



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

CRIMINAL APPEAL NO.296 OF 2020

Dilip s/o Bhimrao Ghute
Age 55 years, Occ. Convict No.8756
R/o Ekurga, Tq. & Dist. Latur
At present in Central Prison,
Aurangabad

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Station, Murud
Tq. Dist. Latur
(Copy to be served on Public
Prosecutor, High Court of
Bombay, Bench at Aurangabad)

... RESPONDENT

.....
Mrs. Bharti Gunjal, Advocate for appellant (appointed)
Mr. S.D. Ghayal, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 2nd April, 2024.

Date of pronouncing judgment : 12th April, 2024.

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

The challenge in this appeal is to a judgment and order dated 19/12/2016, passed by the Court of learned Additional Sessions Judge, Latur in Sessions Case, No.94/2015, whereby the appellant was convicted for the

offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.2000/- and rigorous imprisonment for two years and to pay fine of Rs.1000/- respectively, with default stipulations. The appellant is, therefore, in this appeal before us.

2. The First Information Report (F.I.R.) was lodged by P.W.1 Bibhishan (informant), a Police Patil of the village Ekurga, Taluka and District Latur on 20/7/2015. It has been averred in the F.I.R. that the informant learnt from his brother Jalindar that, Satish Ghute (deceased) was beaten up in his agricultural field. The informant, in his capacity as a Police Patil, therefore, proceeded towards the place to see what the matter was. He was accompanied by 4 others in his jeep. While they were near the field of one Haribhau Survase, they noticed the appellant coming from opposite side, riding a bullock cart. It was about 10.00 in the morning. The informant intercepted him. He found Satish (deceased) to have suffered multiple injuries and was even dead. The appellant told the informant that Satish died due to fall and, therefore, he was carrying his dead body for final rites to be performed in their another field.

3. Since the informant, after having seen the dead body, realized it was not an accident and, therefore, contacted Shri Padwal, Assistant Police Inspector on phone. He turned his jeep back and continued to follow the bullock cart. Shri Padwal (P.W.16) asked Police Head Constable Nagargoje (P.W.11) to go to the village and see what the matter was. Shri Nagargoje came to the village. The appellant confessed him to have killed his brother Satish. True, a confession made to police officer is inadmissible. Shri Nagargoje, however, detained the appellant along with the bullock cart then and there. A.P.I. Padwal (P.W.16) reached the village after a while. The informant gave him F.I.R., who, in turn, reduced into writing.

4. Based on the F.I.R. (Exh.19), a crime vide C.R. No.76/2015 was registered for offence punishable under Sections 302 and 201 of the Indian Penal Code. During investigation, it was realized that the son of the appellant was also involved in committing murder of Satish. Since he was found to be a juvenile in conflict with law, a separate charge sheet was filed against him before competent forum.

5. During the investigation of the crime, the scene of

offence panchanama was drawn. Inquest was conducted. Clothes on the person of the deceased and that of the appellant were seized under panchanamas. Mortal remains of Satish were subject to post mortem examination. There were weapons in the bullock cart, wherewith Satish was assaulted. Those too came to be seized. All the articles and blood samples of both, the appellant and the deceased, were sent to F.S.L. for chemical analysis and report. Upon completion of the investigation, the appellant was proceeded against by filing a charge sheet in the Court of learned Judicial Magistrate, First Class, 6th Court, Latur. The case was committed to the Court of Sessions for trial in accordance with law. The case, in turn, came to be committed to the Sessions Court, Latur and assigned to the Additional Sessions Judge (Trial Court) for trial in accordance with law.

6. The Trial Court framed the Charge (Exh.9). The appellant pleaded not guilty. From the tenor of the cross-examination of the prosecution witnesses, the defence of the appellant appears to be Satish to have been killed by someone else and particularly by his in-laws.

7. To bring home the charge, the prosecution

examined 17 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant and sentenced him as stated as above.

