

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 227 OF 2017

1. Raju Appasaheb Patil	]		
Aged about 33 years,	]		
Occupation : Driver	]		
	]		
2. Suraj Appasaheb Patil	]		
Aged about 30 years,	]		
Occupation : Driver,	]		
Both R/o. Village Lingnur,	]		
Tal. Miraj, District : Sangli	]		
(At present detained at Kalamba	]	...	Appellants/
Central Prison, Kolhapur)	]		Org. Accused

V/s.

The State of Maharashtra	]		
At the instance of Rural Police	]		
Station, Miraj, Taluka : Miraj,	]		
District : Sangli,	]		
Vide C.R. No.59/2012 & Sessions	]		
Case No.12 of 2013.	]		
(Notice to be served on the A.P.P.,	]	...	Respondent/
High Court, Mumbai)	]		Org. Complainant

Dr. Yug Chaudhry a/w Mr. Anush Shetty for Appellants.
Mr. Vinod Chate, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 11th MARCH 2024

ORAL JUDGMENT (Per : A.S. Gadkari, J.) :-

(1) Appellants have questioned the correctness of Judgment and Order dated 16th January 2017, passed by the District Judge-1 and Additional Sessions

Judge, Sangli, convicting them under Section 302 read with Section 34 of the Indian Penal Code (I.P.C.) and sentenced them to suffer imprisonment for life and to pay a fine of Rs.2,000/- each, in default of payment of fine, to suffer further rigorous imprisonment for three months by each.

By the same Judgment and Order, the trial Court has acquitted the Appellants for offences punishable under Sections 323, 504 and 506 read with Section 34 of I.P.C..

(2) Heard Dr. Chaudhry, learned counsel for Appellants and Mr. Chate, learned A.P.P. for Respondent-State. Perused entire record.

(3) The Appellants are original accused Nos.1 & 2 respectively.

The name of the deceased is Mahadeo Bhimsu Kurane. The date, time and place of incident is 21st July 2012 at about 12.30 p.m., in the field of the Appellants, situated at village Lingnur (Kurane Mala), situated at Taluka Miraj, District Sangli.

(4) Shorn of unnecessary details, the prosecution's case in brief is as under:-

(4.1) The deceased was having 6 acres of agricultural land. In the year 2012, the deceased along his wife Smt. Manisha Mahadeo Kurane (P.W.-1) were cultivating and tilling the said land. Adjacent to their agricultural land, the land of one Appasaheb Sidgonda Patil admeasuring about 2 acres was situated. The said Appasaheb Patil is the father of the Appellants. Two years prior to date of incident, deceased was cultivating the land of Appasaheb Patil on

contractual basis of Rs.40,000/- per annum. For the said contract, an amount of Rs.40,000/- was given to Appasaheb Patil for previous year and for the year 2012 by the deceased. Deceased had laid pipeline from their well and sown sugarcane crop in the field of Appasaheb Patil.

(4.2) Prior to 8-9 months of the date of incident, Manisha Mahadeo Kurane (PW.-1) and deceased came to know that, out of 2 acres of land of Appasaheb Patil, 1 acre of land was belonging to their guest Parasu Basappa Chougule, a resident of village Bevnoor. The deceased also came to know that, 1 acre of land was to be alienated by the said guest of Bevnoor. The deceased decided to purchase the said land admeasuring 1 acre from the guest of Bevnoor for Rs.7 Lakh. Accordingly, deceased had paid Rs.4 Lakh to the said guest from village Bevnoor and an amount of Rs.3 Lakh was to be arranged and paid. As the deceased was unable to pay the said amount to his guest from village Bevnoor, it was agreed between the deceased and his friend Parsharam Shankar Nalavade that, the said amount of Rs.3 Lakh would be paid by him and the land would be conveyed to him. That, on account of getting knowledge of the sale deed regarding 1 acre of land, Appasaheb Patil and his two sons, i.e. Appellants herein, got annoyed.

