
(2021) 07 BOM CK 0016

Bombay High Court

Case No: Criminal Appeal No.680, 1103 Of 2015

Vyankat @ Vyankatesh
Chanchayya Pinnam
And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: July 1, 2021

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 37(1)(3), 302, 304(I), 504
- Code Of Criminal Procedure, 1973 - Section 235(2)

Hon'ble Judges: Sadhana S. Jadhav, J; N.R. Borkar, J

Bench: Division Bench

Advocate: Daulat G. Khamkar, P.P. Shinde

Final Decision: Disposed Of

Judgement

Sadhana S. Jadhav, J

1. The appellants herein are convicted for an offence punishable under section 302 r/w 34 of Indian Penal Code by the Additional Sessions Judge,

Pune in Sessions Case No.790 of 2011 vide judgment and order dated 3rd June 2015 and sentenced to suffer imprisonment for life and shall pay fine

of Rs.2,000/- each, i/d to pay fine to suffer imprisonment for one year. Accused no.1 - Vyankat @ Vyankatesh Chanchayya Pinnam is also convicted

under section 235(2) of Cr.P.C. for the offence punishable under section 37(1)(3) and shall suffer imprisonment for one year and shall pay fine of

Rs.100/-, i/d. to pay fine to suffer further imprisonment for one month. Hence, this appeal.

2. It is the case of the prosecution that on 13 th September 2011, an information was received by Mundhawa Police Station that a person named

Narayan was brutally assaulted at Balajinagar. Devidas Patil - P.W.9 who was officiating as P.I. at Mundhawa Police Station rushed to the spot and

learnt that the injured was shifted to Sasoon Hospital. There P.W.9 learnt that Vengayya Kandira (P.W.1), father of Narayan had already reached

the Police Station. P.S.I.Gite recorded the statement of Vengayya Kandira (P.W.1) - first informant. On the basis of his statement Crime No.133 of

2011 was registered against the present appellants for the offences punishable under section 302 r/w 34 and section 504 of IPC. After completion of

investigation, charge sheet was filed. At the trial, prosecution examined as many as 10 witnesses to bring home the guilt of the accused.

3. Vengayya Kandira (P.W.1) happens to be the father of deceased Narayan. The accused Vyankat Pinnam and Ramanayya Pinnam happen to be

brothers inter-se whereas Accused No.4 - Yangayya Battal happens to be the sister of Accused Nos.1 and 2. The acquitted Accused no.3 Vyankat

Battal alias Ravan Gurayya Battal happens to be the son of Accused no.4 - Yangayya. The deceased and Accused no.1 happen to be residents of the

same locality whereas Accused no.2 happens to be the resident of Lane no.3.

4. According to P.W.1, on 13th September 2011 i.e. the following day of Ganesh immersion, at about 9. 00 am Narayan (deceased) had asked

Guraiyya as to why he has abused his father. There was some verbal altercation between them. P.W.1 had intervened, pacified the parties and had

told Ramanayya that he would persuade his son Narayan to behave properly. At about 4.00 pm, on the same day, when P.W.1 was at the well, his

sister, Yangayya (Accused No.4) along with her son Rawan met Narayan at the well. Narayan and Rawan had again started quarreling. Rawan

started beating Narayan with his belt. P.W.1 had apologized to Rawan on behalf of his son.

5. On the same day, at about 7.45 pm, he had learnt telephonically from his wife that Narayan was murdered. P.W.1 immediately reached his house.

Upon learning that the injured was shifted to Sasoon Hospital, he had visited Sasoon Hospital where he met Shrinivasan and Navin. Navin happens to

be the youngest brother of Narayan.

6. According to P.W.1, upon inquiry, Shrinivasan had informed him that when Narayan was standing at the well at about 7.35 pm, Accused no.4

Yangayya assaulted him with her footwear and four persons were abusing Narayan. Shrinivasan had also intervened to pacify both the sides. In the

meanwhile, Ramanayya had caught hold pmw of Narayan and Vyankat assaulted him on his throat and head. Thereafter, Narayan was admitted in

Hospital.

7. That P.W.1 while narrating the prelude to the incident stated that on 13th September 2011 at about noon there was a quarrel. Rawan had instigated

Vyankat and others to kill Narayan. The FIR is lodged on the basis of the information given by Shrinivasan to P.W.1.

