

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.234 OF 2011

Gangadhar s/o Gyanoji Bhosale,
Age : 41 years, Occu.Agri.,
R/o Suhagan, Taluka Purna,
District Parbhani

..APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra

..RESPONDENT

Mr Santosh S. Jadhavar, Advocate (appointed) for the appellant;
Mrs V.A. Shinde, Addl. Public Prosecutor for the respondent

**CORAM : P.V. HARDAS AND
A.V. POTDAR, JJ.**

DATE : April 30, 2012

ORAL JUDGMENT (PER HARDAS, J.)

The appellant, who stands convicted for an offence punishable under section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.5,000/-, in default of which to undergo further R.I. for six months, by the Sessions Judge, by

judgment dated 23.12.2010 in Sessions Trial No.72 of 2010, by this appeal questions the correctness of his conviction and sentence.

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

P.W.10 P.S.I. Ramsing Chiragiya, who was attached to the Purna police station on 6.3.2010, was entrusted with the investigation of Crime No.23 of 2010 under section 302 of the Indian Penal Code, registered by A.P.I. Sonawane, on the basis of the report of P.W.1 Tukaram at Exh.11. Accordingly P.W.10 P.S.I. Chiragiya proceeded to the scene of the incident and arrested the accused. The panchnama of the scene of the incident was drawn in the presence of panchas at Exh.16. From the scene of the incident pair of pliers, pieces of broken bangle, ordinary mud and mud mixed with blood, pieces of broken jar, hammer and black beads and yellow metal beads of a necklace were seized. The inquest panchnama was drawn in the presence of panch witnesses at Exh.17. The dead body of Dhrupada, wife of the appellant, was referred for post mortem examination. Vide Exh.21, a shawl wrapped by the accused around his waist, an axe which was found stained with blood, a make-shift spear were seized in the presence of panchas.

Statements of witnesses were recorded. During custodial interrogation, the appellant expressed his willingness to point out the place where his clothes and weapons were concealed. A memorandum was accordingly scribed in the presence of panch witnesses at Exh.23. The accused led the police and the panch to his field and from near a Babool tree produced the clothes, knife, iron bar and clothes of the deceased. The aforesaid articles were seized in the presence of panchas under panchnama at Exh.24. The seized articles were referred to the Chemical Analyzer and were carried by P.W.9 Police Constable Mohd. Bashir under requisition at Exh.28.

3. Further to the completion of investigation, a charge-sheet against the appellant/accused was filed.

4. On committal of the case to Court of Sessions, Trial Court vide Exh.4 framed charge against the appellant for offence punishable under section 302 of the Indian Penal Code. The accused denied his guilt and claimed to be tried. Prosecution in support of its case examined ten witnesses. The defence of the appellant/accused is of denial. The Trial Court, upon appreciation of the evidence, convicted and sentenced the appellant as aforestated.

5. In order to effectively deal with the submissions advanced before us by Shri S.S. Jadhavar, learned Counsel appointed for the appellant and who has very ably argued the appeal on behalf of the appellant and the learned Additional Public Prosecutor, it would be useful to refer to the evidence of the prosecution witnesses.

6. P.W.2 Vachalabai, mother of the appellant, states that she was residing with the appellant, his wife and two children as well as the mistress of her husband. She further states that the appellant was addicted to liquor about 10 to 12 years prior to the incident. The appellant had recently given up the habit of consuming liquor and had started smoking "Ganja". The appellant was always threatening P.W.2 Vachalabai, deceased Dhrupada and the members of the family. The appellant used to threaten them that he would commit their murder. Vachalabai further states that she had not lodged any report against the accused, because she was apprehending some injury to herself, in the event of arrest and release of the appellant. She further states that the appellant was suspecting the character and chastity of Dhrupada and used to allege in-chastity on flimsy grounds. She further states that on the day of the incident her grandson i.e. son of the appellant P.W.4 Deepak, the appellant and

