

(2015) 06 BOM CK 0025
In the Bombay High Court
Case No : Criminal Appeal No. 104 of 2012

Jagannath and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 4 BomCR(Cri) 725

Hon'ble Judges : S.S. Shinde, J; A.I.S. Cheema, J

Bench : Division Bench

Advocate : S.M. Godsay h/f A.B. Girase, for the Appellant; M.M. Nerlikar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.

1. This appeal is filed by the appellants, aggrieved by the Judgment and Order dated 7th February, 2012 passed by the Additional Sessions Judge, Shahada in Sessions Case No. 46/2005, thereby convicting the appellants for the offence punishable under Section 302 r/w section 34 of I.P. Code.

2. The case of the prosecution, in brief, is as under:-

"(a) One Shantaram Shidya Patil (deceased), was resident of Ganesh-Budhawal, Tahsil Taloda. Said Shantaram was having house and landed property at Ganesh-Budhawal, Tahsil Taloda. Jagannath Shidya Patil (accused No. 1) is brother of said Shantaram. Jagannath is also having house and landed property at Ganesh-Budhawal. Umesh (accused No. 2) and Kisan (accused No. 3) are sons of Jagannath. Parvatabai (accused No. 4) is sister of Jagannath and Shantaram. Bebibai (PW-5) is daughter of Parvatabai. Vasubai (PW-1) is wife of deceased Shantaram. Dharamdas (another deceased) was son of Shantaram. Sabribai (PW-4) and Sushilabai (PW-5) are daughters of Vasubai and deceased Shantaram.

(b) It is alleged by the prosecution that since twenty to twenty-five years prior to the alleged incident, there was a dispute between Shantaram (deceased) AND Jagannath (accused No. 1) over partition of agricultural lands. Families of Shantaram and Jagannath were not talking with each other and they were also not visiting the houses of each other.

(c) It is alleged by the prosecution that on 13th May, 2005 in the morning, Dharamdas (deceased) on his motorcycle along with guest went to Ashrav. At that time Kisan (accused No. 3) was obstructing way of motorcycle of Dharamdas and over that there was hot exchange between Dharamdas and Kisan. Thereafter Dharamdas returned back to Ganesh-Budhawal and at that time he informed to Suresh Jerma (informant), Indrajeet Jolu (P.W.2), Ambya Bhurya (P.W.14 and Devidas Krishna (P.W.3) regarding the hot exchange between him and Kisan.

(d) It is further alleged by the prosecution that thereafter Dharamdas returned towards the house. At that time Vasubai (PW-1), Sabribai (P.W.4), Sushilabai (P.W.5) and Shantaram (deceased) were present in the house. At that time, Dharamdas was informing to the family members that Kisan (accused No. 3) was obstructing way of motorcycle and that there was hot exchange with said Kisan. In the meantime, Kisan came towards the house of Dharamdas and caught hold the collar of his shirt and by pulling taken him towards his house. Thereafter family members of Dharamdas also followed them. Thereafter Kisan went in the house and brought iron pipe and with the help of said iron pipe, gave blows on the legs of Dharamdas as well as Shantaram. It is alleged that at that time Jagannath (accused No. 1) and Umesh (accused No. 2) were armed with swords and they gave blows with the help of swords on the person of Shantaram and Dharamdas and due to that Shantaram and Dharamdas died on the spot. It is alleged that Vasubai (PW-1) tried to intervene and at that time she received injuries to her left hand. It is alleged that Parvatabai and Bebibai were possessing wooden Dengara and with the help of same, beaten to Vasubai, Sabribai and Sushilabai. At that time Suresh also tried to intervene and at that time Kisan with the help of iron pipe gave blow on his person and Umesh and Jagannath were moving swords and therefore nobody came there to intervene and separate the quarrel. At that time Suresh ran away from the spot. At that time Kisan and Jagannath by leaving iron pipe and sword respectively, went away. Umesh went away along with his sword. Parvatabai and Bebibai went away along with wooden Dengara.

(e) Suresh Jerma Padvi (informant) rushed to Police Station, Taloda, and he lodged First Information Report (Exh.69). Suresh More (P.W. 17) was present in police station. He received the First Information Report and on the basis of the said First Information Report, crime bearing No. 54/2005 came to be registered for the offences punishable under sections 302, 307 etc. read with section 149 of the Indian Penal Code.

