

MANILAL HIRAMAN CHAUDHARI

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v.

STATE OF MAHARASHTRA

OCTOBER 09, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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*Penal Code, 1860—ss.302/34 and 506—Murder—Incident proved by eye-witness—Motive for the offence proved—Recovery of weapons at the behest of the accused persons—Blood on the weapon found to be that of the blood-group of the deceased—Trial Court convicting the accused u/s 302/34 and 120B—High Court convicting the accused u/s 302/34 and 506—In appeal, held : In the facts of the case, conviction justified.*

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**Appellant-accused No. 2 along with accused Nos. 1, 3 and 4 were tried for having committed murder of one person. Prosecution case was that the deceased had been an accused in the case of murder of the father of appellant and accused No. 3. On the date of cremation of his father, appellant had taken a vow to take revenge upon the deceased. While the deceased was going on a motorcycle with PW-4, accused Nos. 2, 3 and 4 parked their Maruti Van driven by PW-5, by the side of the road and stopped the motorcycle. They assaulted the deceased. They also threatened PW-4 and he ran away from the spot, took a vehicle of a passerby and lodged FIR. The deceased had also disclosed the names of the deceased persons to a passerby (PW-6).**

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**During trial, PW 4 and PW-5 were examined as eye-witnesses. PW-2 had deposed categorically regarding the vow taken by the appellant for killing the deceased. Trial Court convicted all the accused u/s 302/34 and Section 120B IPC. On appeal, High Court set aside the conviction and sentence of accused No-1. Accused Nos. 2, 3 and 4 were convicted u/s 302/34 IPC. Accused Nos. 2 and 3 were further convicted u/s 341/34 IPC. Accused No-2 was further**

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**A convicted u/s 506 IPC. Appeal of accused No-4 had been dismissed by this Court and Accused No-3 did not prefer any appeal.**

**Appellant, in the present appeal contended that statements of PWs 4, 5 and 6 are not reliable; that the fact of the vow taken by the appellant could not be said to have been proved, in as much as no complaint was made, nor any person was informed in that regard; that non-examination of the motorcyclist with whom PW-4 had gone and of the owner of Maruti Van to whom PW-5 had disclosed the incident are material.**

**Dismissing the appeal, the Court**

**HELD : 1. There is no infirmity in the impugned judgment. Apart from the direct evidence of PWs 4, 5 and 6, that motive for commission of the offence has also been proved by PW-2. The fact that the First Information Report was lodged against Accused No. 2 and his father for attempting murder of the deceased and criminal case was registered against the deceased and some 8-9 persons for committing the murder of father of Accused No. 2 is not disputed.**

**[Paras 17 and 19] [825-F, G; 826-B]**

**2. PW-2 categorically stated about the vow taken by the appellant herein for killing the deceased. It may be true that he did not inform the police or others, but the same by itself, cannot be a ground for discarding his evidence. [Para 6] [822-B]**

**3. The fact that PW-4 was inimically disposed of towards the accused persons, by itself would not be a valid ground to discredit PW 4, who is otherwise truthful. It may be true that the accused and the complainant are two groups in the said village. PW-4 accepted the said fact. [Paras 7 and 8] [822-F, G, H]**

**4. PW-5 was an independent witness. He was driving the Maruti Van wherein the accused persons were travelling. He had no axe to grind. He gave a vivid description in regard the places visited by the accused persons. He was an eye-witness to the occurrence. He intended to flee away from the place, but he was threatened by the accused. They, after assaulting the deceased sat in the said vehicle**

and asked him to take them to a temple. They reached there in the evening. There also he was threatened. He thereafter came and disclosed the incident to the owner of the vehicle.

[Para 10] [823-C, D]

5. PW-6 who found the deceased in an injured condition, intended to ascertain from him the names of the assailants. The deceased disclosed the same to him. Both the courts below have placed implicit reliance on the testimony of this witness also. It cannot be said that it was impossible for the deceased to disclose the names of the assailants as according to the witness heavy bleeding had taken place. Only because there had been profuse bleeding, the same by itself would not lead to the conclusion that the deceased was not in a position to speak.