(4.3) That, prior to two days of incident, Police Patil of the village asked deceased to remove the pipeline laid by him in the field of Appasaheb Patil. The said fact was informed by the deceased to PW.-1. On the date of incident, i.e. 21st July 2012, at about 08.00 a.m., Police Patil of their village namely,

Malayya Guruswami phoned deceased and told him that, the deceased should remove pipelines laid in the field of Appasaheb Patil. At about 11.00 a.m., deceased sent Manoj M. Kurane (P.W.-2), Amar M. Kurane and Shevantabai Bhimrao Kamble (P.W.-3) to the field of Appasaheb Patil for removing the pipelines from his field. Deceased and P.W.-1 were at their home. When the said three persons were removing the underlaid pipelines from the field of Appasaheb Patil, accused Appellants came there. Mr. Manoj Kurane (P.W.-2) immediately rushed to the house of P.W.-1 and informed the said fact to her. It was about 12:00 noon. Thereafter P.W.-1, deceased and Manoj Kuarane (P.W.-2), went to the filed of Appasaheb Patil, where work of removing pipelines was in progress. P.W.-1 saw that, Raju Patil (Appellant No.1) was having a sickle in his hand and Suraj Patil (Appellant No.2) was having a stick in his hand. Appellant No.1 abused deceased in filthy language. The deceased asked Appellant No.1 as to why he is abusing him, whereupon Appellant No.1 gave blows of sickle on the head, forehead and right ear of the deceased. Appellant No.2 assaulted the deceased with stick on his hands, legs, back and head. At that time, P.W.-1 and P.W.-2 tried to interfere in the said fight. However, Appellant No.2 assaulted P.W.-1 with the said stick by giving a blow on right calf. Appellant No.2 threatened P.W.-1 and P.W.-2 and directed them not to interfere in their fight. Appellant No.2 pushed Amar Kurane, nephew of P.W.1 and thereafter both the Appellants fled away from the scene of incident. The husband (deceased) of P.W.-1 was lying on the earth in unconscious condition.

He was taken to Mission Hospital at Miraj. The doctors therein examined Mr. Mahadeo Kurane and declared him dead before admission.

(4.4) Dr. Yojana Pradip Kaduskar (PW.-7) conducted autopsy on the dead body of Mahadeo Bhimsu Kurane between 06.15 p.m. to 07.15.p.m. on 21 July 2012.

(4.4.1) On clinical examination of the dead body, she noticed the following features :-

- (1) Eye - Closed
- (2) Tongue - Central, well inside the mouth
- (3) Bleeding - Through both nostrils and ears
- (4) No oozing from mouth
- (5) Right ear is torn on account of incised wound from outer side to inside till middle of ear and bleeding was present.

(4.4.2) On minute examination of the dead body, PW.-7 noticed following surface wounds & injuries :-

- (1) CLW, inverted L shaped, measuring 6.5 X 1.5 Cm X bone deep and 2.5 X 1.5 Cm X bone deep exposing to frontal bone.
- (2) CLW, inverted Y shaped, measuring 11 & 12 Cm X 2 Cm X bone deep over right parietal and occipital region, 2-3 Cm above right ear.
- (3) Incised wound over right ear or size, 3 Cm X through & through till middle of ear.

- (4) Contused abrasion, measuring 3 X 2 Cm over lateral aspect of left forearm with surrounding swelling.
- (5) Abrasion, 0.5 X 0.5 Cm at extensor aspect of base of left middle finger.
- (6) Abrasion, 1 X 1 Cm, over lateral aspect of right forearm.
- (7) Abrasion, 0.5 X 1 Cm, over proximal part of right ring finger, extensor aspect.
- (8) Abrasion with contusion, 2 X 2 Cm, over extensor aspect of right little finger.
- (9) Abrasions, 2 in numbers, oblique in shape, placed 2 Cm. apart from each other, measuring 5 X 1 Cm and 4 X 2 Cm over back of right thigh.
- (10) Peeling of superficial skin, 1 X 0.5 Cm. Over right knee.
- (11) Abrasion, 1 X 0.5 Cm. over back of left lower leg.
- (12) Brownish coloured irregular abrasion over left scapular region of back.

(4.4.3) On examination of the dead body, P.W.-7 noticed following injuries :-

- (i) Fracture of upper 1/3rd left forearm on palpation.
- (ii) Fracture left frontal bone, continuously extending towards middle frontal, right parietal up-to right occipital region till base of right.

