

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.293 OF 2013

Adinath s/o Trimbak Varpe,
Age-Major, Occu:Labourer,
R/o-Nageshwari, Tq-Rahuri,
Dist-Ahmednagar,
Presently at Yervada Prison, Pune.

**...APPELLANT
(Ori. Accused)**

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.R.D. Sanap Advocate Appointed for Appellant.
Mr.K.D. Munde, A.P.P. for Respondent - State.
...

**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 13TH JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 20TH JULY, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is preferred by the

Appellant - Adinath s/o Trimbak Varpe challenging the Judgment and order dated 12th February, 2013, passed by the Sessions Judge, Ahmednagar in Sessions Case No.215 of 2011, thereby convicting original accused/Appellant for the offence punishable under Section 302 of the Indian Penal Code (in short "I.P. Code") and sentencing him to suffer imprisonment for life and to pay fine of Rs.1000/-, and further convicting the accused for the offence punishable under Section 309 of the I.P. Code and sentencing him to undergo rigorous imprisonment for six months. The substantive sentences were directed to be run concurrently.

2. The prosecution case, in nut-shell, is as under :-

A) The prosecution case is that on 11th May, 2011 in between 12.30 to 1.00 p.m. at Nagar-Manmad road in front of Pallavi Dhaba, at the residential house of Smt. Sarika Rambhau Daule, accused

Adinath Trimbak Varpe, intentionally and knowingly committed murder of Smt. Sarika Rambhau Daule by causing her death and consequently attempted to commit suicide thereby committing an offence punishable under Sections 302 and 309 of the I.P. Code.

B) Rambhau Dnyandeo Daule, the husband of deceased Sarika, lodged First Information Report at police station, Rahuri. He informed the police that he was residing along with his wife Sarika and two daughters, namely Nimisha and Samiksha, opposite Pallavi Dhaba at Nagar-Manmad road of Rahuri Bk. His brother's wife Sangita Bhaskar Daule and his nephew Dnyaneshwar and Akshay and niece Renuka were also residing in the said premises. The informant Rambhau was having cordial relations with Adinath Trimbak Varpe, and they were friends from more than ten years prior to the incident. His wife used to treat accused as her Guru-brother. The accused used to drive a goods

rickshaw and used to bring fodder for the cattle in his rickshaw for the informant. Due to their friendly relations, the informant gave Rs.3,00,000/- to accused Adinath Varpe as a hand-loan six months prior to the incident. The informant was asking the accused to repay said amount since two months prior to the incident.

C) On 11th May, 2011 the accused came to informant Rambhau's house at about 10 a.m. The wife of informant told the accused that she was in need of money and therefore the accused shall return the hand-loan amount of Rs.3,00,000/-. The accused told that he will return the amount in the afternoon, and thereafter he left the house. The informant had been to Jogeshwari Akhada to attend marriage. At about 11.30 to 12.00 p.m. one Sachin Pandurang Sarode came to the informant and told that number of persons are gathered near his house. Therefore, the informant Rambhau came back to home in an auto rickshaw. He found number of

persons surrounding his house. His brother's wife Sangita told him that, at about 12.30 to 1.00 p.m. the informant's daughter Nimisha told her that accused had assaulted her mother with a knife. Therefore she immediately rushed to the informant's house and tried to pacify the accused, but the accused Adinath assaulted himself and fell down. When Sangita went inside the house, she found Sarika lying dead in injured condition in a pool of blood.

D) The informant Rambhau informed the police that the accused had committed murder of his wife Sarika, as she demanded hand-loan amount of Rs.3,00,000/- and as he got annoyed due to said demand. The accused also got himself injured by self inflicting injuries and tried to commit suicide.

E) On the basis of complaint lodged by Rambhau Dnyandeo Daule, Rahuri police registered

Crime No.147 of 2011 against the accused and investigated into the said crime.

F) The police inspector Isamuddin Nasir Pathan investigated into the crime. He recorded the panchnama of place of incident in presence of panchas. The inquest panchnama was already recorded by PSI Parmar and dead body of Sarika was sent for post-mortem. The knife used in the crime was lying in the shed near spot of incident, and the same was seized in presence of panchas. The auto rickshaw of accused, bearing No.MH-17-K-9717 was found opposite Pallavi Dhaba nearby house of the deceased and the same was seized in presence of panchas.