8. The learned counsel appointed to represent the appellant in this appeal would submit that, the case is based on circumstantial evidence. There was no motive for the appellant to commit murder of his brother. The chain of circumstances relied on by the prosecution has neither been complete nor each and every circumstance thereof has been proved. Our attention has also been drawn to a complaint (Exh.70) lodged by the deceased against his in-laws and even wife, informing the police to have been assaulted by them and perception of threat to his life at their hands. The learned counsel relied on following authorities.

- (1) Sachin Bhaskarrao Bobde Vs. The State of Maharashtra
2014 ALL MR (Cri) 2970
- (2) Bhujang Mahadu Panpatte Vs. State of Maharashtra
2014 (3) BOM CR (Cri) 518

9. The learned A.P.P. would, on the other hand, submit that, the appellant was found in custody of a dead body of his

real brother – Satish. Satish had suffered multiple injuries on his person. The weapons of assault were also found in the bullock cart. The prosecution has examined witnesses to indicate that the deceased, appellant and appellant's son had been to the respective field by 8.30 in the morning. The same indicates, the witnesses to have had last seen them together. There was strong motive for the appellant to commit murder of his brother. The appellant had borrowed a sum of Rs.70,000/- from the deceased for marriage of his daughter. He was not returning the same. Moreover, a borewell was taken in common in the field. Some religious ceremony in that regard was to be performed. The deceased was not ready to participate. The learned A.P.P. took us through the evidence of each and every witness and reiterated the reasons given by the Trial Court in support of the impugned judgment and order.

10. Let us advert to the evidence on record and reappraise the same. We have also perused the judgment impugned herein.

11. The suggestions given to the prosecution witnesses on behalf of the appellant go long way to indicate the appellant to have admitted his brother Satish (deceased) to have met with

homicidal death. P.W.12 Dr. Prachi conducted post mortem examination. She noticed following external injuries on the person of the deceased.

- 1) Stab injury over right chest at level of 3rd intercostal space 4 cm. below clavicle, obliquely placed of size 5 x 2 cm. Thoracic cavity deep. Margins clean cut, regular. Both the angles acutely directed downwards towards left side with oozing of blood. Evidence of fracture of 4th rib present.
- 2) Multiple abrasions over abdomen in upper quadrant in right and left side varying from size 4 x 0.5 cm. to 6 x 0.5 cm., Reddish in colour. Margins blurred.
- 3) Incised wound over back on right side at level of T 6 T7 vertebra 4 cm. away from midline, obliquely placed of size 6 x 1.5 x 1 cm., Margins clean cut, regular. Reddish in colour.
- 4) Stab injury over left right anteriorly over middle 1/3rd obliquely placed, of size 5 x 2 cm. bone deep. Margins clean cut, regular. Both angles acute with oozing of blood.
- 5) Chop wound over right leg in lower 1/3rd 3 cm. above ankle joint, obliquely placed over antero medial region of size 13 x 3 cm. bone deep. Fracture of underlying tibia bone. Margins clean cut. Reddish in colour with presence of blood clots.
- 6) Left leg chop wound Antero laterally in lower 1/3rd horizontally placed of size 7 x 2 cm. bone deep with fracture of underlying tibia bone. Margins clean cut. Regular with blood clots.
- 7) Incised wound over left leg horizontally placed 5 cm. below injury No.6 of size 2.1 x 1 x 0.5 cm. Margins clean cut with tailing on lateral side. Reddish in colour.
- 8) Incised wound over left foot just below ankle joint Antero laterally of size 6 x 2 x 1 cm. Reddish. Margins clean cut

with adherent blood clots.

