



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

**CRIMINAL APPEAL NO. 243 OF 2023
WITH
CRIMINAL APPLICATION NO. 939 OF 2023**

Guman Vajarya Pawara
Age: 45 years, Occu.: Convict,
R/o Hindali, Tq. Sendhva, Dist. Badwani,
Madhya Pradesh
At present R/o Saver Shivar, Tq. Shirur,
Dist. Dhule

..APPELLANT

VERSUS

State of Maharashtra
Through P.S.O. Thalner, Dhule

..RESPONDENT

....
Mr. R.A. Jaiswal, Advocate for appellant (Appointed through Legal Aid)
Mr. S.J. Salgare, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 12th SEPTEMBER, 2024**

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this appeal is to a judgment and order of conviction and consequential sentence passed against the appellant by the Additional Sessions Judge, Dhule ('trial Court') in Sessions Case, No. 214 of 2013 dated 31st January, 2017. Vide the impugned judgment and order, the appellant has been convicted for the offences punishable under Section 302 and 324 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- and rigorous imprisonment for three years and to pay fine of Rs.1,000/-, respectively. In

default of payment of fine amount, he has been directed to undergo simple imprisonment for four months and two months respectively.

2. The facts giving rise to the present appeal are as follows :-

The First Information Report ('F.I.R.') (Exh.17) was lodged by PW 1 – Akbar on 31st August, 2013. It is his case that he owns an agricultural land at village Saver, Tq. Shirpur, Dist. Dhule. On the fateful day i.e. on 31st August, 2013 itself, the work of harvesting lady fingers was underway. His son, Firoz was resting on the cot. The appellant all of a sudden came with an axe and gave Firoz three blows therewith. When PW 3 – Suresh tried to catch hold the appellant, he (Suresh) too was assaulted with the axe. The appellant thereafter fled. The reason behind the assault was that Firoz had slapped on the face of the appellant about six months before the incident. The appellant was annoyed thereby, and therefore, done away with Firoz.

3. Based on the F.I.R. (Exh.17) lodged by Akbar, crime vide C.R. No. 41 of 2013 was registered against the appellant. On completion of investigation, charge-sheet was filed against him. The case was committed to the Court of Session. It was assigned to the trial Court for trial in accordance with law.

4. Charge (Exh.12) was framed against the appellant. He pleaded not guilty. His defence was of false implication.

5. To bring home the charge, the prosecution examined six witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court convicted the appellant and consequently sentenced as stated above.

6. Learned counsel for the appellant would submit that the appellant was falsely implicated for no reason. The motive that the deceased slapped the appellant six months before the incident is grossly inadequate to lead the appellant to commit murder of Firoz. Learned counsel took us through the evidence on record to ultimately urge for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit it to be an open and shut case. He took us through the evidence on record. According to him, the case is based on eye witness account. Such evidence carries greater weight. The witnesses have no reason to falsely implicate the appellant sparing the actual culprit. He, therefore, urged for dismissal of the appeal.

8. Before the trial Court, the appellant admitted postmortem examination report (Exh.19). The said report indicates Firoz died of shock due to cardiorespiratory failure due to massive haemorrhage due to multiple injuries with multiple fractures with vital organ injury with head injury.

9. Moreover, PW 4 – Dr. Kailashsing was the Medical Officer at Shirpur Cottage Hospital on the given day. He examined PW 3 - Suresh to

find following three injuries on his person :-

- 1) Incised wound on left thenar eminence of the palm 4 x 1 x 0.5 cm
- 2) Incised wound on the left palm 1 cm away from injury No.1, 5 x 0.3 x 0.3
- 3) Incised wound on right cubital fossa 5 x 1 x 1 cm.

The injury certificate of PW 3 – Suresh issued by him finds place at Exhibit 24.