(f) PSI D.L. Patil immediately rushed to the place of incident. At that time he saw the dead bodies lying there. Accordingly in presence of panchas, he prepared

inquest panchanama upon the dead body of Dharamdas (Exh. 70) and dead body of Shantaram (Exh.71). Thereafter P.I. More (P.W.17) took investigation with him and immediately rushed to the spot and in presence of panchas, he prepared spot panchanama (Exh.58). At that time he seized iron pipe, one sword and soil containing blood stains. On the very day he arrested to accused Jagannath, Kisan, Parvatabai and Bebibai. At that time he seized clothes of Jagannath and Kisan which were having blood stains on it and prepared panchanama vide Exhs. 72 to 74. He referred arrested accused persons to Medical Officer, Rural Hospital, Taloda, for medical examination by giving letter (Exh. 75). The clothes of the deceased were produced before him and he prepared seizure panchanama (Exh. 76).

(g) Thereafter, P.I. Bhaskar Tambat took investigation with him. Accordingly he recorded statements of witnesses as per their say. On 19th May, 2005 when accused Parvatabai and Bebibai were in police custody, at that time they made a statement that they are ready to produce the wooden Dengara which is concealed by them. Accordingly memorandum panchanama of Parvatabai (Exh. 88) and Bebibai (Exh.90) came to be prepared. Accordingly there was recovery of wooden Dengara at their instance and accordingly recovery panchanamas (Exhs. 89 and 91) came to be prepared. On 23rd May, 2005, he arrested to accused Umesh. On 27th May, 2005, when Umesh was in police custody, he made a statement that he is ready to produce the sword which is concealed by him and accordingly memorandum panchanama (Exh. 93) came to be prepared and in pursuance thereof, there was recovery of sword vide Exh.94. The seized Muddemal was sent to Chemical Analyzer for analysis. The autopsy notes and injury certificates were collected. Thereafter as there was sufficient evidence, therefore, charge-sheet came to be filed in the Court of Judicial Magistrate, First Class, Taloda.

(h) The offence under section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions. Therefore, the Judicial Magistrate, First Class, Taloda, committed the case to Sessions Court i.e. the Court of Additional Sessions Judge, Shahada, as per section 209 of the Criminal Procedure Code."

3. After full-fledged trial, the trial Court convicted the accused Nos. 1, 2 and 3- appellants herein, for the offence punishable under Section 302 r/w section 34 of the I.P. Code, in respect of death of Dharamdas Shantaram Patil and each of them is sentenced to suffer rigorous life imprisonment and also sentenced to pay fine of Rs. 2,000/- by each of them, in default of payment of fine, to suffer rigorous imprisonment for six months each. The trial Court also convicted the accused Nos. 1, 2 and 3- appellants herein, for the offence punishable under section 302 r/w section 34 of I.P. Code, in respect of death of Shantaram Shidya Patil and each of them is sentenced to suffer rigorous life imprisonment and also to pay fine of Rs. 2,000/- by each of them, in default of payment of fine to suffer rigorous imprisonment for six months each. The trial Court has acquitted the accused Nos. 1 to 5 for the offences punishable under Section 147, 148, 307 and

504 r/w section 149 of I.P. Code.

4. The learned counsel appearing for the appellants submitted that, almost all eye witnesses turned hostile except P.W. 1 Vasubai Shantaram Patil, P.W. 4 - Shabaribai Shantaram Patil and P.W. 5-Sushilabai Krushna Valvi. It is submitted that, though it is alleged that, accused - Umesh and Jagannath brought sword, there was recovery of only one sword. Recovery of alleged sword from other place cannot be believed. It is submitted that, even if the prosecution case taken as it is, there was no motive or intention to kill Dharmadas and Shantaram. It is submitted that, PW-1 -Vasubai Shantaram Patil in her deposition stated that, daughters Sushila and Shabira came at the spot of incident after the incident was over. It is submitted that, Sushila and Shabira have not witnessed the said incident. Though it is alleged by the prosecution that, they have sustained injuries at the hands of co-accused Parvatabai and Bebibai, they are acquitted by the trial Court. It is submitted that, almost all witnesses have turned hostile, and therefore, the benefit of doubt ought to have been given to the appellants. It is submitted that, the alleged recovery of sword and other articles is not believable and once the said recovery is not believable, there is no corroboration to the version of the alleged eye witnesses. There are improvements in the evidence of Sushila and Shabira, in as much as, they have stated that, they have seen the actual incident, but PW-1 has stated that, they came after the incident was over. Therefore, the learned counsel appearing for the appellants submits that, the appeal deserves to be allowed.