8. That evidence of P.W.2 - Batulla is consistent with the facts narrated by P.W.1 in the FIR as far as the prelude to the incident and the incident of

13th September 2011 at 4.30 pm is concerned. The incident as deposed by P.W.2 is as follows :

On the same day i.e. on 13th September 2011 at about 7.30 pm., Batulla Sasaiya - P.W.2 along with his friends including Narayan were chitchatting

near the well. Yangayya (Accused No.4) abused Narayan and assaulted him with a footwear on his chest. The friends had intervened to pacify both

the parties. At that juncture, Ramanayya caught hold of Narayan and Vyankat assaulted Narayan firstly, on his throat with a sickle, the second blow

was given on the head. Narayan fell down on the road. Upon witnessing the incident, P.W.2 was frightened and rushed home whereas, Shrinivasan

had taken to Hospital and the accused had fled from the spot. It is stated in the cross-examination that Shrinivasan was not in their company at that

time. Witness has stood the test of scrutiny. His statement was recorded after registration of FIR. It is admitted in the cross- examination that

Narayan had abused Yangayya.

9. The evidence of Maladri Borigarala - P.W.3 is consistent with the evidence of P.W.2. He has stated in his cross-examination that on that day, since

he had fever he had been to the clinic while returning home he had seen the incident. He is also resident of Lane No.5. The witness has clarified that

accused Vyankat and Ramanayya had arrived on the spot at the time when Yangayya was quarreling with Narayan and thereafter, Vyankat had

mounted assault on Narayan with a sickle. He has further stated that on 14th September 2011 he had voluntarily visited Police Station at about 10. 00

am. At that time, he had learnt that Crime No.133 of 2011 was registered on the earlier day. He has also reaffirmed his said contentions in cross-

examination.

10. Dr. Amol Balwant Shinde - P.W.8 had conducted autopsy on the dead body of Narayan and has proved the post-mortem notes which are at

Exh.35. Post-mortem notes would show that the deceased had sustained as many as five incised wounds and two abrasions. The injuries are as under

:-

1. Incised wound over left temporal region, 5 x 1cm x bone deep. Bone fractures, horizontal, margins clean cut, reddish.

2. Incised laceration over neck anteriorly, 5 x 3 cm, tissue deep, distance from suprasternal notch 7 cm margins, interiorly clean cut on right side

irregular and contused, reddish.

3. Abrasion over chin interiorly 2.5 x 2 cm irregular margins, reddish.

4. Abrasion on chest left side, 4 x 0.5 cm horizontal above nipple, reddish.

5. Incised abrasion on right shoulder anteriorly, 3.5 x 0.5 cm, reddish.

6. Incised abrasion over right arm upper 1/3rd laterally 6 x 0.5 cm horizontal.

7. Incised wound over right thumb medially, reddish.

11. Column No.17 of the post-mortem notes would corroborate narration of the incident as is stated by P.W.2 and P.W.3 who are actual witnesses to

the incident of assault.

12. Devidas Patil - P.W.9 happens to be the Investigating Officer. He has deposed before the Court in respect of the steps taken by him in the course

of investigation of Crime No.133 of 2011 at Mundhawa Police Station. The Investigating Officer has deposed before the Court that he had learnt

about the involvement of the accused from Navin, the younger son of P.W.1 and the brother of the deceased. The scene of offence was shown to the

Investigating Officer by Navin. The Investigating Officer had video-graphed the recovery of weapon at the instance of Accused No.1 on 17th

September 2011. The same was produced before the Court. The said recovery of weapon is disbelieved by the learned Sessions Court.

13. The learned counsel for the appellants has vehemently submitted that there is delay in lodging FIR. In fact, even according to the prosecution,

P.W.9 had reached the spot immediately. The incident has taken place at 7.30 pm but the FIR (Exh.37) is registered at 10.15 pm. The delay in

registration of offence is not an inordinate delay. The first informant happens to be the father of the deceased. He had initially been to the Hospital

and thereafter, has approached the Police Station. The state of mind of the father of the deceased has to be taken into consideration and therefore, the

said submission cannot be taken into consideration.

14. It is further argued that the prosecution has not examined either Shrinivasan or Navin who happen to be the eyewitnesses to the incident and

therefore, according to the learned counsel, P.W.2 and P.W.3 are got up witnesses.

P.W.2 has stated in the cross-examination that Shrinivasan was

not in their company when the incident occurred but had arrived on the spot immediately. In fact, he wanted to accompany Shrinivasan to the

Hospital. However, his parents had come near the rickshaw and had taken him home. He has further stated that on 15th September 2011 at about

10.00 am he had learnt from his mother that the father of Narayan had lodged a report at the Police Station. Thereafter, he threw away his blood

stained clothes and had visited the Police Station at about 10.30 am and informed the Police about the prelude to the incident and the actual incident.

P.W.2 is an young boy who was studying in 11 th Standard at the time when the incident had occurred. It was quite natural for him to get frightened

after seeing such a ghastly incident. His assertion that he had thrown blood stained clothes out of fear would clearly establish that he had helped

Shrinivasan to take the injured to the Hospital. Evidence of P.W.3 is consistent with the evidence of P.W.2.

