

(2017) 12 BOM CK 0116
In the Bombay High Court
Case No : 65 of 2017

Appaji @ Narendra Marotrao Gade & Anr.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-12-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 34, Section 324, Section 393 - Punishment for murder - Acts done by several
persons in furtherance of com

Citation : (2017) 12 BOM CK 0116

Hon'ble Judges : R. K. Deshpande, M. G. Giratkar

Bench : DIVISON BENCH

Advocate : R. M. Daruvala, N. S. Rao

Judgement

1. Both the appellants challenged their conviction for the offences punishable under Sections 302, 324 and 393 read with Section 34 of the Indian Penal Code in Sessions Case No. 52/2014 passed by the Sessions Judge, Gadchiroli by judgment dated 452016.

2. The case of the prosecution against the appellants in short is as under. (i) Mahadev Kathane, Manohar Korde and deceased Ruprao Korde started their business of sale purchase of cotton. They started their business from the year 2014. They used to take truck on hire from Nagpur and used to go to Sironcha. They used to purchase cotton at Sironcha and sell it at Narkhed and Pandhurna. Since last one month from the time of incident, they used to hire truck of Mohan Road Careers. Accused Kailash Rathod and Appaji were the drivers on the said truck. They always used to go with the complainant Manohar Korde and his companions to Sironcha with their truck. They were knowing that deceased Ruprao Korde, Mahadev Kathane and Manohar Korde were always having money for purchasing cotton.

(ii) On 3132014, complainant and his companions purchased cotton at Sironcha.

They sold cotton. Thereafter, they hired truck. In the night of 24/2/2014, they started to go to Sironcha. Accused Appaji (driver) came at about 10.00 p.m. Complainant Manohar Korde, deceased Ruprao Korde and Mahadev Kathane started their journey in the truck. They were having Rs. 3.50 Lakhs. All three were sitting in the lorry. The said truck reached Nagpur at about 12.00 in the night.

(iii) Accused no. 2 Kailas seated in the cabin of the truck. He was having one plastic bag. In the night of 24/2/2014, they started journey towards Sironcha. When said truck reached Ghot turning point at about 3.30 a.m., accused no. 1 stopped the truck.

(iv) Accused no. 1 Appaji, accused no. 2 Kailas Rathod, deceased Ruprao Korde and Mahadev Kathane alighted from the truck. They got the tea. The complainant was sitting in the lorry. Accused no. 1, accused no. 2 and deceased Ruprao seated in the cabin of the truck. Mahadev Kathane seated on the backside of the truck along with the complainant Manohar Korde.

(v) At about 4.00 a.m., Manohar Korde and Mahadev Kathane heard the cry of deceased Ruprao Korde in the cabin. They pipped from the glass of the cabin. Then they found that accused no. 2 Kailas was stabbing the deceased by knife. Deceased was resisting the accused no. 2. Mahadev Kathane and Manohar Korde were requesting Appaji (accused no. 1) to stop the truck but he did not stop the truck. Accused Kailas searched the person of deceased but he did not find any money with deceased. Thereafter accused Appaji slow down the speed of truck. Accused Kailas entered in the lorry of the truck. He threw chilly powder towards the complainant and Mahadev Kathane. Accused Kailas directed Mahadev Kathane and the complainant to handover all the money otherwise he would kill them. (vi) Mahadev Kathane and the complainant refused to give money. Accused Kailas Rathod taken out knife and started stabbing Mahadev Kathane. Mahadev Kathane and Manohar resisted accused Kailas. Thereafter Kailas jumped from the truck and ran away with knife. Accused Appaji also jumped from the truck and ran away. Thereafter complainant and Mahadev Kathane saw the deceased in the cabin of truck lying in dead condition. They went to APMC Naka at Village Bori. With the help of villagers, Mahadev Kathane was taken to the hospital for medical treatment and Manohar Korde was taken to the Police Station. Manohar Korde lodged the report. Crime was registered by Police Inspector Shri Dhawle.

(vii) Mahadev Kathane was serious. He was sent to Nagpur but looking to his seriousness, he was sent to Mumbai. Mahadev Kathane was in JT Hospital, Mumbai for about 25 days as an indoor patient. (viii) On the report of Manohar Korde, crime was registered against the accused Appaji and Kailas. During the investigation, Investigating Officer suspected complainant about his conspiracy, therefore, he was made accused. Accused nos. 1 and 2 were arrested. Accused no. 1 shown clothes, those clothes were seized as per seizure panchanama, Exhibit 36. Accused no. 2 Kailas gave memorandum statement to show knife

used in the crime. Accused no. 2 shown the knife. It was seized. Investigating Officer recorded the statements of witnesses and after complete investigation, submitted chargesheet to the Court of Judicial Magistrate First Class, Aheri. As offences were exclusively triable by the Sessions Court, therefore, case was committed to the Court of Sessions.

