

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE  
CRIMINAL APPEAL NO.309 OF 1997

Bajrang Ganpat Aware,	)	
resident of Vashi (Near Bombay) )	)	
District Thane.	)	
(At present in Yerwada Central )	)	
Prison at Pune.)	)..	Appellant (Org. Accused)

Vs.

1. The State of Maharashtra, )		
2. Smt.Prabhavati Vasant Karande,)	)	
since deceased through her )	)	
legal heirs;	)	
A) Rajkumar Vasant Karande,	)	
B) Vijay Vasant Karande,	)	
C) Sou.Vandana Suresh Maidale, )	)	
D) Sou.Sangita Ramesh Aware, )	)	
E) Sou.Shoba Bharat Pingale, )	)	
Nos.2(A) to 2(E) residents )	)	
of Malikpeth, Taluka-Mohol, )	)	
District - Solapur.	)..	Respondents.

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Shri P.R.Arjunwadkar with ShriP.M.Mengane for the  
appellant.

Shri A.M.Shringarpure, APP for State.

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CORAM: V.G.PALSHIKAR &  
R.C.CHAVAN, JJ

DATE : 30TH JUNE, 2005

**ORAL JUDGMENT : ( PER R.C.CHAVAN, J )**

1. Taking exception to his conviction for offence of murder punishable under Section 302 of Indian Penal Code and the resultant sentence of imprisonment for life inflicted by the learned Additional Sessions Judge, Solapur, the appellant Bajrang Ganpat Aware has preferred this appeal.

2. Facts which led to the prosecution of respondents are as under:-

. Deceased Vasant Gangaram Karade's daughter Sangita was married to the appellant's brother Ramesh Ganpat Aware in the year 1991. Sangita was ill-treated by her husband and mother-in-law. The Appellant, who resided at Mumbai, too participated in ill-treatment whenever he visited to his native place. On account of this ill-treatment, complaints had been made to police against Sangita's husband-Ramesh and appellant's mother. About 4 to 5 days before the incident, Sangita was driven out of the house. This

led to filing of a report to police on 11th July, 1996. The appellant's mother threatened that she would teach a lesson to Sangita and her family members after arrival of her son, the appellant, from Mumbai.

3. At about 9.00 a.m. on 15th July, 1996, victim Vasant Karade left his house for Mohol for taking treatment. Uttam Ganpat Mane met him on the way and the victim requested Uttam to accompany him to Mohol. When they were proceeding towards S.T. stand, while passing by the house of Tukaram Sathe, appellant Bajrang came there from the rear and inflicted several blows on Vasant Karade. Vasant Karade fell on spot, and in a short while, succumbed to his injuries. The incident was seen by Uttam Ganpat Mane, Usman Mulani and child witness Namdeo Anand Chavare. Vasant's son Rajkumar, who had gone as usual to work at railway station, Mohol, was informed by the station master and on learning of a incident, gave a report to police.

4. The police performed panchanama spot and inquest on the dead body of Vasant and caused it to be sent for post-mortem examination. The medical officer

opined that the death occurred due to haemorrhagic shock due to cutting of right carotid artery with injury to brain with multiple fracture of skull. The clothes of the victim were seized. The accused was arrested in course of investigation. His clothes having blood stains have been seized. The accused agreed to show the spot where he had concealed the weapon. Memorandum was made and weapon was seized under a panchanama from stone wall of compound of temple of Goddess Ambabai. Statements of witnesses were recorded by police and before the learned Special Judicial Magistrate. Articles seized were sent to Forensic Science Laboratory. On receipt of the report from the Laboratory, charge-sheet was sent to the learned J.M.F.C., Mohol, who committed the case to Court of Sessions on finding that the accused had committed an offence triable exclusively by Court of Session.

5. The learned Additional Sessions Judge, Solapur, to whom the case was assigned, framed charge of offence punishable under section 302 of Penal Code. The accused pleaded not guilty to the said charge and

claimed to be tried. In an attempt to bring home the guilt of the accused, the prosecution examined as many as 13 witnesses. The accused was examined under section 313 Cr.P.C. The defence of the accused as appearing from the cross-examination of the prosecution witnesses and statement under Section 313 of Cr.P.C. is that of denial. Upon consideration of evidence tendered in light of arguments advanced, the learned Additional Sessions Judge, Solapur, held that the accused had inflicted severe injuries on the victim with an intention to cause victim's death. Consequently, the learned trial Judge convicted the appellant of offence punishable under Section 302 of Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.10,000/- or in default to suffer further R.I. for one year. Aggrieved thereby, the present appeal has been filed.

