



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

CRIMINAL APPEAL NO.403 OF 2019

Sampat Kakasaheb Kardile,
Age 28 years, Occu. Agriculturist,
R/o Kardile Vasti, Kada,
Tal. Ashti, Dist. Beed.

... APPELLANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. Sanjeev Deshpande, Senior Counsel with
Mr. S.S. Ghate, Advocate and
Mr. Chetan B. Choudhari, Advocate for appellant
Mrs. V.S. Choudhari, Addl. P.P. for respondent
.....

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

Date of reserving judgment : 29th February, 2024

Date of pronouncing judgment : 4th March, 2024

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

The appellant was prosecuted for patricide and, therefore, convicted for the same and consequently sentenced to suffer life imprisonment and fine of Rs.1000/-, in default to undergo R.I. for one year; and R.I. for two years and to pay fine of Rs.500/-, in default to undergo R.I. for 6 months respectively. The substantive sentences have been directed to run concurrently. He is, therefore, before us in this appeal.

FACTS :-

2. Kakasaheb (deceased) and Dattatraya (P.W.1) were real brothers. Their parents were alive. Partition of joint family properties took place among the brothers and their father Kisan. The father and the sons were residing separately from each other.

3. The appellant was son of Kakasaheb (deceased). He would reside along with his wife Madhuri and their son. Kakasaheb (deceased) was also residing with them for some days. The appellant brought JCB on 26/7/2017 by 8.50 p.m. for laying a road in his agricultural field. A dispute, therefore, arose between him and his father (deceased Kakasaheb). P.W.1 Dattatraya (informant) worked out a truce.

4. By little past 11.30 p.m. on 2/6/2017, P.W.1 Dattatraya woke up to answer nature's call. He heard cries of his mother Sitabai (P.W.4). He, therefore, rushed to his brother Kakasaheb's house on motorcycle. He saw the appellant running away with a sword in his hand. He went Kakasaheb's house to find Kakasaheb to have suffered multiple injuries. With the assistance of the neighbour, P.W.1 Dattatraya first rushed Kakasaheb to Sub-District Hospital at Kada. Kakasaheb was then rushed to a private hospital of Dr. Anbhule, at Ahmednagar. Kakasaheb was declared dead there. The dead body was again brought back to Sub-District Hospital, Kada. An autopsy was conducted on the mortal remains

of Kakasaheb. P.W.1 Dattatraya, therefore, lodged First Information Report (F.I.R. - Exh.24), alleging the appellant to have killed his own father, Kakasaheb.

5. Crime vide C.R. No.224/2017 was registered. Scene of offence panchanama was drawn. Statements of persons acquainted with the facts and circumstances of the case were recorded. P.W.4 Sitabai, mother of the deceased was an eye witness to the incident. The appellant was arrested. Clothes on his person were seized. He made a disclosure statement, pointing out the place of a borewell, wherein he threw a sword wielded in commission of the crime. Upon completion of the investigation, the appellant was proceeded against by filing a Charge Sheet before the Court of learned Judicial Magistrate, First Class, Ashti. Learned Judicial Magistrate, First Class, Ashti committed the case to the Court of Sessions for trial in accordance with law. The case was assigned to the Court of Additional Sessions Judge, Beed (Trial Court) for trial in accordance with law.

6. The Trial Court framed the Charge (Exh.13) for offences punishable under Sections 302, 201 of the Indian Penal Code and under Section 4 r/w 25 of the Indian Arms Act. The appellant abjured the guilt. His defence was of false implication on account of property dispute between P.W.1 Dattatraya and deceased Kakasaheb and the appellant.

7. The prosecution, to bring home the charge, examined 17 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code and consequently sentenced to suffer sentence/s as stated above. The appellant was acquitted of the offence punishable under Section 4 r/w 25 of the Indian Arms Act. State has not preferred appeal against acquittal.

8. Heard. Learned Senior Counsel appearing for the appellant would submit that, although number of witnesses have been examined, the case is based on the evidence of the informant and the mother of the deceased. Most of the other witnesses did not stand by the prosecution. No sword could be recovered from the place allegedly pointed out by the appellant. The same suggests the prosecution to have fabricated a false case. Our attention was drawn to the evidence of the mother of the deceased to submit that she was septuagenarian at the relevant time. She admitted to have deposed before the Court as was directed by Dattatraya to depose. Our attention was also drawn to her statement under Section 164 of the Code of Criminal Procedure (Cr.P.C.). According to learned Senior Counsel, the same has been relied on by the prosecution itself. It has been admitted in evidence since marked with Exhibit Number. Learned Senior Counsel meant

to say that the Court can peruse the statement to find P.W.4 Sitabai to have not stated in her statement to have seen the appellant killed her son (Kakasaheb).

