Supreme Court of India
Dattu Ramrao Sakhare And Ors vs State Of Maharashtra on 8 May, 1997
Author: S Kurdukar
Bench: G.T. Nanavati, S.P. Kurdukar

PETITIONER:
DATTU RAMRAO SAKHARE AND ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 08/05/1997

BENCH:
G.T. NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

Present:

Hon`ble Mr. Justice G.T. Nanavati Hon`ble Mr. Justice S.P. Kurdukar Umesh Bhagwat, Adv. forthe appellant No.1 C.N. Sree Kumar, Adv for the appellant Nos.2-3 G.B. Sathe, Adv. for S.M. Jadhav, Adv. for the Respondent The following Judgment of the Court was delivered: JU D G ME N T S.P. KURDUKAR, J.

The appellants/accused have filedthis Criminal Appeal challenging the Judgment and order of conviction and sentence passed against them under Section 302 readwith Section34 IPCby the Bombay High Court Bench at Aurangabad on September 5, 1990. The first appellant is the husband of third appellant and the second appellant is their son. The prosecution case in brief is asunder:

(2) Appa (since deceased) was the brotherof A-1 and Chandrakant. In a partition between these three brothers by metes and bounds each one was cultivating the land fallen to his share. Their lands are situated at village Khudawadi, Taluka Tuljapur in District Osmanabad.There was, however a disputebetween Appa and A-1 in respect of the location of foot track. OnSeptember 25, 1987 at about 5.00 p.m.,Appa was working inthis field whereas his daughter, Sarubai (P.W.2)was grazing the cattle near about the place of incident. The appellants were also doing theiragricultural work in their

own land. According tothe prosecution the appellants came to the land of Appa and started assaulting him with axes and sickle. Sarubai (P.W.2) seeing the assault caused by appellants came near the place ofincident and requested themnot toassaulther father. A-1and A-2were assaulting with axes whereas A-3 was assaulting with a sickle.Due to this assault Appa fell down and made a signal to hisdaughter Sarubai to go to the abadi and call her mother Ambubai(P.W.1). Sarubai (P.W.2) wentto the house but finding that her mother was not there, she left the messagewith her aunt Muktabai,wife ofChandrakant that she be informed to come to the field with abullockcart asAppa was assaulted by the appellants. She then came back to the place of incident. Ambubai (P.W.1) when returned homefrom work, Muktabaiconveyed the message to her and thereafter she requested Shivaji (P.W.4)to geta cart.Shivajithen broughtthe cart fromMaruti and then they reached at the place of incident. At that time Appa was bleeding profusely and was unableto speak. Sarubai (P.W.2) told her mother that the appellants had assaulted him. Ambubai and Shivaji then put Appa into the cart and lift for the dispensary at Naldurg. Doctor on duty declared him dead. Ambubai (P.W.1) then went to the police station and lodged the first Information Report (Ex.31) at about 10.15 p.m. After registering the FIR the investigatingofficerproceeded to the hospital and thereafter to the place of incident. During the course of investigation, statements of various persons came to be recorded. The accused came to bearrested on 26.9.1987 and in pursuance of their statements the incriminated articles were seized. After completing the investigation the appellants were putup fortrial for an offencepunishable under Section 302/34IPC. (3) The appellants denied the chargeand claimed to be tried. According to them theyhave been falsely implicated in present crime. They had neither goneto the field ofAppa nor they had assaulted him. They pleaded that they are innocent and beacquitted.

(4) The prosecution in support of its case principally relied upon the evidence of eye witness Sarubai (P.W.2) (minor)aged about 10 year. Ambubai (P.W.1) Shivaji (P.W.4) and Shanker (P.W.5) were the main witnesses to corroborate the evidence of Sarubai. The prosecution also reliedupon the various panchnamasincluding the panchnamas relating to the recovery of incriminatingarticles. Dr.Onkar Swami (P.W.3)performed the autopsy on the dead body of Appellants did notlead any evidence in defence.

(5) The Learned Sessions Judge Osmanabad onappraisal of oral and documentary evidence on record by hisjudgment and order dated 1.7.1988 convicted the first appellant under Section302 IPC for committing the murder of Appa. The appellants Nos.2 and 3, however weregiven the benefit of doubt and cameto be acquitted. Aggrieved bythe judgment and order of conviction and sentencethe first appellant Dattu preferredCriminal AppealNo.352 of 1989 whereas State of Maharashtrapreferred Criminal Appeal No.319 of1988 challenging the order of acquittal of A-2 and A-3. Both the appealswere heard together and the DivisionBench of the High Court by its judgment and order dated September 5,1990 dismissed Criminal Appeal No.352 of 1989 andallowed the Criminal Appeal No.319of 1988 filled by the state and convicted A-2 and A-3under Section 302/34 IPC. It is the judgment and order passed by the High Courtwhich is the subjectmatter of challenge in this appeal. (6) The entireprosecution case restedupon the evidence of Sarubai(P.W.2) a child witness aged about 10 years. It is, therefore, necessary to find out as towhetherher evidence is corroborated from other evidence on record. A child be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the

evidence Act provided thatsuch witnessis able to understand the question andable togive rational answers thereof. Theevidence of a child witness and credibility thereof would depend upon the circumstances of each case. case. The onlyprecaution which the court should bear inmind while assessing the evidence of a child witnessis that the witness must reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no practicethat in every case the evidence of such a witness becorroborated before a conviction can be allowed to stand but, however as a ruleof prudence the courtalways finds itdesirable to have the corroboration tosuch evidence from other dependable evidence onrecord. In the light of thiswell settledprinciple we may proceed to consider the evidence of Sarubai(P.W.2).

(7) The learned trialjudge recorded his reasons and found that Sarubai was a competent witnessand her evidence is unblemished. The High Court also accepted the evidence of Sarubaias reliable one. We, therefore, do not see any reason to disagree with the observations ofthe learned courts below as regards the evidenceof Sarubai Wewere taken through the judgments of the courts below as regards the evidence of Sarubai We were takenthough the judgments of thecourts below aswell asthe evidence ofSarubai. She had stated in her evidence that whenshe was grazing the cattle in the field at about 5.00 p.m, all the three appellants camein her land andstartedassaulting Appa(her father). A-1 and A-2 had axesin their hands while A-3 was having a sickle in her hand. On seeing a ghastly attack on her father she was verymuch scared, Appa then made a signal to herto go the abadi andinformthe mother Ambubai (P.W.1). She then immediately proceededtowardsabadi and on the way she saw Shanker (P.W.5) who was working in his field. After reaching home she found that her mother had not returned from the work and, therefore, left themessagewith Mukta, the aunt, about the assault on Appa and requested her to askher mother Ambubai (P.W.1) to reach thefield with a bullockcart. Sarubai (P.W.2) then returned tothe place of incident. In the mean time Ambubai (P.W.1) who returnedfrom the work got the message andrequested Shivaji (P.W.4) to get the cart. Shivaji(P.W.4)then brought the cart of Maruti in which they reached at theplace of incident. Sarubai(P.W.2) narrated the entire incident to Ambubai (P.W.1). Appa was then kept in the chart andwas taken to the dispensaryat Naldurg. Doctor on duty, however declared him dead. We have carefully examinedthe evidence ofthis witnessand we find that it is totally unblemished. There is no challenge to her evidence that she was inthe field at the time of incident. Her evidence finds corroborationfrom Shanker(P.W.5)who hadstated that when he wasin his field he heard commotion inthe field of Appa andafter going there he saw sarubai also in the field. Ambubai (P.W.1) in her evidence stated that her daughter sarubai (P.W.2) had gone to the field along with her father and she herself had gone towork inanotherfield. When shereturned home in the eveningshe got a message from Muktabai about the assault and toget a bullock cart in the field. Shivaji (P.W.4) has also stated onoath that when he received amessagefrom Ambubaito geta carthe gotthe same from Maruti and thereafter he and Ambubai went to the field. Sarubai (P.W.2) then narrated the incident toher mother. Appa wasthen taken to the dispensaryat Naldurg in the bullock cart where he wasdeclared dead by theMedical officer. From the evidence of these witnesses it is clear that all these movements tookplace in a very shortspan oftime because they reached the dispensary at Naldurg which is at a distance of 15kms., from Khudawadi at about 9.30 p.m. or 10.00 P.m. We,therefore, seeno hesitation in confirming the findings ofthe courts below that Sarubai was present in the field alongwith her fatherat the time of incident. (8) The second circumstance which lends corroboration to the evidence of Sarubai (P.W.2) is that Ambubai(P.W.1) in her First

information Report lodged at10.15 p.m. had given out the names of all the three appellants as assailants of Appa. Althoughit was contended on behalf of the appellants that the evidence ofSarubai (P.W.2) is concocted and unreliable butwe seeno substance inthis contention. Dr. Onkar Swami (P.W.3) whoheld the autopsy on thedead body of Appa noted 16 injuries on thedead body of Appa. He stated that these injuries were possible by three different weapons and not by one weapon. It is needless to set out the evidence of Dr. Onkar in detail since there isno challenge to thefact that Appamet with a homicidal death due to injuries on his person. The evidenceof Dr. Onkar (P.W.3) corroborates the evidence of Sarubai (P.W.2) when she stated that A-1 and A-2 had assaultedher father withaxes and A-3 with asickle.Out ofthese 16 injuries as many as 10were incisedwoundsand injury No.3 was curved lacerated wound which was attributableto A-3.Having regards to the nature and the size of theseinjuries we have no manner of doubt that this ghastly attack couldnot be caused by one person. The High Courtin our considered view rightly held that the medical evidence corroborates the evidence of Sarubai (P.W.2).

(9) Inaddition to the above substantive evidence the prosecution also relied upon the circumstantial evidence, namely,recovery of certain incriminating articles. Clothes of theaccusedwere seized under panchnama Ex.55 andthis panchnama is proved by panch witnesses Ajmoddin (P.W.10). Dhoti and cap of A-1 were sentto the chemicalanalyser and his report is at Ex.28, wherein it is statedthat the cap had human bloodstains of blood groupA whichwas thesame blood group ofthe deceased. The blood group of A-1 is AB. This weapons like axes and asickle were claimed tohave been recovered at the instance of appellants pursuant to the statement made under Section 27of the EvidenceAct butthis evidence was not accepted by the trial court and we do not proposeto accept the same.

(10) After going through the judgmentsof thecourts below we are satisfied that the high Court was fullyjustified in reversing theorder of acquittal passed by the trial court as regards A-2and A-3 . Thehigh Court was also right in upholding the conviction of A-1.

(11) Inthe result there isno substance inthe criminal appeal and it is accordingly dismissed. From the office reportdated25th January,1997 it appears that the appellants arein jail and, therefore, no further order in that behalf is called for.