



N THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.178 OF 1993

Anil s/o Shyamrao Kolcharlewar,
aged about 25 years,
Occupation: Agriculturist,
R/o Titvi- Paradpar, Tahsil Chimur,
District Chandrapur. ..

Appellant
Accused

... Versus ..

State of Maharashtra ..

Respondent

Shri N. A. Badar, Advocate, for the Appellant/Accused.
Shri N.S. Khubalkar, APP for the Respondent/State.

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CORAM :K.J. ROHEE & S.R.DONGAONKAR, JJ.

DATE OF RESERVING THE JUDGMENT : OCTOBER 24, 2007

DATE OF PRONOUNCING THE JUDGMENT : OCTOBER 26, 2007

JUDGMENT : (PER : K. J. ROHEE, J)

The appellant/accused has challenged his conviction for the offence punishable under Section 302 of IPC and sentence of imprisonment for life and fine of Rs.1000/- in default R.I. for 3 months imposed by 2nd Additional Sessions Judge,

Chandrapur in Sessions Case No.140/1992 decided on 17.4.1993.

2. The appellant had five sisters namely Urmila, Nalu, Lila, Mangala and Pratibha. Urmila, Nalu and Mangala are married. Lila and Pratibha were unmarried. The appellant has no brother. His father died in the year 1987 leaving behind him ancestral land at village titvi and village Paradpar, tahsil Chimur, district Chandrapur. His father had given 2 acres land to each sister of the appellant. About 28/29 acres of land is in the name of the appellant. The relations between the appellant and his brother-in-law Hanumantrao Bongirwar (Husband of Nalu) were strained because of monetary affairs. His mother is alive. Appellant's mother Sushilabai is alive.

3. From the rainy season of 1991, the appellant was residing alone at village Titvi for looking after his land. His mother Sushilabai and sisters Lila and Pratibha were residing at village Paradpar. On 20.3.1992 in the morning the appellant went to village Paradpar for giving *mutton* to his mother and sisters. However, his mother and sisters abused him. His sister Nalu and Lila assaulted him. In order to save himself, he ran towards his field situated near village Titvi. After about half an hour his sister

Lila came to Titvi for working on road near the field of the appellant. When he saw her, the appellant at once assaulted her with *Bichva-Adkitta*. He gave several blows with the result she died on spot. Several labours who had come for the work on road, had seen the incident. However, nobody rescued her. Thereafter the appellant went to the house of Police Patil namely Dattu Kashiram Wankhede of village Titvi and narrated the incident to him. The Police Patil asked him to accompany him to the Police Station. Accordingly the appellant accompanied the Police Patil to P.S. Bhishi and informed the Police about the incident. He also produced *Bichva-Adkitta*. PSI Deshpande (PW12) took down the statement of the appellant (Exh.45). PSI Deshpande registered Crime No. 19/1992 under Section 302 of IPC against the appellant. PSI Deshpande seized *Bichva-Adkitta* stained with blood under seizure panchanama (Exh.29). PSI Deshpande arrested the accused and seized blood stained full pant, blood stained shirt and blood stained baniyan from the accused under seizure panchanama (Exh.30). The appellant was sent for medical examination. PW8 Dr. Kuril, Medical Officer, Primary Health Centre, Bhishi examined the appellant. He noted contusions and

incised wounds on the person of the appellant and issued medical certificate (Exh.32). PSI Deshpande proceeded to the spot. He prepared spot panchanama (Exh.9) and inquest panchanama (Exh. 41). On the next day autopsy was conducted by PW9 Dr. Swami, Medical Officer, Rural Hospital,Chimur. He noted as many as 22 incised wounds on the upper part of the body of the deceased. In his opinion, the probable cause of death was shock due to internal haemorrhage due to injuries caused to (1) lungs, (2) liver, (3) stomach and (4) kidney. The property was sent for chemical analysis. Blood of group "O" was found on the knife (*Bichva-Adkitta*) and clothes of the deceased and the accused. The blood group of deceased and accused, however, could not be ascertained. After completion of investigation, the accused was charge sheeted.

4. The defence of the accused is of denial. According to him at the time of incident he was standing on a hillock. After hearing shouts of Lila, he went near Lila. He, however, did not notice injuries and returned to his house. At about 12/12.30 in the noon, the Police and Police Patil came to his house. He was taken to the Police Station and was arrested.

5. The prosecution examined 12 witnesses in order to prove the guilt of the appellant. PW1 Dattu Kashiram Wankhede is the Police Patil of village Titvi to whom the appellant allegedly narrated the incident. PW2 Narayan Keshav Ghodmare and PW3 Nirmalabai Laxman Dange are the eye witnesses. PW4 Abhiman did not corroborate the prosecution version. PW5 Nalubai is the sister of the appellant. PW7 Pralhad Janbaji Uikey and PW10 Shalik Fakruji Bhonde are panch witnesses. PW9 Dr. Swami and PW8 Dr. Kuril are the Medical Officers. PW12 PSI Deshpande and PW11 HC Fullewar are the investigating officers.

6. The appellant examined DW1 Ramchandra Maroti Kawle in support of his defence.

7. After considering the evidence on record, the trial Court held that Lila met with homicidal death and that it was the appellant who committed murder of his sister Lila. The trial Court accordingly convicted and sentenced the appellant as stated above. The said conviction and sentence is under challenge.

8. We have heard Shri N.A. Badar, Advocate for the appellant and Shri N.S.Khubalkar, APP for the State. We have also gone through the record and proceedings of the trial Court with

the assistance of the learned counsel.

9. At the out set it may be noted that during trial itself the learned defence counsel had conceded that the death of Lila was homicidal and the only contest was whether it was the appellant who was responsible for the death of Lila. The learned counsel appearing before us also did not raise any contention about homicidal death of Lila. Hence we do not propose to discuss the inquest panchanama or post mortem report about the cause of death of Lila. We proceed on the admitted position that Lila met with homicidal death.

10. The trial Court has observed in the judgment that the present case is based on direct as well as circumstantial evidence. Thereafter the trial Court discussed the evidence.

11. PW2 Narayan, PW3 Nirmalabai and PW4 Abhiman are the eye witnesses to the incident. They are the neighbours who were working on Employment Guarantee Scheme. On the date of incident, there was no holiday as can be seen even from the evidence of DW1 Ramchandra Maroti Kawle who also claimed to be the labour working under Employment Guarantee Scheme. PW2 Narayan Keshav Ghodmare and PW3 Nirmalabai Laxman

Dange have described the said incident. PW4 Abhiman Bhiwa Meshram, however, did not support the prosecution and turned hostile. The presence of PW2 and PW3 at the place of incident at the relevant time cannot be doubted as there was no holiday on that day. There is no reason for them to falsely implicate the appellant in the incident. They are independent witnesses and are not interested either in the appellant or the deceased. The trial Court relied on their evidence as trustworthy by observing that their testimony is corroborated by the medical evidence of multiple injuries on the person of Lila.

12. Shri Badar pointed out that though the Police machinery swung into action promptly and though the alleged eye witnesses were available, their statements were not recorded on the same day, but were recorded on the next day. Thus there has been inordinate delay in recording the statements of eye witnesses and that the said delay has not been explained. It is fatal to the prosecution. In this respect he relied on **Ashok Raghunath Bawane .vs. State of Maharashtra- 2007 ALL MR (Cri) 2554** wherein it is observed that:

“Unexplained inordinate delay caused in recording

statement of eye-witnesses would be fatal to the prosecution.”

It is true that in the present case the statements of PW2 and PW3 were not recorded on the same day, but on the next day. However, in view of the attending circumstances it cannot be said that the delay is inordinate so as to render the testimony of those witnesses untrustworthy. It may be noted that in the case relied upon by Shri Badar it has further been observed that :

“other attending circumstances are also required to be considered by the Court while concluding this issue one way or the other.”

It may further be noted that in the case relied upon by Shri Badar the statements of eye witnesses were not recorded by the investigating officer for number of days which is not a case in the present case. In the present case the statements of PW2 and PW3 were recorded promptly and there is nothing to suspect their veracity.

13. Shri Badar further submitted that PW2 and PW3 have not described the actual assault, they have also not seen the weapon of assault and as such no reliance can be placed on their testimony. We are not able to appreciate this submission. It may

be noted that PW2 and PW3 were working as labours and there were several labours with them. They observed the incident from some distance and in such circumstances they might not have minutely observed the weapon. It may be noted that it was a morning time and there is no possibility of mistaken identity on the part of these eye witnesses. It may be noted that there were 50-60 persons present around but none of them intervened when the appellant assaulted Lila. However, that would not render their evidence untrustworthy. We find that the trial Court was justified in relying on the evidence of PW2 and PW3 which is amply corroborated by medical evidence.

14. It may be seen that immediately after the incident the appellant was medically examined by PW8 Dr. Kuril (Exh.32) who noted the following injuries on the person of the appellant:-

“1. Contusion with swelling over elbow joint Rt. hand posteriorly laterally 2” X 1” with tenderness.

2. Multiple abrasion over face near angle of mouth Rt. side and over chine with bleeding old.

3. Incised wound over middle and index finger in between both finger. Adjacent to each other. Small size with sharp margins.

4. *Incised wound with cut out sclase of skin at the base of thumb dorsal side with bleeding.*

5. *Injury over the palm at hypothenar area with remove piece of flash small size."*

It may be noted that the appellant failed to explain those injuries. It is thus apparent that those injuries might have been caused to him while inflicting blows by the weapon on the person of Lila. The defence of the appellant that he rushed near Lila after hearing her shouts is thus rendered false. The defence of the appellant is false also on the ground that on seeing his sister Lila he simply went to the house and did nothing. He even did not note injuries on her person. This is very surprising. It is nothing but an attempt on the part of the appellant to hide the fact of assault by him on Lila.

15. Now besides the above direct evidence, there is circumstantial evidence in the form of extra judicial confession alleged to have been made by the appellant to PW1 Dattu Kashiram Wankhede, the Police Patil of village Titvi. The trial Court has believed and accepted this piece of circumstantial evidence. Shri Badar submitted that extra judicial confession is a weak piece of evidence and the Court should be slow in relying on it. In this respect Shri Badar relied on **State of Rajasthan .vs.**

Kashiram (2007) 1 Supreme Court Cases (Cri) 688.

16. Shri Badar further submitted that the Police Patil is a Police Officer and a confession made to him is inadmissible in evidence as hit by Section 25 of the Evidence Act. In this respect he relied on **Ramsingh .vs. State of Maharashtra – 1999 CRI. L. J. 3763** in which relying on the earlier decision the Court held that Police Patil is a Police Officer and confession made to him is inadmissible in evidence. In view of the above position of law, we find that the trial Court was not justified in accepting the confession alleged to have been made by the appellant to PW1 Dattu Kashiram Wankhede who was Police Patil it being inadmissible in evidence.

17. The trial Court was not justified in observing that the confession to Police Patil can be accepted because it was made before the arrest of the appellant by the Police as there was no force or influence which might have induced the appellant to make confession. In our view, it is immaterial whether the alleged confession was made before or after the arrest of the appellant. What is material is that it was made to the Police Patil who is a Police Officer.

18. The next circumstance is seizure of blood stained weapon and blood stained clothes from the appellant and finding of blood of “O” group thereon. The trial Court also considered the motive for committing the offence. We are not impressed by the reasoning given by the trial Court. However, it would not make any difference because we have found that the direct evidence is trustworthy to bring home the guilt to the appellant.

19. Shri Badar further submitted that the report (Exh.45) alleged to have been lodged by the appellant contains confessional statement and as such it is inadmissible in evidence and could not have been relied upon to find the appellant guilty. In support of this submission Shri Badar relied on the following cases:-

- i) **AIR 1966 SC 119**
Aghnoo Nagesia .vs. State of Bihar.
- ii) **2006 ALL MR (Cri) 367,**
Vetar Bhagwan Mandle .vs. State of Maharashtra.
- iii) **2006 ALL MR (Cri) 1372**
Keshav Maharu Sangle .vs. State of Maharashtra.

The ratio of the above cases is that the first information report

made by the accused is confessional statement to a Police Officer and as such no part of it can be admitted into evidence on account of the ban in Section 25. Such report lodged by the accused is admissible for limited extent of proving the fact of giving information by the accused himself as evidence of his conduct under S. 8 of the Evidence Act. The contents of F.I.R. are absolutely irrelevant when it is confessional in nature and has been filed by the accused himself. However, there is no bar to a confession in F.I.r. being used in favour of the accused.

20. It may be noted that in the present case the trial Court has not at all relied on the statement (Exh.45) given by the appellant himself which was reduced to writing by PW12 PSI Deshpande. Hence no fault can be found with the impugned judgment in that respect.

21. Alternatively Shri Badar wants to look into the statement (Exh.45) in order to bring the case under Section 304 Part II of IPC. Shri Badar submitted that it was not a pre-planned murder. It was without premeditation in a sudden fight in the heat of passion and thus the case falls under Exception 4 to Section 300 of IPC. He submitted that there was scuffle between the appellant and Lila in

which the appellant sustained injuries. He also submitted that no injuries were on vital part of body which indicates that the appellant did not intend to cause death of Lila. Hence the case would fall under Section 304 Part II of IPC. In support of this submission, Shri Badar relied on the following cases:-

- i) **(2007) 2 Supreme Court Cases (Cri) 374
B.K. Channappa .vs. State of Karnataka.**
- ii) **2007 ALL MR (Cri) 142
Sanjay M. Kharade .vs. State of Maharashtra.**

It may be seen that in the first case the injuries were not found on the vital part of the body and in the second case there was provocation and sudden quarrel. In the present case there were as many as 22 incised wounds on various parts of body from neck to umbilicus and particularly 4 incised wounds were found on right lung. The statement of the appellant (Exh.45) does not show that there was any provocation to him by Lila or that there was a sudden quarrel in the field. On the contrary the report shows that after quarrel between him and Lila at the house, he went to field, stayed there for some time, thereafter he saw Lila coming for her work near the field and at that time he assaulted with

Bichva/Adkitta on her abdomen and repeated the blows. This clearly indicates the intention of the appellant to kill Lila by acting in a cruel manner. As such in our opinion, the case would not fall under Exception 4 to Section 300 as urged by Shri Badar. We are of the considered view that the conviction of the appellant for the offence punishable under Section 302 of IPC is perfectly correct and needs no interference. We see no substance in the appeal. We, therefore, pass the following order:-

The appeal is dismissed. The conviction of the appellant under Section 302 of IPC is maintained.

22. Shri N.A. Badar, Advocate is appointed to represent the appellant/accused in the present appeal. His fees is quantified at Rs.3000/- to be paid by the High Court Legal Services Sub-Committee, Nagpur.

(S.R.DONGAONKAR, J.) (K.J. ROHEE, J.)

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