his wife were present in the house. Mistress of the husband of Vachalabai had returned back to the house of her parents. Jyoti, daughter of the appellant, had gone to the house of her maternal uncle P.W.1 Tukaram. She further states that the appellant was quarreling since 8.00 p.m. and was threatening Dhrupadabai and others. At about 11.00 p.m., deceased Dhrupada had come to the room which was occupied by Vachalabai. The appellant called his wife Dhrupada to his room and Vachalabai states that Dhrupada was saying that she was not willing to sleep there as there was dust in the said room. The appellant had stated that they should sleep in that room. The door of the bed room thereafter was closed. Vachala states that she heard the sound of Dhrupada weeping at about 3.00 a.m. as she was assaulted by the appellant. Vachalabai further states that she went to the door of bed room of Dhrupada and she and Deepak both requested the appellant to open the door. The appellant refused to open the door and had stated that he would chop off their fingers. Because of the threat of the appellant, Vachalabai and Deepak went to the house of one Rasool and requested him to accompany them to the house of P.W.1 Tukaram, brother of deceased Dhrupada. Tukaram resides at village Sonna and on reaching his house, Vachalabai informed him that the appellant had confined Dhrupada in a room and was not willing to

open the door. Tukaram, therefore, left for proceeding to the village Suhagan, i.e. village where the appellant was residing. After Tukaram had left, one person had come to the house of Tukaram and had informed Vachalabai that Dhrupada had been killed and her body was thrown on the road. Vachalabai, therefore, returned back to her village, but did not go near the house as she was told that the appellant was armed with an axe and was assaulting every one. After Vachalabai had seen the police taking the appellant with them, she returned back to her house and noticed Dhrupada lying dead on the road with injuries.

7. In cross-examination she has accepted that her other son Sanjay was not willing to cultivate the land of the appellant out of fear. She has further stated that no one in the village was willing to cultivate the land of the appellant on contract. She has agreed that the appellant was whimsical and sometimes he used to go for work and sometimes he used to stay at home. She has further admitted as true that the appellant used to behave properly when he was not under influence of the liquor. The behaviour of the appellant used to be sober if he had not consumed liquor. She has further admitted that the appellant used to behave like a lunatic after consuming liquor. She has further agreed that the appellant had started smoking

Ganja as he could not afford to purchase liquor. She has further admitted that on the day of the incident the appellant had dug the flooring of the room where he used to sleep. At that time the appellant was under the influence of liquor. She has agreed that the appellant had thrown all articles helter and skelter. The appellant used to carry a packet of Ganja with him always. She has then admitted that there is a window between her room and the room of deceased Dhrupada and, therefore, she could hear the noise of Dhrupada crying. She has agreed that on account of the behaviour of the appellant, the neighbours were reluctant to help and Rasool was not willing to help her, but she had forced him to accompany her to the house of Tukaram. She has admitted that character of Dhrupada was excellent and she did not have illicit relations with any one. Minor omissions have been elicited, but these minor omissions do not affect the credibility of this witness at all.

8. Prosecution has examined P.W.4 Deepak, son of the appellant. P.W.4 Deepak also deposes on similar lines as that of P.W.2 Vachalabai. In cross-examination he has agreed that his father was an alcoholic and was also addicted to Ganja. In cross-examination it is also elicited that the appellant was suspecting the character of Dhrupadabai. He has further agreed that his father used

to return home under the influence of either Ganja or liquor every day. He has further agreed that the appellant used to become violent if he was under the influence of either liquor or Ganja. He has also admitted as correct that the appellant was digging the flooring since morning and he was violent on that day.

9. From the perusal of the evidence of P.W.2 Vachalabai and P.W.4 Deepak, it emerges that the appellant was an alcoholic, who was addicted to alcohol as well as Ganja. The appellant used to behave violently when under the influence of either liquor or Ganja. The appellant used to suspect the character of his wife and would imagine that his wife was having illicit relations with someone and accordingly used to assault her. On the day of the incident the appellant had taken Dhrupada to his room as Dhrupada was unwilling to sleep in that room. At about 3.00 a.m. they had heard the sound of beating and had asked the appellant to open the door, but the appellant had threatened them that he would chop off their fingers. Vachala and Deepak accordingly went to the house of P.W.6 Syed Rasool and requested him to take them to the house of P.W.1 Tukaram. They narrated the incident to P.W.1 Tukaram and accordingly Tukaram came to the house of Dhrupada.

