

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

CRIMINAL APPEAL NO.119/2013

Rameshwar Shivram Gaikwad
Age 26 years, Occ-Nil,
R/o Kanegaon, Tq. Lohara
Dist.Osmanabad

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Inspector
Lohara Police Station,
Tq.Lohara, Dist.Osmanabad

.. RESPONDENT

...
Mr. P.K.Joshi h/f Shri S.D.Karkare, Advocate for appellant.
Mr. A.R.Borulkar, APP for Respondent-State

...

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA,JJ.**

DATED : 15TH JULY,2016

ORAL JUDGMENT [PER A.V.NIRGUDE,J.] :-

This Appeal challenges judgment and order dated 19/1/2013 in Sessions Case No.7/2011 passed by Additional Sessions Judge, Omerga convicting the appellant for offence punishable under Section 302 of IPC and sentencing him to suffer life imprisonment with fine of Rs.3000/- in default simple imprisonment for one month.

2] It was alleged that the appellant-accused attacked Dnyandeo and his son Netaji on 8/10/2010 at about 7 p.m. in village Kanegaon, Tq. Lohara, Dist.Osmanabad and committed Dnyandeo's murder.

3] In order to prove the prosecution case, 7 witnesses were examined. The most important witness is P.W.3 Netaji. He stated that on 9/10/2010 while he was going from Bhimnagar Chowk towards his house, he saw accused. He Inflicted one blow of sickle on his head. He shouted in alarm. Hearing his shouts, his mother and father came running to the spot. While accused was about to give second blow, Netaji raised his left hand and sustained injury on his hand. Thereafter, the accused gave a blow of sickle on the head of Netaji's father Dnyandeo. Both got injured. Thereafter, mother and other brother, cousins of Netaji rushed to the spot and took Netaji and Dnyandeo to hospital. While Netaji was at Osmanabad hospital, at about 5 p.m. police recorded his statement which was converted into FIR. Offence was registered on 11/10/2010 at about 5 p.m. Initially, offence was registered under Section 326 of IPC. Dnyandeo died while taking treatment in Solapur hospital on 14/10/2010 and thereafter offence under Section 302 of IPC was added.

4] During the investigation, the appellant was arrested on 12/10/2010. While he was in custody, his clothes were seized and at his instance, the sickle was discovered from a spot near his house at village Kanegaon.

5] P.W.No.6 stated as to how they went with the accused to his house and discovered the sickle. He also described as to how the clothes of the accused were seized. This witness as well as investigating officer stated that they found blood like stains on the

sickle as well as on the clothes seized from the accused.

6] P.W.No.4 is Sushila, Netaji's mother and Dnyandeo's wife. She stated that on the date of incident at about 7 p.m. she was sitting in front of her house, she heard shouts of her son Netaji and therefore, she and her husband went to the Chowk which was close to her house. She saw the accused had inflicted a sickle blow on Netaji's head, she also saw accused gave blow of sickle on the head of Dnyandeo. Dnyandeo became unconscious. Netaji was conscious. Thereafter, her other son Sheshrao arranged a vehicle and took both the injured persons to civil hospital, Lohara, from where they were taken to Osmanabad civil hospital. On the same day, Dnyandeo was shifted to civil hospital, Solapur. After 6 days, her husband Dnyandeo died.

7] The next important witness of the prosecution is Dr.Santosh Bhoie who was the autopsy surgeon. He stated that on 15/10/2010, while he was on duty, he examined the body and performed post mortem. He said that the cause of death was head injury. He described the head injury and stated that due to the external injury which by that time sutured he found linear fracture of skull having 18 cm. length. This fracture was extending from right frontal eminence to left parietal eminence meninges. He also found corresponding internal injuries. He found meninges congested, extradural haematoma on left side. Subdural haematoma on left side and arachnoid hemorrhage. He also found entire brain surface covered with red thin blood film. He also found about 1200 gm. Of oedematter in the brain. He specifically opined that the injury was sufficient in ordinary course of thing to cause death. The doctor also opined that the injuries on the head were possible by use of the weapon produced before the Court.

8] The clothes of the deceased were also taken in charge. All the seized articles such as clothes of the accused, clothes of the deceased and sickle were sent for Chemical analysis. Witness also identified this weapon as the murder weapon.

9] The learned Judge of the trial Court believed prosecution case and convicted the appellant-accused.

10] The learned counsel for appellant-accused argued that in this case there are several defects in the prosecution case which would entitle his client to benefit of doubt. He pointed out that there is 10 hours delay in recording of FIR. He also contended that if the incident took place at a public place, there ought to have been independent witnesses and in absence of such witnesses, the depositions of interested witnesses should be discarded. He suggested that the prosecution tried to shift the spot of incident from one place to other. He then suggested that the defence could prove on probability that victim died due to scuffle between the victim and his son Netaji.

11] We perused entire record with the help of learned counsel for the parties. The following points arose for our consideration :

Whether the case suffers infirmity due to delay in recording of FIR. We do not accept the contention that there was delay in recording of FIR. The incident took place in the evening time. The injured persons were first taken to village Lohara from where they were taken to Osmanabad. On the same day, Dnyandeo victim was taken to Solapur. By this time, the complainant, his family members were naturally busy in attending the health of Dnyandeo. Nonetheless the police orally recorded Netaji's statement while he

was still in hospital at Osmanabad. We find that recording of such statement was quite prompt action on the part of the police. If at all there is a time gap between the incident and the recording of the statement of the complainant, it was only because of exigency of situation. There was no intentional delay and the time gap was quite natural. Besides there is no indication that the witnesses tried to unnecessarily implicate the accused. The learned counsel for the appellant tried to bring to our attention a lapse in the prosecution story. The complainant Netaji stated in his deposition before the Court that he was alone when he was attacked and hearing his shouts, his parents came there. On the other hand, in FIR he pointed out that the complainant intimated that he and his father were already present and thereafter the incident occurred. There is indeed variance between earlier statement and the deposition, yet it does not fatal to the prosecution. It is of minor nature and would not make any difference.

12] The Id. Advocate for the appellant then pointed out that there is no independent eye witnesses examined by prosecution. Both the eye witnesses are related to deceased. In our view, mere non-examination of independent eye witnesses is not fatal to the prosecution case. The injured witness found to be more reliable. Learned counsel then pointed out though Netaji the complainant stated that he was assaulted and injury was caused to him yet the prosecution could not prove his injuries by examining medical officer who had examined him. Netaji has narrated the entire incident and categorically deposed that he too injured in the incident. In the cross examination there is no challenge to facts deposed to this effect by the witness. So it can safely be said that Netaji was an injured eye witness and therefore his evidence assumes greater importance. Even Sushila P.W.4 is trustworthy. She did not exaggerate the

account of the incident, her presence on the spot of incident was also natural. Hearing the commotion naturally she rushed to the spot. The prosecution could have also examined Sheshrao as witness but since he did not witness the incident, his deposition was avoided. This shows that Sushila was natural eye witness who saw the accused and the victims.

13] The defence of the accused is that Netaji and his father caused injury in an independent incident occurred in their house and scuffle took place in between them inside their own house resulting into injury to deceased. This defence appears to be a figment of imagination. The defence did not try to prove this defence even on probability. During the course of cross examination of prosecution witnesses no useful admissions were brought on record to accept the defence of accused. No defence evidence was led.

14] To us, this appears to be a straight forward case which does not require any interference in the judgment of the lower Court. On close scrutiny of evidence on record we are of the view that the reasons and findings recorded by learned Additional Sessions Judge are quite consistent with oral and documentary evidence on record. There is no perversity in any of the reasons and findings recorded by the trial Court. In absence of any case made out to interfere with the judgment and order passed by trial Court the appeal deserves to be dismissed. Accordingly, Appeal stands dismissed.

(V.L.ACHLIYA,J.)

(A.V.NIRGUDE,J.)

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