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**(2013) 09 BOM CK 0138**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 1303 of 2004**

Ramchandra Ishwar Surwase

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 24-09-2013

**Acts Referred:**

**Citation :** (2013) 6 ABR 369

**Hon'ble Judges :** P.V. Hardas, J; P.N. Deshmukh, J

**Bench :** Division Bench

**Advocate :** Rebeca Gonsalvez, for the Appellant; S.D. Shinde, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.V. Hardas, J.—The appellant/original accused No. 1, who stands convicted for an offence punishable under Sections 302 r/w 34, 324 r/w 34 and 341 of the Indian Penal Code and sentenced to imprisonment for life and to each pay fine of Rs. 1000/-, in default of which to undergo RI for three months and RI for two years and to each pay fine of Rs. 500/- in default of which to undergo RI for one month, with a direction that the substantive sentences shall run concurrently, by the 1 Ad-hoc Additional Sessions Judge, Pandharpur, Dist. Solapur, by judgment dated 15/09/2004 in Sessions Case No. 11 of 2003, by this appeal questions the correctness of his conviction and sentence. This appeal had originally been filed by appellant Nos. 1 and 2 who were the accused Nos. 1 and 2 respectively in the trial Court. The Division Bench of this Court by its judgment dated 10/10/2012 in Criminal Application No. 1224 of 2012 allowed the aforesaid Criminal Application and while confirming the conviction of appellant No. 2-Dhanaji Ramchandra Surwase, quashed the substantive sentence of imprisonment and upheld his plea that he was a juvenile in conflict with law. This Court by the aforesaid judgment also directed that the appellant No. 2 be set at liberty forthwith unless he was required in connection with the other cases. The Division Bench further directed that the Criminal Appeal would proceed as against appellant No. 1/original

accused No. 1. In the light of the aforesaid judgment, therefore, this appeal is restricted to the challenge to the conviction and sentence on behalf of appellant No. 1/original accused No. 1.

2. Facts in brief as are necessary for the decision of this Appeal may briefly be stated thus:--

PW 10-P.I. Madhukar Ingale, who on 11-11-2002, was attached to the Sangola Police Station and was present in the police station recorded the complaint of PW 7-Kailas at Exh. 54. On the basis of the complaint lodged by PW 7-Kailas, an offence vide Crime No. 128 of 2002 was registered under Sections 302, 307, 341 read with Section 34 of I.P.C. at about 12.15 p.m. The injured PW 1-Balu was thereafter referred to the medical hospital for examination and treatment. The investigation of the said crime was entrusted to PW 10-P.I. Ingale and accordingly he proceeded to the scene of the incident, which was on Sangola-Kadlas Road. At the scene of the incident, he noticed the dead body of deceased Mahadeo and accordingly in the presence of panch witnesses drew the inquest panchanama of the dead body of deceased Mahadeo at Exh. 39. The dead body was thereafter referred for post-mortem examination under requisition at Exh. 68. Scene of the offence panchanama came to be drawn in the presence of panchas at Exh. 40. Samples of ordinary mud and blood mixed mud were drawn and seized under the said panchanama. PW 10-P.I. Ingale returned back to the police station and on arrival of PW 1-Balu at the police station, his clothes, which were stained with blood, were seized under seizure memo at Exh. 41. Statement of injured Balu was also recorded as well as statements of other witnesses. On 12/11/2002 the accused Nos. 1 and 2 were traced and accordingly were arrested under arrest panchanama at Exh. 44. The clothes of accused, which were blood stained, were seized. On 16/11/2002, accused No. 1-Ramchandra, during custodial interrogation expressed his willingness to point out the place where a motorcycle had been concealed. Accordingly, a memorandum was drawn in the presence of panchas at Exh. 47. Accused No. 1-Ramchandra led the police and the panch and pointed out the motorcycle which had been parked under a tree in Shirdhon Shiwar. Motorcycle was accordingly seized under panchanama at Exh. 48.

