

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.174 OF 2023

Sandip Chandrakant Pawar .. Appellant
Versus
The State of Maharashtra .. Respondent

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Ms.H.M.Whaval, Appointed Advocate, for the Appellant.
Mrs.M.M.Deshmukh, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**
DATED : 21st NOVEMBER, 2024

JUDGMENT (Per Bharati Dangre, J.):

1. Appellant, Sandip Chandrakant Pawar faced the charge of hitting his father, Chandrakant in the intervening night of 23/07/2015 and 24/07/2015 in the house of the Complainant-Ramchandra Mane by means of stones and cricket bat and thereby causing his death. He was charged by the learned Additional Sessions Judge, Vaduj under Section 302 of the Indian Penal Code (for short, “IPC”)

On charge being framed, the Appellant pleaded not guilty and chose to be tried.

2. The prosecution, in order to establish the guilt of the Appellant, examined eight witnesses, which included the

informant, Ramchandra Mane (PW 1), Jaywant Narayan Pawar (PW 2), eye witness, Ekanath Anna Pawar (PW 6) and Netaji Tukaram Ghadge (PW 7) to throw light on the incident.

PW 3 and PW 4 are the panch witnesses, whereas Dr.Dhondiram Jadhav, the Medical Officer who conducted autopsy, is examined as PW 5. The Investigating Officer is examined by the prosecution as PW 8.

3. PW 1-Ramchandra Mane, a resident of Nimsod, deposed that there was a marriage ceremony of daughter of one Rohidas Salunkhe and, therefore, his brother-in-laws, Ekanath Anna Pawar, Chandrakant Anna Pawar (deceased) and his son, Sandip (the present Appellant), residents of village Bhandewadi, Taluka Khatav, visited Nimsod, had visited his village. The marriage ceremony was held on 23/07/2015 and on 24/07/2015, the visitors halted at his house.

In the evening, after having dinner, the informant went to sleep in the temporary hut situated in front of their house, whereas his brother-in-laws alongwith Accused went to sleep in one room of his house.

At around 4.00 a.m., while he was in sleep, he heard the shouts of his brother-in-law, Ekanath, who had stepped out of the room, saying that the Accused was assaulting his father, Chandrakant by stone. On hearing the shouts, even his wife, Hausabai also woke up and both of them rushed to the room, where his guests had slept.

On entering the room, PW 1 noticed the Accused standing in the room, whereas his brother-in-law, Chandrakant

was found lying in an injured condition, surrounded in pool of blood, his face towards the roof of the room. He had sustained bleeding injury on his head and face and blood was oozing from his head and three stones were lying close his body alongwith a broken wooden bat. The articles lying there were also stained with blood and when he checked on Chandrakant, he found him to be dead. He questioned Sandip as to why he assaulted his father and he responded by saying that Chandrakant was not providing food to him and was insisting that he should go to work and, therefore, he assaulted him.

As per PW 1, the persons in the neighbourhood arrived on the spot and somebody gave intimation to the police, who arrived on the spot and recorded his complaint formally, as per his say, which was treated as an FIR (Exh.15). It was PW 1, who showed the place of incident to the police and he identified the stones and the broken bat, which was lying on the spot.

4. PW 2- Jaywant Narayan Pawar, has also corroborated the version of the Complainant (PW 1), as he deposed that he received a phone call from Netaji Ghadage (PW 7), who informed him that Sandip had committed the murder of his father and, therefore, he reached the spot and found the dead body of Chandrakant lying in the house. The dead body was surrounded by three stones and he categorically deposed that when he reached the spot, Ekanath, the brother of the deceased, Ramchandra Mane, Shrikant Devkar and Tukaram Devkar were also present alongwith the Accused. On being asked by Tukaram, Accused has given the same reason for killing his father, which he had given to the Informant.

PW 2 is also a signatory to the panchnama for seizure of the clothes worn by the deceased, which had blood stains (Exh.20). Another panch to the spot panchnama is Tukaram Devkar, who was also present on the spot.

5. PW 6-Ekanath Anna Pawar, brother of the deceased Chandrakant is also examined by the prosecution, who testified before the Court that on the date of incident, he alongwith his brother Chandrakant and his son, Sandip had been to village Nimsod to attend the marriage ceremony and when they went to sleep after having dinner, he heard noise of falling of some articles and he woke up, to see that blood was oozing from the head and face of Chandrakant and Sandip was found standing near him with stone in his hand and two stones lying near the body of his brother. He shouted loudly, when he saw this and upon questioning the Accused, he again pelted stone on the head of Chandrakant and came out of the room. According to PW 6, his sister Hausabai alongwith her husband, Ramchandra Mane (PW 1) also came in the room and police arrived on the spot and arrested the Accused, whereas Chandrakant was taken to the hospital.

A specific suggestion to this witness that he has not personally seen the accused while assaulting his deceased brother is denied. He also denied the suggestion that at Ramchandra's instructions, he has named the Accused as the assailant. He also denied the suggestion that his eye sight is weak and even his hearing capacity is weak and that he was deposing falsely.

The learned Judge, on examining the witness, has recorded as below :-

“(The witness seems to be mentally retarded as while recording his evidence and in the cross examination he was not giving proper reply to the questions asked to him.)”

However, we do not find any inconsistency in his version and in absence of any proof to the effect that he was mentally retarded, in our opinion, his testimony cannot be discarded.

Worth it to note that the statement of Ekanath was also recorded under Section 164 of Cr.P.C. by the Magistrate on 31/07/2015, where he had categorically stated that Sandip had hit Chandrakant by stone, while he was in sleep.

