

(2012) 12 BOM CK 0051
In the Bombay High Court
Case No : Criminal Appeal No. 554 of 2005

Suresh Navsa Ghatal

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 12 BOM CK 0051

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Abhay Kumar Apte, for the Appellant; A.S. Shaikh, APP for the Respondent No. 1-State and Mr. D.A. Nalawade, Special P.P. for Respondent No. 2-Union Territory, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. V.K. Tahilramani, J.—The Appellant/Original Accused has directed this Appeal against the Judgment and order dated 21st July, 2004, passed by the learned Sessions Judge, Dadra and Nagar Haveli at Silvassa in Sessions Case No. 6 of 2003. By the said Judgment and order, the learned Sessions Judge convicted the Appellant for the offence u/s 302 of Indian Penal Code and sentenced him to suffer life imprisonment and to pay fine of Rs. 5,000/- in default R.I. for one year. The prosecution case, briefly stated, is as under:

P.W. No. 1 Chaita Bapji Ghatal was residing in Karchond Ghatal Pada, district Dadara and Nagar Haveli. His father Bapji Ghatal was residing near his house. Bapji Ghatal is the deceased in the present case. The father of the Appellant is brother of Bapji Ghatal i.e. deceased. Father of the Appellant had expired about 4 to 5 years before the incident. There was dispute in relation to land between Bapji Ghatal and the Appellant. Bapji Ghatal was asking the Appellant to enter his name in the record of the land which was given to the share of Bapji Ghatal. However, the Appellant refused to do so. On account of this, there used to be frequent disputes between the Appellant and Bapji Ghatal.

Deceased Bapji Ghatal was residing near the house of P.W.No. 1 Chaita. Bapji had two daughters, one of them being P.W.No. 1 Guli. The husband of Guli was in jail, therefore, Guli was residing with her father Bapji. On the day of incident, i.e. on 24th December, 2002 at about 8.00 p.m., P.W.No. 2 Guli served food to her father Bapji. Bapji was having food in the court-yard of their house. At that time, Appellant came there with axe. He gave two axe blows on the neck of his father Bapji and, thereafter, he gave axe blows on the chest, left hand and stomach of her father. Her father sustained bleeding injuries and fell down. The Appellant then ran away taking the axe with him. Bapji expired on the spot. On the day of incident, when the Appellant had entered the house of P.W.No. 1 Chaita, Chaita was not there at his house, at that time. At that time, the Appellant took Khata book of agricultural land from the house of Chaita. This fact was informed by Sarita, daughter of Chaita to P.W.No. 2 Guli. P.W.No. 1 Chaita filed the First Information Report (FIR) Exhibit-13. Thereafter, investigation commenced. The dead-body of Babji was sent for post-mortem. P.W.No. 8 Dr. Anil performed the post-mortem on the dead body of Bapji. He found following injuries on the dead body :

1. Chopped wound on back of neck and lateral aspect of right side of neck measuring 4 inches x 1 inch x cutting back muscle and cervical vertebrae.
2. A chopped wound on front of neck lateral aspect of the neck measuring 2 1/2 inches in length x 1 1/2 inches in width cutting the underneath structure, ellecptical in shape.
3. Incised wound on right hand forearm cutting the radius and ulnar, measuring 5 1/2 inches in length and 1 1/2 inch in breadth.
4. Incised wound over back of right scapula measuring r 1/2 inches in length and 2 inches in breadth.
5. Incised wound over upper border of right scapula measuring 1-1/2 inches in length in breadth.
6. Incised wound in between 11th and 12th ribs situated anterior measuring 1 inch in length and 1/2 inch in breadth.
7. Fracture of 10th and 12th ribs of right side.
8. Incised wound measuring 1/1 inch in length and 1/4 inch in breadth over the right boarder of sternum between 9th and 10th ribs with crack fracture of lower 1/3rd sternum.

According to Dr. Anil all the above injuries were ante-mortem and injury Nos. 1 and 2 referred to above were individually sufficient in the ordinary course of nature to cause death. According to Dr. Anil, the cause of death was cardio respiratory arrest due to hemorrhagic shock as a result of two chopped cutting wounds over neck, cutting the vital structure of neck. The said injuries were caused by sharp cutting weapon. The Appellant came to be arrested on 15th

January, 2003. After completion of investigation, charge-sheet came to be filed.

2. Charge came to be framed u/s 302 of the Indian Penal Code (IPC) against the Appellant-original accused. The Appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the Appellant as stated in paragraph No. 1 above, hence, this Appeal.

3. We have heard the learned Advocate appointed for the Appellant, the learned A.P.P. for the Respondent-State as well as the learned Special Public Prosecutor Mr. Nalawade, for the Union Territory of Dadra and Nagar Haveli. After giving our anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned Advocates, the Judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated herein below, we are of the opinion that the learned Sessions Judge has rightly convicted and sentenced the Appellant and there is no merit in the present Appeal.

4. The conviction is mainly based on the evidence of P.W.No. 2 Guli, who is an eye witness in the present case. Briefly stated the evidence of Guli is that on the day of incident, i.e. on 24th December, 2002 at about 8.00 p.m., P.W.No. 2 Guli served food to her father Bapji. Bapji was having food in the court-yard of their house. At that time, Appellant came there with axe. He gave two axe blows on the neck of her father Bapji and, thereafter, he gave axe blows on the chest, left hand and stomach of her father. Her father sustained bleeding injuries and fell down. The Appellant then ran away taking the axe with him. The evidence of Guli also brings out the motive for the Appellant to commit the crime. Guli has stated that there was dispute between her father and the Appellant on account of agricultural land. Motive is also brought out in the evidence of P.W.No. 1 Chaita, who is son of the deceased. The father of the accused had expired about 4 to 5 years prior to the incident. He has stated that his father deceased Bapji was asking the Appellant to enter his name in the record of land which was given to his share. However the Appellant refused to do so. On that count there used to be dispute between the Appellant and his father. Guli has stated that Sarita daughter of Chaita told her that on the day of the incident, the Appellant had entered the house and taken away Khatabook of land. This lends some corroboration to the circumstance of motive that there were land disputes between the appellant and the deceased. The evidence of eye witness P.W.No. 2 Guli is also corroborated by the medical evidence. P.W.No. 8 Dr. Anil, who conducted the post-mortem has clearly stated that the injuries were caused by sharp cutting weapon as a result of assault by somebody.

5. In addition to the evidence of the eye witness P.W.No. 2 Guli there are other circumstances of an incriminating nature which are brought out by the prosecution against the Appellant. The circumstances are recovery of blood stained clothes and blood stained axe at the instance of the Appellant. P.W.No. 5 Devji is the panch witness who has deposed on this aspect. He has deposed

about recovery of blood stained clothes and blood stained axe at the instance of the Appellant. C.A. report Exhibit-24 shows that the axe as well as the blood stained clothes of the Appellant were found to have blood stains of "A" Group. The C.A. report Exhibit-23 shows that the blood group of the deceased was "A" Group. Thus, the recovery of these articles at the instance of the Appellant is a strong incriminating circumstance against the Appellant.

6. On going through the evidence on record, we are of the opinion that there is sufficient evidence to connect the Appellant with the evidence. Thus, we find no merit in the Appeal. The Appeal is dismissed. Office to communicate this order to the Appellant who is in jail.