G) The accused was admitted in Civil Hospital, Ahmednagar by his relatives. The clothes of accused were seized in presence of panchas after his arrest. Similarly, the clothes of deceased were also seized in presence of panchas

and all the seized articles were sent to C.A., Nasik. The PSI Isamuddin Nasir Pathan recorded statement of the witnesses, and after due investigation, came to the conclusion that the accused committed murder of Sarika, as he got annoyed by the demand of Rs.3,00,000/- which was given to him as a hand-loan, and in the said incident attempted to commit suicide. It was also found that the incident was witnessed by Smt. Sangita Bhaskar Daule and Renuka Bhaskar Daule. After due investigation, a charge-sheet was filed in the Court of J.M.F.C. Rahuri. In due course, case was committed to the Court of Sessions.

H) A charge Exhibit-7 for an offence punishable under Sections 302 and 309 of the I.P. Code was framed against the accused and the same was explained to him. The accused pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted accused for the offence punishable under Section 302 of the I.P. Code and sentenced him to suffer imprisonment for life and to pay a fine, as afore-stated. The trial Court also convicted accused for the offence punishable under Section 309 of the I.P. Code and sentenced him to suffer rigorous imprisonment for six months, as afore-stated. Hence this Appeal by the accused.

4. Heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

5. The prosecution examined PW-5 Dr. Sudhir Radhaji Kshirsagar. He deposed that on 11th May,

2011 he was on duty, he performed post-mortem of Sarika Rambhau Daule, a female aged about 30 years, brought by police of Rahuri police station. Post-mortem was carried out in between 5.10 p.m. to 6.00 p.m. He found following external injuries on the person of deceased Sarika:

"(i) Incised wound over left chest in 2nd intracostal space 4 X 2 X 14 cm. towards heart,

(ii) Incised wound over left arm, anterior aspect 4 X 2 X 3 cms.

(iii) Incised wound over left axilla anterior border 4 X 2 X 3 cms.

(iv) Incised wound over neck posterior aspect 4 X 2 X 14 cms.

(v) Incised wound over parotid region on right side 4 X 2 X 5 cms.,

(vi) Incised wound over right shoulder 4 X 2 X 2 cms.

(vii) Incised wound over left side at the base of thumb 4 X 3 X 1 cms.

. PW-5 Dr. Sudhir deposed that all injuries were caused by sharp and hard object and all injuries were ante-mortem. The age of the injuries

were within six hours. He found following internal injuries:-

- (i) left lung was perforated through and through,
- (ii) Similarly pericardium was also perforated,
- (iii) Left Atrium and left ventricle,
- (iv) Clots were noted in large vessels,
- (v) About 250 ml. blood clots were seen in thoracic cavity.

. PW-5 Dr. Sudhir further deposed that the death was due to shock due to major injuries to vital organs like lungs, heart due to stabbing with sharp and hard object.

. Thus, it is clear from the deposition of PW-5 Dr. Sudhir that death of Sarika was homicidal.

. PW-5 Dr. Sudhir further deposed that he

has also examined Adinath Trimbak Varpe (accused). The history was of self inflicted injuries while attempting suicide. He found following injuries on the person of accused Adinath Varpe:

(i) Cut incised wound over throat tracheal region having size 7 X 3 X 2 cms. Trachea was perforated and air leakage was present,

(ii) Cut incised wound over abdomen 5 cms. above umbilicus, having size 5 X 1 X 1 cms.,

(iii) Cut incised wound over abdomen 7 cms. above and lateral at right side of umbilicus having size 6 X 1 X 1 cms.,

(iv) Cut incised wound over sternum area having size 3 X 1 X 1 cms.

. PW-5 Dr. Sudhir deposed that all the above injuries were grievous and might have been caused due to sharp and hard object. The age of injuries was within three hours.

. Thus, it is clear from the evidence of PW-5 Dr. Sudhir that accused also sustained self inflicted injuries, by sharp and hard weapon.