[Paras 13 and 14] [824-A, B]

6. Examination of the owner of the Maruti Van was not essential. He was not an eye-witness. Except the fact that his vehicle was taken on hire, he could not have proved anything else.

[Para 11] [823-E]

7. Even non-examination of the motorcyclist who had taken the PW-4 to the police station is not material. He was not a witness to the occurrence. The fact that the First Information Report was lodged promptly and the deceased was removed to the hospital for treatment in a tractor is not the subject-matter of any controversy. How PW-4 reached the police station may be relevant for judging his conduct. Failure to examine the owner of the motorcycle itself, would not lead to the conclusion that no First Information Report was lodged by PW-4. [Para 12] [823-F, G, H]

8. Accused No. 2 has also made a disclosure statement leading to recovery of the weapon of offence. Even Accused No. 1 made a disclosure statement and showed the place where the blood-stained clothes were burnt. The weapon was found to be tainted with blood. The place where the weapon of offence was concealed was at a distance of 250 k.m. from the place of incident. The said material objects were said to be containing blood which was found to be

**A** belonging to Group-B. The blood group of the deceased was also 'B'. [Para 18] [825-H; 826-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1200 of 2006.

**B** From the Judgment and final Order dated 17.10.2005 of the High Court of Judicature at Bombay, Bench at Aurangabad in Crl. A. No. 60/1992.

**C** Shekhar Naphade, Sudhanshu Choudhari, Rajshri Dubey and Sunil Kumar Verma for the Appellant.

Dr. Rajeev B. Masodkar and Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

**D** **S.B. SINHA, J.** 1. One Manilal Hiranman Chaudhari is before us being aggrieved by and dissatisfied with the judgment and order dated 17.10.2005 passed by a Division Bench of the High Court of Judicature at Bombay, Aurangabad Bench at Aurangabad.

**E** Appellant herein along with Anil Shivram Pawar (Accused No.1), Premraj Hirman Chaudhary (Accused No. 3) and Bapu @ Gangaram Shantaram Salunkhe (Accused No. 4) were tried for committing the murder of one Bhaulal Jadhav. Bhaulal Jadhav was an accused in a case of murder of the father of the appellant and accused No. 3. Allegedly, when cremation of Hiranman was taking place, the appellant took a vow to take revenge of murder of his father. Bhaulal (deceased) on or about **F** 13.02.1991 at about 11.00 a.m. was going to Jalgaon on a motorcycle. He was accompanied by Lotu Eko Patil (PW-4). When they were at distance of about 3 k.m. from Jalgaon, the accused persons who were in a Maruti van parked the vehicle by the side of road got down. The **G** motorcycle was stopped by Accused Nos. 2, 3 and 4. Premraj (Accused No. 3) is said to have caught hold Bhaulal and Manilal (Accused No. 2) and Gangaram (Accused No. 4) inflicted stab injuries with knives. An attempt to rescue the deceased by PW-4 resulted in a threat to him, whereupon he started running towards Jalgaon. Bhaulal also tried to save

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himself by running away from the said place. He was chased by Accused Nos. 2 and 3 and was again assaulted with knives.

PW-4 immediately went to the Taluka Police Station Jalgaon on a vehicle of a passer by. A First Information Report was lodged at about 11.45 a.m. Bhaulal was taken to the hospital in a tractor. At about 12.45 p.m. he died.

2. At the trial, the prosecution examined 17 witnesses. Lotu Eco Patil (PW-4) and Govinda Shamrao Marathe (PW-5) were examined as eye-witnesses to the occurrence.

3. We have noticed hereinbefore that PW-4 was the informant. PW-5 was the driver of the Maruti van, which was taken on hire by the accused persons. They had gone to Onkareshwar and Saptashringi Gad in the District of Nasik. The learned Trial Judge upon considering the evidence brought on record convicted all the accused persons under Section 302 read with Section 34 and Section 120B of the Indian Penal Code (IPC). The High Court by reason of the impugned judgment in the criminal appeal filed by the accused persons, however, set aside the conviction and sentence of Accused No.1. Accused Nos. 2, 3 and 4 were convicted under Section 302 read with Section 34 IPC. Accused Nos. 2 and 3 were also convicted under Section 341 read with Section 34 IPC. Accused No. 2 was further convicted under Section 506 IPC.

