



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

CRIMINAL APPEAL NO.538 OF 2019

Vilas Deoram Narsale
Age : 50 years, Occu : Agriculturist,
R/o. Village Goregaon, Tal. Parner,
Dist. Ahmednagar ... Appellant

Versus

The State of Maharashtra,
Through Parner Police Station,
Tal. Parner, Dist. Ahmednagar ... Respondent

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Mr. Ujwal Subhash Patil, Advocate for the Appellant
Mr. N. R. Dayma, APP for the Respondent / State.

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

RESERVED ON : 03.07.2024
PRONOUNCED ON : 29.07.2024

JUDGMENT (*Per* NEERAJ P. DHOTE, J.) :

. This is the Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment and Order dated 16.04.2019 passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.325 of 2015 convicting the Appellant and sentencing him to suffer Imprisonment for Life and to pay fine of Rs.5,000/- (Rs. Five Thousand), in default to pay the fine to suffer Rigorous Imprisonment for 6 (Six) Months for the offence punishable under Section 302 of the Indian Penal Code (hereinafter referred to as

the I.P.C.) and to suffer Rigorous Imprisonment for 3 (Three) Years and to pay fine of Rs.5,000/- (Rs. Five Thousand), in default to pay the fine to suffer Rigorous Imprisonment for 6 (Six) Months for the offence punishable under Section 201 of the I.P.C.

The Prosecution's case as revealed from the Police Report is as under :

2. Informant – Sampat Ambadas Narsale (PW1) was working in Goregaon Nursery, Tal. Parner, Dist. Ahmednagar. On 13.08.2015 around 11:00 a.m., when he was working at the Nursery, his grandfather Chimaji Narsale came to him and informed that he was going to the field situated at Hivare Korda and left. Around 02:00 p.m. the resident of Hivare Korda, PW4 - Shashikant @ Dnyaneshwar came to the Nursery and informed him that his grandfather was assaulted by the family member of the Appellant. The Informant, his maternal uncle who was also working in the said Nursery and Ramdas Kisan Tambe reached the spot of incident which was at Hivare Korda, by the vehicle. They noticed the Informant's grandfather lying in an injured condition and was unconscious. They noticed that the Appellant was present on the spot with an Axe in his hand. They also noticed one Usha Sharad Narsale passing therefrom. The injured was taken to the hospital. The injured informed the Informant that the Appellant assaulted him with the Axe in his head and the Appellant's family members assaulted him with fists and kick blows. The Informant's grandfather succumbed to the injuries.

3. The Report was lodged by the Informant and Crime No.284/2015 came to be registered against the Appellant and 4 (four) others for the offence punishable under Sections 302, 143, 147, 148, 149, 323 of the I.P.C. During the course of investigation, the Inquest was done and the body was referred for Post-mortem, the Spot Panchanama came to be drawn, the Appellant came to be arrested, the clothes of the deceased were seized, the clothes of Accused and co-Accused Usha Narsale came to be seized, the statements of witnesses were recorded, the Axe Blade came to be seized at the instance of the Appellant from the place near the well of agricultural field, the seized Articles were referred for Chemical Analysis and on completion of the Investigation, the Appellant came to be Charge-sheeted.

4. Learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 302 and 201 of the I.P.C. vide Exh.6. The Appellant pleaded not guilty and claimed to be tried. To prove their case, the Prosecution examined in all 6 (six) witnesses and brought on record the relevant documentary evidence. After the Prosecution closed the evidence, the statement of the Appellant came to be recorded under Section 313 (1)(b) of the Cr.P.C. The Appellant denied the evidence and the case of Prosecution. After hearing both the sides and appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

5. The witnesses examined by the Prosecution are, PW1 – Sampat Ambadas Narsale, the grandson of deceased who lodged the Report, PW2 – Baban Haribhau Sumbe, the Panch for the Spot Panchanama, PW3 – Krushna Raghunath Borse, the Panch for the discovery of Blade of Axe at the instance of the Appellant pursuant to Section 27 of the Indian Evidence Act, PW4 – Shashikant @ Dnyandeo Bhausahab Adsul, who witnessed the incident, PW5 – Dr. Nilesh Sunil Gaikwad, Medical Officer who performed the Autopsy and PW6 – Dilipkumar Baburao Parekar, the Police Inspector, who conducted the investigation and submitted the Charge-sheet.