9. According to learned Senior Counsel, there was Police Outpost at Kada. The police had arrived at Sub-District Hospital. The informant could have lodged F.I.R. at the earliest point of time. There is unexplained delay in lodging of the F.I.R. The same suggests the informant to have lodged the F.I.R. afterthought. The informant had an axe to grind against the appellant. We were taken through the cross-examination of the informant to make out a case of unequal distribution of property in partition. According to learned Senior Counsel, the sole testimony of the P.W.4 Sitabai, mother of the deceased ought not to have been acted upon by the Trial Court since she gave an admission to the effect that she deposed before the Court at the behest of her another son Dattatraya. The learned Senior Counsel, therefore, urged for allowing of the appeal.

10. The learned A.P.P. would, on the other hand, submit that, P.W.4 Sitabai, mother of the deceased was illiterate and rustic woman. Her evidence needs to be scrutinized in the said backdrop. Her evidence is consistent with her statements under Sections 161 and 164 of the Cr.P.C. She would submit that, she was not confronted with her 164 statement so as to bring on record omissions amounting to material contradictions. Such statement is

not a substantive piece of evidence. No Court can read it in evidence as it is. In support of her contentions, the learned A.P.P. relied on the judgment of the Hon'ble Supreme Court of India in case of **R. Shaji Vs. Stazte of Kerala [2013 AIR (SC) 651]**. On the question of delay in lodging of the F.I.R., the learned A.P.P. would submit that, there was no delay at all. The F.I.R. was lodged within a few hours of the incident. The informant was none other than the real brother of the deceased. He rushed the injured first to Sub-District Hospital at Kada and then shifted him to Ahmednagar for better treatment. After having realised Kakasaheb to have passed away, he brought the dead body back to Sub-District Hospital, Kada. It was his first priority to attend to the injured. The informant did not have a grudge against the appellant, his nephew. On the question of medical evidence, the learned A.P.P. would submit that the doctor has categorically stated the injuries to have been caused by sword like weapon. She relied on the judgment of the Apex Court in case of **Haalesh @ Haleshi @ Kurubara Haleshi Vs. State of Karnataka [2024 GoJuris (SC) 86]** to submit that when there is conflict between ocular evidence and medical evidence, the ocular evidence would prevail. The learned A.P.P. further submits that, no case for interference with the impugned judgment and order is warranted. She, therefore, urged for dismissal of the appeal.

11. The prosecution examined 16 witnesses and produced in evidence number of documents. Reading of the evidence of the prosecution witnesses would indicate that the only relevant evidence for deciding the present appeal is that P.W.1 Dattatraya (informant), P.W.4 Sitabai (mother of the deceased) and P.W.6 Dr. Vaibhav. Out of 16 witnesses examined, 7 – 8 witnesses did not stand by the prosecution. P.W.15 Navnath is a police officer who carried the muddemal to Forensic Science Laboratory. While P.W.16 Harshwardan is the investigating officer. The appellant allegedly made a disclosure statement (Exh.41) to the effect that he concealed the sword in a borewell. His statement (Exh.41) was recorded in the presence of panchas Amrut and Tushar (P.W.5). He accordingly led the investigating officer and the panchas to the particular borewell, but no sword could be recovered therefrom. The said disclosure statement, therefore, would be of little consequence to further the prosecution case. 2 – 3 witnesses were examined on the point that the appellant, a few hours after the incident, filled in his motorbike at a particular petrol pump. The said evidence is also of little consequence.

12. P.W.11 Vikas was the owner of JCB allegedly used by the appellant for making a way through his land. This witness too did not stand by the prosecution.

13. We, therefore, now propose to advert to the evidence of the Medical Officer P.W.6 Dr. Vaibhav, who conducted autopsy on the mortal remains of Kakasaheb. He noticed following injuries on the person of the deceased :-

- (1) C.L.W. on back side of right shoulder injury size 20 cm.
- (2) Contusion 30 cm. at left hypochondriac region.
- (3) C.L.W. 5 cm. on left wrist above thumb.

The post mortem report is at Exh.45. In the opinion of P.W.6 Dr. Vaibhav, the deceased died due to cardio respiratory arrest due to hypovolemia due to severe haemorrhage due to multiple lacerated wounds over extremities.

