
(2014) 06 BOM CK 0039
In the Bombay High Court
Case No : Criminal Appeal No. 183 of 2012

Madhav Balaji Dangare	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 504, 506

Citation : (2014) ALLMR(Cri) 3500 : (2014) 3 BomCR(Cri) 405

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Nasreen S.K. Ayubi, Advocate for the Appellant; A.S. Pai, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The appellants-original accused Nos. 1 and 2 have preferred this appeal against the judgment and order dated 8.7.2011 passed by the learned Additional Sessions Judge-2, Niphad, in Sessions Case No. 34 of 2010. By the said judgment and order, the learned Additional Sessions Judge convicted both the appellants u/s 302 of IPC and sentenced each of them to life imprisonment and fine of Rs. 1000/-, in default SI for 6 months.

2. The prosecution case briefly stated, is as under:

(i) The deceased Uttam Shinde was residing at village Kothure Shivar, Taluka-Niphad, District-Nashik. Uttam was the maternal uncle of PW-1 Dnyaneshwar who is the complainant in the present case. Both the appellants are brothers. There was dispute between the appellants and Uttam on account of title of the field. On 25.4.2010, at about 9 a.m., Dnyaneshwar went along with his uncle Uttam to the field of Uttam Shinde on motorcycle. Dnyaneshwar knew both the appellants i.e. appellant No. 1-Madhav Dangare and appellant No. 2-Hari Dangare. On that day exchange of words took place between both the appellants and Uttam at the field on account of title of the field. At that time both the

appellants abused Uttam. Uttam tried to convince both the appellants. However, suddenly the appellant No. 1 Madhav gave blow with an axe on the neck of Uttam. At that time the appellant No. 2 Hari assaulted over the face of Uttam Shinde with sickle. After continuous assault by both the appellants, Uttam fell down in an injured condition. The appellants then went at some distance. They had some consultation amongst themselves. They again came back where Uttam Shinde was lying. The appellant No. 2 Hari cut off the wrist of Uttam and appellant No. 1 Madhav cut both legs of Uttam. Both of them then escaped by motorcycle of Uttam Shinde and ran away. PW-1 Dnyaneshwar who witnessed the incident got frightened and came near Karanjgaon road. There he met Bajirao Chandore and by motorcycle of Bajirao, PW-1 Dnyaneshwar came to the Niphad Police station. PW-1 Dnyaneshwar then lodged F.I.R. which is at Exhibit 17.

(ii) Thereafter investigation commenced and the appellants came to be arrested. Blood-stained clothes on the person of the appellants which were produced by the appellants at the police station came to be seized. After completion of investigation the chargesheet came to be filed.

3. Charge came to be framed against the appellants as well as their mother Salubai Dangare u/s 302 read with 34 of IPC, and Sections 504 and 506 of IPC. All the accused pleaded not guilty to the said charge and came to be tried. The defence of all the accused was of total denial and false implication. After going through the evidence adduced in this case the learned Sessions Judge acquitted the original accused No. 3-Salubai. However, the learned Sessions Judge convicted and sentenced both the appellants as stated in para 1 above and, hence, this appeal.

4. We have heard Ms. Ayubi, learned Counsel for the appellants and Mrs. Pai, learned APP for the respondent-State. We have carefully considered their arguments, facts and circumstances of the case, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for below mentioned reasons we are of the opinion that there is no merit in this appeal.

5. The conviction of both the appellants is mainly founded on the evidence of PW-1 Dnyaneshwar who is the eye-witness in the present case. Dnyaneshwar was the nephew of the deceased Uttam. PW-1 Dnyaneshwar knew both the appellants. PW-1 Dnyaneshwar has stated that on 25.4.2010 at about 9 a.m. he went to the field of his uncle Uttam on the motorcycle of Uttam. In the field exchange of words took place between his maternal uncle Uttam and both the appellants on account of title over the field. Both the appellants abused Uttam. Uttam tried to convince both the appellants. However, suddenly the appellant No. 1 Madhav gave blow with axe on the neck of Uttam. At that time the appellant No. 2 Hari assaulted over the face of Uttam Shinde with sickle. After continuous assault by both the appellants, Uttam fell down in an injured condition. The appellants then went at some distance. They had some consultation amongst

themselves. They again came back where Uttam Shinde was lying. The appellant No. 2 Hari cut off the wrist of Uttam and appellant No. 1 Madhav cut both legs of Uttam. Both the accused then ran away on motorcycle of Uttam Shinde. PW-1 Dnyaneshwar who witnessed the incident got frightened and came near Karanjgaon road. There he met Bajirao Chandore and by motorcycle of Bajirao, PW-1 Dnyaneshwar came to the Niphad Police station. PW-1 Dnyaneshwar then lodged F.I.R. Nothing has been elicited in the cross-examination of PW-1 Dnyaneshwar to shake his testimony. We find his testimony to be fully reliable and trustworthy, hence, we have no hesitation in relying on the same.