On 19/11/2002, accused No. 2-Dhanaji, during custodial interrogation, expressed his willingness to point out the weapon "Rapee" which had been concealed by him. Accordingly, a memorandum was scribed in the presence of panchas at Exh. 57. The accused No. 2-Dhanaji led the police and the panch and produced the weapon which was hidden in grass, which came to be seized under seizure memo at Exh. 58. On 20/11/2011, during custodial interrogation, accused No. 1-Ramchandra, expressed his willingness to point out the place where the weapon "sattoor" (sickle) was concealed by him. Accordingly, a memorandum at Exh. 50 was recorded in the presence of panchas. Accused No. 1-Ramchandra led the police and the panch and from a sugarcane field produced the sickle which came to be seized under seizure memo at Exh. 51. On

26/11/2002, the JMFC, Sangola was requested to record 164 statement of PW 1-Balu. Blood sample of PW 1-Balu was obtained. On 26/11/2002, opinion of the Medical Officer was sought in respect of the injuries being caused by weapons which had been seized. The seized articles were accordingly referred to the Chemical Analyzer under requisition at Exh. 70. Since accused No. 2 had sustained injuries, he was referred for medical examination and the injury certificate of accused No. 2-Dhanaji is at Exh. 63. Further to the completion of investigation, a charge-sheet against the accused was submitted.

Post-mortem on the dead body of deceased Mahadeo was performed by PW 9-Dr. Shobha Lokhande, who noticed the following external injuries:--

- (1) Incised wound over rt. eyebrow horizontal size-7 cms. x 2 cms. Muscle deep.
- (2) Incised wound over bridge of Nose extending to Lt. eye, size 11 cms. x 1 cm. Muscle deep.
- (3) Incised wound over rt. cheek extending from rt. angle of mouth, size 9 cms. x 2 cms. Muscle deep.
- (4) Incised wound over chin-rt. side extending to rt. mandible, size 6 cms. x 1 cm. bone deep.
- (5) Incised wound over rt. side of neck just below angle of rt. mandible extending to middle of the neck interiorly, size 11 cms. x 4 cms. Rt. sternomastoid muscle cut. Trachea cut-opened. Rt. carotid vessel cut opened. S/o bleeding.
- (6) Incised wound over rt. occipital region extending to rt. mastoid, size 5 cms. x 1 cm. Muscle deep.
- (7) Incised wound over sub occipital region-horizontal, size 5 cm. x 1 cm. muscle deep.
- (8) Incised wound over occipital region-horizontal, 3 cms. above injury No. 7, size 3 cms. x 1 cm. muscle deep.
- (9) Incised wound over rt. occipital region-2 cms above injury No. 8. Size 4 cms. x 1 cm. muscle deep, linear crack.
- (10) Incised wound over rt. mastoid region including rt. pinna of ear. Size 5 cms. x 1 cm.
- (11) Incised wound over rt. occipital region, size 1 cm x 1 cm, muscle deep.
- (12) Incised wound over Lt. occipital region-horizontal, size 9 cms. x 1 cm, muscle deep, crack.
- (13) Incised wound over rt. shoulder region, size 4 cms. x 2 cms. Muscle deep.
- (14) Incised wound over rt. suprascapular region, size 6 cms. x 1 cm. skin deep.

(15) Incised wound over lt. shoulder region, size 2 cms. x 1 cm. skin deep.

(16) Incised wound over dorsum of rt. hand below knuckle of middle finger-vertical, size 9 cms. x 1 cm. muscle deep.

(17) Incised wound over rt. wrist, size 1 cm x 1 cm muscle deep.

(18) Incised wound over rt. forearm-middle 1/3rd, size 3 cms. x 1 cm. muscle deep.

On internal examination, intra-cranial haemorrhage to brain was noticed. Carotid artery was cut. The Medical Officer, therefore, opined that cause of death of Mahadeo was due to cardio-respiratory failure due to hemorrhagic shock due to head injury due to multiple incised wounds over scalp with injury to right side of neck. The post-mortem report is at Exh. 60. The Medical Officer has further opined that the external injury No. 5 was dangerous to life, while injuries at Sr. Nos. 6, 7, 8 and 9 were less likely to cause death. The Medical Officer has further opined that the injuries sustained by Mahadeo were possible to be caused by weapons which had been seized, namely, articles 18 and 19.