14. The appellant does not dispute his father to have met with homicidal death. The question is, whether the appellant is author thereof. P.W.1 Dattatraya (informant) is the uncle of the appellant. His evidence indicates that, Kakasaheb (deceased) was his elder brother. They have two sisters. Their parents are alive. Partition of the joint family property took place some years before. The family owned not less than 10 acres of land. 5 acres thereof was irrigated. In a partition, 7 acres land was allotted to the share of deceased. 5 acres land came to his (P.W.1's) share. It is further in his evidence that, R.C.C. constructed house was allotted to the

share of the deceased. While he got two tin sheet rooms. His house was towards East of the house of deceased Kaka. In between the two houses, there was open land admeasuring 6 gunthas. His evidence further indicates that the deceased along with his son Sampat (appellant), Sampat's wife and son would reside together, initially. There is, however, no evidence to indicate as to when and for what reason the father, son duo (appellant and the deceased) started residing separately. The fatal incident is said to have a prelude in the nature of a quarrel between the appellant and the deceased over making a way through the land, with JCB.

15. According to P.W.1 Dattatraya, it was 8.30 p.m. of 2/6/2017, the appellant called him on phone and told to have brought JCB for preparing a road. He was further informed that a quarrel took place between the appellant and his father and he was, therefore, requested to come and resolve the same. P.W.1 Dattatraya further deposed that he accordingly went there and worked out a truce. Then he went back his home. Took dinner and went to sleep.

16. P.W.1 Dattatraya further testified that, by 11.30 p.m., he woke up to answer nature's call. He heard cries of his mother Sitabai (P.W.4). He immediately went to the house of deceased, on his motorbike. While parking the motorbike, he saw the appellant

fleeing away with a sword in his hand. He then entered the house of the deceased to find him to have suffered bleeding injuries. His evidence further indicates that he raised shouts. Thereupon, Deepak Kardile, Amol Kardile with Laxman Lagad came. They first took the injured to Sub-District Hospital, Kada. The Medical Officer there asked them to shift the injured to Civil Hospital, Ahmednagar. They, therefore, took the injured to private hospital of Dr. Anbhule, at Ahmednagar. The doctor there declared Kakasaheb to have passed away. They, therefore,, brought back the dead body to Sub-District Hospital, Kada for post mortem. P.W.1 Dattatraya then lodged the F.I.R. (Exh.24).

17. The record indicates that, the F.I.R. was lodged by little past 8.00 on the following morning. The evidence of P.W.1 indicates that he was with the deceased all along. We do not find a delay of 4 – 5 hours in lodging of the F.I.R. to have been exploited. True, we need to scrutinise the evidence of P.W.1 Dattatraya closely since his evidence indicates that, in the partition of family properties, a lesser share was given to him. He was staying separate from deceased Kakasaheb. P.W.1 Dattatraya's evidence is found to be consistent with the F.I.R. (Exh.24) and even 164 statement (Exh.25). According to learned A.P.P., the F.I.R. and 164 statement corroborate P.W.1's testimony before the Court. The question is, whether P.W.1 Dattatraya had really seen the appellant

fled with a sword. We will address this issue little later.

18. P.W.4 Sitabai, mother of the deceased was said to be little over 75 years of age. It is in her evidence that, on the given day, the appellant had brought a JCB of one Vikas Kanade for making a road through the land. A quarrel between the appellant and the deceased, therefore, ensued. P.W.1 Dattatraya intervened and asked the appellant not to create the road at the middle of the land.

19. P.W.4 Sitabai's evidence further indicates that the mother of the appellant had gone to attend Jagran Gondhal (religious ceremony) at village Dhirdi. She (P.W.4) took dinner with Kakasaheb and then went to sleep. It is further in his evidence that she heard the shouts of Kakasaheb. She woke up thereby to see the appellant assaulting Kakasaheb with a sword. It is further in her evidence that she laid herself on the person of Kakasaheb to save him of further blows. According to her, Dattatraya came on hearing her shouts. Thereafter the appellant went away. Dattatraya (P.W.1) and others took Kakasaheb to house, but in vain. It is further in her evidence that, his statement under Section 164 of the Cr.P.C. (Exh.37) was recorded. According to her, the contents therein were true and correct.

It has come in her cross-examination that, she was residing in the house of Dattatraya. We then fail to understand how come she was in the house of Kakasaheb at the material time. She admitted that Kakasaheb got more land in partition. She categorically denied to have been falsely deposing against the appellant. She, however, gave a vital admission to the effect that she had come to the Court with her son Dattatraya (informant) to give evidence. She went on to state that the informant told her what to depose before the Court. This vital admission dilutes her evidence in examination-in-chief.

20. It is true that, P.W.4 Sitabai is a rustic and old woman. We, however, cannot give benefit thereof to the prosecution. We do not propose to dwell at length on the point that testimony of this witness is somewhat inconsistent with her say in her statement recorded Section 164 of Cr.P.C. Learned Senior Counsel meant to say that the appellant was not required to confront her with her statement recorded Section 164 of Cr.P.C. since the prosecution itself has brought it on record. According to him, both her statements do not stand together. It needs no mention that statement recorded Section 164 of Cr.P.C. is not a substantive piece of evidence. It can only be used for contradiction or corroboration. The prosecution got it marked in evidence so as to have the testimony of P.W.4 Sitabai to be corroborated by her

previous statement.