6. The evidence of the eye-witness PW-1 Dnyaneshwar is corroborated by the medical evidence. PW-4 Dr. Prashant Khaire conducted the postmortem on the dead body of Uttam Shinde. On external examination, Dr. Khaire noticed the following injuries on the deceased Uttam:

1. Traumatic amputation of forearm just above 2-3 cm of above wrist joint.
2. Left forearm 4-5 cm just above wrist joint.
3. Right leg 3-4 cm above ankle joint.
4. Left leg 2 cm above ankle joint.
5. Deep incised wound over nose horizontal-length 4 inch causing fracture deep diameter 4 inch, causing fracture depth 5 inch of maxillary sinuses, diameter--0.5 cm.
6. Incised wound (deep) over bone of skull, posterior, causing fracture length 7 inch of bone of skull deep 4-5 inches diameter 0.5-2.00 cm.
7. Contused lacerated wound over left ear of pinna is cut at middle level 3 x 0.1 x cut of pinna.
8. Contused lacerated wound on right side of back just below axillary 3 inch x 1 1/2 inch x 0.2 cm.

According to Dr. Khaire, all the above injuries were ante mortem injuries likely to be caused within 12 hours by sharp and heavy object and all those injuries are sufficient in ordinary course to cause death. According to Dr. Khaire, the cause of death of the deceased is cardio respiratory arrest due to hemorrhage shock due to polytrauma. We thus find that the medical evidence is totally consistent with the prosecution case.

7. In addition to PW-1 Dnyaneshwar, the prosecution is relying on the evidence of PW-2 Anil Mogal, the panch-witness. PW-2 Anil has stated that on 25.4.2010 in his presence the police seized the weapons i.e. axe and sickle as well as the clothes of the appellants which were blood-stained from the appellants before the Court. It is the prosecution case that after PW-1 Dnyaneshwar went to the police station to lodge FIR within 15 minutes the appellants came there on the motorcycle of Uttam and they produced sickle, axe and their clothes before the

police. PW-1 Dnyaneshwar has stated that when he went to the police station to lodge FIR, within 15 minutes the appellants came on motorcycle to the police station and produced their weapons before the police.

8. As far as production of weapons by the appellants before the police is concerned, Ms. Ayubi, the learned Counsel for the appellants submitted that it cannot be relied upon because PW-2 Anil has stated in his cross-examination that on that day when he went to the police station, the axe and sickle were lying inside the police station and police showed it to the panchas and then obtained their signatures. In view of the evidence of PW-2 Anil on the aspect of seizure of weapons, we are not inclined to take it into consideration. However, as far as the blood-stained clothes of the appellants are concerned, the panch-witness has not been shaken in his cross-examination. His evidence clearly shows that the police seized the clothes of the appellants which were blood-stained. The CA report at Exhibit 37 shows that the blood group of the deceased Uttam is "A" group. The CA report Exhibit 20 shows that the clothes of the appellant No. 1 Madhav i.e. sando-banian and full pant were stained with blood of "A" group, so also the clothes of the appellant No. 2 Hari i.e. full shirt and full pant were stained with "A" blood group. The clothes of the deceased Uttam i.e. shirt, banian, full pant were also found stained with "A" blood group. This finding of blood of "A" group i.e. blood group of deceased Uttam on the clothes of both the appellants is a very strong incriminating circumstance against the appellants. The appellants have not furnished any explanation for finding of blood stains of the deceased Uttam on their clothes.

9. On carefully going through the evidence in this case, we find that there is sufficient evidence to show that both the appellants committed the murder of Uttam. Thus, we see no merit in the appeal. The appeal is dismissed.

10. At this stage, we must record our appreciation for Advocate Ms. Nasreen S.K. Ayubi who is on the High Court Legal Services Committee and who was appointed to represent the appellant in this appeal. We found that she had meticulously prepared the matter and she has very ably argued the appeal. We quantify total legal fees to be paid to her in this appeal by the High Court Legal Services Committee at Rs. 5000/-.