4. Indisputably, Gangaram Shantaram Salunkhe preferred an appeal before this Court against the said judgment of conviction and sentence passed by the High Court, which was marked as Criminal Appeal No. 241 of 2006. The said appeal has since been dismissed by this Court by a judgment and order dated 22.11.2006. [See *Gangaram Shantaram Salunkhe v. The State of Maharashtra*, (2006) 12 SCALE 259]. Premraj Hiranman Chaudhari (Accused No. 3) has not preferred any appeal.

5. Mr. Shekhar Naphade, learned Senior Counsel appearing on behalf of the appellant, *inter alia*, would submit that it would be hazardous to rely upon the statements of PWs 4 and 5 to base a judgment of conviction against the appellant.

A The learned counsel would urge that the contention of Sukhlal in regard to the purported vow taken by the appellant to take revenge of murder of his father cannot be said to have been proved inasmuch as no complaint was made in regard thereto, nor any other person was informed thereabout.

B 6. PW-2 was a labour contractor. He was also a member of the Panchayat. He categorically stated about the vow taken by the appellant herein for killing the deceased Bhaulal. It may be true that he did not inform the police or others, but the same by itself, in our opinion, cannot be a ground for discarding his evidence.

C 7. We may now notice the evidence of PW-4. He was a Peon in the Village Gram Panchayat. He was accompanying the deceased on the motorcycle. He categorically stated that a Maruti van overtook them. It was found standing at a distance. Both the deceased as well as he D recognized the Maruti van. They saw the accused persons coming down therefrom. The accused had stopped the motorcycle. Premraj caught hold of the deceased and Manilal started inflicting blows on the person of the E deceased with a dagger. There was an unknown person also who inflicted blows with a sickle. On intervention, PW-4 was threatened by Manilal. He gave the details of the infliction of blows by the weapons in the hands F of the accused persons on the deceased. He upon having been threatened started running towards Jalgaon. He found a motorcyclist coming towards him; gave a signal and came to the police station to make a report at about 11.45 a.m. The First Information Report was lodged without any delay whatsoever. In fact, the police came to the place of occurrence and removed the deceased to the hospital in a tractor.

Mr. Naphade submitted that PW-4 was inimically disposed of towards the accused persons as he had made a complaint to the police that Hiranman, Prabhakar Motiram and others on 26.05.1985 had G attempted to kill him. We, however, are of the opinion, the same by itself would not be a valid ground to discredit the said witness, who is otherwise truthful.

H 8. It may be true that there are two groups in the said village. PW-4 accepted the said fact. Hiranman and Manilal were prosecuted for

attempting to murder of Bhaulal. They were, however, acquitted. Bhaulal and some 8-9 persons were said to have committed the murder of Hiranman, father of Accused Nos. 2 and 3, wherefor a criminal case was initiated against them.

9. The vehicle was said to be of chocolate colour; but he is said to have been shown a blue colour Maruti van. Our attention was also drawn to the statement of PW-5, who was the driver of the said Maruti van to show that the colour of the Maruti van was not dark blue but it was light blue. Such minor contradictions, in our opinion, are of not much significance.

10. PW-5 was an independent witness. He was driving the Maruti van wherein the accused persons were travelling. He had no axe to grind. He gave a vivid description in regard the places visited by the accused persons. He was an eye-witness to the occurrence. He intended to flee away from the place, but he was threatened by the accused. They after assaulting the deceased sat in the said vehicle and asked him to take them to the temple of Vani Gadh. They reached there in the evening. There also he was threatened. He thereafter came to Jalgaon and disclosed the incident to the owner of the vehicle Yogesh Aggarwal.

11. Mr. Naphade submitted that the said Yogesh Aggarwal should have been examined by the police. We do not think that it was essential to do so. He was not an eye witness. Except the fact that his vehicle was taken on hire, he could not have proved anything else.

