

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 14 OF 2016

Shivaji Laxman Jadhav	..Appellant
Versus	
The State of Maharashtra	..Respondent

Mr. Yashpal Thakur (Appointed Advocate) for Appellant.
Smt. Mankuwar M. Deshmukh, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 20 JANUARY 2025

ORAL JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. The Appellant has challenged the Judgment and order dated 24.03.2015 passed by the Additional Sessions Judge, Malshiras, in Sessions Case No.1 of 2014. Vide the impugned judgment and order, the Appellant was convicted for commission of offence punishable U/s.302 of the I.P.C. He was sentenced to suffer R.I. for life and to pay a fine of Rs.5000/- and in default to suffer further R.I. for one year.

2. Heard Mr. Yashpal Thakur, learned counsel for the

Appellant and Smt. Mankuwar Deshmukh, learned APP for the State.

3. The prosecution case is that, the Appellant was working with the deceased Dattatraya Shinde. The Appellant was addicted to *ganja*. There used to be frequent quarrels between the deceased as the employer and the Appellant as an employee. A quarrel took place between the Appellant and Dattatraya in the late evening on 28.08.2013. On the next day morning, Dattatraya's wife Suman saw the appellant standing next to Dattatraya's bed. The Appellant was having an axe in his hand. Dattatraya had sustained bleeding head injury. On seeing Dattatraya's wife, the appellant ran away. Before going away, he kept the axe in the store room. Dattatraya's cousin who was residing nearby saw the Appellant running away from Dattatraya's house. One other neighbour Annasaheb Shinde also saw the appellant running away. One Deepak Jadhav saw the appellant going towards another village. The Appellant was seen with blood stained clothes, therefore, Deepak tried to catch him, but the Appellant could not be caught. In the meantime, Dattatraya's brother lodged the F.I.R. vide C.R.No.67 of 2013,

under section 302 of the I.P.C. at Velapur police station. The investigation was carried out, the inquest panchanama was conducted, the dead body was sent for postmortem examination, the spot panchanama was conducted and the blood stained axe was seized. The Appellant was arrested and, at his instance, his blood stained clothes were seized. The articles were sent to the Forensic Science Laboratory for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

4. During the trial, the prosecution examined 12 witnesses including the wife and the brother of the deceased, the neighbour Annasaheb Shinde and Deepak Jadhav who tried to catch the appellant, the panchas for inquest panchanama, spot panchanama and the clothes seizure panchanama etc. The postmortem notes were admitted by the defence. Besides this evidence, the police witnesses were examined.

5. The learned Judge believed the prosecution witnesses and relying on the evidence of PW-3, PW-4 and PW-6, in particular,

convicted and sentenced the Appellant, as mentioned earlier.

6. The main evidence of the prosecution is in the form of evidence of Dattatraya's wife Suman. She is examined as PW-4. She has deposed that the Appellant was their servant. He was residing with PW-4 and her husband. On the previous day of the incident, the deceased had scolded the Appellant because the appellant was not doing any work and was addicted to *ganja*. Dattatraya went to sleep in the hall after taking dinner. The Appellant slept in the front portion of the bungalow and PW-4 slept in the bedroom. She woke up at around 4:00a.m. Her husband also woke up. He went to bathroom and again went back to sleep. At that time, she had seen that the appellant had also woken up. He was doing his daily chores around the house. PW-4 went to take bath. The bathroom was made up of tin sheets in front of their bungalow. After taking bath, she returned to the hall of the bungalow. At that time, she saw that the appellant was standing near her husband's bed. The Appellant was having an axe in his hand. As the appellant saw PW-4, he rushed out of the house by pushing her. PW-4 saw that her husband was lying in a pool of

blood. She raised shouts. Her brother in law Jaysing Shinde, Anna Shinde came there. At around 6:00a.m. Jaysing informed their relatives. Dattatraya's brother Pandurang Shinde came there. At around 8:00a.m. the police came to her house. She narrated the incident to her brother in law. The police prepared the panchanama. The dead body was taken for the postmortem. The police recorded the statements. Police showed her the axe which was recovered from her house. She identified the axe in the Court.

In the cross-examination, she deposed that Dattatraya's cousins were residing at a short distance. The store rooms made up of tin sheets were used to keep the agricultural implements, as well as, fodder etc. On her raising shouts, Dattatraya's cousin came to the spot within 2 to 3 minutes. Dattatraya's brother Pandurang came before the arrival of the police. The police first recorded the statement of the first informant and then they recorded her statement. She denied the suggestion that the Appellant was mentally imbalanced. No other suggestion was put to her except that the appellant did not understand what he was doing. She denied that, she was deposing falsely that she had seen the

Appellant near the bed of the deceased with an axe in his hand.

7. PW-3 Pandurang Shinde was Dattatraya's brother. On 29.08.2013 at about 5:30a.m. he received a phone call from Annasaheb Shinde, who informed PW-3 Pandurang about Dattatraya's murder. PW-3 Pandurang immediately rushed to Dattatraya's house which was situated in the field. He saw that Dattatraya was lying dead in the hall on his iron bed. He had suffered injuries on his neck and head. PW-4 Suman told him that the Appellant had committed murder and had run away. One Uddhav Jadhav called the police telephonically. Police came there. PW-3 Pandurang then lodged his complaint. It is treated as an F.I.R. It is produced on record at Exhibit-21.