- 9) Chop injury over left leg upper 1/3rd Anteriorly placed of size 10 x 4 cm. bone deep with compound fracture of underlying tibia bone and fibula bone. Margins clean cut, Reddish with blood cots.
- 10) Stab injury over middle 1/3rd of left arm, horizontally placed of size 4 x 2 cm. bone deep. Margins clean cut. Regular, both angles acute with oozing of blood.
- 11) Incised wound over dorsum of lower 1/3rd of right forearm. 7 cm. above wrist joint, obliquely placed of size 3 x 1 x 0.5 cm. Margins cleancut regular. Reddish in colour.
- 12) Incised wound over right palm over hypothenar region obliquely placed of size 4 x 1.5 x 1.00 cm. Reddish. Margins clean cut with presence of blood clots.
- 13) Chop wound over left wrist and left palm over hypothenar region of size 8 x 3 cm. bone deep with fracture of underlying carpal bones and injury to underlying tissue. Margins clean cut. Reddish in colour with blood clots.
- 14) Laceration over left maxillary prominence of size 4 x 3 cm. Reddish colour. Margins irregular ragged.
- 15) Multiple abrasion over right and left frontal region varying from 3 x 0.5 cm. to 3.5 x 0.5 cm. Reddish in colour margins blurred.

12. P.W.12 Dr. Prachi also noticed corresponding internal injuries as follows :

- 1) Fracture of 4th rib corresponding to injury No.1 in Col.No.17
- 2) Pleura punctured on right lung corresponding to injury

No.1 in Col. No.17.

Right plural cavity filled with fluid blood about 1.5 liter.

- 3) Stab injury to upper lobe of right lung of size 3 x 1.5 x 5 cm. corresponding to injury No.1 in column No.17. Rest of the lungs appeared pale and collapsed. Rest of internal organs intact and pale.

According to P.W.12 Dr. Prachi the injuries on the person of the deceased were ante mortem. In her opinion, the cause of death was haemorrhagic shock due to injury to vital organ – lung.

13. The inquest panchanama (Exh.2) suggests number of injuries on the person of the deceased. Scene of offence panchanama (Exh.23) indicates that, Satish was found lying dead in a bullock cart. Shirt on his person was seen torn. In the bullock cart, there were blood stained sickle, scythe etc.

14. The question is whether the appellant is the author of the crime. The evidence of the informant P.W.1 Bibhishan indicates that he learnt in the village that Satish was assaulted in his field. He (informant) being Police Patil of the village, therefore, started towards the field of the deceased in his jeep. He was accompanied by 3 others namely Devanand Patil,

Jagannath Ghute, Trimbak Pathade and Vishnu Pathade. While the informant was on his way towards the field of the deceased, he saw the appellant coming from opposite side in his bullock cart. The informant, therefore, intercepted him. On interception, the informant and the others in his company noticed dead body of Satish in the bullock cart. His evidence further indicates there were multiple injuries on the person of Satish. Blood stained sickle, scythe etc. were also in the bullock cart. Shirt on the person of the deceased was torn. Since the informant realized something amiss and not an accident as claimed by the appellant, he made a phone call to A.P.I. Shri Padwal (P.W.16). Shri Padwal, in turn, deputed P.H.C. Nagargoje (P.W.11) to go to the village and to see what the matter was. The informant's evidence further indicates that Shri Nagargoje came to the village. He took the appellant into his custody. Equipped with him. Whatever has been disclosed/ stated by the appellant to Shri Nagargoje is not being referred to, since the same is inadmissible, being confession to police.

15. The informant's evidence further indicates that, after a while, Shri Padwal arrived. He lodged report. Dead body of Satish was taken to Government Hospital, Murum.

16. During cross-examination of P.W.1 Bibhishan, it has been brought on record that, one Chandrakant, brother of Suryakant and Ramakant Ghute, was murdered a year before the incident in question. He, however, claimed ignorance that deceased Satish was in the company of Chandrakant. The informant denied that Suryakant and Ramakant committed murder of Satish with a view to take revenge of murder of their brother Chandrakant. This suggestion goes a long way to indicate the appellant to have admitted Satish met with a homicidal death. It was also suggested to the informant that, appellant Dilip had told him that someone else had already murdered Satish in the field. It was also suggested to him that Dilip (appellant) told that someone else had committed murder of Satish in the field and he was carrying the dead body in the bullock cart for cremation in another field.