6. We have heard both, the learned counsel for the appellant and the learned Additional Public Prosecutor for the State, at adequate length. There can be no dispute about the fact that the deceased Vasant met with homicidal death. The nature of

injuries observed by P.W.5 Dr.Mahadeo Piraji Zille in the notes of post-mortem examination at Exhibit 14 leave no doubt that the injuries were intended to cause death of victim. The injuries were caused on head, neck and shoulder of the victim by a sharp and hard object. The injuries had resulted in fracture of right temporal bone, right parietal bone. Brain matter was lacerated and had come out from the skull. Right carotid artery had been cut and muscles at that place were crushed. According to Dr.Zille, the death was caused by haemorrhagic shock due to cutting of right carotid artery and injury on brain with multiple fracture of skull.

7. To consider the only question, whether the appellant was rightly held to be the author of those injuries which led to death of Vasant Gangaram Karade, we have gone through the evidence. P.W.1 Rajkumar Vasant Karade has stated that his sister Sangita was married to brother of the accused Ramesh. Ramesh and his mother were ill-treating Sangita which led to filing of a complaint on 11th July, 1996 i.e. just four days before the incident. It was stated that the

complaint was filed against Ramesh, his mother as also against the accused. Accused Bajrang resides at Mumbai. P.W.1 Rajkumar had stated in his report to police at Exhibit-16 that Bajrang had come to the village on 11th July, 1996. The report to the police allegedly made on 11th July, 1996 is however not filed on record. It could have shown involvement of the appellant in the incidents prior to murder of Vasant and would have helped in creating strong link against the accused. The fact of absence of previous report against accused, who resided at Mumbai, would make it difficult to attribute to him motive to attack Vasant, when his own brother Ramesh, husband of Sangita, has not ventured into any such adventure.

8. The learned Additional Public Prosecutor however submitted that the case rested on ocular testimony and therefore the evidence of motive was not so material. P.W.6 Uttam Mane is the most important witness in the case. Vasant asked Uttam to accompany Vasant to the hospital at Mohol. Uttam stated that he would inform his family and then accompany Vasant. Accordingly, he claims to have informed to his family

members and proceeded to Mohol with the victim-Vasant. He states that the victim was about 4 to 5 ft. behind him. The incident took place in front of house of Tukaram Sathé. He heard some sound, turned back and noticed that the deceased was lying on the ground with bleeding injuries on his head and neck. Uttam claims to have fallen unconscious. The learned APP therefore was required to declare the said witness hostile and to cross-examine him. The witness then stated that his own brother and the complainant were sitting in the Court and so he had no fear from anybody. he was reminded of his statement recorded before the learned Magistrate. He admitted having informed the police as well as the learned Magistrate that when, after hearing the sound, he turned around, he saw the accused armed with satur causing injuries on the head and neck of the deceased. He identified that Article no.10 satur before the Court as the weapon in the hands of the accused. He stated that he saw accused running away from the spot with the weapon.

9. P.W.6 Uttam admitted in his deposition that he

knew one Usman Mulani but did not see Mulani coming



from the back side because he fell unconscious. He stated that he did not hear any words of Usman Mulani and contradicted the relevant portion of his police station. In course of cross-examination by defence, he admitted that since Sunday before the evidence was recorded, he was with police-men. He stated that he, Namdeo and Usman were at police station and were also taken to Solapur where his statement was recorded before the learned Magistrate. He admitted that the police had told him that if he did not depose before the learned Magistrate according to his narrative, he may be punished. He stated that similar instruction was given to Namdeo and Usman. He also admitted that he was afraid when police said that he may be punished.

10. P.W.6 Uttam further stated in his cross-examination that the deceased was carrying illicit liquor business due to which he had quarrels with some persons. He stated that when he accompanied the deceased and heard sound, he turned back and noticed that the assailant was running. He denied that he did not see the assailant but claimed that he

had seen the assailant from a distance of 1000 ft. There was no stain of blood on his clothes. He stated that after the incident he ran away to his house and slept. He fell unconscious for about 5 minutes.