In the cross-examination, he reiterated that, PW-4 Suman told him as to what had happened. His evidence is similar to his statement.

8. PW-6 Annasaheb Shinde has deposed that, he was residing near the bungalow of the deceased Dattatraya. The appellant was Dattatraya's servant. On 28.08.2013 at about

9:00p.m. he heard the quarrel between the Appellant and the deceased Dattatraya. Dattatraya was scolding the appellant on his addiction to *ganja* and as the appellant was not doing the agricultural work properly. On 29.08.2013, at about 5:30a.m. he heard shouts of PW-4 Suman. By that time, he had already woken up and was brushing his teeth. He immediately rushed there with his uncle Jaysing and cousin Mohan Shinde. He has further deposed that, at that time, he had seen the appellant running away from the bungalow towards the village Maloli. PW-6 Annasaheb and others went inside Dattatraya's house. He saw that Dattatraya was lying in a pool of blood. PW-4 Suman was crying. There were injuries on the neck and head of the deceased. There were blood stains on the wall.

In the cross-examination, he deposed that the distance between his house and Dattatraya's house was about 15 feet. When they reached the spot, they saw that the appellant was running away from the courtyard of the bungalow. But they did not chase the appellant. He denied the suggestion that his deposition was false.

9. PW-7 Deepak Jadhav has deposed that on 29.08.2013 he received a phone call from his brother in law Mohan who told PW-7 that Dattatraya's servant had committed his murder. PW-7 proceeded towards the spot of incident. He met one Dattatraya Mahadik near the school. In the meantime, they saw the appellant coming towards PW-7's Maloli village. They tried to catch him, but he escaped and went towards the sugarcane field. PW-7 then informed the police of Velapur police station on his cell phone. Thereafter they went to the spot and saw the dead body of the deceased with those two injuries.

In the cross-examination, he deposed that, they chased the appellant for about 10 to 15 feet. The police recorded his statement on 05.10.2013. Till that date, he was in his village Maloli.

10. The postmortem notes produced on record show that the deceased had suffered the following two injuries:

- i) incised wound over right side of skull from right eyebrow to right temporal region above right ear of the size 10cm x 3cm. It was bone deep. The brain tissue exposed and crushed.

- ii) Incised cut throat at thyroid cartilage level coupled with fracture of thyroid cartilage opening respiratory tract.

The cause of death was mentioned as “death due to shock and hemorrhage due to fractured skull and fractured thyroid’s cartilage”.

11. PW-1 Shivaji Jadhav was a pancha for the inquest panchanama which is produced at Exhibit-17. PW-2 Prashant Jadhav was a pancha for spot panchanama which is produced at Exhibit-19. He has deposed that they inspected the bungalow with the police. They went to the rooms made up of tin sheets where the agricultural implements were kept. In one of the baskets they found the blood stained axe. It was seized. The spot panchanama was produced on record at Exhibit-19.

12. PW-5 Nivruti Mahadik was another pancha on the point of seizure of clothes of the appellant. He deposed that, he was called to the police station on 01.09.2013. The Appellant led PW-5, police and another pancha to a temple which was around 1Km. away from the village. The clothes were recovered at the appellant’s instance from the back side of the temple in the stone

compound. They were seized and sealed. PW-5 admitted that the Appellant's hands were handcuffed and were tied behind his back.

13. PW-8 Vinayak Bankar was a photographer who took the photographs of the dead body and the spot from where the axe was found.

14. PW-9 Police constable Kanifnath Nimgire was the driver of the police vehicle when recovery of the clothes was effected at the instance of the appellant. PW-10 PHC Nandkumar Kshirsagar is the carrier of the articles to the F.S.L. PW-11 PSI Suresh Kote was the officer who had registered the F.I.R.

15. PW-12 API Shivshankar Bondar had carried out the investigation, had carried out the spot panchanama, had seized the appellant's clothes at his instance, recorded the statements of the witnesses, sent the dead body for the postmortem examination, and had completed the investigation and filed the charge-sheet.

Nothing much is elucidated from the cross-examination of this witness.

This, in short, is the evidence led by the prosecution.

16. Learned counsel for the Appellant submitted that, PW-6 came at the spot after some time, therefore, he could not have seen the Appellant running away from the spot. It is also unbelievable that, PW-6 Annasaheb and others had not tried to catch the appellant. He submitted that, statement of PW-7 Deepak was recorded belatedly on 05.10.2013. He was very much available in village Maloli. The police were aware of his availability and yet his statement was not recorded immediately, therefore, his deposition is doubtful. He submitted that, though, there is no effective cross-examination of PW-4 Suman, yet the evidence of PW-4 Suman is quite weak. She had not seen the actual assault. She had not even heard the shouts of her husband. He submitted that, therefore, it becomes a case of circumstantial evidence and the chain of circumstances is not complete. In the alternative, he submitted that, even otherwise, the appellant's act would fall within the *Exception 4* to Section 300 of the I.P.C., as admittedly, there was quarrel between the deceased and the appellant and the alleged incident was a result of that quarrel.