5. On the other hand, the learned Additional Public Prosecutor appearing for the State invited our attention to the evidence of prosecution witnesses, and in particular, evidence of PW-1, PW- 4, PW-5, Medical Officer and Investigating Officer and submits that, there is cogent, clinching and clear evidence against the appellants-accused. They were sharing common intention, and therefore, it cannot be said that, the appellants are entitled for benefit of doubt. The case in hand, is a case of double murder, and therefore, the findings recorded by the trial Court and conviction awarded deserves to be upheld by dismissing the appeal.

6. We have given careful consideration to the submissions advanced by the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the Respondent/State. With their able assistance, we have perused the entire record and proceedings. The prosecution has examined Vasubai Shantaram Patil as PW-1. In her evidence, she stated that, Dharmadas was her son and Shantaram was her husband. Accused Jagannath Shidya is her elder brother-in-law (Jeth). The said accused resides at the lower side of the road and PW-1 with her family resides at upper side of the road. Neither the family members of this witness nor the family members of the accused were on visiting terms. The relations between the family of the accused and this witness were strained with each other because of dispute over the agriculture property. Incident took place prior to five to five and half years ago. On the date of

incident, her son Dharamdas took our guest to village Ashrahal. He went on motorcycle. Thereafter, Kisan and Umesh came there and dragged her son Dharamdas with them. At that time, her husband Shantaram was sitting besides road. Thereafter, she and her husband went to Jagannath's house to rescue their son. At that time, Kisan brought pipe from his house. Kisan hit the said pipe over the head of Dharamdas. Thereafter, Kisan assaulted her husband with the help of said pipe. Thereafter, Umesh and Jagannath brought swords with them. Thereafter Umesh and Jagannath assaulted Dharamdas and Shantaram with sword. At that time, when she went to rescue them, she got hurt and suffered injury over her left hand. In the said assault, Dharamdas and Shantaram fallen down. At that time, they both died. It is further stated that, the daughters Sushila and Shabira came at the spot of incident. At that time, Parvatabai and Bebibai assaulted the daughters with wooden sticks. They sustained injuries. PW-1 identified pipe and sticks shown to her and also iron rod and sword.

7. Upon careful perusal of her cross-examination, nothing is elucidated by the defence, which can be said to be useful to the accused. It has come in the evidence of PW-1 that, when she tried to rescue deceased, there was assault on her left hand and she sustained injury. It is abundantly clear from her evidence that, Dharamdas and Shantaram died on the spot. The argument of the learned counsel appearing for the appellants cannot be accepted that, there was no intention on the part of the accused to assault the deceased. In fact, on the same day when the incident had taken place, it appears that, Dharamdas was going by bicycle. At that time accused quarreled with him. Not only that, Kisan and Umesh came at the house of PW-1 and they dragged Dharamdas and thereafter all accused persons assaulted Dharamdas and Shantaram. The weapons used by the accused unequivocally indicate the intention of the appellants that, they have assaulted the deceased on vital parts. By any stretch of imagination, it cannot be said that, accused were not sharing common intention in commission of offence. The fact that, Dharamdas and Shantaram died on the spot is clear indicative of the fact that, all accused were sharing common intention.

8. If the evidence of daughters of PW-1 namely Sushila and Shabira are read in its entirety, there is no slightest doubt that, it lends complete corroboration to the evidence of PW-1. Merely because at one stage, PW-1 has stated that, Dharamdas and Atmaram died and then both daughters came, that would not nullify the evidence of both the daughters, who have suffered injuries and as a matter of fact, they had taken treatment. This may be due to her impression, power of observation and re-collection. It is not necessary for us to discuss in detail the evidence of PW- 4 Shabira and PW-5 Sushila. Suffice it to say that, their evidence is clear, cogent and does not suffer from any improvements or exaggeration, and the fact that, they themselves were injured makes the prosecution case completely believable that, apart from PW-1, the other two daughters of PW-1 had opportunity to some extent witness the incident and fact that, the dead bodies were lying on the spot and presence of accused persons.