3. On committal of the case to Court of Sessions, trial Court vide Exh. 27 framed charge against the accused for offence punishable under Sections 302, 307 and 341 read with 34 of I.P.C. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case, examined 12 witnesses. The defence of the appellant/accused was of denial. The trial Court, upon appreciation of the evidence, convicted and sentenced the accused as afore-stated.

4. In order to effectively deal with the submissions advanced before us by Ms. Rebecca Gonsalvez, the learned counsel for the appellant and the learned APP, it would be useful to refer to the evidence of the prosecution witnesses.

5. The entire prosecution case revolves around the testimony of PW 1--Balu, who is an injured eye-witness and who had accompanied deceased Mahadeo at the time of the incident. PW 1-Balu states that he was an agriculturist and was employed as an agricultural labour by PW 7-Kailas. Balu at the time of the incident was residing at Javala. He further states that near the agricultural property of PW 7-Kailas, the agricultural property of accused No. 1-Ramchandra is located. He states that in the year 2002, there was a dispute in respect of the property between Kailas and accused No. 1 and the said dispute was pending in the Court at Sangola. In respect of the incident, he states that on 10/11/2002 PW 7-Kailas had given him the pipe for connecting it to the pipe-line at Javala. Accordingly, on 10/11/2002 he had brought the pipe from Akluj to Javala on a motorcycle. Motorcycle was belonging to PW 7-Kailas. According to Balu, he connected the pipe to the pipe-line with the assistance of deceased Mahadeo. While they were about to start the electric motor, accused Nos. 1 and 2 came there and abused them. Accused Nos. 1 and 2 removed the fuse of the electric motor and also threatened them. PW 1-Balu and Mahadeo, therefore, returned back to the house of Mahadeo and telephoned PW 7-Kailas at Akluj. On the next

day i.e. on 11/11/2002, Mahadeo was to attend the Court at Sangola and accordingly PW 1-Balu and deceased Mahadeo proceeded from Javala at about 10.15 a.m. for attending the Court at Sangola on a motorcycle. Deceased Mahadeo was riding the motorcycle; while PW 1-Balu was the pillion rider. When they had reached upto the bridge on the Maan river by the side of village Kailas, the accused came to the said place on a motorcycle which was being driven by accused No. 2-Dhanaji. Accused obstructed Balu and Mahadeo from proceeding further, by parking their motor-cycle in front of the motorcycle of Balu. Accused thereafter started assaulting Mahadeo. Accused No. 1-Ramchandra assaulted Mahadeo by the sickle, while accused No. 2-Dhanaji assaulted Mahadeo with "Rapee". PW 1-Balu requested the accused not to assault Mahadeo, but the accused did not relent and assaulted PW 1-Balu. Because of the assault, Balu sustained injuries on his head, palm of right hand and both the shoulders. Deceased Mahadeo also fell on the ground. After assaulting Mahadeo and Balu, the accused fled away from the scene of the incident. Balu tied a towel to the injuries sustained by him and reached Javala on the motorcycle. He went to the house of Mahadeo and informed the incident to the ladies, who were present in the house. The ladies from the family of Mahadeo, therefore, proceeded to the scene of the incident in a jeep. Balu was also brought on a motorcycle to the scene of the incident and when Balu was near the temple of Lord Datta, he noticed the ladies of the family of Mahadeo informing the incident to PW 7-Kailas. Accordingly, Balu also informed Kailas about the incident and took Kailas to the scene of the incident. They noticed Mahadeo lying on the ground and Mahadeo was dead. Balu and Kailas thereafter came to the Sangola Police Station, where Kailas reported the incident. Police referred PW 1-Balu for medical examination. From the hospital, Balu again returned back to the police station, where his clothes were seized and his statement was recorded.

