hard and sharp object. The Doctor's evidence would further indicate that Ramdas was indoor patient upto 11.04.2017. He was only allowed to left the hospital for 5-6 hours for attending funeral of his brother (Bappa). True, the injury was bandaged when he went to the hospital.

18. True, the Medical Officer (PW 4 - Dr.Satish), who conducted post-mortem on the dead body of Bappa (deceased), was suggested that the knife seized from the scene of offence was sharp on one side only. He admitted the same. He was further suggested that the injury on the person of deceased was possible by a weapon, which is sharp from both edges. He denied the same. We do not find any inconsistency between the ocular evidence and the medical evidence. We found the oral evidence of the informant (PW 1 - Chhaya), her son PW 2 - Vishal and the injured witness, Ramdas (PW 3) to be consistent with each other and reliable one. Same is corroborated by the FIR (Exh.27) and the post-mortem report besides the injury certificate of Ramdas. We, therefore, do not propose to refer to the evidence of other witnesses relating to seizure of clothes, other articles and C.A. reports in that regard.

19. Suffice it to say that the evidence referred to herein above and appreciation thereof lead us to observe the trial court to

have not erred in convicting the appellant for offences punishable under Sections 302 and 324 of Indian Penal Code and consequential sentence therefor. We are at one with the findings recorded by the trial court.

20. In the result, the appeal fails. The same is dismissed.

**[NEERAJ P. DHOTE, J.]**

**[R.G. AVACHAT, J.]**

KBP