17. Pursuant to the phone call made by P.W.1 Bibhishan (informant), A.P.I. Padwal deputed Shri Nagargoje (P.W.11) to the village. Evidence of Shri Nagargoje (P.W. 11) indicates that, a dead body of Satish was in the bullock cart. There were three weapons (stained with blood). Whatever was the response of the appellant to the questioning asked him by Shri Nagargoje (P.W.11) would be inadmissible in evidence, as is hit by Section

25 of the Evidence Act. The fact, however, remains that, Shri Nagargoje (P.W.11) immediately visited the village. On having seen the dead body in the bullock cart, took the appellant into his custody. He was followed by A.P.I. Shri Padwal (P.W.16), to whom P.W.1 Bibhishan (informant) gave a report which was registered as F.I.R.

18. It was also suggested to P.W.11 Shri Nagargoje that already someone else had killed Satish in the field and the appellant was bringing back the dead body in a bullock cart for cremation.

19. P.W.2 Fulchand was Teacher of Zilla Parishad. His services were availed for 3 panchanamas. First one is the scene of offence panchanama (Exh.22). It contained two spots, one bullock cart and the place in an agricultural field. His evidence indicates that, dead body of Satish was in the bullock cart. Shirt on his person was torn. Satish had suffered multiple injuries. The blood stained sickle, scythe etc. were in the bullock cart itself.

20. Exh.23 is the panchanama relating to the scene of offence in the field. An axe was taken charge therefrom and

blood mixed earth as well. Whereas Exh.24 is the panchanama, whereunder clothes of the accused were seized.

21. We have closely gone through the cross-examination of P.W.2 Fulchand to find nothing has been brought on record that would assist the appellant.

22. P.W.3 Kailas is a witness to the panchanama (Exh.26) of seizure of clothes of the deceased.

23. P.W.4 Suvarna, widow of the deceased Satish and P.W.5 Suraj, son of the deceased, have deposed in one voice. According to them, the deceased left the house in the morning on 20/7/2015. Since he did not return home until 2.00 p.m., P.W.5 Suraj received a phone of his maternal uncle, informing the quarrel had taken place. P.W.5 Suraj, therefore, first contacted Satish on his phone. There was, however, no response. A call was, thereafter made to Chimnya (juvenile in conflict with law). He talked to P.W.4 Suvarna and told her that a quarrel took place between the deceased and the appellant. Chimnya was weeping while he talked to P.W.4 Suvarna. P.W.8 Bibhishan Wakure was the brother-in-law of deceased (brother of P.W.4 Suvarna). His evidence indicates that, having learnt

about the incident, he came to the village Ekurga. He saw his brother-in-law Satish dead in a bullock cart.

24. P.W.4 Suvarna, P.W.5 Suraj and P.W.8 Bibhishan Wakure were subjected to search cross-examination. They were found somewhat economical with the truth. They denied the deceased to have had lodged a complaint with the police, alleging his wife and in-laws to have assaulted him on 29/6/2015. Whereas the investigating officer has admitted the said fact. A certified copy of the complaint lodged by deceased Satish against P.W.4 Suvarna and her relations is on record. The reason therefor appears to be that the agricultural land purchased by the deceased at Ramwadi was initially cultivated by his in-laws. It was later on taken back by him and quarrel had, therefore, ensued. The house of the in-laws of the appellant is at village Ramwadi, about 25 Kms. away from Ekurga.

25. P.W.6 Suryakant testified to have had received a phone call of Chimnya (juvenile in conflict with law), informing him to have hunt something. He thought Chimnya to have killed a wild pig. In response to the call made by Chimnya, he went to his field. He saw Satish (deceased) lying injured in the

field. He was in the pool of blood. Both, the appellant and Chimnya were there. They asked him to go away.

26. The cross-examination of this witness indicates that, his brother Chandrakant was murdered about a year before the incident in question. Involvement of deceased Satish was suspected. He denied to have killed Satish and gave false evidence against the appellant.