11. Uttam's evidence is hesitant and it is strange that the victim found it necessary to request Uttam to accompany the victim to Mohol when his own son Rajkumar P.W.1 had gone to Mohol on the very same morning. Further if Uttam was to accompany the victim, it is not clear as to why he was ahead of the victim. According to panchanama-Exhibit 24, the road at spot appears to be 12 ft. wide. Since it was not a narrow footpath, both, the victim and the witness Uttam could have walked together. There was no need for them to walk one behind the other. This story of their walking one behind the other seems to have been evolved because walking together would have been inconvenient to explain absence of blood stains on the clothing of Uttam even after the carotid artery of victim was cut. Anyone with an elementary of knowledge of anatomy would realise that carotid artery is an important blood vessel and would give out spurt

of blood if cut. Further Uttam claims to have fallen unconscious on seeing the incident. This unconsciousness seems to stem from an unwillingness to reel out a convenient story for nabbing the appellant. The last statement in cross-examination that he saw the assailant running away from a distance about 1000 ft. is the last straw on the camel's back. This makes whole evidence of Uttam about identifying the culprit as Bajrang-appellant, suspicious.

12. P.W.7 Usman Mahiboob Mulani, who was supposed to be the other eye witness to the incident, turned hostile and refused to support the prosecution case. He stated that he had not seen any incident. Likewise, P.W.8 Namdeo Chavare, a child witness, who too was supposed to have witnessed the incident, turned hostile and did not state anything about the incident.

13. The incident is supposed to have taken place in front of the house of one Tukaram Sathe. To the argument of learned counsel for the appellant that Tukaram Sathe was not examined, the learned APP

replied that, may be, he was not examined because he was not at home. According to the learned APP merely because the incident took place in front of the house of Tukaram Sathe, it does not follow that Tukaram must be examined or that Tukaram must have been present at the time of incident to witness it.

14. All the same, it is strange that when the incident took place at about 9 a.m. on a public road, only two persons saw the incident.

15. P.W.10 Sangita, wife of appellant's brother Ramesh, claimed that she was driven out of the house by mother-in-law and her mother-in-law had said at that time that after arrival of mother-in-law's son from Mumbai, mother-in-law will teach a lesson to everyone. In cross-examination, however, she admitted that these particular words were missing from her statement recorded by police. It thus appears that the story of Bajrang coming from Mumbai to teach a lesson to Sangita's father is an after thought and does not form a part of the original version conveyed to the police.

16. The evidence about seizure of clothes of accused comes from P.W.2 Dattatraya Tukaram Khatake at Exhibit-17. He proved panchanama at Exhibit-18. He also proved panchanama Exhibit-19 about seizure of clothes of the deceased. The witness was also examined to prove discovery of weapon at the instance of accused, and proved the memorandum at Exhibit-20 and recovery panchanama at Exhibit-21. The witness admitted in his cross-examination that he had received summons for being examined as panch in another Case No.61 of 1996 and admitted that he had also been examined as panch before the Additional Sessions Judge on 1st March, 1997. He denied that he had received summons in another sessions case for deposing as a Panch. Apart from indicating that he has participated in too many investigations, the cross-examination would show that his testimony is not reliable. He stated that the accused was to produce a satur-cum-koyata. These words are not recorded in the memorandum. While in one breath, he stated that there were houses around the temple, in the next breath, he said that there is no residential area near the temple

where the recovery was made. In any case, even the learned Additional Sessions Judge has discarded the evidence of discovery.

17. P.W.11 Ravindra Manikarao Rasal has conducted investigation. He stated that he had sent the articles seized to the Forensic Science Laboratory. It seems that the blood group of deceased Vasant was "B" and so is the blood group of accused Bajrang, as may be seen from the reports of the Laboratory at Exhibits-44 and 45. The clothes of the accused marked articles 8 and 9 in the report at Exhibit-46, had no stains of blood. Thus, scientific evidence does not connect the accused to the crime.

18. Learned counsel for the appellant rightly contended that the sole testimony of P.W.6 Uttam Mane, a hesitant and possibly a got-up eye witness was hardly sufficient to hold the appellant guilty of offence of murder. In view of this, we find that the conviction recorded by the learned Additional Sessions Judge, Solapur, cannot be sustained.

19. In the result, we allow the appeal and set aside the conviction of the appellant for the offence punishable under Section 302 of Indian Penal Code and the resultant sentence for imprisonment for life and fine of Rs.10,000/-. The appellant be set at liberty if not wanted in any other case. Fine, if paid, be refunded to the appellant.

( V.G.PALSHIKAR, J )

( R.C.CHAVAN, J )