6. Netaji Ghadage (PW 7), another witness residing in the neighbourhood of Ramchandra Mane also gave his version in sync with the other witnesses, when he had stated that when he was present in the house between 4.00 to 5.00 a.m., his aunt Sharada, who is daughter-in-law of Ramchandra Mane, came to his house and disclosed that the Accused committed murder of his father Chandrakant, by pelting stone on his head and, therefore, he rushed towards the house of his aunt Sharda, where he saw that the deceased was lying on the ground in dead condition and three stones were lying nearby his body and the Accused was standing in the room. He referred to the presence of Ekanath (PW 6) on the spot, who was crying and questioning Sandip as to why he assaulted Chandrakant. He corroborated the other witnesses on the aspect that the Accused had responded, that he had assaulted his father, since he was sending him on work and was not providing sufficient food to him.

7. In order to establish the cause of death, the body of Chandrakant was sent for autopsy and PW 5, who had conducted the postmortem, ascribed the cause of death as, “severe head injury with multiple fracture bones due to hard and blunt force impact”.

PW 5 proved the panchnama and deposed about the external injuries found on the body of the deceased Chandrakant, being eleven in number, with specific reference to the multiple fractures and he also deposed about the internal injuries in form of the following injuries :-

- “1. Haematoma under skull in left frontal and parietal region in the area of 7x5 cm, red in colour,
2. Depressed fracture of left frontal bone of size 6 x 5 cm, bleeding through fracture line present.
3. Brain covering lacerated in frontal region contused, brain matter-subdural haematoma with intra-cerebral bleeding in left fronto parietal lobes and right parietal region.”

According to PW 5, the injuries were caused within 24 hours by hard and blunt object. He opined that death of Chandrakant was homicidal and he had also issued Advance Death Certificate. When specifically posed a question about the possibility of the injury being caused by the stones, he expressed in the positive.

8. PW 3-Prataprao Mane is the signatory to the inquest panchnama (Exh.24) and he deposed about the injuries noticed on the body of Chandrakant, when the inquest was conducted.

9. PW 4-Vijay Shinde proved the spot panchnama (Exh.27) and deposed that on the spot, three blood stained stones were lying alongwith one broken wooden bat, one cap of white colour having blood stains, one shawl, one strip of gunny bag and two broken tooth. The articles were attached from the spot under the same panchnama and the seizure of the articles is proved by PW 4.

10. In order to prove the collection of evidence and its corroboration, the Investigating Officer, Ravindra Gaikwad, is examined as PW 8, who deposed about the investigation that was carried out and also as regards the report of analysis, which was received from the Regional Forensic Science Laboratory, State of Maharashtra, which has revealed that the clothes of the Accused had blood stains and, admittedly, the accused has failed to offer any explanation in that regard.

11. Appreciating the evidence brought on record through the prosecution in form of three witnesses viz. PW 1, PW 6 and PW 7, who had narrated the incident in sync with each other, coupled with the other evidence as regards seizure panchnama of the clothes of the accused (Exh.20), spot panchnama (Exh.27) as well as the seizure panchnama of the clothes of the deceased (Exh.21) alongwith the seizure of the articles from the spot, coupled with the evidence of the Medical Expert, the trial Judge also relied upon the CA Reports (Exh.51 to 55). The chemical analysis revealed that the clothes of the Accused and the deceased were having blood

stains, which were found to be of human origin and the Accused did not offer any explanation as to how his clothes were stained with blood.

Concluding that the circumstances placed on record conclusively established the nexus of the Accused with the alleged incident of murder, the learned Judge recorded a finding of guilt in paragraph 33, on examination of the evidence of the prosecution witnesses, and a conclusion is derived that it is the Accused, who had caused death of the deceased, his own father and he did not produce any evidence to rebut the evidence brought on record by the prosecution.

12. The learned counsel Ms.H.M.Whaval, Appointed Advocate for the Appellant, has assertively argued before us that the prosecution has failed to prove its case beyond reasonable doubt, as the other witnesses, who were present on the spot, are not examined. She has also urged before us that PW 7-Netaji Ghadage had deposed that Ramchandra Mane is the father-in-law of his aunt Sharada, but this was not disclosed by Ramchandra Mane (PW 1) in his deposition.

We find this submission to be totally irrelevant, as it is not the relationship of the persons that was relevant, but what is relevant is Ramchandra's deposition that his brother-in-laws, Ekanath and Chandrakant along with his son had resided at his place and in the night, when he heard the shouts from Ekanath, he entered the room and found his brother-in-law in an injured condition and the Accused was standing near him. Ekanath (PW 6) has corroborated the said version and he has

categorically deposed that his brother was assaulted by his own son. There is no reason as to why the prosecution witnesses would depose against the Accused, as he has never disputed his presence on the spot and offered no explanation about the blood stained clothes pursuant to his arrest.

The prosecution has, therefore, successfully established its case, based upon which the learned Judge recorded a finding of guilt and has sentenced the Appellant/Accused commensurating with the guilt that has been proved.

Finding no legal infirmity in the impugned judgment dated 26/04/2019, passed in Sessions Case No.44 of 2015, the same is upheld and the Appeal filed by the Appellant stands dismissed.

13. We would like to place on record the words of appreciation for Advocate H.M.Whaval, who on being appointed, has effectively represented the cause of the Appellant before us and we direct the Legal Service Authority to pay the legal remuneration due to her, within six weeks from today.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)