Though other witnesses have turned hostile but some of the witnesses stated that, the relations between the family of the deceased and family of the accused were strained, and that, there was dispute between these two families on account of agricultural property.

9. Dr. Jaywant Chindhu Fule was examined as PW-6. In his examination-in-chief, he stated that, in 2005, he was serving as Medical Officer and was attached to Cottage Hospital, Taloda. On that day Police Station Taloda referred injured Suresh Jerma Padvi, Shabira Shantiram Patil, Vasubai Shantaram Patil and Sushilabai Shantaram Patil for the purpose of treatment. Accordingly, he medically examined to them and provided treatment. He has stated that, after medical examination of Suresh Jerma Padvi, he found following injuries on his person:-

"(i) Contusion over left scapular region obliquely place 5 x 1"

(ii) Contusion over left arm posterior aspect, obliquely placed 4" x 1"

He stated that, both injuries were simple in nature. The age of the injury was within six hours caused by hard and blunt object like Lathi. Accordingly, he has prepared the medical certificate and he identified the same, which bears his signature. Thereafter, he medically examined Shabira Shantaram Patil and found following injuries on her person :

"(1) CLW over occipital parietal region obliquely placed, 2 in numbers :

(i) size 4 x 1 x 1"

(ii) 3 x 1 x 1"

(2) CLW over occipital parietal region on left size 1 x 1/2 x 1/2"

(3) Contusion from right scapular region obliquely drawn over to the left side of back 2 in numbers, 5" x 1" each."

He stated all injuries were simple in nature. The age of the injury was within six hours caused by hard and blunt object like Lathi. Accordingly, he has prepared the medical certificate, which he identified and bears his signature.

He stated that, after medical examination of Vasubai Shantaram Patil, he found following injuries on her person :

"(1) Incised looking wound over left palm in web between 2nd and 3rd finger 6 x 3 x 1" Fracture metacarpal 2nd and 3rd bone

(2) Deformity right lower forearm. Fracture lower radius ulna."

He stated the injury Nos. 1 and 2 were grievous in nature. The age of the injury was within six hours caused by hard and sharp object. Patient was transferred to Civil Hospital, Nandurbar for further management. Accordingly, he has prepared the medical certificate, which he has identified and which bears his signature.

He further stated that, after medical examination of Sushilabai Shantaram Patil, he found following injuries on her person :

"CLW over occipital region, transversely placed 5 c.m. X 1 c.m."

He stated the said injury was simple to grievous in nature. The age of the injury was within six hours caused by hard and sharp object. The patient was transferred to Civil Hospital, Nandurbar, for further treatment. Accordingly, he prepared the medical certificate, which he identified and which bears his signature. He stated that, on the very day, dead bodies of Shantaram Shidya Patil and Dharamdas Shantaram Patil were referred to him for the purpose of autopsy. When he started autopsy upon the dead body of Shantaram Shidya Patil, at that time Suresh Jerma Padvi identified the said dead body. After carrying out the autopsy, he noticed following external injuries on the person of the deceased :-

"(1) Fracture left ankle joint contusion, contusion over ankle joint 5 c.m. X 2 c.m.,

(2) Fracture left wrist joint.

(3) Incised looking wound from behind ear up to nape of neck on left side obliquely placed 3 1/2 X 2 X 1", fracture mastoid bone present.

(4) Incised looking wound from temporoparietal up to occipital bone, obliquely placed, 14 c.m. X 1 c.m. There is comminuted fracture temporal parietal and occipital bone, brain matter coming out from injury.

(5) Incised looking wound over occipital region, vertically placed 6 c.m. X 1 c.m., fracture bone (occipital);

(6) Incised wound from right forehead, laterally cutting the ear and extended up to lateral aspect of neck 14 c.m. X 3 c.m. X 2 c.m. evidence of fracture right mastoid bone."

