

CASE NO.:
Appeal (crl.) 708 AND 832 of 2005

PETITIONER:
Rajendra Prabhu Chikane & another etc

RESPONDENT:
State of Maharashtra etc

DATE OF JUDGMENT: 01/05/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

1. These two connected appeals (Criminal Appeal No. 708/2005 and Criminal Appeal No. 832/2005) have been filed against the common judgment and final order dated 2.3.2005 and 3.3.2005 passed by the Bombay High Court in Criminal Appeal Nos. 99/2001 and 609/2000.

2. Heard learned counsel for the parties and perused the record.

3. Criminal Appeal No. 708/2005 has been filed by accused No. 2 Rajendra Chikane and accused No. 3 Shashikant Chikane, whereas, Criminal Appeal No. 832/2005 has been filed by accused No. 1 Sharad Chikane in Sessions Case No. 250/1999.

4. The Additional Sessions Judge, Solapur in Sessions Case No. 250/1999 had acquitted accused No. 2 and 3 of the offence under Section 302/34 IPC, but had convicted accused No. 1 Sharad Chikane under Section 302 IPC and sentenced him to life imprisonment as well as fine.

5. Against the said judgment of the trial court, accused No. 1 Sharad Chikane, filed an appeal in the High Court which was dismissed, whereas, the appeal filed by the State of Maharashtra against acquittal of accused No. 2 and 3, was allowed and both the accused were convicted under Section 302/34 IPC and sentenced to life imprisonment along with fine.

6. The prosecution case was that the deceased Sukhdeo Chikane was the Sarpanch of village Gulpoli, Taluka Barshi, Dist. Solapur since 1990. He was a resident of village Gulpoli. The complainant (PW1) Vikram Chikane who is an eye witness was a cousin brother of the deceased Sukhdeo. Dipak Chikane (PW2) was the real brother of the complainant Vikram and thus another cousin brother of the deceased Sukhdeo. Avinash Chikane (PW3) who is the second eye witness was a close relative of PW1 Vikram and PW2 Dipak. Anil Mali (PW4) was a person who was from the Shivsena group in the village, of which group the deceased Sukhdeo was the leader.

7. The father of deceased Sukhdeo was Bhaskar. An agricultural land of Bhaskar was situated next to the land of one Kisan Sawant who was his son-in-law. In respect of the said land there was a boundary dispute between the family members of Bhaskar Chikane and Kisan Sawant. Another son of Bhaskar named Shirish had filed Regular Civil Suit No.204/93 against Kisan Sawant and one another seeking an injunction. The said suit had been filed on 30.4.1993. On 26.12.1996 the TILR had effected measurement in respect

of the disputed areas which were the subject matter of the suit. The prosecution case was that in view of such disputes, there was bad blood and enmity between the deceased Sukhdeo on the one hand and the family members of Bhaskar including his sons. The record indicates that on 13.10.1997, deceased Sukhdeo had also filed a criminal case being Criminal case No.6253/97 in the Court of JMFC Barshi. The said case was filed against accused No.1 Sharad, accused No.3 Shashikant and one of their brother Dhananjay alleging commission of an offence under Sections 323, 504 & 34 of the IPC. The evidence indicates that such legal proceedings were pending in the Court when the incident, which is the subject matter of the present case, took place on 16.9.1999. On 16.9.1999, at about 9.30 A.M. deceased Sukhdeo alongwith (PW1) Vikram, (PW3) Avinash, (PW4) Anil Mali, Brahmadev Chikane, Babruvan Machale, Sopan Machale, Shridhar Machale, Nagnath Machale, Laxman Shinde and Gautam Chikane started from village Gulpoli in a jeep. They were proceeding to the Sub-Registrar office at village Vairag in order to execute a Sale deed by which one of them i.e. Brahmdeo Chikane was to purchase the land of one Sopan Machale, which land was situated at village Gulpoli. The jeep carrying the persons as aforesaid reached the Vairag Sub-Registrar's office at about 12.00 noon. A Stamp vendor/Bond writer by name Kale scribed the sale deed and thereafter the sale deed was executed in the Sub-Registrar's office. After the execution of the sale deed at about 1.30 P.M., the aforesaid persons came out of the Sub-Registrar's office and reached upto their jeep which was standing on the road adjoining the office. At that time accused No.1 Sharad Chikane, accused No.2 Rajendra Chikane and accused No.3 Shashikant @ Sheshrao Chikane came running towards them from the eastern side. Accused No.3 threw chilli powder in the eyes of deceased Sukhdeo, and then accused No.1 gave a blow on the head of the deceased Sukhdeo with a Sattur which he was carrying with him. On receiving this blow Sukhdeo collapsed on the ground. All the three accused Sharad, Shashikant and Rajendra then inflicted blows with Satturs which they were carrying on the head of the deceased. Sukhdeo received several injuries on his head and his brain matter came out of his skull. Thereafter all the accused persons ran away towards the east carrying their Satturs. PW1 Vikram Chikane who had witnessed the entire incident ran towards the direction of Vairag police station. He arrived at the police station in a frightened condition at about 1.45 P.M. and narrated the incident to the police. At 2.00 P.M. i.e. within half an hour of the occurrence of the incident, the police recorded the FIR (Exh.15) of PW1 Vikram. In his FIR Vikram named all the 3 accused and categorically stated that they had assaulted the deceased on his head with the koytas which they were carrying with them.

8. On the basis of the FIR (Exh.15), PW11 Police Sub-Inspector Rajkumar Kendre registered an offence under Section 307 read with 34 of the IPC and 135 of the Bombay Police Act against all the three accused named in the FIR. Even while he was recording his FIR he sent his staff members ahead to the spot of incident for taking the injured to the hospital. He himself followed and reached the spot of the incident a little later. On reaching the spot he found that a lot of blood could be seen on the spot. Two pieces of brain matter and a piece of a skull were also found on the spot. He saw a goggle, a pair of slippers, a steel glass and a Rs.10/- note on the spot. He prepared a spot panchanama (Exh.25) in the presence of panchwitness in respect of the seizure of the aforesaid articles as well as seizure of blood stained soil. Articles 1 to 9 produced before the Court were the articles which were seized under the said panchanama. Even before the arrival of PW11 PSI Rajkumar Kendre, the deceased Sukhdeo had been removed from the aforesaid scene of the offence by PW3 Avinash, PW4 Anil Mali and one Vilas Sawant. These three persons had put Sukhdeo in another private jeep and had rushed him towards the Solapur Civil Hospital. While they were proceeding towards the hospital they saw PW2 Dipak on the way near Naka No.3. The jeep was stopped and Dipak also boarded this jeep. By that time they reached village Nanaj, they found that the body of Sukhdeo had cooled. They however, proceeded to Solapur civil hospital where Sukhdeo was declared dead on admission. While carrying the body of Sukhdeo the clothes of PW3 Avinash Chikane and Vilas Sawant had got stained with blood.

Articles 19 & 20 produced before the Court were the clothes of PW3 Avinash which subsequently came to be attached in the course of the investigation.

9. At the hospital, the police interrogated Dipak (PW2) and Dipak is said to have narrated that Sukhdeo had been injured near Sub-Registrar's office Vairag by the three accused with a Sattur and by a pistol. One Police Head Constable Abdul Shaikh (Court witness No.1) was then on duty at the Civil hospital and he was a Police officer to whom Dipak made his disclosure as aforesaid. (CW1) Abdul Shaikh then prepared an inquest panchanama in which it was mentioned that Sharad Chikane, Sheshrao Chikane and others had fired a bullet from the revolver and had caused injuries to Sukhdeo by means of a Sattur used for cutting sugarcane. Abdul Shaikh made an entry in the station diary maintained at the Police Chowky at the Civil hospital. A copy of this entry was exhibited (Exh. 66) during the trial through the evidence of (CW 1) Abdul Shaikh.

10. In the meanwhile, (PW11) PSI Kendre had recorded the statement of eight witnesses such as Narsinh Kale, Kamalakar Govardhan and others. He sent a police party for searching out the accused persons and at 6.15 in the evening accused No.1 and accused No.2 were accosted and brought to the police station. They were arrested under an arrest panchanama (Exh.50) conducted between 8.15 hours to 19.00 hours.

11. At the Civil hospital the post mortem on the dead body of Sukhdeo commenced at 6.30 P.M. and was completed at 8.30 P.M. The following external injuries were found on the body of the deceased Sukhdeo :-

(i) Perforating chop wounds over front of head involving forehead and frontal regions extending between lt frontal (at 2" above lt ear) to back of Rt ear measuring about 14" x 3" cavity deep ; vault of skull is fractured into multiple pieces and cranial cavity is exposed to exterior exposing the lacerated brain. Anatomical continuity is lost, deformity due to disruption of scalp and skull into multiple pieces present disrupted scalp tissue and fractured bony fragments embodied and driven inside the brain and cranial cavity. Damage is irregular and directed obliquely from lt fronto parietal region to the level of nose and orbits on centre and upto rt. ear on right side.

(ii) Oval shaped perforating wound over Rt. side of face in maller region 1" x 112" x deep upto maxillary sinus. Fractured bony fragments driven inside. No E/o blackening soothing or sinjing.

(iii) Irregular perforating injury at base of nose of size 2&1/2" x 1/2" cavity deep cutting through nasal bone. Skin flap separated exposing the cutbone associated with fracture underneath involving nasal bone, bones of anterior cranial fossa.

(iv) Contused abrasion over face in between injury No.2, 3 described associated with extra vassation and fracture underneath.

(v) Transversely situated contusion over rateral aspect at rt. side of neck measuring 3" in length associated with extra vassation underneath (dark red in colour).

(vi) Incised chop wound over back of head in Rt. occipital region vertically situated measuring 4" x 1/2" x cavity deep. Bone cut obliquely into pieces and driven inwards.

(vii) Chop wound vertically situated behind Rt. ear 3" x 1/2" x bone deep ends are split injury is crossing injury No.1 resulting into deformity and loss of anatomical continuity at Rt.ear.

12. The doctor opined that all the injuries were fresh and caused due to a heavy sharp object. That injury No.1 was due to multiple blows in the same region. He found that there was a fracture of the vault of the skull, base of the skull and the facial bones with deformity. He found that anatomical continuity was lost in the frontal region of the skull. There was extra vassation in the right mastoid and right side of ausopotil region. He found a perforating injury to the vault and partly particularly separated base fractured in anterior cranial fossa and right occipital bone. The brain matter was lacerated and the fractured fragments were embodied in brain material involving frontoparietal lobes on both sides, with subdural haemorrhage all over the brain surface, brain stem and cerebellum. Blood clots were present.

13. Apart from the aforesaid internal and external injuries the doctor who performed the post mortem i.e. (PW8) Ajay Keoliya, noted that reddish chilli powder like material was found over the chest of the deceased. He opined that the cause of death was "perforating chop wounds over head and face, associated with fracture, skull, facial bone and cerebral laceration."

14. On 17.9.1999 accused No.1 Sharad disclosed that he had parked a two-wheeler Bajaj M-80 vehicle bearing No.MH-13-C-4157 on the rear side of the Girls' school at Vairale. The said vehicle was seized under a panchanama in the presence of two panchas, of which (PW2) Dipak was one of the panchas. It was the prosecution case that this vehicle had been used by the accused to flee from the scene of the offence. On 17.9.1999 PW3 Avinash and Vilas Sawant came to the police station and as their clothes were found to be blood stained, they were seized by PW11 PSI Kendre under a panchanama (Exh.26). On 17.9.1999 PSI Kendre recorded the statement of Dipak PW2. On 18.9.1999 PSI Kendre recorded the statements of several additional witnesses. Accused No.3 Shashikant was accosted by the police and was produced before him. PSI Kendre arrested accused No.3 and seized his blood stains clothes under a panchanama (Exh.28) in the presence of panchas, one amongst whom was PW 6 Rameshwar.

15. On 19.9.1999 accused No.3 disclosed that he had hidden certain weapons under a heap of stones near the well of the field of one Nandkumar within the boundary of village Ladole. Thereafter the police party alongwith accused No.3 proceeded to the spot disclosed by accused No.3 and discovered two Satturs kept hidden in a heap of stones. These two Satturs were articles-25 & 26 produced before the Court. The aforesaid two Satturs were seized under a panchanama (Exh.40) in the presence of two panchas, one of whom was PW9 Bhau Pawar. It may be mentioned at this stage that PW9 did not support the prosecution case and therefore, this panchanama had to be proved by the prosecution through the evidence of the Investigating officer. It was found at the time of the seizure of the weapons that the handles of these weapons were blood stained.

16. On 22.9.1999 the Investigating Officer PSI Kendre sent all the accused to the primary health centre for collection of their blood samples.

17. On 27.9.1999, under his covering letter dated 23.9.1999, 25 articles seized during the investigation were sent by the Investigating officer to the Regional Forensic Science Laboratory for a Chemical Analyser's report. In the meanwhile, the forensic medical department of the V.M.Medical college had also sent the red chilli powder like substance for analysis to the Regional Forensic Laboratory. The blood sample of the accused and deceased were also sent for analysis to the said laboratory. In due course, the Investigating officer received C.A. reports in respect of all the articles sent. Two reports dated 31.1.2000 indicated the finding of the C.A. on the 25 articles and his

further finding that the red powder found on the chest of the deceased was in fact chilli (capsicum) powder.

18. The Investigating officer had in the meanwhile, received the post mortem report. He collected the certified copy of the plaint & complaint in the litigation pending between the parties. Exh.52 was the certified copy of the plaint in RCS No.204/93 and Exh.53 was a certified copy of the complaint filed by deceased Sukhdeo against accused No.1, accused No.3 and one of their brothers Rajendra. He also collected a copy of the map of measurement in respect of the disputed land made by TILR and a copy of the sale deed executed on 16.9.1999 between Shankar Chikane and Sopan Machale.

19. Ultimately on completion of his investigation, PW 11 PSI Rajkumar Kendre filed the charge-sheet.

20. At the trial, the Sessions Judge framed charges against the accused for committing offences punishable under Section 302 read with 34 of IPC and under Section 37(i) read with section 135 of the Bombay Police Act. The accused pleaded not guilty to the charges. In order to prove their case the prosecution examined as many as 13 witnesses. On an application on behalf of the accused, Police head-constable Abdul Shaikh was called and examined as Court witness No.1. On behalf of the defence, two persons claiming to be eyewitnesses were examined. They were DW1 Shridhar and DW2 Tayyab Pathan. After recording the statements of all the three accused under Section 313 of Cr.P.C. and hearing the arguments of both the sides, the IInd Additional Sessions Judge, Solapur passed his Judgment and order, convicting accused No.1 Sharad and acquitting accused No.2 and accused No.3, as aforesaid.

21. As already stated above, before the High Court accused No. 1 Sharad Chikane filed an appeal against his conviction, and the State Government filed an appeal against the acquittal of accused Nos. 2 and 3. The High Court found all the three accused guilty under Section 302/34 IPC and imposed life imprisonment on all three along with fine, as already mentioned above.

22. It may be noted that in the FIR all the three accused have been named as the assailants and this version is corroborated by the testimony of PW1, Vikram Chikane as well as PW3, Avinash Chikane. They all stated that accused No. 1 Sharad Chikane attacked Sukhdeo Chikane on his head and thereafter all the three accused attacked him on his head with a Sattur, which is scythe like iron instrument used for cutting sugarcane. Thus the evidence of PW1 and PW3 is consistent with each other, and also with the F.I.R.

23. The post mortem on Sukhdeo shows as many as seven injuries, as already mentioned above. Most of the injuries were on vital parts of the body, i.e. on the head or the neck. Thus, the medical evidence corroborates the testimony of the eyewitnesses Vikram Chikane and Avinash Chikane.

24. Learned counsel for the appellant submitted that the evidence of PW2, Dipak Chikane is inconsistent with the testimony of PW1 & PW3. He submitted that PW2 Dipak Chikane's testimony discloses that a firearm (pistol) was fired on Sukhdeo, but there are no gunshot injuries on the body of Sukhdeo. However, a perusal of testimony of PW2 shows that he was not an eyewitness at all, and he mentioned that Vilas Sawant had informed him that accused No. 1 Sharad Chikane had injured Sukhdeo by means of a Sattur and members of the staff of the Civil Hospital, where the injured was taken, opined that Sukhdeo was fired by a pistol. Thus, Dipak's evidence regarding the incident is only hearsay and no value can be attached to the same. However, this does not detract or discredit the testimony of PW1 and PW3 which is consistent with the F.I.R. version and with each other.

25. Learned counsel for the appellant then referred to the evidence of defence witness Shridhar Machale (DW1), and he submitted that this is in

conflict with the testimony of PW1 and PW3.

26. We have gone through the evidence of DW1 Shridhar Machale and find that it is not reliable at all inasmuch as in his cross-examination he stated that he did not lodge any complaint in writing to any authority informing the facts which he had deposed. He did not also make a complaint to anybody that the accused were falsely implicated in the case. He has mentioned that he came to know that the accused persons had been arrested for committing the murder of Sukhdeo. If he was really of the opinion that these accused had been falsely implicated he would normally have informed the Police and and/or other persons about it. The fact that he did not do so belies his testimony. For the same reason we also reject the testimony of DW2, Tayyab Pathan.

27. A perusal of the testimony of PW11 Rajkumar Kendre, the Police Sub-Inspector at the Vairag Police Station shows that a Police report was lodged promptly and all actions were taken soon after the incident. This witness had seen lot of blood on the spot and two pieces of brain and skull and other articles. He had prepared spot Panchnama in the presence of panchwitnesses. He had collected blood-stained soil and simple soil etc. from the place of the incident. The Sub-Inspector then arrested the accused, Sharad Chikane and Rajendra Chikane who had blood-stained clothes. Accused Shashikant Chikane was interrogated in the presence of panchwitnesses and he volunteered to discover the weapon used at the time of the offence which was kept under a heap of stones near the well of a field. He volunteered to accompany the Police to point out the same. Thereafter accused Shashikant Chikane, Rajkumar Kendre (PW11) and Police staff and panchwitnesses sat on the Jeep and went to the spot where accused Shashikant Chikane took out two Satturs kept hidden under a heap of stones.

28. We see no reason to disbelieve the evidence of PW11, the Police Sub-Inspector. We also find the evidence of PW1 Vikram and PW3 Avinash as credible. The prosecution has thus proved the guilt of the accused beyond reasonable doubt.

29. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly. If the appellants are on bail, the bail bonds shall stand discharged and they should be taken into custody forthwith to serve out the sentence.