10. P.W.1 Tukaram states that deceased Dhrupada was married to the appellant and she had two children Jyoti and Deepak. Jyoti had come to reside at his house on the day of the incident itself. He further states that on the morning of 6.3.2010, P.W.2 Vachalabai and P.W.4 Deepak had come to his house at about 7.00 a.m. and had informed him that the appellant was assaulting Dhrupada. Tukaram further states that the appellant was addicted to liquor and Ganja. Tukaram also states that the appellant used to behave violently with Dhrupada suspecting her character. He further states that when he reached the house of Dhrupada, he had noticed Dhrupada lying on the road with injuries. Dhrupada was nude, except for a piece of red coloured cloth placed around her waist. The appellant was sitting beside the dead body of his wife wearing a shawl and was brandishing an axe and a spear. The spear was a make-shift spear as a penknife had been fixed to a bamboo stick. The appellant was violent and was attacking every one who attempted to go near the dead body of Dhrupada. The appellant was arrested and taken to the police station. Tukaram states that thereafter he had lodged the report at Exh.11.

11. He further states that the appellant was addicted to liquor since about 10 to 15 years and since 4 to 5 years he had started smoking

Ganja also. He has further admitted as correct that the appellant used to misbehave, if under the influence of liquor. He has admitted that in his presence the appellant had not assaulted any one till the arrival of the police. He then states that the appellant had attempted to assault the police also and had fled inside his house and latched the door from inside. The police persons had entered the house by removing the tin sheets of the roof. Omission has been proved that he had not stated that the appellant was armed with a spear.

12. Mr Jadhavar, learned Counsel appointed for the appellant has urged before us that as per the evidence of P.W.10 Ramsing the weapons were seized from the appellant, while the evidence of the panch witness is to the effect that the weapons were seized from inside the house. It is further stated that if the appellant was apprehended when he was sitting near the dead body of his wife, the seizure of the weapons from the house is a manufactured evidence. Similarly, it is also urged before us that there is discrepancy in respect of the seizure of the knife and the clothes of the appellant and of the deceased, at the behest of the appellant and no reliance could be placed on that evidence. The learned Additional Public Prosecutor has supported the findings arrived at by the Trial Court. According to us, even if the evidence of discovery and of the seizure

of the weapons is left out of consideration, there is over-whelming evidence against the appellant. The evidence of P.W.2 Vachalabai and P.W.4 Deepak establishes that the appellant had assaulted deceased Dhrupada. Even if the evidence of discovery and seizure is left out of consideration, no dent is made to the prosecution case.

13. Post mortem on the dead body of deceased Dhrupada was performed by P.W.3 Dr. Babu Shaikh. P.W.3 Dr. Babu Shaikh noticed the following external injuries :-

- 1) Deep incised wound over left parietal region, ad measuring 3 x 1/8th x 1/2 inch., oblique in direction, regular margins with up to bone deep with evidence of fracture of skull;
- 2) Deep incised wound in fronto parietal region, 2 x 1/2 inch x 1/2 inch. x 1/2 inch up to bone deep, regular margins with evidence of fracture of outer cable of skull;
- 3) Incised wound in left frontal region one inch above left eye brow, 1 x 1/8th inch, oblique in direction, regular margins, falling anteriorly;
- 4) Incised wound one inch below injury no.3, ad measuring 1 x 1/4 x 1/4 inch, oblique in direction, regular margins, falling anteriorly;

- 5) Deep incised wound in left temporal region, measuring $\frac{1}{4} \times 1 \times 1$ inch, regular margins up to bone deep with evidence of fracture of zygomatic bone, falling anteriorly;
- 6) Deep incised wound one inch below injury no.5, $2 \times \frac{1}{2} \times \frac{1}{2} \times 1$ inch., vertical up to bone deep with fracture of left maxilla, regular margins falling anteriorly;
- 7) Deep incised wound over left maxillary region, one inch anterior and parallel to injury no.6, size $4 \times 1 \times \frac{1}{2}$ inch with underlying bone fracture, regular margins, falling anteriorly;
- 8) Incised wound over left cheek, lateral to nose, measuring $1 \times 1 \times 2$ inch, bone deep, regular margin, falling anteriorly;
- 9) Deep incised wound, just below left eye $\frac{1}{2} \times \frac{1}{4} \times \frac{1}{2}$ inch up to bone deep with multiple fracture of underlying bone, regular margins, falling anteriorly;
- 10) Deep incised wound below left shoulder, measuring $2 \times 1 \times \frac{1}{2}$ inch, regular margins;
- 11) Incised wound below left elbow joint $2\text{-}\frac{1}{2} \times 1 \times \frac{1}{2}$ inch., oblique in direction, regular margins;
- 12) Incised wound one inch below parallel to injury no.11, measuring $2 \times \frac{1}{2} \times \frac{1}{4}$ inch., regular margins;