15. The learned counsel for the appellants has submitted that the appellants are falsely implicated at the hands of the Investigating Agency. Thrust of

the argument is on non-examination of Navin and Shrinivasan. On 6th February 2015, the Public Prosecutor had filed an application informing the

Court that the prosecution does not desire to examine Navin and Shrinivasan and others as they are on the same point. To avoid repetition on the face

of record, the prosecution had chosen not to examine multiple witnesses on the same point. The said application is at Exh.89. The Station diary entry

shows that one Rahinath Ramaiyya Kaman Boina has admitted Narayan in the Hospital when he was declared dead. This would establish that

Shrinivasan was not one who had admitted Narayan in the Hospital. The Station diary entry also shows that Narayan was killed by an unknown

person and that he was found in unconscious condition when he was admitted in the Hospital. The said station diary entry is at Exh.85.

16. P.W.2 had categorically stated that they had not intervened in the quarrel. In fact, P.W.3 has stated that the boys present on the spot had shifted

Narayan to Sasoon Hospital.

17. The contention of the learned counsel that the appellants are falsely implicated cannot be taken into consideration.

18. It is a matter of record that the Accused No.4 - Yangayya was the first person who had raised quarrel with Narayan and assaulted him with her

footwear. She was not armed with any weapon. Similarly, no overt act is attributed to Ramanayya i.e. Accused No.2 except that he had intervened

and was trying to pull Narayan from the scene of offence. The fact that the eyewitnesses have not exaggerated the incident and have not attributed

any specific role to Accused Nos.2 and 4 would clearly show that this could not be a case of false implication.

19. The post-mortem notes and the evidence of P.W.8 further establish that the injuries sustained by the deceased could have been caused by a sickle

and that only Accused no.1 was armed with a sickle. That, Accused Nos.1 and 2 were not present at the spot when Yangayya had raised a quarrel

with Narayan and had assaulted him with her footwear. This, by itself, would establish that there was no premeditation and that Accused Nos.2 and 4

had not shared common intention with Accused No.1.

In all probabilities, Accused No.2 had no knowledge that Accused No.1 Vyankat would assault Narayan with a sickle.

20. The learned counsel for the appellants has further submitted that since there was a sudden quarrel and no premeditation, the conviction of

Accused No.1 be modified to section 304(I) of IPC. The said submission cannot be taken into consideration for the simple reason that the deceased

had sustained about five incised wounds. There was no quarrel, much less any altercation between Narayan and Accused No.1. The first blow was

on the throat. The second blow was on left temporal region which was bone deep. There was incised wound on right shoulder and right arm. Column

No.20 of the post- mortem notes would show that there was fracture of secondary corresponding to injury no.1. The dura was cut and there was

evidence of subarachnoid hemorrhage.

21. The learned APP has vehemently supported the judgment of the Sessions Court and has submitted that the sterling testimony of P.W.2 and P.W.3

would establish that Accused No.1 alone had caused homicidal death of Narayan. There was no grave and sudden provocation. He had seen the

quarrel between his sister and and he had caused injuries to Narayan which resulted in his death.

22. The nature of injuries would establish the force with which the blows were given. It is not a case of grave and sudden provocation and therefore,

conviction recorded against Accused No.1 by the trial Court needs to be upheld. Hence, we pass the following order :-

ORDER

(i) Appeal is partly allowed;

(ii) Criminal Appeal No.1103 of 2015 is dismissed;

(iii) The conviction and sentence against Accused No.1 - Vyankat @ Vyankatesh Chanchayya Pinnam in Crime No.133 of 2011 passed by the

Additional Sessions Judge, Pune in Sessions Case No.790 of 2011 vide judgment and order dated 3rd June 2015 is hereby upheld and confirmed;

(iv) Criminal Appeal No.680 of 2015 stands allowed;

(v) The conviction and sentence against Accused Nos.2 - Ramanayya Chanchayya Pinnam and Accused No.4 - Smt. Yangayya @ Yangamma

Gurayya Battal in Crime No.133 of 2011 passed by the Additional Sessions Judge, Pune in Sessions Case No.790 of 2011 vide judgment and order

dated 3rd June 2015 is quashed and set aside;

(vi) Accused Nos.2 and 4 (Appellants in Criminal Appeal No.680 of 2015) are acquitted of all the charges levelled against them;

(vii) The Accused Nos.2 and 4 (Appellants in Criminal Appeal No.680 of 2015) are on bail. Their bail bonds stand cancelled;

(viii) Fine amount, if any paid, be refunded;

(ix) Appeals are disposed of on above terms.