12. We, therefore, do not see any infirmity in the deposition of PWs 4 and 5. We may also notice that according to Mr. Naphade, the motorcyclist who had taken the PW-4 to the police station had not been examined. The said person has again nothing to do in the matter. He was not a witness to the occurrence. The fact that the First Information Report was lodged promptly and the deceased was removed to the hospital for treatment in a tractor is not the subject-matter of any controversy. How PW-4 reached the police station may be relevant for judging his conduct. Failure to examine the owner of the motorcycle itself, in our opinion, would not lead to the conclusion that no First Information Report was lodged by PW-4.

A 13. PW-6 is Namdev. He was also going to Jalgaon. He found Bhaulal in an injured condition. He intended to ascertain from him the names of the assailants. Bhaulal disclosed the same to him. Both the courts below have placed implicit reliance on the testimony of this witness also.

B 14. Mr. Naphade's contention that as according to this witness heavy bleeding took place and about two liters of blood accumulated around the body of the deceased and, thus, it was impossible for the deceased to disclose the names of the assailants, cannot be accepted. Only because there had been profuse bleeding, the same by itself would not lead to the conclusion that the deceased was not in a position to speak.

C 15. We may also notice that the doctor found the following external injuries on the person of the deceased :

- D "1. Injury over the right ear 4 ½" in length and 2" in breadth. It was brain deep.
2. Injury extending to as occiput to left mastoroid 4" in length x 1" breadth.
- E 3. Incised wound from medical aspect of scapula to the upper border upto upper one-third of the shoulder. Parallel to the first to the first injury.
4. Incised wound, 3" in length 1 ½" in breadth bone deep from the medical aspect of the scapula to the left shoulder joint.
- F 5. Penetrating wound above the right superior 1" x 1" x 1" brain deep.
6. Incised wound from right angle of the mouth extending to the mandible of the size of 3" x 1".
7. Incised wound over the lower end of the scapula transverse in direction 1" x ½".
- G 8. Incised wound on the right midclavical line 3" below postal margin, transverse in direction 3 ½" x ½".
9. Incised wound 3" below umbilicus transverse in direction, 3 ½" on the left side and 2" on the right side.

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10. Incised wound 4" above the wrist joint 1" x 1" round shape. A
11. Amputated left three fingers from the proximal M.P. joint.
12. Right thumb was cut only the skin tap was left.
13. Penetrating wound arising from the 8th rib, at midaxillary line on the left side, 4 curve in shape upto point 4" from the L 3 level extending to the abdominal cavity with exposure of abdominal viscera." B

Apart from the external injuries, the doctor noticed the following internal injuries :

- “1. There was a fracture of the right temporal bone.
2. Superior orbito bone was fractured, on opening the skull the brain was lacerated on the right side.
3. Fracture of the 8th, 9th, 10th, 11th , 12th ribs on the left side.” D

16. PW-13 is Dr. Ulhas Patil. According to the said witness, injuries nos. 5 and 13 were on the vital parts of the body and were sufficient in the ordinary course of nature to cause death. The nature of the injuries suffered by him as also opinion of the doctor is not in question. It is furthermore accepted that more than one weapon was used in commission of the murder of Bhaulal. The investigation of the offence was made by Dhanraj Gopalrao (PW-17) and Popat (PW-15). Recovery of knife as also the blood-stained clothes of Accused No. 3 was made. E

17. Apart from the direct evidence of PWs 4, 5 and 6, that motive for commission of the offence has also been proved by PW-2. The fact that the First Information Report was lodged against Hiranman, father of the Accused Nos. 2 and 3 and Manilal (Accused No. 2) for attempting murder of Bhaulal and Crime No. 81 of 1990 was registered against the deceased and some 8-9 persons for committing the murder of Hiranman is not disputed. F

18. We have also noticed that Accused No.2 has also made a disclosure statement leading to recovery of the weapon of offence, which was concealed at Saptashringi Gadh. Even Accused No. 1 made a H

- A disclosure statement and showed the place where the blood-stained clothes were burnt. The weapon was found to be tainted with blood. The place where the weapon of offence was concealed was at a distance of 250 k.m. from the place of incident. The said material objects were said to be containing blood which was found to be belonging to Group-B. The blood group of the deceased was also 'B'.

19. We, therefore, are of the opinion that there is no infirmity in the impugned judgment. The appeal being devoid of any merit is hereby dismissed.

C K.K.T.

Appeal dismissed.