(4.4.4) P.W.-7 has opined that, the injuries mentioned in Column Nos.17 and 18 of the Postmortem Report were ante-mortem and all the injuries were fresh.

(4.4.5) On internal examination of the dead body, PW-7 noticed following injuries :-

- (i) Head - Extensive haematoma measuring approximately 15 X 20 Cm over frontal, right parietal and right occipital region.
- (ii) Skull - Displaced fracture over left frontal bone, extending continuously over mid-frontal, right parietal and right occipital region, exposing to brain.
- (iii) Brain - Coverings torn over fractured sites.
 - Brain matter exposed through displaced pieces of fracture bone.
 - Brain contused and lacerated corresponding with injury nos.1 and 2 of Column No.17.

(4.4.6) PW. 7 accordingly prepared Postmortem Report (Exhibit-61). PW-7 opined that, cause of death of the deceased was head injuries.

(4.5) The Investigating Officer thereafter issued a letter (Exhibit-62), requesting her to give her opinion regarding injuries mentioned in Column No.17 of the postmortem report.

(4.5.1) In response to the said letter at Exhibit-62, PW-7 gave her opinion (Exhibit-63). She opined that, injury Nos.1 and 2/contused lacerated wounds to the head were caused by hard and blunt object/impact. Injury No.3/incised wound was caused by sharp object. Injury No.4/CLW was caused by hard and blunt object/impact. The other injuries suffered by the deceased were peeling of superficial skin and abrasions and not material to decide the issues involved in the present Appeal.

(4.5.2) PW-7 in her deposition has stated that, injury No.3 shown in Column No. 17 of the Postmortem Report could be possible by Article No.14 (sickle) by its pointed sharp edge. She has categorically deposed and opined that, by the same weapon and by its hard and blunt object from its outer side, other injuries mentioned in the Postmortem Report were possible. That, except injury No.3, all injuries mentioned in Column No. 17 could be possible by means of Article No.11 (stick).

(4.6) After receipt of Chemical Analysis Report and completion of investigation, the Investigating Officer (PW.-9) filed chargesheet in the Court of Judicial Magistrate First Class at Miraj for the offences punishable under Sections 302, 323, 504 and 506 read with Section 34 of I.P.C.. Learned Judicial Magistrate First Class, Miraj after complying with the mandatory necessity as prescribed under Section 207 of Cr.P.C., committed the said case to the Court of Sessions as contemplated under Section 209 of Cr.P.C., as the offence punishable under Section 302 of I.P.C. is exclusively triable by the Court of Sessions.

(4.7) The trial Court framed charge below Exhibit-10. The contents of the said charge were read over and explained to the Appellants in Marathi vernacular language, to which, they pleaded not guilty and claimed to be tried. The defence of the Appellants was of total denial and false implication. The prosecution in support of its case examined in all 9 witnesses.

(4.8) As per the line of cross-examination and the stand adopted by the Appellants in their statement recorded under Section 313 of the Cr.PC., it can be discerned that, it is their specific defence that they have been falsely implicated in the present crime. According to them, due to the fall from high dyke the deceased sustained injury on his head by angles of grape garden and the injured complainant (PW.-1) sustained injuries on her forearm due to brushing with dry bottom of coconut tree.

(4.9) The learned Judge of the trial Court after recording evidence and hearing the learned Advocates for the respective parties has convicted and sentenced the Appellants by its impugned Judgment and Order, as noted hereinabove.

(5) At the outset, it is to be noted here that, Dr. Chaudhry, learned counsel for the Appellants did not seriously dispute about the homicidal death of Mahadeo Kurane; the recovery of weapons at the instance of Appellants; the Postmortem Report; various other Panchnamas and the Chemical Analysis Report. He submitted that, a minute perusal of evidence of PW.-7, i.e. the Autopsy Surgeon, would indicate that, the said witness has not stated that the injuries allegedly caused by Appellants were with intention of causing bodily injury and bodily injury intended to be inflicted, is sufficient in the ordinary course of nature to cause death. He submitted that, considering the evidence of Manisha Kurane (PW. 1) and Manoj Kurane (PW.2), who are the eye witnesses to the alleged incident, it is clear that, the acts allegedly committed by the

Appellants, will be covered by Exception-4 of Section 300 and therefore also at the most, the Appellants can be said to have committed an offence under Section 304 (Part II) and not under Section 302 of I.P.C..

