



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

CRIMINAL APPEAL NO. 813 OF 2024

Dnyaneshwar Pandit Khode
Age: 41 years, Occu.: Convict No. 37001,
R/o Taroda Tq. Muktainagar, Dist. Jalgaon
At present in Chh. Sambhajinagar Central Prison ..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Muktainagar,
Tq. Muktainagar, Dist. Jalgaon ..RESPONDENT

....
Mrs. B.B. Gunjal, 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 : 11th NOVEMBER, 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 by the Court of Additional Sessions Judge, Bhusawal ('trial Court') in Sessions Case, No. 86 of 2015 on 15th May, 2019. Vide the impugned judgment and order, the appellant has been convicted for committing murder of hie neighbour, and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- with default stipulation.

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

The appellant and Pramod (deceased) were the neighbours of each other. Pramod had opened a pan stall just outside his house but adjoining to the wall of the house of the appellant. Therefore, there used to be quarrel between the two. Pramod (deceased) had filed a criminal case against the appellant and his brother. The case was pending. The appellant was insisting him to withdraw the case. Pramod refused. The refusal to withdraw the case is said to be the motive for commission of murder.

It was 08:30 in the morning of 03rd September, 2015. Pramod had been to the house of his friend, PW 1 – Mahadev, residing near to his house. After a brief chat, Pramod left the house of Mahadev for the day. In a while, Mahadev heard cries of Pramod, “*बाबा बाबा*”. He, therefore, turned to see the appellant assaulting Pramod with an axe. Pramod ran to save himself. He slipped on a cow dung. The appellant followed and rained further axe blows on him. The incident was witnessed by PW 1 – Mahadev and PW 2 – Sopan. Both of them went to the house of the deceased and informed his wife, PW 3 – Savita, who in turn came out of the house to saw her husband lying in a pool of blood. It appears that Pramod had died on the spot. He was rushed to the hospital.

3. PW 3 – Savita lodged the F.I.R. (Exh.18) against the appellant. Crime vide C.R. No. 132 of 2015 was registered for the offence punishable under Section 302 of the Indian Penal Code. Crime scene panchanama (Exh.28) was drawn. The house of the appellant was searched. An axe came to be seized during the house search panchanama (Exh.29). The

appellant was arrested. Clothes on the person of both, the appellant and the deceased were seized. From the crime scene, blood spots were collected. All the seized articles were sent to R.F.S.L., Nashik. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, a charge-sheet was filed against the appellant.

4. The trial Court framed the charge (Exh.2). The appellant pleaded not guilty. His defence was of false implication. To bring home the charge, the prosecution has examined eight witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted and consequently sentenced the appellant as stated above.

5. Learned counsel for the appellant would submit that the informant was not an eye witness to the incident. The so called eye witnesses did not intervene to save the deceased. There is inconsistency between the evidence of prosecution witnesses that goes to the root of the matter. As such, presence of the so called eye witnesses nearby the crime scene was doubtful. The axe was seized from the house and not from the possession of the appellant. As such, the prosecution failed to bring home the charge beyond reasonable doubt. She relied on the judgment of Apex Court in case of ***State of Haryana Vs. Mohd. Yunus and Ors., AIR 2024 SC 597*** to ultimately urge for dismissal of the appeal.

6. Learned A.P.P. would, on the other hand, submit that it is an open and shut case. He took us through the evidence on record and urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record and the judgment impugned here. Let us advert thereto and appreciate the same.

8. Admittedly, the appellant and the deceased were neighbours of each other. All was not well between the two families. A criminal case at the instance of Pramod (deceased) was instituted against the appellant and his brother. A certified copy of the charge-sheet of that case finds place at Exhibit 56. The F.I.R. was lodged by the widow of deceased, Savita (PW 3). She did not witness the incident. It was little past 08:30 a.m. of 03rd September, 2015. She was engaged in cooking. Her husband Pramod (deceased) had been to the house of his friend, PW 1- Mahadev. He left the house of Mahadev and in a while the appellant mounted attack on Pramod with an axe. PW 1 – Mahadev testified on oath to have seen the incident. It is in his evidence that Pramod tried to run away to save himself. He, however slipped on a cow dung. The appellant, therefore, followed him and again rained axe blows. As he tried to intervene, the appellant threatened him. He, therefore, ran away and hid himself behind the pan stall of PW 2 – Sopan.

9. PW 2 – Sopan testified that he would run a pan stall nearby the house of the appellant. He was at his pan stall at the relevant time. The house of the deceased was visible from his pan stall. By little past 08:30 a.m. on 03rd September, 2015 he heard cries, “*वावा वावा*”. He, therefore, looked towards the side the cries were emanating. He saw the appellant assaulted Pramod with the axe blows. He got frightened and hid himself in the pan stall. The appellant then left. It is further in his evidence that PW 1- Mahadev had taken shelter behind his pan stall. Both of them went to the house of the deceased and narrated the incident to PW 3 – Savita, wife of Pramod.

10. PW 3 – Savita gave her evidence consistent with what was reported to her by both, PW 1 and 2. True, she is not an eye witnesses to the incident. But what has been reported to her by both, PW 1 and 2 would be taken into consideration in evidence under Section 6 of the Evidence Act as *res gestae*. It is in her evidence that other neighbours shifted her husband to the hospital. She too went to the hospital. By little past 12:00 p.m. she lodged the F.I.R. (Exh.18).

11. Learned counsel for the appellant would contend that there is inconsistency inter se the evidence of these witnesses. According to her, both, PW 1 and 2 claimed to have been together while going to the house of the deceased to inform PW 3 – Savita about the incident. While PW 2 admitted to have no interaction with PW 1 about the incident. Going together

silently without any interaction is possible, and therefore, cannot be said to be inconsistency going to the roots of the matter. It is not disputed that PW 1 – Mahadev resides in the neighbourhood of the deceased, while pan stall of PW 2 – Sopan was just 50 feet away from the house of the deceased. The incident took place in the front yard of the house of the deceased. Only a suggestion was given to the witnesses that in the village there is dispute between Koli and Maratha communities, and therefore, the witnesses deposed against the appellant. We find such suggestion to be of little help since no person would spare the real culprit and implicate an innocent person. Nothing has been brought on record to indicate the eye witnesses to have an axe to grind against the appellant.

12. PW 5 - Sopan is another eye witness to the incident. His evidence indicates that he had visited the house of the deceased by 08:30 a.m. on the fateful day to ask for spray pump to spray the insecticides on the crop. While he was leaving the court yard of the house of the deceased, he heard the cries. He turned back to saw the appellant to have been assaulting Pramod with an axe.

We have closely perused the cross-examination of this witness as well to find nothing helpful to the prosecution.

13. PW 4 - Nitin is a witness to the crime scene panchanama (Exh.28), panchanama to the seizure of axe (Exh.29) from the house of the appellant and the panchanama relating to seizure of clothes of both, the

appellant and the deceased (Exhs.31 and 32). We find his evidence does not further the prosecution case, since the axe was recovered from the house of the appellant and was not seized at the instance of the appellant. True, all the seized articles were carried to R.F.S.L., Nashik by PW 5 – Bharat, Head Constable. The C.A. reports are on record. Those, however appear to have not been put to the appellant in his examination under Section 313 of Code of Criminal Procedure. We, therefore, do not take them into consideration.

14. PW 8 – Hemant did investigation of the crime. As such, from the evidence of PW 1, 2 and 5 the fact that appellant killed Pramod by inflicting number of axe blows gets proved. The reason therefor was that the deceased had lodged a criminal case against the appellant and his brother. The appellant was insisting the deceased to withdraw the same. Certified copy of the charge-sheet of the said case is on record. The witnesses deposed in that regard.

15. The mortal remains of Pramod was subjected to autopsy. It was conducted by PW 6 – Dr. Pravin. He noticed following injuries on the person of Pramod :-

- (1) CLW (wedge shaped) behind left ear, of size 3 x 2 x 3 inch.
- (2) CLW (wedge shaped) over left side of cheek, size was 2.25 x 1 x 1 inch.
- (3) CLW (wedge shape) over left side of neck, just below mandible, with left carotid and jugular vessel cut and crushed, of size 3 x 2 x 3 inch.

- (4) CLW (wedge shape) behind neck posteriorly, of size 3 x 2 x 1 inch.
- (5) CLW over right forearm near elbow, of size 1.5 x 1 x 1 cm.
- (6) CLW (wedge shape) over left forearm, on upper 1/3rd area of size 3 x 2 x 3 inch.
- (7) CLW (wedge shape) over back on right side near medial border of scapula of size 2 x 1 x 1 inch.
- (8) CLW over left hand palm of size 2 x 2 x 1 inch.
- (9) CLW over left forearm of size 1 X 1 X 1 inch.

In his opinion, all the injuries were ante-mortem. According to him, Pramod died of hypovolumic (hemorrhagic shock) due to injury to left carotid and jugular vessels and due to polytrauma. The postmortem report finds place at Exhibit 39. He opined that the injuries were possible with the axe blows. Close reading of the cross-examination of the medical officer does not lead us to find anything in favour of the appellant.

16. As such, re-appreciation of the evidence in the case lead us to infer the trial Court to have rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code. We are at one with the findings recorded by the trial Court.

17. As such, the appeal is sans merit. Same is, therefore, dismissed. Fees of Mrs. B.B. Gunjal, learned counsel appointed to represent the appellant is quantified to Rs.10,000/- (Rupees Ten Thousand) to be paid by Legal Services Sub-Committee, High Court, Aurangabad.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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