

A STATE OF MAHARASHTRA  
v.  
PRAKASH SAKHA VASAVE AND ORS.  
(Criminal Appeal No. 654 of 2004)

B JANUARY 21, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]**

C *Penal Code, 1860 – s.302/34 – Murder – By three  
accused – Eye-witnesses to the incident – Motive proved –  
No overt act attributed to third accused – Conviction by trial  
Court – Accused 1 and 2 sentenced to death and accused 3  
sentenced to life imprisonment – Acquittal by High Court on  
the ground inter alia that version of eye-witnesses not reliable  
D and that there was delay in lodging FIR – On appeal, held:  
On facts, evidence of eye-witnesses reliable – Reasons  
indicated for acquittal of accused Nos.1 and 2 not justified –  
However, their case does not fall in the category of rarest of  
rare case – Hence, sentenced to life imprisonment – Acquittal  
E of third accused is justified.*

**Appellants-accused were prosecuted for having  
caused death of one person. According to prosecution,  
appellant Nos.1 and 2 were the brothers and appellant  
No.3 was the uncle of the wife of the deceased. They  
F were annoyed with the deceased because he was having  
illicit relationship with another woman. PWs.3, 4 and 6  
were the eye-witnesses. All the three accused were  
convicted u/s.302/34 IPC. Accused 1 and 2 were awarded  
death sentence while accused 3 was given life  
G imprisonment.**

**High Court acquitted all the accused on the grounds  
that there was delay in lodging FIR and the place of its  
recording was doubtful; that PW3 did not speak about the**

assault by A2 with knife; that no overt act was attributed by PW6 to A-3; that PW4 did not say that the axe was fixed on the head; and that evidence of PW2 was full of contradictions as there was discrepancy about the recovery. Hence the present appeal.

Party allowing the appeal, the Court

HELD: 1.1. High Court was not justified in directing acquittal of A1 and A2. The conclusion of the High Court is erroneous because PW-4 in his evidence has categorically stated that the deceased was having injury on his body due to assault by means of axes. One axe was found inserted in the bone of head near the left ear. The handle of that axe was in a broken condition. According to the evidence, the axe was inserted near about 4 to 5 inches in the head. [Paras 6 and 5] [455-F-H; 456-G]

1.2. The High Court has come to an absurd conclusion that the eye-witnesses PWs 3 and 6 gave account of 4 to 5 external injuries but the witnesses did not utter a single word about remaining 15 injuries. A witness who witnesses an attack on another by three persons armed is not supposed to go on counting number of assaults on the parts of the body where the injuries were inflicted. They had categorically stated about the external injuries. PWs 3 and 4 came running after hearing shout of the deceased. So it was possible that they had not noticed the injuries which were earlier sustained due to assaults. They appeared at the spot when the assault was continuing. PW-4, in his cross-examination, had stated that on hearing shout of the deceased he rushed towards him and reached there within a short time. When he reached at the spot of incident, at that time the deceased was lying on the ground having injuries on his person. There is practically

A no cross-examination of any of the eye-witnesses i.e. PWs 3, 4 and 6 on the assault part. [Para 5] [456-A-E]

B 1.3. So far as the delay in lodging the First Information Report is concerned, it has been accepted that the informant went to the wrong police station first. That clearly explains the delay. [Para 6] [456-F-G]

C 1.4. However, in view of the facts of the case, it is apparent that the accused persons were annoyed with the deceased because of his having illicit relationship with another lady while his wife was alive. The case does not fall to the rarest of rare category. The appropriate sentence would be life imprisonment. [Para 6] [457-A-B]

D 2. So far as A-3 is concerned, the High Court has indicated sufficient reasons for holding him not guilty. Same needs no interference. [Para 6] [456-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 654 of 2004.

E From the Judgment and Order dated 11.10.2002 of the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No. 371 of 2002.

Pabbi (for Ravindra Keshavrao Adsure) for the Appellant.

F K. Sarada Devi, for the Respondent.

The Judgment of the Court was delivered by

G H DR. ARIJIT PASAYAT, J.1. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court directing acquittal of the respondents who were convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to suffer capital punishment so far as respondents 1 and 2, namely, Prakash and Ramu are concerned. Accused No.3-

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Shiva was convicted for the aforesaid offence but was sentenced to suffer imprisonment for life. All the three accused persons were also convicted for offence punishable under Section 506 read with Section 34 IPC. No separate sentence was imposed. A

2. Prosecution version as unfolded during trial is as follows: B

Jaitubai is the sister of respondent Nos.1 and 2 and niece of respondent No.3. Jaitubai was married to Madhukar (hereinafter referred to as the deceased) long back. Jaitubai had a son Alpesh (PW6) and daughter Hema (PW5). Alpesh and Hema are major. All of them are residents of Rayagaon (Patilfali), Taluka Nawapur, District Nandurbar. C

Deceased Madhukar brought Ramabai, a married woman and kept her in his house. On 15.7.2001, first husband of Ramabai, alongwith 15 to 20 persons came to Madhukar. There is a custom prevailing in their community, which is commonly known as ZAGDA system. As per this custom compensation is required to be paid to former husband. Pursuant to ZAGDA system, Madhukar paid Rs.5,051/- to the former husband of Ramabai. Thereafter Madhukar was allowed to marry Ramabai. Jaitubai and Ramabai stayed with Madhukar for a period of 15 days. D

On account of marriage with Ramabai, the married life of Jaitubai was disturbed. Accused nos. 1 to 3 were not happy over this affair. They were shocked to know that their brother-in-law Madhukar married Ramabai and kept her in the house which adversely affected the married life of Jaitubai. Accused became furious and decided to teach a lesson to Madhukar. E F

The incident occurred on 16.7.2001 at about 6.30 p.m. at a close proximity of the house of deceased Madhukar. Madhukar gave alarm to the effect "MARLE, MARLE". On hearing the alarm of Madhukar, Reenabai (PW 3), sister of G H

A Madhukar, Gemji (PW 4), brother of Madhukar, daughter Hemabai (PW 5) and son Alpesh (PW 6) immediately arrived on the spot in order to see what had happened to Madhukar. Surtan (PW 7), Gulabsingh (PW 8) and other persons from neighbourhood also arrived on the spot after having heard the alarm of Madhukar. Accused Prakash went inside the house and brought two axes. He retained one axe with him and handed over another axe to his brother Ramu. Accused no.3 Shiva caught the legs of Madhukar by means of rope. Accused no.1 cut the left hand of Madhukar. He also cut right foot of Madhukar. Accused no.2 inflicted axe blows on the right eyebrow and near the left ear of Madhukar. The blow was given with so much force that the blade of the axe stuck into the head of Madhukar and handle of the axe was broken. Accused no.2 brought knife from the house and inflicted blows on the back of Madhukar by means of knife. Reenabai (PW 3) tried to rescue her brother Madhukar, however, because of threats administered by the accused, she did not dare to rescue her brother Madhukar. In the presence of dear ones, Madhukar was brutally assaulted. His organs were severed by means of axes. But the dear ones and close ones could not offer any kind of help to Madhukar. After the brutal assault on Madhukar, accused nos. 1 to 3 disappeared from the scene of offence.

Reenabai (PW3) asked Alpesh (PW6) to go to the Police Patil. Alpesh (PW6) went to Pangram and contacted Police Patil Shamji Gavit (PW11). Alpesh (PW-6) narrated the entire incident to him. Police Patil Shamji (PW 11) went to Navapur Police Station on the bike belonging to Sarpanch and disclosed the occurrence to the Police. Reenabai (PW3) lodged FIR (Exh.14) at 10.30 p.m. On the basis of FIR (Exh. 14) Crime No. 55/2001 came to be registered. P.1. Pradip Sonawane (PW18) carried out further investigation of the crime and, after completion of the investigation, sent up the charge sheet against the accused nos.1 to 3. Learned Judicial Magistrate, First Class, Navapur, District Nandurbar, committed the

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accused nos.1 to 3 to the Court of Sessions to stand their trial. A

Since the accused persons pleaded innocence trial was held. As noted above, the trial Court found the accused persons guilty and death sentence in respect of A-1 and A-2 and life imprisonment to A-3 was awarded. Three witnesses were stated to have witnessed the occurrence. They are PWs 3, 4 and 6. The trial Court found their evidence to be adequate and accordingly recorded the conviction and imposed sentences. The High Court directed acquittal primarily on the ground that PW-3 did not speak about the presence of Gemji (PW-4) and there is doubt about the place of recording the first information report and delay in lodging it. PW-3 did not speak about the assault by A-2 with knife. Only PW-6 spoke about it. No overt act was attributed by PW-6 to A-3. PW-4 did not say that the axe was fixed on the head. The evidence of PW-2 was full of contradictions as there was discrepancy about the recovery. B  
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3. Learned counsel for the appellant-State submitted that the High Court has lost sight of several important factors and attached undue importance to minor discrepancies which are normal. E

4. Learned counsel for the respondents on the other hand supported the judgment of the High Court.

5. It is to be noted that PW-3 is the sister of the deceased. There was practically no cross examination on the assault part. So far as fixing of the axe on the head is concerned, unnecessary importance appear to have been attached to the same. As a matter of fact the conclusion of the High Court is erroneous because PW-4 in his evidence has categorically stated that the deceased was having injury on his body due to assault by means of axes. One axe was found inserted in the bone of head near the left ear. The handle of that axe was in a broken condition. According to the evidence the axe was inserted near about 4 to 5 inches in the head. Thereafter, all F  
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A the three accused persons ran away from the spot. The motive indicated was that the deceased was having a illicit relationship with another lady and, therefore, the family members of the wife were upset. The High Court has come to an absurd conclusion that the eye witnesses PWs 3 and 6 gave account of 4 to 5  
B external injuries but the witnesses did not utter a single word about remaining 15 injuries. The High Court came to the conclusion that if at all these two witnesses witnessed the incident from a short distance then it was not explained as to why they were not able to account for the remaining injuries  
C which were found on the body of the deceased. A witness who witnesses an attack on another by three persons armed is not supposed to go on counting number of assaults on the parts of the body where the injuries were inflicted. They had categorically stated about the external injuries 1, 4, 8, 14 and  
D 18. It is noticed that PWs 3 and 4 came running after hearing shout of the deceased. So it was possible that they had not noticed the injuries which were earlier sustained due to assaults. They appeared at the spot when the assault was continuing. As a matter of fact, in his cross examination PW-4  
E had stated that on hearing shout of the deceased he rushed towards him and reached there within a short time. When he reached at the spot of incident, at that time the deceased was lying on the ground having injuries on his person. As noted above, there is practically no cross examination of any of the eye witnesses i.e. PWs 3, 4 and 6 on the assault part.  
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6. So far as the delay in lodging the First Information Report is concerned, it has been accepted that the informant went to the wrong police station and when he was directed to go to Navapur Police Station, he went there and lodged the FIR.  
G That clearly explains the delay. In the ultimate analysis, High Court was not justified in directing acquittal of A1 and A2. However, so far as A-3 is concerned, the High Court has indicated sufficient reasons for holding him not guilty. Same needs no interference. But the reasons indicated for directing  
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acquittal of A-1 and A-2 are not justified. We, therefore, set aside the judgment of High Court so far as their acquittal is concerned. But considering the facts of the case, it is apparent that the accused persons were annoyed with the deceased because of his having illicit relationship with another lady while his wife was alive. The case does not fall to the rarest of rare category. The appropriate sentence would be life imprisonment. The State's appeal is allowed to the extent indicated above. Respondents 1 and 2 are directed to surrender to custody forthwith to serve the remainder of sentence.

K.K.T.

Appeal partly allowed.