6. In cross-examination, he has admitted that he did not possess a license for driving the vehicle. He has also admitted that prior to the incident, he had no occasion to visit the Court at Sangola along with deceased Mahadeo. He has also admitted that he had not received any summons for attending the Court. He has admitted that for reaching the Court at Sangola from Javala, it takes about 20 to 25 minutes. He has also admitted as correct that while the accused were assaulting deceased Mahadeo, Mahadeo was warding off the blows by raising his hands. He has also admitted that at the relevant time a tractor was deployed in the nearby agricultural field. He has admitted that he had gone towards the tractor seeking help. He has also admitted as correct that after informing the lady members of the family of Mahadeo, he was taking them to the scene of the incident, where he met Kailas. He has admitted that he was present in the Sangola Police Station for about 5 minutes and was thereafter referred to the hospital. He was confronted with portion marked "A" from 164 statement that he and Kailas had gone with the police to the scene of the incident and thereafter he was referred to the hospital for examination. He has denied the suggestion that he had informed the police that unknown persons had assaulted him.

7. The learned counsel for the appellant has urged before us that it is extremely doubtful if PW 1-Balu had accompanied deceased Mahadeo and was present at the time of the incident. According to the learned counsel for the appellant, no reason is forthcoming as to why Mahadeo had requested Balu to accompany him to the Court at Sangola. It is also urged before us that the medical certificates of PW 1-Balu at Exhs. 61 and 62 indicating that he had sustained the injuries due to hard and blunt object. It is also urged before us that had Balu really been present at the scene of the incident, the statement of Balu would have been recorded by the police and would have been treated as an F.I.R. It is also urged before us by the learned counsel for the appellant that had Balu really been present at the scene of the incident, he would not have abandoned Mahadeo, who was grievously injured and would not have rushed back to Javala. The learned APP has supported the findings arrived at by the trial Court.

8. PW 1-Balu was in the employment of PW 7-Kailas, who was the brother of deceased Mahadeo. It was at the best of PW 7-Kailas that PW 1-Balu had gone to Javala for connecting the pipe to the pipe-line and he had done so with the assistance of deceased Mahadeo. According to PW 1-Balu, he was at village Javala. Since PW 1-Balu was in the employment of PW 7-Kailas, who was the brother of deceased Mahadeo, we do not find it to be suspicious that Balu had accompanied deceased Mahadeo for going to the Court at Sangola. In fact, when Mahadeo had telephoned PW 7-Kailas, Kailas had asked Mahadeo if there was any further incident. An incident of abusing by the accused had already occurred on a day prior to the incident. In such circumstances, Mahadeo may have requested PW 1-Balu to accompany him to the Court at Sangola. Thus, the circumstance of Balu accompanying Mahadeo on the day of the incident to the Court at Sangola is not a circumstance so suspicious as to affect the credibility of PW 1-Balu.

9. Deceased Mahadeo had sustained incised injuries, while PW 1-Balu had sustained injuries by hard and blunt object. The presence of PW 1-Balu at the scene of the incident, according to us, has been fully established. PW 1-Balu has been cross-examined on behalf of the accused at length. Nothing of substance has been elicited in the cross-examination, which would in any manner affect his version that he was present at the scene of the incident. Merely because of the fact that he had sustained injuries which could be ascribed to hard and blunt object, the evidence of PW 1-Balu cannot be doubted that he was present at the scene of the incident. The injuries sustained by Balu, which were found to be fresh and no doubt simple injuries would only reflect that the accused had no intention of causing death of PW 1-Balu. The anger of the accused was directed towards deceased Mahadeo with whom the accused had dispute over the agricultural land. Balu was a mere employee of PW 7-Kailas and, therefore, there was no animus against PW 1-Balu. Thus, we find that the aforesaid circumstance, in our opinion, does not at all affect the credibility of PW 1-Balu.