6. The documentary evidence brought on record by the Prosecution are, the Report on which the crime came to be registered (Exh.25), statement of the Informant recorded under Section 164 of the Cr.P.C. (Exh.26), Spot Panchanama (Exh.30), Inquest (Exh.31), the Memorandum under Section 27 of the Indian Evidence Act and Seizure Panchanama at Exh.35 and 36, respectively, Arrest Form (Exh.39), the Statement of the eye witness recorded under Section 164 of Cr.P.C. (Exh.42), Post-mortem Report (Exh.45), Cloth Seizure Panchanama of the Appellant (Exh.56), the letter for referring Articles to the Chemical Analyser (Exh.59) and C.A. Reports at Exhs.68 to 72.

7. Heard learned Advocate for the Appellant and learned APP for the State.

7.1. It is submitted by learned Advocate for the Appellant that the evidence of the eye witness nowhere show that the incident was seen by him. The Informant reached the spot after the incident. The discovery was from the open space. There is no evidence of blood stains of the deceased on the Axe Blade. There is no evidence that the Articles were sealed after they were seized. The Medical Evidence do not successfully proved the Homicidal Death. The evidence on record go to show that the deceased was assaulted by some other persons due to his money lending business. The Charge is not established against the Appellant and the Appeal is liable to be dismissed.

7.2. It is submitted by learned APP that evidence of the eye witness and the Informant proved the presence of the Appellant on the spot of incident with the Axe in his hand. There was immediate reporting of the incident to the police. The Appellant was arrested on the same day. The Axe used in the crime came to be seized at the instance of the Appellant. Property dispute was the motive behind the commission of the crime. Learned Trial Court has rightly appreciated the evidence on record and convicted the Appellant. He supported the impugned Judgment and Order and prayed for dismissal of the Appeal.

8. As regards the death of Chimaji Narsale is concerned, the evidence of PW5 - Dr. Nilesh Sunil Gaikwad, Medical Officer show that he received the dead body on 13.08.2015 when he was on duty as the Casualty Medical Officer at Rural Hospital at Parner. The dead body was brought by PW6 – Dilipkumar Parekar, Police Officer. He performed Post-mortem and noticed the following external injuries:

- “i) Abrasion of size 2x1 cm over Rt. Side of forehead
- ii) Abrasion of size 3x2 cm over Lt. Fronto parietal region
- iii) Abrasion of size 1x1 cm. Over Nose
- iv) Contusion 10x2 cm. Over left side of upper back
- v) Abrasion 3x4 cm. Over centre of back
- vi) Abrasion 4x1 cm. Over lateral aspect of Rt. Forearm
- vii) Abrasion 2x2 cm. Over little finger of left hand

On palpation there was fracture on lower end of sternum.
All the aforesaid injuries are antemortem.”

8.1. His further evidence show that, he noticed the following internal injuries :

- “i) There was fracture on lower end of sternum
- ii) There was fracture at right second and third rib
- iii) There was purature over right lung upper lobe
- iv) There was lascretic wound of size 4x3 cm. On upper lobe
- v) There was intrathorasic blood collection present.”

9. The Medical Officer opined the cause of death as ‘*hemorrhagic shock due to intrathorasic bleeding due to chest trauma*’. According to him, the aforementioned injuries were sufficient to cause death in ordinary course of nature. The injuries were possible, if a person is forcefully beaten with the handle of Axe. The Post-mortem Report at Exh.45 is brought on record in his evidence. His further

evidence in the cross-examination show that the injuries mentioned in Column No. 17 were simple in nature. The abrasions were possible, if a person falls on hard and blunt surface. The injuries mentioned in Column No.18 may be possible, if a person falls on hard and blunt surface. He denied that the abrasions may not be possible, if a person is beaten by wooden log. It has come that ribs may be fractured, if a person forcefully falls on hard and blunt surface and in the present case, rib was fractured and it pierced the lung.

10. The evidence of PW2 – Baban Haribhau Sumbe, Panch for Spot Panchanama show that Spot Panchanama (Exh.30) was drawn on 13.08.2015 when he responded the call of Parner Police Station and went to field Gat No.231 situated on Hivre Korda. His evidence show the spot was near the well where the heap of murum (soft stone) was lying. His evidence show that there were stones of big size near the heap of murum (soft stone).

11. The above evidence show that as per the medical evidence the injuries found on the deceased were possible due to beating by handle of Axe and also possible by fall on hard and blunt surface. However, the evidence of Spot Panch show that stones were noticed on the spot of incident. If we see the cross-examination of the witnesses what can be gathered is that the Homicidal Death of Chimaji Narsale is

not seriously disputed by the defence. Even during arguments in the Appeal, learned Advocate for the Appellant did not address the issue of Homicidal Death seriously. Thus, we hold that the Prosecution proved the death of Chimaji Narsale as Homicidal.

12. The Prosecution primarily relies on the evidence of PW4 – Shashikant @ Dnyandeo Bhausahab Adsul, the eye witness and PW1 – Sampat Ambadas Narsale, the Informant to prove the Charge. Scrutiny of their evidence show that on the fateful day i.e. 13.08.2015, when PW1 – Sampat Ambadas Narsale was working in the Nursery, PW4 – Shashikant @ Dnyandeo Bhausahab Adsul came to him in the afternoon. According to PW1 - Sampat Ambadas Narsale, he was informed by PW4 - Shashikant @ Dnyandeo Bhausahab Adsul that family members of the Appellant assaulted his grandfather Chimaji. However, the evidence of PW4 - Shashikant @ Dnyandeo Bhausahab Adsul nowhere show that he informed the same to PW1 - Sampat Ambadas Narsale. The evidence of PW4 - Shashikant @ Dnyandeo Bhausahab Adsul show that he took PW1 - Sampat Ambadas Narsale on his motorcycle to the spot of occurrence. Thus, there is inconsistency in the evidence of these two Star Witnesses.

13. The evidence of PW4 -Shashikant @ Dnyandeo Bhausahab Adsul show that while he was returning to village Hivre Korda and reached near the field of Chimabhau Narsale (deceased) and Vilas

Narsale, he noticed Skirmish between the Appellant and the deceased and deceased went towards the well. So, immediately he went to the house of one Usha Narsale on motorbike and narrated the incident to her. In his evidence it has come that except the incident of assault, the rest of the contents of his statement were correct. His further evidence in the cross-examination show that when the police had come on the spot of incident on 14.08.2015, he told police that he was not aware as to who assaulted the deceased. He clearly deposed that deceased was not assaulted in his presence. This witness was neither cross-examined nor re-examined by the Prosecution. Resultantly, his evidence as a whole do not establish that he witnessed the incident of assault on the deceased. Thus, his evidence would be of no assistance to the Prosecution to prove the Charge.

14. According to PW1 - Sampat Ambadas Narsale, he with his maternal uncle Annabhau and Ramdas Kisan Narsale reached the spot in the field, where deceased was lying. He saw the Appellant was present on the spot with the Axe in his hand. His evidence show that he noticed Usha Sharad Narsale going from the spot of incident. His further evidence in cross-examination show that his evidence that on the spot of incident he noticed the Appellant with the Axe in his hand, was an omission in his Report at Exh.25. Admittedly, the scribe of Report is not examined by the Prosecution and therefore, the defence lost the

opportunity to prove the said improvement by confronting the Report to the scribe, therefore, his said evidence that he saw the Appellant with the Axe on the spot deserves no credence. What can be gathered from his evidence that he reached the spot where his grandfather was lying in an injured condition and nothing more.

15. Though PW1 - Sampat Ambadas Narsale in his evidence deposed that the doctor at Parner Hospital where the injured was taken by him, made enquiry regarding the incident. In the first breath he deposed that he did not inform about any incident to the doctor and in the second breath he volunteered / deposed that he informed the doctor that deceased was assaulted by the Appellant. However, there is no corroboration to the said evidence of PW1 - Sampat Ambadas Narsale. Neither the said doctor is examined nor the Medical papers showing the history of assault are brought in evidence. Thus, in view of above discussed evidence, the evidence of PW1 - Sampat Ambadas Narsale is of no assistance to the Prosecution to prove the Charge.