27. P.W.7 Balasaheb's evidence is on the lines of the evidence of P.W.6 Suryakant. His evidence too indicates that, Chimnya (juvenile in conflict with law) told him to have got a Shikar (hunt). He along with others, therefore, went to the field of the appellant. Both, the appellant and Chimnya (juvenile in conflict with law) were there. Deceased Satish was lying dead. He had suffered multiple injuries. An axe was lying by his side.

28. P.W.9 Nandkumar and P.W.10 Angad testified to have their agricultural lands adjoining the land of the deceased and the appellant. Their evidence indicate that both of them were in their respective fields by 8.00 in the morning on the fateful day. They saw appellant, his son Chimnya, a deceased as well in their respective fields.

29. It has simply been brought on record that, in the adjoining field, there were sugarcane crops of the height of about to 10 ft.

30. P.W.13 Faruq was a Police Constable, who carried viscera to F.S.L., Aurangabad. P.W.14 Chintamani is a witness to the seizure of appellant's motorbike under panchanama (Exh.48). P.W.15 Bhimashankar was a Circle Officer, who did the sketch of the scene of offence.

31. P.W.16 Rama Padwal was the investigating officer, who had reached the village in response to the call made by P.W.1 Bibhishan Ghute. It is in his evidence that, he had deputed Shri Nagargoje (P.W.11) to immediately visit the village. His evidence indicates that, when he visited the village, he saw dead body of Satish in a bullock cart. Satish had suffered multiple injuries. It is he who drew the scene of offence panchanama and other panchanamas relating to seizure of clothes of both, the appellant and the deceased. It is he who drew the inquest and even seized the motorbike of the appellant.

32. P.W.17 Dr. Mushir had obtained blood sample of the appellant for chemical analysis. While P.W.18 Dr. Sneha testified to have had examined the appellant on 21/7/2015. She issued injury certificate, indicating the appellant to have suffered abrasion over right lower leg. The injury was simple in nature.

APPRECIATION :

33. The case is based on circumstantial evidence. The motive for committing murder of Satish was said to be a demand of Rs.70,000/- paid to the appellant as a hand loan for the marriage of his daughter. There is another motive in the nature of the deceased to have refused to contribute for performing Pooja of a taking up a new borewell in common. The evidence on record indicates that the appellant and the deceased were real brothers. They had one more brother by name Bhagwat. The deceased was initially residing in Pune along with his wife and children. He purchased two plots at Latur. His share in the ancestral agricultural land was initially cultivated by appellant Dilip. It was got back by him after a while. He had then started residing at Murum. There is also some evidence to indicate that the deceased had purchased a land at Kolewadi. It was initially cultivated by his in-laws. The

deceased had got the land back to his possession. Exh.70 indicates that, only about 15 days before his murder, he had lodged a police report against his wife, father-in-law and brother-in-law, alleging them to have assaulted him. It has also been mentioned therein that they had threatened of committing his murder. It appears that, the said quarrel took place over the land purchased by him at Kolewadi Shivar.

34. Learned counsel for the appellant was, therefore, somewhat justified in contending and even deflecting the Court's attention from the main evidence to suggest the deceased might have been killed by his wife and the in-laws. It was also brought to our notice and which appears from the evidence as well that, in spite of the incident to have taken place by little past 10.00 in the morning, P.W.4 Suvarna (widow of the deceased) and her relations arrived late (post 5.00 p.m.). Close scrutiny of the evidence, however, indicates there was nothing to suspect involvement of the widow of the deceased and her relations from parental side.

35. So far as regards evidence of P.W.9 Nandkumar and P.W.10 Angad is concerned, who claim to have seen the appellant, his son and deceased in the field in the morning is

concerned, and the evidence of P.W.6 Suryakant and P.W.7 Balasaheb to have been to the field of the appellant in response to a call by Chimnya and to have seen the deceased lying in a pool of blood inspires no confidence since their conduct appears to be somewhat unnatural. Both these witnesses, after having seen Satish to have been murdered, did not relate the same to the police immediately.