He stated that, after internal examination of skull, there was fracture as mentioned in detail in column No. 17. On examination of the brain, dura was found at the side of injury Nos. 3, 4, 5 and at site of injury No. 4 Brain, matter coming out. There is evidence of subdural, epidural subarachnoid and intracerebral hemorrhage. He stated the said injuries were ante-mortem. According to him, cause of death was due to shock due to injury to the vital organ i.e. brain. Accordingly he prepared the autopsy notes. He identified the said autopsy note. He further stated that, injuries mentioned in autopsy notes are possible due to blows given on the person with the help of sword. He further stated that, the above said injuries are sufficient in ordinary course of nature to cause death.

He stated that, on the very day, he also carried out the autopsy upon the dead body of Dharamdas Shantaram Patil between 2.15 p.m. and 3.15 p.m. He found external injuries on the person of the deceased which are as follows:-

"1. Contusion over middle of thigh on left side in numbers obliquely placed in cross.

12 c.m. x 2 c.m.

15 c.m. x 2 c.m.

2. Contusion over right thigh 3 in numbers transversely placed one below the other

upper 12 c.m. x 2 c.m.

Middle 10 c.m. x 2 c.m.

lower 11 c.m. x 2 c.m.

3. Stab wound over right lower leg just below the knee joint 3 in numbers

Upper 1/2 c.m. x 1/2 c.m.

Middle 1/2 c.m. x 1/2 c.m.

Lower just below the right ankle joint 1/2 c.m. X 1/2 c.m.

4. Stab wound over middle of left lower leg 1/2 c.m. x 1/2 c.m.

5. Contusion over left lower leg, obliquely placed just below knee joint 2 in numbers:

10 c.m. X 2 c.m.

8 c.m. x 2 c.m.

6. Contusion over right cheek, 5 x 3 c.m. Evidence of fracture mandible bone present.

7. Incised looking wound over the scalp at the level of coronal suture, transversely placed on left side 6 c.m. X 1 c.m.

8. Incised looking wound over left temporal transversely placed 2 X 1/2 x 1/2 inch evidence of fracture temporal bone.

9. On opening the scalp there is haematoma present over frontal, parietal and temporal side and evidence of following comminuted fracture of skull bone:

1) Fracture of frontal bone 3 1/2 3"

2) Fracture fronto parietal bone 4 1/2 x 3"

3) Fracture temporal bone 2 1/2 x 2"

On internal examination of skull dura was found torn. There is evidence of subdural, epidural and intracerebral hemorrhage. All the above said injuries were ante-mortem. According to him, cause of death was due to shock due to head injury. Accordingly he prepared the autopsy notes and he identified the same. He

further stated that, injuries mentioned in autopsy notes are possible due to blows given on the person with the help of sword and above said injuries are sufficient in ordinary course of nature to cause death.

10. It appears from reading of cross-examination of PW- 6 Dr. Jaywant Chindhu Fule that, the learned counsel appearing for the defence did ask some general questions about whether injury No. 1 mentioned in Exh.51 is possible with knife or otherwise. Even in his cross-examination, he has specifically stated that, he examined Vasubai and Sushilabai within a hour. Vasubai was examined at 10.40 a.m. and Sushilabai was examined at 10.30 a.m. and 1.00 a.m. Merely because in autopsy of Vasubai and Sushilabai, PW-6 has not mentioned injuries are fresh or old, that would not wipe-out his statement that, he examined both of them within one hour from happening of incident. The medical evidence unequivocally indicates that, the injuries inflicted on the deceased correspond with the weapons used by the accused.

11. Police Officer including Investigating Officer have categorically deposed about recording of the statements of the prosecution witnesses, the case in hand and also about the recovery of the weapons. Since there is direct evidence in the nature of eye witnesses which lends corroboration from the evidence of eye witnesses to each other and also from the medical evidence and the fact that, Dharamdas and Shantaram died at the spot, and involvement of all three accused is stated by the eye witnesses and, in particularly, PW-1 in a minute detail including weapons used by them and identification of such weapons before the Court by PW-1. There is no slightest doubt in mind that, all three accused were sharing common intention in commission of crime and as a result, Dharamdas and Shantaram were brutally murdered by the accused, as it is evident from the evidence of Medical Officer PW-6. We do not wish to elaborate on this point, as we are in agreement with the findings recorded by the trial Court and conviction and sentence awarded.

12. For the reasons stated hereinabove, the Appeal stands dismissed.