10. On noticing that deceased Mahadeo had sustained grievous injuries and had

fallen on the ground, Balu had rushed back to the house of deceased Mahadeo to inform his family members. The attempt obviously was to get help for taking Mahadeo to the hospital. Balu, on reaching the house of deceased Mahadeo, had informed the ladies who were present there about the incident. The ladies proceeded to the scene of the incident and Balu followed them on the motorcycle. Thus, the entire endeavour of Balu was to see that prompt assistance is made available for removing Mahadeo to the hospital. Near the temple, he had noticed PW 7-Kailas, to whom he had narrated the, entire incident. F.I.R. is lodged by PW 7-Kailas and not by PW 1- Balu. According to Balu he was in the police station merely for five minutes and was thereafter referred to the hospital. Obviously, the purpose was to ensure that first aid is immediately made available to PW 1-Balu and, therefore, the statement of Kailas was recorded. This is not a case where PW 1- Balu had abandoned deceased Mahadeo and had fled somewhere else. Balu had immediately proceeded to the house of deceased Mahadeo for informing his relatives and also took steps of taking the relatives to the scene of the incident. In such circumstances, therefore, the presence of Balu at the scene of the incident cannot be doubted. The conduct of Balu in immediately informing the relatives about the incident and further informing the incident to Kailas, is a circumstance which corroborates the version of PW 1-Balu that he had witnessed the assault on deceased Mahadeo and had also sustained the injuries at the hands of the accused. We thus find that the presence of PW 1-Balu at the scene of the incident cannot be doubted.

11. Prosecution has relied upon the evidence of Chemical Analyzer in respect of seizure of the sickle at the behest of accused No. 1 as well as the finding of blood on the sickle and the clothes of accused No. 1. We, however, find that there is no evidence that the sickle and the clothes of accused No. 1 were sealed when they were seized by the police. Thus in the absence of reliable evidence in respect of the sealing of the articles and the evidence that the articles remained in that condition till they were examined by the Chemical Analyzer, no reliance can be placed on the finding of blood on the sickle and the clothes of the accused No. 1. The aforesaid circumstance, therefore, will have to be left out of consideration.

12. The prosecution has established that the relations between deceased and the accused were strained as there was a dispute between them. Cases and counter cases had been filed by each other. The prosecution has thus established the motive for the accused to have committed the crime. The prosecution has also established that deceased Mahadeo was assaulted by both the accused. According to us implicit reliance can be placed on the testimony of PW 1-Balu as we do not find any circumstances which would discredit the version of PW 1-- Balu. At the close of his cross-examination, PW 1-Balu has emerged as, a reliable witness and we see no grounds at all for jettisoning the testimony of PW 1-Balu.

13. The learned counsel for the appellant has urged before us that according to the evidence of PW 9-Dr. Shobha Lokhande external injury No. 5 was the fatal injury while the other injuries were not fatal injuries. It is, therefore, urged

before us that it could not be said that the common intention of both the accused was to commit murder of deceased Mahadeo. The accused had obstructed deceased Mahadeo and Balu when they were proceeding to Sangola Court. The accused were armed with deadly weapons i.e. sickle and rapee. Deceased Mahadeo had sustained about 18 injuries. The assault on deceased Mahadeo was a murderous assault. Injuries had been inflicted by the weapons on vital parts of the body of deceased Mahadeo. The intention of the accused is obvious. In any event, intentional injuries had been caused to deceased Mahadeo and deceased Mahadeo had died as a result of the said injuries. In fact, death of deceased Mahadeo was instantaneous as he was found dead when Kailas had gone to the scene of the incident. In such circumstances, therefore, according to us the prosecution has established the offence against accused No. 1-Ramchandra beyond reasonable doubt. Accused No. 1 has, therefore, been rightly convicted for an offence punishable under Sections 302 and 324 for having caused hurt to PW 1-Balu. Accused No. 1 has been rightly convicted for an offence punishable u/s 341 of I.P.C. for wrongful restrain.

14. Having thus considered the rival submission of the learned counsel for the parties, according to us, the prosecution has proved the offence against accused No. 1 beyond reasonable doubt. Present appeal, which is without merit, deserves to be dismissed. Accordingly, Criminal Appeal No. 1303 of 2004 is dismissed, confirming the conviction and sentence of the appellant.