17. Learned APP submitted that, PW-6 Annasaheb is an independent witness. He was a neighbour. He had deposed about the quarrel between the appellant and the deceased. To that effect, he was a natural witness being a neighbour who was residing at a very short distance from the house of the deceased. On the next day morning also he rushed to the spot on hearing shouts of PW-4 Suman and at that time, he had seen the Appellant running away from the spot. She submitted that, there is no reason to disbelieve PW-7 Deepak, though, his statement was recorded belatedly on 05.10.2013. She submitted that the incriminating circumstances were that the appellant was servant of the deceased and he was on bad terms with the deceased. The appellant had a motive to commit murder.

18. She further submitted that, the evidence of PW-4 Suman shows that the appellant was standing near the dead body with the murder weapon in his hand, which was found in the store room of the house. The Appellant was aware as to where the agricultural implements were kept. He had kept the axe in that room.

19. PW-6 Annasaheb had rushed to the spot and he had seen the appellant running away from the spot. PW-7 Deepak had seen the appellant coming towards village Maloli and going towards the sugarcane field for hiding himself. This conduct of the appellant is an incriminating circumstance against the appellant. All these circumstances formed a complete chain which is further elaborated by the medical evidence regarding nature of injuries which were possible by an axe.

20. We have considered these submissions. We find substance in the submission of learned APP. The most important evidence is of PW-4 Suman who was the wife of the deceased. She has deposed about the quarrel that had taken place between the appellant and the deceased in the previous evening. The incident had occurred on the next day in the early hours. She had seen the appellant standing near the bed of the deceased. The Appellant was holding an axe. He pushed PW-4 Suman and ran away. Therefore, though, PW-4 Suman had not actually seen the Appellant giving fatal blow to Dattatraya, her presence at the spot immediately after the incident and her description of the scene

makes her an important and reliable witness. As can be seen from her evidence, there is hardly any cross-examination of this important witness. Therefore, her evidence is not shaken at all. Her evidence itself proves that the Appellant had committed the murder.

21. The evidence of PW-6 Annasaheb is also natural. He was the next door neighbour who had rushed to the spot on hearing her shouts. He had heard the quarrel between the Appellant and the deceased on the previous evening. His evidence lends credence to the evidence of PW-4 Suman. PW-7 Deepak has also deposed that, he had seen the appellant coming towards village Maloli. But, as submitted by Shri. Thakur, there is some doubt about his evidence because his statement was recorded by the police much belatedly on 05.10.2013, though, he was very much available and he has claimed that he himself had called the police when he had seen the appellant running away from the spot.

22. The other incriminating circumstance of recovery of blood stained clothes from the appellant may not be a

circumstance which can be conclusively held to be an incriminating piece of evidence because the blood stains found on his clothes were merely mentioned as of 'human blood', but those blood stains are not connected to the deceased's blood. Moreover, PW-4 Suman was not asked to identify those clothes in the Court. Therefore, some reasonable doubt is created about the Appellant having worn those clothes at the time of commission of offence. Therefore, we are leaving aside that particular circumstance.

23. The other circumstance of finding of axe in the store room is an important circumstance. The Appellant was seen with that axe by PW-4 Suman. It was found in the store room where the Appellant used to normally work and keep the agricultural implements. Therefore, finding of that blood stained axe shows that it was kept by a person who was aware of the location of the store room. PW-4 Suman has identified the axe in the Court and, there is no cross-examination about this identification by PW-4 Suman in the Court. As rightly submitted by learned APP, PW-4 Suman and PW-6 Annasaheb corroborated each other. PW-3 Pandurang had come to the house and then had lodged his F.I.R.

There was immediate disclosure by PW-4 Suman to the other witnesses about the incident and about the part played by the Appellant. The motive, as submitted by learned APP, is proved by the prosecution because the appellant was addicted to *ganja* and there was a quarrel between the appellant and the deceased on the previous evening. The fact that, the appellant was residing in the house of the deceased, is also not challenged. Therefore, all these circumstances show that there is strong material against the Appellant which is proved by the prosecution beyond reasonable doubt.

24. We are unable to accept the submission of learned counsel for the Appellant that the offence would not fall within the meaning of 'murder' as defined U/s.300 of the I.P.C.; as it would be covered by *Exception 4* to Section 300 of the I.P.C. The quarrel which had taken place between the deceased and the appellant was at about 9:00p.m. on 28.08.2013. After that, everybody had gone to sleep in the house. In the morning of 29.08.2013 the appellant had woken up and had attended the every day duties and within a short time he assaulted the deceased with axe on his

head and neck in a brutal manner. Therefore, it cannot be said that the incident had occurred in a sudden fight without premeditation.

25. From the evidence, it appears that, it was a calculated, premeditated, cold blooded murder and, therefore, the *Exception 4* to Section 300 of the I.P.C. will not come to the aid of the Appellant. In view of this matter, we do not find merit in the Appeal.

26. Accordingly, the Appeal is dismissed.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)