

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

CRIMINAL APPEAL NO. 510 OF 2012

Dulsingh alias Bodya s/o Hari Pawar,
age 59 years, occ. Prisoner,
at present in Central Prison,
Harsool, Aurangabad

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

Mrs. A.N.Ansari, advocate for the appellant
Mrs. R.K.Ladda, APP for Respondent/State

**CORAM : A.V.NIRGUDE &
INDIRA K. JAIN, JJ.
DATED : 12th January, 2016**

ORAL JUDGMENT : [Per Indira K.Jain, J.]

This appeal takes an exception to the judgment and order, passed by learned Sessions Judge, Nanded on 10.5.2012 in Sessions Case No. 12 of 2008. By the said judgment and order, learned Sessions Judge convicted the appellant/accused of the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life.

2] For the sake of convenience we shall refer the appellant in his original status as accused as he was referred before the Trial Court.

3] Prosecution case, briefly stated, is as under : -

- i) Deceased Nursing was residing with his wife and children at Banjara Tanda, Taluka Mahur, District Nanded within the jurisdiction of police station Sindkhed.
- ii) Accused was residing with his wife Aruna at some distance from the house of deceased. Accused suspected that Nursing had illicit relations with his wife Aruna. On that suspicion he used to threaten to kill Nursing.
- iii) Incident occurred on 25.4.2007 between 3.00 a.m. to 3.30 a.m. It is the case of prosecution that Nursing, his wife Sunita and children were sleeping on two cots in front of the courtyard of their house. Sunita heard cries of her husband Nursing "Are Bapre Melo". She got up and saw accused running from the spot with a weapon like Axe or Ballam in his hand. She identified the accused in the street light. Sunita also noticed the injuries on the cheek and neck of Nursing and oozing of blood. She found Nursing as dead. She rushed to the house of her cousin father-in-law Ganpat Pawar who was sleeping in his courtyard at some distance from the house of deceased. She alighted Ganpat and informed about the incident to him. Ganpat Pawar also saw the accused running from the spot.
- iv) In the morning at 6.30 a.m. Sunita lodged report with police station Sindkhed. On the basis of report, Crime No. 21 of 2007 was registered against the accused for the

offence punishable under Section 302 of the Indian Penal Code. On completion of investigation, charge sheet was filed before the learned Judicial Magistrate, First Class, Mahur, who in turn committed the case for trial to the Court of Sessions.

4] Charge of the alleged offence was explained to the accused vide Exh.2. He pleaded not guilty to the charge and claimed to be tried. His defence was of total denial and false implication.

5] Prosecution examined in all 12 witnesses to substantiate the guilt of accused. After going through the evidence adduced by the prosecution, accused was convicted and sentenced by the Trial Court as stated in paragraph 1 above. Hence, this appeal.

6] We have heard the learned counsel for the parties. Considering the facts and circumstances of the case, submissions made on behalf of the learned counsel for the appellant and the learned Additional Public Prosecutor for the State, the reasoning recorded by the Trial Court and evidence on record, for the below mentioned reasons we are of the opinion that accused assaulted Nursing with a deadly weapon on the vital part of body in the late hours of night and thereby caused his death.

7] The conviction of appellant is based on the evidence of eye witnesses PW 4-Sunita Nursing Pawar and PW 3- Ganpat Pawar who had seen the accused running away from the spot with a

weapon. PW 4-Sunita, as mentioned earlier, is wife of deceased Nursing and is complainant. She states that accused was suspecting her husband Nursing having illicit relations with his wife and on such suspicion he was threatening her husband. Regarding incident Sunita stated that at about 3.00 a.m. to 3.30 a.m. mid night she was sleeping in the courtyard of the house along with her elder daughter. Her husband Nursing and younger son were sleeping in the same courtyard on another cot. According to Sunita, before incident at about 8.00 p.m. to 9.00 p.m. she saw the accused taking round around their house while they were sleeping. She woke up on hearing cries of her husband "Are Bapre". When she woke up she saw accused had assaulted on the left shoulder of her husband by Ballam. She started shouting. Her father-in-law Ganpat, residing in neighbouring house, rushed to the spot. She stated that due to assault her husband sustained injuries on the shoulder and died on the spot. She states that Ganpat Pawar had also seen the accused running away from the spot. PW 4-Sunita then stated that in the morning she had been to Sindkhed police station and lodged report. First Information Report is proved by her at Exh.27. She reiterated that she had seen the incident in street light. She identified the blood stained clothes of her husband before the Court.

8] The evidence of PW 4-Sunita is corroborated by PW 3-Ganpat Pawar. He has not actually witnessed the incident, but he saw the accused running away with Ballam. It is stated by Ganpat Pawar that before the incident at around 9.00 p.m. he saw the accused moving around the house of deceased. This witness also

supports the testimony of PW 4-Sunita on the point of motive. He stated that accused was quarrelling with Nursing alleging that he was having illicit relations with his wife and he was threatening to kill Nursing. On account of frequent assaults and quarrel, Shankar nephew of accused reached the wife of accused to her parental house.

9] On going through the evidence of these two star witnesses, we could not see any material omission or contradiction in their evidence. We, therefore, have no hesitation in relying on their testimonies.

10] In addition to the evidence of PW 4-Sunita and PW 3-Ganpat Pawar, prosecution has also placed reliance on the circumstantial evidence. Those circumstances are : -

- (i) Recovery of weapon at the instance of accused; and
- (ii) Motive .

11] So far as recovery of weapon at the instance of accused is concerned, reliance is placed on the evidence of PW 2-Suresh Rathod. He has proved memorandum of the accused at Exh.21 and recovery of Ballam concealed under the heap of grass in a field of the accused situated at Pardi Road. The recovery panchanama proved by the witness is at Exh.22. He has also identified the knife before the Court. The evidence of PW 2-Suresh is supported by the investigating officer A.P.I. PW 12-Anant Rathod.

12] The moot question is whether evidence of recovery of weapon at the instance of accused under Section 27 of the Indian Evidence Act would be an incriminating circumstance against the accused. Record shows that accused was arrested after six months of the incident. The allegation is that he was absconding. Recovery after six months of arrest of accused would not be helpful, particularly in the absence of an expert opinion. The weapon seized was not sent to the Chemical Analyser. As Chemical Analyser's report is not available, the evidence of recovery is of no assistance to the prosecution.

13] Another incriminating circumstance alleged against the accused is the motive to commit murder of Nursing. PW 5-Arunabai is the wife of accused. She fully supports the prosecution on motive. It is stated by Arunabai that accused used to doubt that she was having illicit relations with Nursing. Suspecting her character he was assaulting and quarreling with PW 5-Arunabai. The evidence of PW 5-Arunabai on motive gets corroboration from the material witnesses PW 3-Ganpat Pawar and PW 4-Sunita.

14] Needless to state that in a case based on ocular evidence motive does not assume much significance. In the case on hand, in addition to the evidence of PW 4-Sunita and PW 3-Ganpat prosecution has succeeded in proving that accused had strong motive to take away the life of Nursing.

15] The next question which remains to be answered is

whether the death in question was a homicidal death and the prosecution has completely overruled the possibility of suicidal, accidental and natural death. In this connection, evidence of PW 7 Dr. Ramchandra Dhole is important. PW 7-Dr. Dhole was attached to Public Health Center, Wai Bazar as a Medical Officer. On 25.4.2007 he received the dead body of Nursing for postmortem examination from police station Sindkhed. Dr. Dhole performed the postmortem. Postmortem report is proved by the Medical Officer at Exh.37. As per postmortem report deceased sustained the following external injuries.

Lacerated wound

- (i) 4 x 3 x 2½ inches left side of neck
- (ii) 5 x 2 x 2½ inches left side cheek
- (iii) left Ear cut's half

The external injuries were found corresponding to the internal injuries. Internal injuries noticed were -

- (i) Internal External carotid artery rupture
- (ii) Internal External jugular vein ruptured.

The cause of death opined by the doctor was hypovolemic shock due to rupture of External carotid artery internal carotid artery and both jugular veins.

All the injuries were ante mortem. According to the Medical Officer, injuries found on the person of the deceased were possible with Ballam seized in the case. This voluminous evidence could clearly establish that death in question was a homicidal death.

16] In the above premise, we find that there is clinching evidence indicating that accused and accused alone was responsible for causing the death of Nursing. The Trial Court relying upon the evidence of star witnesses held the accused guilty of offence of murder punishable under Section 302 of the Indian Penal Code. We have no reason to take the view different than taken by the Trial Court. We thus find the appeal devoid of merits and substance.

17] Hence, Criminal Appeal No. 510 of 2012 is dismissed.

[INDIRA K. JAIN, J.]

[A.V.NIRGUDE, J.]

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