(ix) Charge was framed against the accused at Exhibit 12. Same was readover and explained to the accused. Accused pleaded not guilty and claimed to be tried. Their defence appears to be of total denial.

(x) The prosecution has examined following witnesses.

- (1) P.W. 1 Pravin Laxmanrao Balpande (Exhibit 27)
- (2) P.W. 2 Mahadev Pandurang Kathane (Exhibit 30)
- (3) P.W. 3 Panjab Nathhuji Korde (Exhibit 31)
- (4) P.W. 4 Sunil Pundlikrao Navghare (Exhibit 32)
- (5) P.W. 5 Laxminarayan Nanayya Raut (Exhibit 34)
- (6) P.W. 6 Ravi Ratnayya Nelkudri (Exhibit 37)
- (7) P.W. 7 Govind Rajkumar Bishwas (Exhibit 42)
- (8) P.W. 8 Gajanan Wamanrao Tule (Exhibit 46)
- (9) P.W. 9 Heera Rupraoji Korde (Exhibit 49)
- (10) P.W. 10 Santosh Maranna Padala (Exhibit 50)
- (11) P.W. 11 Subhash Murlidhar Dhawle (Exhibit 51) and
- (12) P.W. 12 Pandurang Tukdyadas Ramteke (Exhibit 59)

(xi) After hearing the prosecution and defence, learned trial Court convicted the accused nos. 1 and 2 i.e. appellants for the offences punishable under Sections 302, 324, 394 read with Section 34 of the Indian Penal Code. Accused nos. 1 and 2 are convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life each and to pay fine of Rs. 2,000/each, in default to suffer R. I. for three months each.

They are convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years each and to pay fine of Rs. 2,000/each, in default to suffer R. I. for three months each. They are also convicted for the offence punishable under Section 393 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years each and to pay fine of Rs. 2,000/each, in default to suffer R. I. for three months each. Substantive sentence of accused nos. 1 and 2 to run concurrently.

3. Accused no. 3 Manohar Manikrao Korde came to be acquitted. In fact accused

no. 3 Manohar Korde lodged the report immediately after the incident. Investigating Officer suspected him for making conspiracy with accused no. 1 and 2 to kill Ruprao Karode and to make a show that he was killed by naxalite. But all the evidence adduced by the prosecution do not show that accused no. 3 Manohar Korde made any conspiracy with any of accused nos. 1 and 2. There is no evidence against accused no. 3, hence accused no. 3 Manohar Korde is rightly acquitted by the trial Court. There is no appeal by the State against accused no. 3, therefore, evidence adduced in respect of accused no. 3 need not to be discussed.

4. Heard learned counsel Shri Daruvala for the appellants. He has submitted that Appaji not taken any part while inflicting injuries on deceased, therefore, he is entitled for acquittal. Learned counsel has submitted that evidence adduced by the prosecution against the appellant nos. 1 and 2 is not sufficient to convict them, hence prayed to allow the appeal.

5. Heard learned Additional Public Prosecutor Shri Rao for the State/respondent. He has submitted that the evidence of P.W. 2 is well supported by P.W. 5, P.W. 6, P.W. 7, P.W. 10 and P.W. 11. His evidence is also supported by Chemical Analyser's Report, Exhibit 65 to 68. Learned Additional Public Prosecutor has submitted that the impugned judgment is well reasoned. There is sufficient evidence against the appellants, therefore, appeal is liable to be dismissed.

6. Perused the evidence on record. P.W. 2 is the star witness who was injured by the accused no. 2 at the time of incident. He has stated in his evidence that he along with Manohar Korde and deceased Ruprao Korde were doing the business of salepurchase of cotton. They used to purchase cotton at Sironcha and used to sell it at Narkhed. It was agreed between them to divide the profit after the season.

7. P.W. 2 has stated that on 31/3/2014, they transported cotton from Sironcha to Narkhed. Thereafter on 24/2/2014, he along with deceased Ruprao Korde and Manohar Korde proceeded towards Sironcha for purchasing cotton. Accused no. 1 Appaji was the driver. They started their journey at about 10.00 p.m. from Narkhed. They were having Rs. 3,50,000/to 4,00,000/-. All amount was of three partners. When they went to Nagpur, accused Kailas sat in the cabin of truck. He was having one sack. Accused Kailas and Appaji were sitting in cabin of the truck. Manohar, Ruprao and he himself were sitting in the lorry of the truck.

8. P.W. 2 has further stated that at about 3.30 a.m. to 4.00 a.m., driver of the truck stopped the truck at Ghot road. Then he himself, Ruprao Korde and Appaji alighted from the truck. He asked the driver why the truck was stopped. Then he told that he want to go for nature's call. Thereafter Ruprao Korde along with two drivers sat in the cabin. He along with Manohar Korde sat in the lorry. Vehicle was moving. They heard noise "okpok & okpok". Then he himself and Manohar Korde pipped from the glass attached to the cabin. They saw accused Kailas was assaulting Ruprao by knife. The driver Appaji raised the speed of the vehicle and

did not stop the truck in spite of their repeated requests.

9. P.W. 2 has further stated that after some distance, Appaji slow down the speed. Accused Kailas Rathod came in the lorry of the truck. At that time, speed of the vehicle was 10 to 15 Km per hour. After entry into the lorry, accused Kailas shown them blood stained knife. He demanded money from them, otherwise, threatened to kill them like Ruprao Korde. They refused to give money. Then accused Kailas started to assault him by knife. He sustained bleeding injury to neck and backside of right shoulder. He tried to avert the blow. When he resisted his blow, accused Kailas jumped from the running truck. Thereafter another driver Appaji stopped the truck and both of them ran away.

10. P.W. 2 has stated that truck was stopped near half Kilometer away from Bori Village. After stopping the truck, he rushed to the office of bazar samittee, where some persons were present. He did not see Ruprao Korde who was in the cabin. Some persons informed to the police and hospital. After 20 minutes, ambulance reached there and he was taken to hospital at Aheri. From Aheri, he was referred to Nagpur. As the Neuro Surgeon was not available, he was referred to Bombay. He was there as indoor patient for about 25 days.

11. P.W. 2 has further stated that in the business of salepurchase of cotton, he himself, Ruprao and Manohar equal in profit and loss. He invested Rs. 95,000/ and Ruprao invested Rs. 1,50,000/at the relevant time in the business. The business of partnership was going on from last 2 to 3 years prior to the incident. Manohar Korde was to maintain the account of their business. Manohar Korde was doing the business through Santosh Padalwar, resident of Sironcha. After completion of the seasons, they decided to divide the profit of the business.

12. This witness was crossexamined by the learned counsel for accused nos. 1 and 3 but nothing is brought on record in his cross examination to disbelieve his evidence. Evidence of P.W. 3, P.W. 4, P.W. 8 and P.W. 9 is against accused no. 3 Manohar Korde. Their evidence is not relevant against accused nos. 1 and 2. These witnesses viz. P.W. 3, P.W. 4, P.W. 8 and P.W. 9 have stated that there was business transactions between deceased Ruprao Korde, Mahadeo Kathane and accused no. 3 Manohar. P.W. 2 himself not stated in his evidence that accused no. 3 made any conspiracy with accused nos. 1 and 2. There is no evidence against accused no. 3 to show the conspiracy with the accused nos. 1 and 2. He is rightly acquitted by the trial Court.

13. Evidence of P.W. 2 who was injured by accused no. 2 is sufficient to convict both the accused. Learned counsel for the appellants has submitted that accused Appaji not taken any part while beating deceased and P.W. 2, therefore, he is not liable. This argument can not be considered because accused no. 1 Appaji was driving the truck. As per the evidence of P.W. 2, deceased Ruprao was sitting in the cabin along with appellants/accused no. 1 and 2. Accused Appaji was driving the truck in high speed. Accused no. 2 Kailas started stabbing deceased Ruprao by knife.

14. P.W. 2 Mahadev Kathane and accused no. 3 Manohar Korde requested accused no. 1 (Appaji) to stop the truck but he did not stop the truck and on the other hand, he raised the speed of the truck. When accused no. 2 killed Ruprao and searched his person, he did not find any money with deceased. Thereafter accused no. 2 entered in the lorry, that time, accused no. 1 slow down the speed of the truck. This act of the accused no. 1 clearly shows that he had common intention with accused no. 2 to rob deceased and P.W. 2. Therefore, accused no. 1 is also equally liable for the act of accused no. 2. Evidence of P.W. 2 is well supported by other evidence.

15. P.W. 5 has stated in his evidence that accused Appaji made confessional statement to show his clothes. His confessional statement was recorded as per Exhibit 35. Thereafter accused Appaji shown his clothes hidden in the cabin of the truck. Those were seized as per seizure panchanama, Exhibit 36. P.W. 6 Ravi Nelkudri has stated in his evidence that accused Kailas was in the police station. He gave confessional statement to show the knife used in the crime. Thereafter accused no. 2 shown knife and it was seized as per recovery panchanama, Exhibit 39.

16. P.W. 7 Govind Bishvas has stated that on 342014, he was called by PI Dhawle near Bori Village. There was one truck standing and one dead body was found in the cabin. There was chilly powder, one mobile and one Jeans pant in the cabin. Police shown the spot of incident to him. Accordingly, spot panchanama, Exhibit 43 was prepared in his presence.

17. P.W. 10 Santosh Padala has stated in his evidence that he know Mahadev Kathane, deceased Ruprao Korde and Manohar Korde. He was working as a agent in the business of sale and purchase of cotton since 2012 at Sironcha. Manohar Korde, Mahadev Kathane and deceased Ruprao Korde were purchasing cotton from Sironcha. He used to get commission of Rs. 3,000/to 3500/per trip. His evidence shows that Mahadev Kathane, deceased Ruprao Korde and Manohar Korde were doing the business of salepurchase of cotton. P.W. 11 Police Inspector Subhash Dhawle has stated about the investigation.

18. There is no dispute about the death of deceased Ruprao Korde. Postmortem report, Exhibit 62 is admitted by the defence. As per the postmortem report, near about 30 injuries were found on the dead body of Ruprao. Injury Certificate, Exhibit 61 in respect of P.W. 2 Mahadev Kathane was also admitted by the defence. Therefore, there is no dispute that deceased Ruprao died due to homicidal death and P.W. 2 sustained injuries.

19. There is no doubt about the evidence of P.W. 2. Nothing is brought on record in his crossexamination to disbelieve his testimony. P.W. 2 was injured. He is the eye witness of the incident. As per his evidence, he along with Manohar Korde were sitting in the lorry of truck, accused Appaji was driving the truck. They saw accused Kailas stabbing the deceased Ruprao. Deceased was crying and requesting for help. P.W. 2 and Manohar requested accused no. 1 to stop the

truck, but accused no. 1 instead of stopping the truck, raised the speed of truck.

20. Evidence of P.W. 2 further shows that when Ruprao became motionless, accused Kailas searched his person, but he did not find anything with deceased. Thereafter accused Appaji slow down the speed of truck. Accused no. 2 Kailas entered in the lorry. He threatened P.W. 2 and Manohar Korde and directed them to handover money. When they refused, accused Kailas assaulted P.W. 2. Both of them resisted. Thereafter accused no. 2 jumped from the truck. Accused no. 1 also jumped and both of them ran away.

21. Evidence of P.W. 2 is well supported by other evidence. Chemical Analyser's reports are on record at Exhibit 65 to 68. The Chemical Analyser's report, Exhibit 65 shows that clothes of accused no. 2 stained with blood of blood group "B". Chemical Analyser's report, Exhibit 66 shows that blood group of P.W. 2 was of "B". Blood group of deceased Ruprao was of "O". As per Chemical Analyser's report, Exhibit 68, Exhibit Nos. 8 and 10 were stained with blood group "B" as well as "O". From the Chemical Analyser's report, it is clear that the blood was detected on knife. Knife was having blood of deceased Ruprao Korde i.e. of blood group "O" and blood of injured i.e. P.W. 2 i.e. blood group "B". The Chemical Analyser's reports corroborates the evidence of P.W. 2.

22. From the perusal of cross-examination of P.W. 2 and other witnesses, nothing is brought on record to disbelieve his testimony. Prosecution has proved beyond reasonable doubt that accused nos. 1 and 2 in furtherance of their common intention committed murder of deceased Ruprao Korde. Accused nos. 1 and 2 in furtherance of their common intention voluntarily caused hurt to P.W. 2 Mahadev Kathane. Both accused attempted to commit robbery and therefore, they are rightly convicted for the offences punishable under Sections 302, 324 and 393 read with Section 34 of the Indian Penal Code by the trial Court. We do not find any merit in the appeal. Hence, we pass the following order.

ORDER (i) The appeal is dismissed. (ii) R & P be sent back to the trial Court.

(iii) Fees of the learned counsel Shri R. M. Daruvala appointed by the Legal Services Authority is quantified at Rs. 5,000/.