36. Many a time motive remains hidden. True, in case of circumstantial evidence motive plays an important role. In the case in hand, the appellant admitted the deceased Satish to have met with homicidal death. Suggestions given on his behalf to P.W.1 Bibhishan and P.W.11 Shri Nagargoje have already been referred to hereinabove. He initially made a false assertion to P.W.1 Bibhishan that the deceased Satish was found dead. It is, however, again reiterated that, on behalf of the appellant it was suggested to P.W.1 Bibhishan and P.W.11 Shri Nagargoje that someone else had already killed Satish and the appellant was taking the dead body for cremation in his another field. This goes a long way to infer the Trial Court even to have rightly convicted the appellant for offence punishable under Section 201 of the Indian Penal Code. Then evidence referred to hereinabove indicates the appellant was carrying the

dead body of Satish in a bullock cart. Satish had suffered multiple injuries on his person. Shirt on his person was torn. Blood stained sickle, scythe etc. were seized from the bullock cart itself. The appellant did not offer any reasonable explanation as to how did Satish met with homicidal death. Learned A.P.P. was right in relying on the judgment of the Apex Court in case of **Prem Singh Vs. State of NCT of Delhi [2023 LiveLaw (SC) 2]**, wherein it has been observed that :-

“16.4.1 It is of course, the duty of prosecution to lead the primary evidence of proving its case beyond reasonable doubt but, when necessary evidence had indeed been led, the corresponding burden was heavy on the appellant in terms of Section 106 of the Evidence Act to explain as to what had happened at the time of incident and as to how the death of the deceased occurred. There had not been any explanation on the part of the appellant and, as noticed, immediately after the incident, he attempted to create a false narrative of accidental drowning of the children. There had not been any specific response from the appellant in his statement under Section 313 Cr.P.C. either.”

37. The C.A. reports (Exh.51 & 52) indicate the blood group of both, the appellant and the deceased Satish was “A”. Almost all the articles seized by the investigating officer borne blood stains of blood group “A”. The appellant did not claim to had scuffle with the deceased nor did he claim the deceased to

have first assaulted him. The appellant's injury certificate indicates him to have suffered a minor and superficial injury. The prosecution was not under obligation to explain the same. Whatever the appellant told to P.W.1 Bibhishan, Police Patil of the village, could not be stated to be hit by Section 25 of the Evidence Act. A Full Bench judgment of this Court in case of **Hiraman Mohurle (in jail) Vs. State of Maharashtra, 2009 (2) Bom.C.R. (Cri.) 757 : 2009 (4) Mh.L.J. 483**, has held that Police Patil appointed under the Maharashtra Village Police Act, 1967 is not a "Police Officer" for the purpose of Section 25 of the Evidence Act.

38. The Apex Court, in case of **Dharma Radaka Walvi Vs. State of Maharashtra [(2002) 10 SCC 233]**, held that, a confession made to a Police Patil is not hit by Section 25 of the Evidence Act. An extra-judicial confession made to a Police Patil of village has also been considered while confirming the conviction of the appellant imposed by the Trial Court and the Appellate Court as well.

39. In our view, the dead body of Satish with multiple injuries on his person was found in the custody of the appellant. The appellant is none other than the real brother of deceased

Satish. He was carrying the dead body for cremation. It was in fact his obligation first to report the matter to the police if Satish had received beating or assault at the hands of someone else. He was carrying the dead body for cremation. The appellant did not offer any explanation to discharge his burden, even by preponderance of probabilities under Section 106 of the Indian Penal Code. On reappreciating the entire evidence in the case, which has been referred to hereinabove, we find the Trial Court to have rightly convicted the appellant. We have no reason to take a different view. The appeal, therefore, fails. It is dismissed.

40. Fees of Mrs. Gunjal, learned counsel appointed for the appellant is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-