He submitted that, Appellants as of today have undergone more than 10 years of incarceration and after considering the said submissions, this Court may hold that, Appellants are guilty of an offence under Section 304 (Part II) of I.P.C. and accordingly suitable Orders in the interest of justice may be passed.

(6) Per contra, Mr. Chate, learned A.P.P. vehemently opposed the Appeal. He drew our attention to the evidence of P.W.-1 and submitted that, prior to 2 to 3 days from the date of incident, the Appellants along with other persons were loitering near the house of deceased. That, Appellant No.1 was carrying a sickle with him at the time of incident, which is the indication of the intention of Appellants to commit murder of deceased. There are two witnesses to the incident and their evidence is reliable.

He submitted that, the said witnesses have withstand the searching cross-examination at the behest of the Appellants and nothing beneficial to the Appellants has been extracted from it. He submitted that, the trial Court has taken into consideration all the said attending circumstances and has rightly convicted the Appellants for the offence under Section 302 of I.P.C.. He submitted that, there are no merits in the Appeal and therefore the Appeal may be dismissed.

(7) The facts mentioned in para Nos. (4), (4.1) & (4.2) are deciphered from the testimony of Smt. Manisha Kurane (P.W.-1), i.e. wife of deceased and reproduction of the same is hereby avoided for the sake of brevity.

In her elaborate cross examination, she has admitted that, the sickle is being used by farmers. The incident lasted for one minute. Till the end of incident, she did not go in the field of Appasaheb Patil. When the said incident was going on, Manoj Kurane (P.W.2) was in their field with Amar Kurane. That, Shevantabai Kamble was also in their field. Manisha Kurane (P.W.1) admitted that, sickle is being used by farmers. As noted earlier, Manisha Kurane (P.W.1), has admitted that, incident in question lasted for one minute.

(8) Manoj Kurane (P.W.-2) has deposed that, about two years prior to the date of incident, 2 acres of land of Appasaheb Patil was taken by deceased for cultivation at Rs.40,000/- p.a. on rental basis. That, deceased had cultivated sugarcane crop in the said land. He had also installed water sprinkling system in the said field. Manoj Kurane (P.W.-2) has thereafter deposed about the transaction of sale of land, purchase of the said land by Parshuram S. Nalavade and forfeiture of an amount of Rs.4 Lakh.

(8.1) He has deposed that, on 21st July 2012, i.e. on the date of incident, at about 11:00 a.m., the deceased told him and his brother to remove pipes from the sugarcane crop. Accordingly, he and his brother removed pipes from sugarcane crop and handed over those pipes to Shevantabai Kamble (P.W.-3). She was standing in the field of the deceased and was placing those pipes near

grape garden. Manoj Kurane (PW.-2) and his brother had removed about 27/28 pipes. At about 12:30 p.m., the Appellants came there. Appellant Nos.1 and 2 were armed with sickle and stick respectively. Appellant No.1 asked PW.-2, as to with whose permission they were removing the said pipes. To which, PW.-2 replied that, deceased had directed them to remove those pipes. Appellant No.1 thereafter told PW.-2 to call deceased and till his arrival, he should not remove the said pipes. PW.-2 accordingly went to the house of deceased and narrated the said fact to him. Thereafter the deceased, Manisha Kurane (PW.-1) proceeded towards the field along with PW.-2. When they reached near the grape garden, Appellant No.1 hurled abuses in filthy language to the deceased. The deceased asked Appellant No.1, as to why he was abusing him. Thereafter, there was oral altercation between the deceased and Appellant No.1 and Appellant No.1 gave blows of sickle on the head, forehead and ear of deceased. Appellant No.2 also gave blows of stick on legs, head and hand of the deceased. PW.-2, his brother Amar and Manisha Kurane (PW.-1) tried to intervene and rescue the deceased. However, both the Appellants threatened them with serious consequences. When Manisha Kurane (PW.-1) tried to pacify the quarrel, Appellant No.2 hit stick on her right hand. After PW.-2 and other persons raised shouts, both the Appellants fled from the sugarcane crop.