6. The prosecution examined PW-1 Smt. Sangita w/o Bhaskar Daule. She deposed that informant Rambhau resides adjacent to her house. She knows accused Adinath Trimbak Varpe. He is friend of Rambhau. Accused used to visit Rambhau's house frequently. Rambhau's wife Sarika (deceased) was treating accused as her Guru-brother.

. About the incident, PW-1 Smt. Sangita deposed that on 11th May, 2011 she did her routine work and gave water to the sugarcane crop at about 12.00 noon and came back home at about 12.30 p.m. She was viewing T.V. in her veranda (Padhvi). She heard the cry of Sarika. She came out and found Sarika's daughter Nimisha coming towards her house. Nimisha told her that accused Varpe was assaulting her mother by knife. She therefore rushed towards Sarika's house from backdoor. She found accused Adinath Varpe assaulting Sarika with knife. She asked him why he was assaulting on

which accused rushed towards her. She therefore rushed towards field, towards the house of cousin brother of her husband viz. Yeshwant Daule and Shanker Daule. Shankar Daule and his son Yeshwant came out hearing her cry. She herself, Yeshwant and Shankar came back towards the house of Sarika and they found Sarika lying in injured condition in the door and Adinath was also found injured nearby her. She further deposed that Rambhau gave Rs.3,00,000/- as hand-loan to accused Adinath and Rambhau and Sarika were insisting him to give back the said amount. As accused was not willing to repay the amount, he committed murder of Sarika. This witness was extensively cross-examined by the defence, but nothing useful to the defence has been elicited.

. Thus the prosecution has brought on record through the evidence of Smt. Sangita (PW-1) that, when the incident of assault on Sarika by accused was going on, she went to the spot and

witnessed the incident and thus she is eye-witness to the incident. She categorically stated that Sarika's daughter Nimisha came to her house and told her that accused Varpe was assaulting her mother by knife and therefore she rushed towards Sarika's house from back-door and she saw that accused Adinath Varpe was assaulting Sarika with knife.

7. The prosecution examined PW-2 Rambhau Dnyandeo Daule, who is informant in this case. He deposed that accused Adinath is his friend. He had given Rs.3,00,000/- to the accused as a hand-loan six months prior to the incident and since two months prior to the incident he was insisting accused to repay the said amount. He further deposed that on the day of incident at about 10.00 a.m. Adinath came to his house, his wife Sarika asked him to pay the said amount of hand-loan and accused in reply told that, he will bring the amount in the afternoon and left the house. PW-2

Rambhau further deposed that thereafter he went to Jogeshwari Akhada for attending marriage and while he was in marriage ceremony, his relative Sachin Pandurang Sarode came there and told him that number of persons gathered outside his house. He immediately came back to his house and came to know from Sangita that accused assaulted his wife with a knife. Thereafter he went inside the house and found dead body of his wife, she was injured, having injuries on chest, hand, neck and all over body. He went to the police station and lodged the FIR.

. During the course of cross-examination, PW-2 Rambhau stated that there is nothing in writing as regards giving of loan of Rs.3,00,000/- to the accused. He was unable to state the exact date of payment of loan to accused. There was no quarrel between himself and accused on non-payment of loan amount prior to the day of incident. He denied that Sangita and Renuka told him that there

was altercation between his wife and accused. He denied all the suggestions put to him by the defence.

. Thus it is clear from the evidence of PW-2 Rambhau that he has given the amount of Rs.3,00,000/- to the accused as hand-loan. He was insisting the accused to repay the said amount. On the date of incident, in the morning he has asked accused to repay the amount, and accused told him that, he will repay the amount in the afternoon. When he came to know about the incident, he immediately went to his house and seen the dead body of his wife.

8. The prosecution examined PW-3 Renuka d/o Bhaskar Daule. She deposed that deceased Sarika was her aunt and her neighbourer also. She knows accused. Accused used to come to the house of her uncle Rambhau and aunt Sarika.

. About the incident, PW-3 Renuka deposed that on 11th May, 2011 at about 10.00 a.m. accused had been to Sarika's house in auto rickshaw. At about 12.00 to 12.30 p.m. she was viewing T.V. After keeping Samikha, daughter of Sarika, in the swinging to the cot, Sarika went to her house. Within five minutes she heard the cry of Sarika and therefore she rushed towards her house. She found accused Varpe assaulting Sarika with a knife. She got frightened and ran away. She went towards house of her uncle Yeshwant Daule and Shankar Daule to call them for help. She herself, her uncles Yeshwant, Shankar and her mother Sangita went near the house of Sarika. Sarika was lying in the pool of blood and accused was also lying there in injured condition. Sarika was no more. During the cross-examination of PW-3 Renuka, nothing contrary was brought on record.

. Thus, from careful perusal of the evidence of PW-3 Renuka, it is clear that she is

also eye witness to the incident. She witnessed the incident when accused was assaulting Sarika and due to fear she ran away. Immediately after the incident she visited the spot of incident and found that Sarika died on the spot and accused was also lying there in injured condition.

9. PW-4 Isamuddin Nasir Pathan, Police Inspector, is the investigating officer in this crime. He deposed about the manner in which he carried out the investigation of the crime.

10. Thus upon careful perusal of the entire evidence brought on record, it reveals that the informant Rambhau and accused Adinath were friends and Rambhau had given an amount of Rs.3,00,000/- to accused by way of hand-loan. Rambhau and his wife Sarika (deceased) were insisting the accused to repay the said amount and accused was not willing to repay the said amount, and he was annoyed due to persistent demand of the said

amount by Sarika and her husband, and thus the prosecution has brought on record the motive for commission of the offence through the prosecution witnesses PW-2 Rambhau and PW-1 Sangita. PW-1 Sangita and PW-3 Renuka are the eye witnesses to the incident. They have specifically stated that after hearing cries of Sarika, they rushed to the house of Sarika and saw that accused Adinath was assaulting Sarika with knife, due to fear they ran away from the incident. Soon after the incident they both visited the spot and found that Sarika died on the spot and accused was also lying there in injured condition. The prosecution has brought on record through the evidence of PW-4 Isamuddin Pathan, investigating officer that the knife, which was used as a weapon to commit the offence, was lying in the shed, near the spot of incident and the same was seized. It has also come on record that PW-4 Isamuddin Pathan also seized Rickshaw of the accused bearing No.MH-17-k-9797 standing near the spot of incident. The said

rickshaw was owned by the person namely, More and the same was being driven by the accused. The blood group of Sarika was "A" and the C.A. report discloses that said blood was found on the knife used by the accused for assaulting Sarika, which was seized from the spot of incident. The prosecution has brought on record through the evidence of PW-5 Dr. Sudhir Kshirsagar that death of Sarika was homicidal and accused also sustained grievous injuries, which were self inflicted injuries. Thus the prosecution has proved beyond reasonable doubt that the accused committed an offence punishable under Section 302 and 309 of the I.P. Code.

11. The trial Court has considered the entire evidence brought on record and observed in Para-35 of the impugned Judgment that, on a conspectus of discussions in foregoing paras, it will be thus, crystal clear that the prosecution has proved beyond all reasonable doubt that accused committed

murder by assaulting Sarika on vital part of her body and inflicted injuries were not only on vital part but also multiple in nature and it were so grievous that Sarika died on the spot. The trial Court further observed that, it is also proved that the accused in order to raise self-defence got himself injured and attempted to commit suicide, and both the offences charged have been proved by the prosecution beyond reasonable doubt. The trial Court has convicted the Appellant/accused for the offence punishable under Section 302 and also under Section 309 of the I.P. Code and sentenced him, as afore-stated.

12. In the light of discussion herein above, on independent and in-depth scrutiny of entire evidence, we are of the opinion that the trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record and convicted the Appellant/ accused.

The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

13. In the light of discussion herein above, we are of the opinion that there is no merit in the Appeal. The Criminal Appeal stands dismissed.

14. Since, Mr. R.D. Sanap, learned counsel is appointed to prosecute the cause of the Appellant - Adinath s/o Trimbak Varpe, his fees and expenses are quantified at Rs.5000/- (Rupees Five Thousand).

[S.M. GAVHANE, J.]

asb/JUL17

[S.S. SHINDE, J.]