10. The F.I.R. (Exh.17) was lodged by PW 1 – Akbar within hours of the incident. It is in his evidence that he owns an agricultural land, Gut No. 192 at Saver vicinity, Tq. Shirpur. He came to his field by little past 09:00 in the morning. His son, Firoz (deceased) was lying on the cot. He saw the appellant gave three blows with an axe to his son – Firoz. It is further in his evidence that the appellant started running away. PW 3 – Suresh, therefore, attempted to catch hold of him. The appellant, therefore, assaulted him with the axe. The appellant then fled. He brought an Indica car and took his son to Cottage Hospital, Shirpur. PW 3 – Suresh followed them to the very hospital.

In the cross-examination it was suggested to him that he had come to his field at 08:30 in the morning. It was also brought on record through his cross-examination that PW 3 – Suresh was residing in the very field. It was further brought on record that six months before the incident, Firoz had given two slaps to the appellant on account of having problem of the wife of Suresh. He was confronted with the F.I.R. to bring on record omission that the appellant gave Firoz an axe blow on his neck. On perusal

of the F.I.R. (Exh.17) it appears that omission pertains to portion of the body, 'neck' only. The same, therefore, is of little consequence. During cross-examination of PW 1 – Akbar, nothing useful could be brought on record that would help the appellant in his defence.

11. PW 2 – Dadamiyan was the uncle of deceased – Firoz. His evidence is on the lines of the evidence of PW 1 – Akbar. His evidence indicates that he was in the field by 09:00 in the morning on 31st August, 2013. Labours were engaged in plucking lady fingers. He was collecting the same. PW 3 – Suresh was engaged on yearly remuneration (*ਸਾਲਗਰ*). Firoz was resting on the cot. It is further in his evidence that he heard sound of beating. He saw the appellant gave Firoz second axe blow. He, therefore, raised shouts. During that time the appellant gave third blow on the neck of Firoz. PW 3 – Suresh tried to catch hold of him. The appellant assaulted Suresh as well.

He was confronted with his statement to the police, to bring on record the same to have been silent to state the appellant to have assaulted on head, below the ear and on the neck of Firoz.

12. PW 3 – Suresh is another vital witness. His evidence is consistent with the evidence of both, PW 1 and 2. It is in his evidence that he was serving as '*Saldar*' with PW 1 – Akbar. He would reside in a hut on PW 1 – Akbar's land. His wife too would reside with him. His evidence further indicates that his wife left him for no return six months before he gave

evidence in the Court. His evidence further indicates that the incident took place by 09:30 a.m. in the morning. He was working in the field. His wife was engaged in plucking the lady fingers. PW 2 – Dadamiyan was also there. It is further in his evidence that the appellant came with an axe. He saw the appellant assaulted Firoz with the axe. He raised shouts. He intervened to save Firoz. The appellant gave axe blows on his right hand elbow and left hand palm. He thereby suffered injuries. PW 1 – Akbar was coming to the field by that time. After having seen all of them, the appellant fled away.

13. We have closely perused the cross-examination of PW 1 to 3 to find nothing to disbelieve their evidence. PW 3 – Suresh's evidence carries greater weight since he being an injured witness. PW 1 to 3 have no reason to falsely implicate the appellant, sparing the real culprit. PW 5 – Dilip did some of the investigation of the crime. He sent the seized muddemal to R.F.S.L., Nashik. He also recorded statements of the persons acquainted with the facts and circumstances of the case. PW 6 – Ramkrishna was a witness to the crime scene panchanama (Exh.36) and the panchanama of the seizure of clothes of the deceased (Exh.37). He was also a witness to the disclosure statement made by the appellant pursuant to which an axe came to be seized. Both the memorandum statements given by the appellant and seizure panchanama of the axe finds place at Exhibit 38 and 39.

14. Since the evidence of PW 1 to 3 was found to be reliable and inspiring confidence, we do not propose to dwell at length as to the evidence of other witnesses viz. Police officials, who did the investigation and the panch witness referred to above. Suffice it to say that based on the evidence of PW 1 to 3, the trial Court has rightly convicted the appellant and consequently sentenced. We find no reason to interfere with the impugned order of conviction and even quantum of sentence as regards offence punishable under Section 324 of the I.P.C.

15. In the result, criminal appeal stands dismissed. In view of dismissal of the criminal appeal, nothing survives in the criminal application. Same, therefore, stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)