- 13) Defused contusion over left upper arm on lateral aspect, one inch above elbow joint, ad measuring 3 x 3 inches, evidence of fracture of lower end of femurus;
- 14) Wire marks seen complete encircling both wrists;
- 15) Incised wounds in sub-occipital region left to mid line, ad measuring 1-1/2 x 1/2 x 1 inch, with evidence of fracture of skull bone, regular margins;
- 16) Incised wound over sacral region on right side, ad measuring 1-1/2 x 1 x 1 inch., regular margins;
- 17) Deep incised wound over left upper 1/4th high anterior aspect, ad measuring 2-1/2 x 1 x 3 inch., regular margins;
- 18) Incised wound over left lateral part of thigh, ad measuring 1-1/2 x 1/2 x 1/2 inch, horizontal direction, regular margins;
- 19) Incised wound over left intra cranial region, ad measuring 2 x 1 1/2 x 1 1/2 inch., regular margins;
- 20) Incised wound 3 inches below and parallel to injury no.129, ad measuring 2 x 1/2 x 1/2 inch., regular margins;
- 21) Incised wound over palmer aspect, over index finger, upper 1/3rd size 1/4 x 1/4 inch., oblique in direction, with regular margins;

- 22) Incised wound over left thumb, palmer aspect, ad measuring 1 x 1/4 x 1/4 inch., regular margins;
- 23) Incised wound over lateral aspect, 1 x 1/4 x 1/4 inches, regular margins, oblique in direction;
- 24) Incised wound over left knee, above patella ad measuring 2 x 1/4 x 1/2 inch., regular margins;
- 25) Incised wounds over left knee, below patella 2 x 14 x 1/4 inch.

According to P.W.3 Dr. Shaikh, Dhrupada had died due to the haemorrhagic shock, due to multiple injuries over head, neck and face. The post mortem report is at Exh.14.

14. In cross-examination Dr. Shaikh has admitted that he had noticed that the dead body was clad in a blue printed sari and a dark red petticoat. He has further admitted that hallucination is a result of long term alcoholism. He has also admitted that in such state, a man accuses his wife and suspects her character. He has also admitted that the long term alcoholics become violent.

15. Mr Jadhavar, learned Counsel for the appellant has urged before us that the appellant was insane and, therefore, was not in a

position to understand the nature of the act which he was committing. Reliance is placed on the judgment of the Supreme Court in **Ratan Lal vs. the State of M.P., AIR 1971 S.C. 778**. Reliance is also placed on the judgment of the Supreme Court in **Shrikant Anandrao Bhosale vs. State of Maharashtra, AIR 2002 S.C. 3399**. Reliance is also placed on the judgment of the Supreme Court in **Siddhapal Kamala Yadav vs. State of Maharashtra, AIR 2009 S.C. 97**, to urge before us that the behaviour of the appellant at the time of commission of the incident would certainly lead to an inference that the appellant was a person of unsound mind.

16. The appellant was not suffering from any mental ailment. The appellant was also not under treatment of any Medical Practitioner. The appellant was a person of violent behaviour and his violence was further aggravated when the appellant was under influence of liquor. Since the appellant had consumed liquor on the day of the incident and was under the influence of liquor, as has been elicited in the cross-examination, the appellant cannot take the benefit of having consumed liquor by urging before us that the appellant could not understand the gravity of the act which he was doing. The appellant had deliberately taken Dhrupada in his room and had denuded her and thereafter had tied her wrists by a wire and had assaulted her.

The appellant had then placed the dead body of Dhrupada on the road and was sitting there armed with weapon till his arrest. The appellant was behaving in this violent manner for the last 10 to 15 years on account of the consumption of liquor and a narcotic substance called Ganja. The appellant certainly cannot be extended the benefit of section 84 of the Indian Penal Code. The appellant was fully aware of the act he was committing. The appellant, it appears was a menace to the residents of the locality and because of the behaviour of the appellant, neither the neighbours nor the relatives were coming to the aid of Vachalabai and the other members of the family. The appellant in that fit of rage had committed murder of deceased Dhrupada suspecting her to be having illicit relations with others. In such circumstances, therefore, according to us the prosecution has established and proved the offence against the appellant beyond reasonable doubt.

17. There being, therefore, no merit in the present appeal, the appeal is dismissed confirming the conviction and sentence. Fees payable to Shri Jadhavar, learned Counsel for the appellant, quantified at Rs.5,000/-.

(A.V. POTDAR, J.)
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(P.V. HARDAS, J.)