16. There is evidence in respect of discovery of Blade of Axe at the instance of the Appellant. PW3 – Krushna Raghunath Borse, Panch deposed that on 18.08.2015 he was called by the Police at Police Station where the Appellant was present and the Appellant made voluntary statement in respect of discovery of the Axe. His further evidence show

that the police simply asked him to act as the Panch and board the vehicle. His evidence also show that his office i.e. office of Forest Department received the letter from the Police Inspector of the Parner Police Station for seizure of Axe on 17.08.2015. From this evidence it is clear that no disclosure statement as required under the law to prove the discovery at the instance of the Appellant, was made. It is nowhere in his evidence that the Appellant stated the place where the Article was hidden or kept.

17. On the point of discovery, the evidence of PW6 – Dilipkumar Baburao Parekar, Investigating Officer, show that on 18.08.2015 the Appellant made statement before him in the presence of panchas that he was ready to produce the Axe Blade from the place where it was hidden and Article '1' the Blade of Axe was seized from the spot near the house of one Sharad Narsale from the soil mixed with ash.

18. The said discovery and seizure of Article '1' Blade of Axe would not be of any assistance for the Prosecution for more than one reason. Firstly, the said discovery and recovery is after a period of 4 (four) days from the arrest of the Appellant. The evidence of PW6 – Dilipkumar Baburao Parekar, Investigating Officer, show that the Appellant was arrested on 14.08.2015 and the said discovery and seizure was on 18.08.2015. It is, thus, clear that the discovery

and seizure was not immediate. Secondly, nowhere the evidence of PW3 – Krushna Raghunath Borse, the Panch, and PW6 - Dilipkumar Baburao Parekar, Investigating Officer, show that the said Article '1' - Blade of Axe was stained with blood. The C.A. Report show no blood on the Article '1' Blade of Axe. Thus, the said discovery and recovery will not be relevant under Section 27 of the Indian Evidence Act.

19. The other evidence is regarding seizure of the clothes of the Appellant. The evidence of PW6 - Dilipkumar Baburao Parekar show that on 14.08.2015 he seized the clothes of the Appellant in the presence of panchas under the Panchanama at Exh.56. The C.A. Report at Exh.70 show blood of 'A' group on the full pant. The C.A. Report at Exh.71 show that the blood group of deceased was 'A'. There is no substantive evidence that the clothes of the Appellant were sealed after they were seized. Further, the Prosecution has not examined the carrier of the Articles to the Chemical Analyser. Thus, the said evidence of blood stains on the clothes cannot form the basis to hold that the Charge is proved.

20. There is no evidence to show that the Appellant was having any motive to commit the murder of his brother. The evidence of PW1 - Sampat Ambadas Narsale, who was the nephew of the Appellant and son of deceased, show that prior to the date of the incident the Partition

of the property was effected. Further, the evidence of PW2 – Baban Haribhau Sumbe, the Spot Panch, show that he was the resident of same village where the incident had taken place and his daughter was the wife of nephew of the deceased. This show that he knew the family of the deceased. Further evidence in his cross-examination show that the deceased was in the money lending business and prior to the incident, he was assaulted on 2 (two) to 3 (three) occasions in connection with his money lending business by the persons to whom he had loaned the money. The evidence of PW6 - Dilipkumar Baburao Parekar, Investigating Officer show that the Report was lodged against four (4) to five (5) persons. It has not been disputed by learned APP that the Report and remand papers which are public document, show in all five (5) accused persons. However, the Appellant alone is Charge-sheeted. The Prosecution has failed to explain this anomaly.

21. The above discussed evidence available on record do not establish the Charge against the Appellant. The evidence of eye witnesses nowhere proved that the Appellant assaulted the deceased. The discovery and seizure of the Axe Blade is not relevant and therefore, cannot be connected with the crime. In absence of substantive evidence regarding sealing of the Articles after their seizure and non-examining the carrier of the Articles to the Chemical Laboratory makes the seizure of no assistance in proving the Charge. With the evidence available on

record, which do not establish the Charge against the Appellant, the conviction recorded by learned Trial Court cannot be sustained. Resultantly, the Appellant is entitled for acquittal. Eventually, the Appeal succeeds and hence the following order:

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The Judgment and order dated 16.04.2019 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.325 of 2015 convicting and sentencing the Appellant namely Vilas Deoram Narsale is hereby quashed and set aside.
- (iii) The Appellant namely Vilas Deoram Narsale is acquitted of the offence punishable under Sections 302 and 201 of the I.P.C.
- (iv) The Appellant be released forthwith, if not required in any other crime.
- (vi) Record & Proceedings be sent back to the Trial Court.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP