



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR**

CRIMINAL APPEAL NO.175/1993

Prabhakar s/o Zabaji @ Sahebrao Sirsat
aged about 26 years,
R/o Apoti Khurd,
Tq. & District Akola

.. **APPELLANT**
(Accused)

V e r s u s .

The State of Maharashtra,
through Police Station Officer,
Police Station Barshi Takli.

.. **RESPONDENT**
(Complainant)

Mr. M.I. Dhattrak, Advocate for the Appellant.
Mr. D.B. Patel, A.P.P. for the Respondent.

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CORAM : K. J. ROHEE & S.R.DONGAONKAR, JJ
DATE OF RESERVING THE JUDGEMNT: JULY 5, 2007.
DATE OF PRONOUNCING THE JUDGMENT: JULY 11, 2007.

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JUDGMENT : (per K.J. Rohee, J.)

1. By this appeal the appellant challenges his conviction for the offences punishable under Sections 302 and 307 of IPC and punishment thereunder by the Additional Sessions Judge, Akola

in Sessions Trial No. 244/1993 decided on 17.4.1993.

2. The appellant was tried for the offence punishable under Section 302 of IPC for having committed murder of Kamlabai Shankar Sirsat, aged about 55 years and Dinesh Shankar Sirshat, aged about 25 years. He was also tried for the offence of attempt to commit murder of Shankar Kashiram Shrisat aged about 65 years. Other four accused persons were tried for abetting the appellant for committing those offences.

3. Accused No.2 Zabaji @ Sahebrao, accused no.3 Pandurang and PW11 Shankar Kashiram are real brothers. The appellant and accused no.4 Bhaskar are the sons of accused No. 2 Zabaji @ Sahebrao. Accused no.5 Miraji is the son-in-law of accused no.3 Pandurang. Kamlabai (deceased) was the wife of Shankar (PW11). Shankar and Kamlabai were having four sons and two daughters namely Dilip(PW2) , Dinesh (deceased), Ganesh and Ramesh (PW4), Sou. Manda and Ku. Vandana. PW3 Pushpa is the widow of deceased Dinesh. Accused no.2 Zabaji @ Sahebrao, accused no.3 Pandurang and PW11 Shankar were residing separate. The houses of accused no.2 Zabaji @ Sahebrtao and PW11 Shankar were adjacent to each other.

There was some dispute between accused no.2 Zabaji @ Sahebrao and PW11 Shankar about partition of the joint family land and their relations were not cordial. They often used to quarrel with each other. The appellant is serving in Military. Whenever he used to come on leave, he used to abuse and threaten PW11 Shankar and his family members with life.

4. The marriage of accused no.4 Bhaskar took place on 23.3.1992. The appellant had come on leave for the marriage. The marriage was solemnized at village Tandali. The marriage party returned to village Apoti Khurd on the same day and on the next day i.e. on 24.3.1992 there was dinner for the invitees.

5. In the evening of 24.3.1992 the appellant started abusing PW11 Shankar and his family members. Shankar and Kamlabai had gone to the house of accused to tell them not to abuse. Thereupon there was quarrel. The people who were present there pacified them. The appellant was tied and was put in a room.

6. It is alleged that in the midnight the appellant came on the roof of the house of PW11 Shankar with a spear in his hand. He was abusing. At that time Kamlabai and her sons were

searching her Mangalsutra which was lost. Hearing the abuses, they came near the bathroom situated in the courtyard of the house of PW11 Shankar. They saw that the appellant was abusing and breaking the tiles of the roof. The wife and son of Dinesh were in the house. Apprehending injuries to them, Dinesh rushed towards the house. The appellant jumped down and hit Dinesh with the spear. When Kamlabai intervened, the appellant also hit her with the spear on her stomach. She fell down. Thereafter PW11 Shankar tried to intervene. The appellant assaulted him with the same spear. It is alleged that at that time other accused persons were in the lane and were instigating the appellant to kill the members of PW11 Shankar's family. After assaulting Dinesh, Kamlabai and Shankar, the appellant threw the spear there and ran away from the place. He went to the house of Keshav Sirsat (PW5) and slept there. PW2 Dilip rushed to the house of the Police Patil namely PW7 Kailash Apotikar and told him about the incident. The Police Patil asked him to lodge report with the Police. Thereupon PW2 Dilip went to Police Station Borgaon Manju and lodged report (Exh.32). On the basis of the said report, Crime No. 49/1992 under Section

302 of IPC was registered against the appellant. PSI Gawande (PW12) visited the place of incident. Usual investigation was undertaken. PW9 Dr. Agrawal, Medical Officer, Civil Hospital, Akola conducted autopsy on the bodies of Kamlabai and Dinesh. The appellant was arrested. The clothes of the appellant as well as of PW11 Shankar were seized. After completion of investigation, the accused were charge sheeted.

7. The defence of the appellant is that at the time of dinner at his house there was quarrel between Kamlabai and the family members of his family. When the appellant went to intervene, Shankar (PW11), Dilip (PW2), Dinesh (deceased) and others assaulted him. They hit his head on the ground due to which blood started oozing from his nose, ears and head. The appellant was tied and locked in a room. Due to assault, the appellant became unconscious. On the next day in the morning, the Police came to his house, tied him and arrested him.

8. The prosecution examined 15 witnesses. PW11 Shankar is the injured. PW2 Dilip and PW4 Ramesh (sons of Shankar), PW3 Pushpa (widow of deceased Dinesh) and PW10 Indubai (occupant of the house of PW11 Shankar) are the eye witnesses.

PW5 Keshav Sirsat is the person in whose house the appellant had slept after the alleged incident. PW9 Dr. Agrawal conducted autopsy on the bodies of Kamlabai and Dinesh. PW15 Dr. Kalve, Medical Officer, Main Hospital, Akola examined PW11 Shankar. PW12 PSI Gawande and PW14 PI Jadhav are the investigating officers. The remaining four are other witnesses.

9. The trial Court held that the prosecution proved homicidal death of Kamlabai and Dinesh. The prosecution also proved that the appellant committed murder of Kamlabai and Dinesh and also attempted to commit murder of Shankar. The prosecution, however, failed to prove that the remaining accused abetted the commission of offence by the appellant. Accordingly the trial Court convicted the appellant and acquitted the remaining accused. The said conviction is under challenge.

10. We have heard Mr. M. I. Dhattrak, Advocate for the appellant and Mr. D.B. Patel, APP for the State. We have also gone through the record and proceedings of the sessions trial with the assistance of the learned counsel.

11. Mr. Dhattrak, the learned counsel for the appellant submitted that in fact the appellant was beaten by Shankar,

Kamlabai and their sons. The appellant was seriously injured in the said assault. He was tied and locked in a room. He fell unconscious. On the next day morning he was arrested by the Police. Mr. Dhattrak submitted that the prosecution has not explained the injuries found on the person of the appellant. In the absence of such explanation, it will have to be held that the prosecution has suppressed the genesis of the incident and that the appellant did not assault Shankar, Kamlabai or Dinesh. He urged that the trial Court was wrong in holding that the appellant assaulted Kamlabai and Dinesh and is responsible for committing their murder, so also the trial Court wrongly held that the appellant assaulted PW11 Shankar and attempted to commit his murder. Mr. Dhattrak submitted that there is no material to sustain the conviction of the appellant and that the appellant is entitled to be acquitted.

12. Mr. D.B. Patel, the learned APP, on the other hand justified the impugned judgment. He emphatically submitted that there is reliable evidence on record establishing the guilt of the appellant beyond doubt and that the trial Court rightly convicted the appellant. He submitted that the appeal preferred

by the appellant deserves to be dismissed.

13. The inquest panchanama (Exh.21) in respect of the body of Kamlabai shows that there was mark of thorough injury extending from right side of the body upto left side of the body through which intestine was protruded was noted. There was bleeding and the injury was measuring about 2". PW9 Dr. Agrawal who conducted autopsy on the body of Kamlabai noted the following injuries :

- i) Incised perforating wound on right lateral chest in mid clavicular line at right hypochondriac level 6 c.m. X 3 cm X opening abdominal cavity. Colon was seen protruding along with part of mesocolon;
- ii) Incised perforating wound on left lateral lower chest in mid-clavicular line at left hypochondriac area , size 4 cm X 2 cm X opening abdominal cavity and omentum was seen coming out of the wound.

Dr. Agrawal opined that the probable cause of death was haemorrhagic shock. Dr. Agrawal also stated that those injuries were sufficient in the ordinary course of nature to cause death of the injured. Dr. Agrawal stated that these injuries might have been caused by hard and sharp object like spear (Article 7).

14. Inquest panchanama (Exh.22) in respect of the body of

Dinesh shows that the following injuries were noted:

- i) Deep injury measuring 2" in length on the back near left side;
- ii) Deep injury measuring 1 ½ " on right buttock;
- iii) Injury measuring 1" in length on right wrist and
- iv) Injury measuring ½ " in length on left side of chest.

Dr. Agrawal who conducted autopsy on the body of Dinesh noted following injuries:-

- i) Incised wound on right hip lateral aspect oblique of size 3 cm X 1 ½ cm X 1 ½ cm and going upto the femur bone;
- ii) Incised perforating wound in 5th intercostal space just lateral to left border of sternum size 1 ½ cm X ½ cm X opening chest;
- iii) Oblique incised wound on left paraspinal area of size 5cm X 3cm X upto muscles.
- iv) Incised wound on right forearm medio-posterior aspect size 1 ½ cm X 0.5 cm x 0.05 cm.

Dr. Agrawal opined that the probable cause of death was haemorrhagic shock due to heart injury. Dr. Agrawal stated that injury nos. (ii) and (iii) were sufficient in the ordinary course to

cause death of the injured. Dr. Agrawal stated that these injuries might have been caused by hard and sharp object like spear (Article 7). The evidence of Dr. Agrawal was not challenged by the defence. Hence it has been proved that Kamlabai and Dinesh met with homicidal death.

15. Regarding injury of PW11 Shankar, the evidence of PW15 Dr. Kalve shows that he examined Shankar on 25.3.1992 at about 2.46 a.m. and found the following injuries:-

- i) Incised wound over left arm-upper backside measuring 1 ½ " X ½ " X muscle deep;
- ii) Incised wound over back lower side renal angle measuring 1" X ½" X muscle deep

Dr. Kalve stated that those injuries might have been caused by hard and cutting object like spear (Article 7). During cross-examination, Dr. Kalve stated that the injuries were simple injuries and that there was no injury on the vital part of the body. In view of this evidence, it cannot be said that there was an attempt to commit murder of PW11 Shankar. Therefore, there would not be an offence under Section 307 of IPC but the offence would be voluntarily causing hurt by dangerous weapon punishable under Section 324 of IPC.

16. As regards the incident in which Kamlabai, Dinesh and PW11 Shankar were injured, the prosecution adduced the evidence of PW11 Shankar Kashiram Sirsat, PW2 Dilip Shankar Sirsat, PW4 Ramesh Shankar Sirsat, PW3 Pushpa wd/o Dinesh Sirsat and PW10 Indubai w/o Gautam Wankhede. The gist of their evidence is that after the marriage of accused no.4 Bhaskar was solemnized, there was dinner at his house on 25.3.1992. Though the PWs and the accused persons are thickly related the PWs were not invited for the dinner obviously because there was dispute between the PWs and the accused persons about property. On that day at about 8/9 p.m. there was quarrel between Kamlabai and the sisters of the appellant. At that time the appellant abused Kamlabai and threatened her with life. The people who gathered there took away the appellant, tied him by rope and kept him in the house. After couple of hours in the midnight the appellant started abusing the PWs and threatening them. The appellant climbed the roof of the house of the PWs with a spear in his hand. He was breaking the tiles of the roof. Thereafter he descended from the roof on the ground and firstly assaulted Dinesh with spear, thereafter Kamlabai and lastly PW11

Shankar. The appellant threw the spear at the place of incident and ran away.

17. All these witnesses are most natural witnesses. Their presence at the time of incident at their house cannot be doubted. The evidence of the above PWs is consistent with each other. The testimony of PW2 Dilip is also corroborated by the report (Exh.32) lodged by him at P.S. Borgaon Manju immediately after the incident. It may be noted that there is prompt reporting of the incident inasmuch as the offence was registered at 1 a.m. at the Police Station which is at a distance of 15 kms. from village Apoti Khurd. The report described the incident about assault by the appellant on Dinesh, Kamlabai and Shankar. There is some variance in the deposition of these PWs. However, the trial Court rightly observed that in the given circumstances it cannot be said to be of substantial nature so as to discard their evidence.

18. It may further be noted that the prosecution has also proved the letter (Exh.31) sent by the appellant to PW2 Dilip which contained threatening language. Thus the said letter also corroborates the evidence of the PWs.

19. The above evidence is also corroborated by PW5 Keshav

Baban Sirsat who stated that he resides at village Apoti Bz. which is at a distance of about 1 Km. from village Apoti Khurd. On the date of incident in the mignight the appellat had come to his house and called him. PW Keshav got up and opened the door. The appellat asked him for water and PW Keshav served him water. The appellat told PW Keshav that he would sleep at his house. PW Keshav gave him gunny bag to sleep. Thereafter PW Keshav and the appellat slept in the courtyard of the house. At that time PW Keshav found that the clothes of the appellat were stained with blood. PW Keshav asked about the blood stains, but the appellat did not state anything. In the morning PW Keshav again asked the appellat about the blood stains on his clothes. At that time the appellat told him that he committed two murders. By saying so, the appellat again slept. PW Keshav went to Police Patil and informed him about it. Thereafter Police came and arrested the appellat.

20. The evidence of PW5 Keshav is corroborated by the Police Patil namely PW6 Baliram Raghoji Sirsat. PW Baliram deposed that he is the Police Patil of the village Apoti Bk. since last 14 years. On 25.3.1992 at around 6/6.30 a.m. PW Keshav

had come to his house and told him that the appellant is in his house and that the appellant himself told that he committed two murders. PW Baliram met PSI Gawande who had come for inquiry about those murders. PW Baliram told him about the information received by him from PW Keshav. Thereafter the Police arrested the appellant at the house of PW Keshav in the presence of PW Baliram. The clothes of the appellant were stained with blood. There was blood on his forehead also.

21. The above evidence establishes beyond doubt that the appellant entered the courtyard of the house of the PWs and assaulted Dinesh, his mother Kamlabai and his father Shankar with spear , injured them and that Dinesh and Kamlabai succumbed to those injuries. Thus the appellant committed an offence under Section 302 and 324 of IPC. The trial Court was wrong in holding that offence under Section 307 of IPC was proved. Hence the conviction of the appellant under Section 307 of IPC requires to be modified to that of Section 324 IPC.

22. It was urged by Mr. Dhattrak, the learned counsel for the appellant, that the prosecution has not explained the injuries on the person of the appellant and as such the prosecution

suppressed material evidence which would affect the testimony of the PWs. In this regard the learned counsel relied on the following cases :

- i) **D.V. Shanmugham & Anr .vs. State of A.P. (1997) 5 Supreme Court Cases 349 (A);**
- ii) **Lakhwinder Singh & Ors. .vs. State of Punjab (2002) 10 Supreme Court Cases 295 (A);**
- iii) **State of U.P. .vs. Ram Bahadur Singh & ors. (2004) 9 Supreme Court Cases 310 (E).**

The first decision above shows that failure to explain injuries on the accused assumes importance where evidence consists of interested and inimical witnesses. However, the prosecution is not obliged to explain minor and superficial injuries sustained by the accused , so also where the evidence is absolutely clear, cogent and consistent, failure to explain injuries on accused is not fatal. The remaining decisions are also on the same line.

23. In the present case it seems that when the appellant was arrested there were injuries on his head, forehead, nose, left shoulder and on back. He was immediately referred to the Medical Officer, Borgaon Manju vide requisition Exh.61. Accordingly the Medical Officer examined the appellant on

25.3.1992 in the noon and found incised wound on central of the forehead 1 ½ " in length and bone deep. There was bleeding from nose, ear and sputum. He was referred to Main Hospital , Akola for further investigation and treatment. The requisition and medical certificate are admitted by the appellant. Hence it cannot be said that the prosecution suppressed the injuries on the person of the appellant. Secondly the evidence on record shows that before the incident in question there was quarrel between Kamlabai and sisters of the appellant. The appellant intervened and threatened Kamlabai. At that time people gathered there, overpowered the appellant, tied him by rope and placed him in a room. Thereafter the appellant untied himself, came out of the room and climbed the roof of the house of the PWs. It seems that in the said commotion the appellant might have sustained those injuries. So the injuries on the person of the appellant would not render the evidence of PWs untrustworthy and would not show that the deceased or the injured PWs were the aggressors. Thus we find that there is no force in the appeal. We, therefore, pass the following order:

- i) The appeal is partly allowed.

ii) The conviction and sentence of the appellant for the offence punishable under Section 302 of IPC is confirmed. The conviction of the appellant under Section 307 of IPC is modified to that under Section 324 of IPC and he is sentenced to suffer R.I. for 3 years and to pay fine of Rs.5,000/- in default to suffer R.I. for 6 months. Both the sentences shall run concurrently.

iii) The appellant to surrender to serve out the sentence within four weeks from today.

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

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