(8.2) In his cross examination, PW.-2 has admitted that, farmers always use sickles in their fields. Article No.14 (sickle) is easily available in market. That, he did not see specific identification mark on Article-14 on the date of

incident. That, stick like i.e Article No.11, which was used by Appellant No.2 while committing the crime, is generally used by farmers.

(9) Smt. Shevanta Kamble (PW.-3), an employee of Manisha Kurane (PW.-1) did not support the prosecution's case and was declared hostile. Perusal of her evidence indicates that, it is not at all beneficial to the prosecution.

(10) Perusal of deposition of Manisha Kurane (PW.-1) and Manoj Kurane (PW.-2), i.e. eyewitnesses to the incident, clearly indicates that, said witnesses are reliable and trustworthy, though the said witnesses are close relatives of the deceased, they have deposed the exact incident without any exaggeration in that behalf.

(11) Manoj Kurane (PW.-2), has categorically deposed that, after he along with deceased and Manisha Kurane (PW.-1) went to the field, initially Appellant No.1 abused him in filthy language and thereafter, there was an altercation between the deceased and Appellant No.1. In the said altercation, Appellant No.1 gave blows of sickle on the head, forehead and ear of the deceased. As noted above, Manoj Kurane (PW.-2), admitted that, farmers always use sickles in their fields and Article No.14 is easily available in the market. It appears from the record that, Appellants and in particular, Appellant No.1 did not have intention to commit murder of Mahadeo B. Kurane (deceased), as he was assaulted with blunt side of the sickle and not by sharp edge of it on the head of the deceased.

(12) To bring a case within Exception 4 to Section 300 of I.P.C., all the ingredients mentioned in it must be found. It is to be noted that, the word 'fight' occurring in Exception 4 to Section 300 of I.P.C. is not defined in the I.P.C.. It takes two to make a fight. To invoke Exception 4 to Section 300 of I.P.C., four requirements must be satisfied viz.:-

- i. It was a sudden fight;
- ii. There was no premeditation;
- iii. The act was done in the heat of passion and
- iv. The assailant had not taken undue advantage or acted in a cruel or unusual manner.

(13) The cause of the quarrel is not relevant nor it is relevant as to who offered the provocation or started to assault first, but what is important is that the occurrence must have been sudden and not premeditated and the offender must not have acted in a fit of anger and must not have taken any undue advantage or acted in a cruel or unusual manner. When during the course of a sudden quarrel, a person in the heat of moment, attacks the other person and causes injury, one of which proves to be fatal, the accused would be entitled to the benefit of this exception.

(14) The Hon'ble Supreme Court in the case of *Sukhbir Singh Vs. State of Haryana*, reported in (2002) 3 SCC 327, while analyzing the provisions of Exception 4 of Section 300 read with Section 304(II) of I.P.C. has held that, to avail the benefit of Exception 4, the defence is required to probabalise that the

offence was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally a man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the Courts that a fight is not per se palliating circumstance and only unpremeditated fight is such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception.

(15) After applying the aforestated principles enunciated by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the present case, we are of the considered view that, the acts of the Appellants clearly fall within the purview of Exception 4 of Section 300 of the Indian Penal Code and therefore the act committed by them is under Section 304 (Part II) of the Indian Penal Code.

(15.1) Hence, the following Order is passed :-

O R D E R

- (i) Appellants are acquitted under Section 302 of the Indian Penal Code and instead convicted under Section 304 (Part-II) of the Indian Penal Code;
- (ii) Appellants are directed to undergo Rigorous Imprisonment for 10 years each and to pay fine of Rs.5,000/- each. In default of payment of fine, to further suffer Rigorous Imprisonment for 3 months each;
- (iii) The impugned Judgment dated 16th January 2017 is modified to the extent as noted hereinabove;
- (iv) Record indicates that, Appellants as of today have undergone approximately 9 years and 6 months in actual incarceration, and including remission approximately 11 years in incarceration;
- (v) In view thereof, Appellants have already undergone the sentence prescribed and also in default sentence as of today and therefore they may be released from Jail immediately, if not required in any other case/cases, on production of an authenticated copy of the Operative Part of the present Order;
- (vi) Criminal Appeal is partly allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN

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by RAJESH
VASANT
CHITTEWAN
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