21. P.W.6 Dr. Vaibhav noticed the injuries on the person of the deceased in the nature of contused lacerated wounds. In his opinion, such injuries can be caused by hard and blunt object. The deceased did not suffer either cut or incised injury. Our attention has been drawn to Chapter XXV of Modi's Medical Jurisprudence. In para 25.2 27th Edition (Page 676), it has been stated that, contusions are injuries which are caused by a blow from a blunt weapon, such as a club (lathi), whip, iron bar, stone, ball, fingers fists, boots or by a fall, or by crushing or compression. These are accompanied by a painful swelling and crushing or tearing of the subcutaneous tissues without solution of continuity of the skin. The swelling is due to the rupture of the small subcutaneous blood vessels producing in the cellular tissues, extravasation of blood, which is known as ecchymosis. The term effusion of blood is ordinarily limited to extravasation of blood in a pleural cavity. Haematomas are formed when large blood vessels are injured.

22. Although P.W.6 Dr. Vaibhav testified that injuries on the person of Kakasaheb could be caused by a sword, in his cross-examination, he testified that hard and rough weapon caused contused lacerated wounds. Hard and blunt object cause contusion.

23. Not a single injury suffered by the deceased appeared to have been caused by sharp weapon. Sword allegedly wielded by the appellant could not be recovered. The submission of the learned A.P.P. that sword might have been old and with rust thereon, the injuries might have been possible by the same. We cannot subscribe the hypothetical submissions. On the contrary, the prosecution examined P.W.12 Vijay to show the appellant had been to him with vehicle Pata (long iron plate) and made a sword. As such, it is the case of the prosecution that, the appellant had got a new sword to assault the deceased. This witness too did not stand by the prosecution.

24. Evidence of P.W.14 Laxman is only to the effect that he had accompanied P.W.1 Dattatraya to take the injured to Sub-District Hospital at Kada.

25. The observations made by the Trial Court in para 28 of its judgment are reproduced below :

“28. It is true that, P.W.4 Sitabai during cross admitted that, as per say of Datta she deposed before the Court. It is true that in her statement Exh.37 recorded under Section 164 of the Cr.P.C. before the Court she has not taken name of Sampat. However, in her statement recorded under Section 161 of the Cr.P.C., she

unequivocally has taken the name of Sampat and stated that, accused himself and no one assaulted Kakasaheb by means of sword. Admittedly, when evidence was recorded P.W.4 was more than 70 years of age. She was illiterate rustic and also old aged lady. According to me, she has given admission under the confusion therefore, its benefit cannot be given to the accused. Her evidence is consistent with her previous statement. There is no contradiction or omission in her evidence which goes to the root of the case. She is stick up with her earlier statement recorded by the police. Admittedly, deceased Kakasaheb is her son and accused Sampat is her grandson. She is only witness in whose presence incident occurred. It is true that, P.W.4 in her statement recorded under Section 164 of the Cr.P.C. not taken name of Sampat, but statement recorded under Section 164 of Cr.P.C. is not substantive piece of evidence and can be used only for the contraction and corroboration purpose.”

26. We are not in agreement with the aforesaid observations. On appreciation of the evidence on record, we reach to such a pass that, the deceased must not have been assaulted with a sword. Evidence of P.W.1 Dattatraya to have seen the appellant running with a sword does not inspire confidence. It is a case of a sole eye witness account i.e. little over 75 year old mother of the deceased. She although claimed to have had witnessed the appellant assaulted the deceased with sword, her admission in cross-examination that she deposed accordingly on the say of her another son (P.W.1 Dattatraya, informant) lead us to doubt veracity thereof. Her evidence is also inconsistent with the medical

evidence which indicates the deceased to have suffered injuries by hard and rough objects.

27. It is true that in case of conflict between an eye witness account and medical evidence, many a time eye witness account prevail. Each case is required to be decided on its peculiar facts and circumstances. The learned A.P.P. will not be benefited by relying on the judgment in case of Haalesh @ Haleshi (supra) since the facts therein indicate that the deceased had suffered injuries with sharp weapon. The question was, whether only one sharp weapon was used or there were more than one such weapon.

28. Since the evidence of P.W.1 Dattatraya and P.W.4 Sitabai do not inspire confidence, interference with the impugned order of conviction and consequential sentence is warranted. In the result, the appeal succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The order of conviction and sentence dated 27/2/2019, passed by learned Additional Sessions Judge, Beed in Sessions Case No.117/2017 is hereby set aside. The

appellant is acquitted of the offences punishable under Sections 302 and 201 of the Indian Penal Code. The appellant be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-