



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 130 OF 2018

Balaji s/o. Narhari Revanwar
Age: 35 years, Occu.: Labour,
R/o. Saibaba Nagar, Parbhani,
Tq. & Dist.Parbhani.

..Appellant

VERSUS

The State of Maharashtra

..Respondent

...
Mr.Satej S.Jadhav, Advocate for Appellant
Mr.S.D.Ghayal, APP for Respondent
...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 20 SEPTEMBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Verdict of conviction handed down by learned Sessions Judge, Parbhani dated 10-01-2018 is taken exception to here by appellant Balaji Narhari Revanwar, who is held guilty for offence under Section 302 of the Indian Penal Code (IPC) and sentenced to imprisonment for life.

PROSECUTION CASE IN BRIEF

2. PW7 Sk.Habib, brother of deceased, set law into motion by informing Nawa Mondha Police Station, Parbhani that on 21-05-2016 at around 04:00 p.m. on receiving information about assault on deceased by owner of pani puri

stall, he visited the spot and there he found his brother Younus lying in the pool of blood. On his report, Nawa Mondha Police Station, Parbhani lodged crime, which was investigated by PW13 Deshmukh (PSI). On being chargesheeted, he was tried by the learned Sessions Judge, Parbhani, who after hearing both the sides and on analyzing evidence adduced by the prosecution, accepted the case of prosecution as proved and thereby held appellant guilty for charge under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life.

It is the above judgment and order of conviction, which is now assailed by convict by preferring instant appeal by invoking Section 374 of the IPC.

SUBMISSIONS

On behalf of appellant :

3. Questioning maintainability and sustainability of the impugned judgment, learned Counsel for the appellant would point out that motive has not been established by prosecution, secondly, all witnesses examined by the prosecution are interested witnesses and thirdly according to him, it is not a case of homicidal death rather it is at the most attempt to commit culpable homicide. Elaborating such submission, he would submit that going by story of prosecution, it is emerging that accused and deceased indulged in heated exchange of words and thereafter, there are accusations of assault by means of knife, which is vegetable cutting knife and being running an eatables shop,

it was an implement used by the accused for cutting onion. He had no ill intention nor the incident was premeditated and as such it is his submission that by no means offence under Section 302 of the IPC could be attracted. According to him, at the most, the case would attract offence under Section 304 part I and case would not travel beyond it. According to him, there is no proper appreciation of evidence and there is non-consideration of settled legal position, hence he seeks interference at the hands of this Court.

On behalf of State :

4. In answer to above, learned APP would submit that there is overwhelming evidence. All witnesses examined by prosecution are deposing about seeing the actual occurrence. He would point out that though there was some exchange of words, convict had allegedly used a big knife and he has given two blows on the chest of deceased. The impact is evident from testimony of PW3 Dr.Mohd. Faisal, Autopsy Doctor. Deceased died on the spot. Therefore, both intention and knowledge can clearly be attributed. Therefore, according to him, considering such evidence adduced by the prosecution, the learned trial Court has correctly held accused guilty for charge under Section 302 of the IPC and so he prays to dismiss the appeal for want of merits.

5. In support of its case, prosecution seems to have adduced evidence of in all 13 witnesses and has also relied on documentary evidence. The sum and substance and status of prosecution witnesses are as under :

EVIDENCE OF PROSECUTION

PW1 Mohd. Haroon S/o. Mohd. Salim Qureshi deposed at Exh.19 that on 21-05-2016, after taking lunch, when he was returning to his tailoring shop, he saw the appellant running in scared condition. According to this witness, he asked him why he was running, but there was no response. He stated that that accused was running with cash box and was having knife in his hand.

PW2 Yasin Khan S/o. Noor Mohd. Khan, a driver of the Ambulance, stated that on 21-05-2016, he received telephonic call and therefore, he went to Wangi road and he carried dead body to Civil Hospital. His evidence is at Exh.20.

PW3 Dr.Mohd. Faisal S/o. Fazlur Raheman, Autopsy Doctor, who deposed about receiving dead body, noticing external and internal injuries, conducting post mortem and issuing opinion about death due to “terminal cardio respiratory arrest due to hemorrhagic shock with bilateral lungs rupture due to stab injuries”. He identified the weapon confronted to him and opined that injuries are possible by the same. His evidence is at Exh.22.

PW4 Mohd. Rahim S/o. Kadtuji Qurashi, a grocery shop owner, stated that he runs a shop. According to him, he knew accused, who was running a pani puri stall. According to him, incident took place on 21-05-2016. According to him, while he was in shop, he heard heated exchange of words between deceased and accused and at that time, accused took out knife, caught-hold of neck of deceased and gave blows on the chest of deceased twice and thereafter, he took said knife and fled with the cash. According to him, accused died on the

spot. He gave description of the knife and he identified the same in the Court. His evidence is at Exh.30.

PW5 Nasir Ahmad S/o. Khalil Qurashi deposed that on 21-05-2016, while he was proceeding towards his house on Wangi road, he saw heated exchange of words between deceased and Pani puri stall owner. He claims to have ignored the same. Then, he saw Pani puri stall owner giving blow of knife on deceased Younus and running with the knife. He stated that he chased him but he could not catch him. Then he returned to the spot and saw deceased Younus lying on his stomach. He identified the accused. His evidence is at Exh.31.

PW6 Sk. Mujib Mohd. Issak also stated that he witnessed quarrel between Pani puri stall owner and one person in front of Shiva tent house at around 04:00 p.m. on 21-05-2016. He witnessed that Pani puri stall owner took out knife and gave a blow of said knife on the chest of the person with whom he was quarreling and thereafter, he ran away. Injured fell on ground in motionless condition on account of injury on chest. He identified accused in the Court. His evidence is at Exh.32.

PW7 Sk. Habib Sk. Amin Qurashi is brother of deceased and informant, who lodged report on receipt of information. His evidence is at Exh.33.

PW8 Anand S/o. Vinayakrao Deshmukh, Pancha to memorandum of disclosure regarding handing over weapon and its seizure vide panchanama Exh.38 and Exh.39. His evidence is at Exh.36.

PW9 Mohasin Ahmad Khan S/o. Samandarkhan acted as Pancha to spot panchanama. His evidence is at Exh.40. Spot panchanama is at Exh.42. Police have seized a pair of chapple Exh.41, sample of blood stained soil Exh.43, blood collected with the help of cotton ball Exh.44 and bank pass book Exh.45.

PW10 Rehamatali S/o. Majaharali Saudagar is Pancha to seizure of clothes of accused. His evidence is at Exh.46. Seizure panchanama is at Exh.48 and Exh.49.

PW11 Sunil Shivram Wasalwar is second Pancha to memorandum of disclosure regarding handing over of knife by accused, its seizure and he is carrier of Muddemal. His evidence is at Exh.51.

PW12 Chandrashekhar S/o. Narsingrao Deshpande is Pancha to seizure of clothes of deceased received from Hospital. His evidence is at Exh.55.

PW13 Shishirkumar S/o. Kailasrao Deshmukh (PSI), who conducted the investigation and after investigation, chargesheeted accused. His evidence is at Exh.56.

6. Taking into account submissions before us, there is absolutely no dispute about occurrence or involvement of accused. Learned Counsel for the appellant has canvassed only on the legal aspect i.e. case being not premeditated or planned and occurrence taking place all of a sudden in the backdrop of heated exchange of words and so it is not a case of murder. Rather

it is a case of culpable homicide not amounting to murder. In the light of above submission made before us, we have to consider the case in very narrow compass. However, we still wish to narrate the medico legal expert's evidence i.e. **PW3** Dr.Mohd. Faisal, who has opined about mode and nature of death.

External injuries :

1. Stab injury right upper chest at the level of second rib 6 x 2 x 9 cm. fracture of second rib right.
2. Stab injury left upper chest second rib level 3 x 1 x 13 cm second rib fracture left side.
3. Subcutaneous bruising both below the stab injury having sharp and clean edges regular margins.
4. Fracture of second rib right and fracture of second rib left.

Internal injuries :

1. Second rib right and left side pleura ruptured bilateral. Both the lungs were ruptured at upper lobe.

This witness opined that cause of death is due to "terminal cardio respiratory arrest due to hemorrhagic shock with bilateral lungs ruptured due to stab injuries".

Cross-examination of above witness shows that there is virtually no cross on mode of death. Cross is confined to nature of injuries, its dimensions, nature of weapon. Therefore, here there is no hesitation to hold that death of Younus is nothing but homicidal one.

7. Now we have to deal with the point raised before us that is it a case which would attract at the most Section 308 of the IPC i.e. committing culpable homicide or at the most culpable homicide not amounting to murder under Section 304 Part I.

ANALYSIS

8. We have re-appreciated the entire evidence adduced by prosecution. What is noticed by us is that PW1 Mohd. Haroon seems to have merely seen accused running with a knife and subsequently, he learnt about death of Younus. PW4 Mohd. Rahim, PW5 Nasir Ahmad, PW6 Sk.Mujib, PW7 Sk.Habib are examined by prosecution as they claim to have seen occurrence.

EYE WITNESSES

9. **PW4** Mohd. Rahim deposed that at around 04:00 p.m. while he was in his shop, at that time, he saw heated exchange of words between accused and deceased. At that time, accused took out knife then caught-hold neck of deceased and gave blows of the knife twice on the chest of deceased. Presence of this witness in his own shop near the spot of incident itself is admitted by defence. Therefore, there does not seem to have any dispute that he eye witnessed the occurrence.

10. **PW5** Nasir Ahmad has deposed that he saw heated exchange of words between deceased and Pani puri stall owner. Even he stated that he saw Pani

puri stall owner giving blow of knife on Younus and thereafter running away. He even chased him but could not succeed.

Even in his cross-examination, nothing damaging has brought to disbelieve his testimony.

11. **PW6** Sk. Mujib also deposed that he witnessed quarrel between Pani puri stall owner and one person and he witnessed that Pani puri stall owner took out knife and gave blow of the same on the chest of the person with whom he was quarreling and thereafter, flee away.

All these three witnesses identified article knife. They also identified accused, who was present in the Court.

12. Consequently here above three witnesses are infact lending support to each other on the point of occurrence taking place at around 04:00 p.m. They have named appellant accused to be the owner of Pani puri stall and even narrated about knife being used for stabbing. In our opinion, evidence of **PW4** Mohd. Rahim assumes importance. This witness is knowing both accused as well as deceased. Regarding the actual occurrence, he stated that initially there was heated exchange of words between appellant and deceased and at that time, appellant took out knife then he caught-hold of neck of deceased and thereafter, given blows on the chest that too twice and thereafter, decamped with knife.

13. In our considered opinion, the sequence stated by this witness assumes importance. Though there was heated exchange of words, it is clearly coming on record that accused had initially caught-hold of neck of deceased and thereafter, he had stabbed deceased twice on the chest part. The impact is already reproduced by PW3 Dr.Mohd. Faisal, Autopsy Doctor. Therefore, taking testimony of this witness into consideration, in our opinion, there is no force in the submission of learned Advocate for the appellant that it is not a case of murder. Here intention and knowledge is writ large. In our opinion, clause 3rdly of Section 300 of the IPC is completely attracted. Taking into account the nature of the weapon, knowledge can definitely be attributed to the appellant that he knew that body part on which injury is directed is sufficient in ordinary course of nature to cause death. Here there is high degree of probability of death as there are more than one blows and that too on vital part.

Resultantly, in our considered opinion, learned trial Court has committed no error whatsoever in accepting the case of prosecution in recording charge under Section 302 of the IPC to be proved and has further rightly held that the case of prosecution is worthy of credence and so proved. We do not find it a case to be attracting Section 308 (attempt to commit culpable homicide) or Section 304 Part I (culpable homicide not amounting to murder) as is tried to put-forth before us,. It is a clear case of murder.

14. We have gone through the impugned judgment. Learned trial Court has appreciated available evidence in correct spirit and in the backdrop of legal requirement. Reasons are sound for accepting the case of prosecution. No patent perversity or illegality is shown to cause interference. Hence, we proceed to pass following order :

ORDER

Criminal Appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT