

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

CRIMINAL APPEAL NO. 439 OF 2014

Gulab S/o Gimblya Valvi (Naik)

Age : 50 years,

R/o Dhekwad, Tq. Nandurbar,

Dist. Nandurbar

... Appellant

Versus

The State of Maharashtra

... Respondent

....

Mr. A.R. Borulkar, (appointed) Advocate for the Petitioner

Mr. Shashibhushan P. Deshmukh, APP for Respondent / State

....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 21st SEPTEMBER, 2021

ORAL JUDGMENT (PER V. K. JADHAV, J.) :-

1. This Appeal is directed against the judgment and order of conviction passed by the Additional Sessions Judge, Nandurbar dated 11.03.2014 in Sessions Case No. 8 of 2008.

2. Brief facts of the prosecution case are as follows:

a. Deceased Bhamtibai was the wife of appellant-accused Gulab. Appellant-accused Gulab used to consume liquor and beat Bhamtibai. The incident occurred on 11.11.2007 in the night. At about 8.30 p.m., PW-3 Anjanabai, who is the

neighbour of the appellant-accused Gulab, heard shouts and thus alongwith the son of the appellant-accused Fulsing went to direction of those shouts. Beyond the stream near their house and the construction site of a church, they saw that the appellant-accused Gulab was beating deceased Bhamtibai on foot-way. Appellant-accused Gulab was having axe with him. He brought deceased Bhamtibai upto stream from construction site. PW-3 Anjanabai and Fulsing tried to persuade the appellant-accused Gulab, however, the appellant-accused Gulab was fully drunk. He had axe in his hand. Appellant-accused Gulab had hit Deceased Bhamtibai with the said axe on her head. Deceased Bhamtibai had sustained the injury on her head. She was also beaten up on her hands and legs. The appellant-accused then brought deceased Bhamtibai to the house and left her there. On the next day i.e. on 12.07.2007 at about 7.00 a.m. appellant-accused Gulab went to the house of PW-3 Anjanabai and told her that deceased Bhamtibai was no more.

b. On the basis of the complaint lodged by PW-3 Anjanabai Exhibit 28, crime no.217 of 2007 for the offence punishable under Section 302, 504 of IPC came to be registered at Taluka Police Station, Nandurbar, District Nandurbar.

c. During the investigation, the Investigating Officer has drawn the *inquest panchanama*, spot *panchanama* and further sent the dead body of deceased Bhamtibai to Civil Hospital, Nandurbar. The Investigating Officer has seized simple soil and soil mixed with blood as well and the other articles from the place of incident. The Investigating Officer has also seized the clothes of deceased Bhamtibai which were on her person at the time of incident. Her clothes were stained with blood. The appellant-accused came to be arrested on 12.11.2007. There were blood stains on the clothes of the appellant accused. During the investigation, the appellant-accused has made disclosure statement and agreed to produce the axe used in commission of offence from the roof tiles of his house and accordingly in presence of *panchas* and police at Dhekwad took out an axe from roof tiles of the house. The same came to be seized by drawing *panchanama* under Section 27 of the Indian Evidence Act.

d. After the investigation, the Investigating Officer has submitted the charge-sheet in the Court. The learned Judge of the trial court has framed charge for the offence punishable

under Sections 302, 498-A of IPC against the appellant-accused. The appellant-accused pleaded not guilty and claimed to be tried.

e. The prosecution has examined in all 14 witnesses to substantiate the charge levelled against the accused. After completion of the prosecution evidence, the appellant-accused has given a statement under Section 313 of Cr.P.C. The defence of the appellant-accused is of simple denial.

f. The learned Additional Sessions Judge, Nandurbar, by judgment and order dated 11.03.2014 in Sessions Case No. 8 of 2008, convicted the appellant-accused for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one year.

3. Being aggrieved by the same, the appellant/accused Gulab has preferred this appeal.

4. Learned counsel for the appellant-accuse submits that pre-incident and post incident conduct of PW-3 Anjanabai is not natural. Even though she allegedly witnessed the incident on

11.11.2007 at about 8.30 p.m., however, on that day, she did not lodge any complaint in the police station. Only after Bhamtibai was found dead in her house, PW-3 Anjanabai had lodged the complaint Exhibit 28 on the next day i.e. on 12.11.2007. Even PW-3 Anjanabai had not tried to intervene into the said quarrel. Learned counsel submits that the son of the appellant-accused namely Fulsing has not supported the prosecution case. Even the *panch* witnesses, on the seizure *panchanama* of the clothes of the deceased, has not supported the prosecution case in any manner.

5. Learned counsel submits that deceased Bhamtibai was also used to consume liquor. Learned counsel submits that even the witnesses on the *inquest panchanama* have deposed contrary to the contents of the seizure *panchanama*. It thus appears that the investigation is tainted one. Learned counsel submits that it would not be safe to rely upon the evidence of the sole eye witness when the person i.e. the son of the appellant-accused, who accompanied her at the time of alleged incident, had not supported the prosecution case.

6. Learned counsel submits that PW-6 Lilabai has deposed before the Court, particularly, in her cross-examination that the appellant-accused had also come to her house on the day of incident and remained there till late night and he returned to home on next day morning. Learned counsel submits that this witness is not declared hostile by the prosecution.

7. Learned APP submits that PW-3 Anjanabai is trustworthy and reliable witness. Her evidence inspires confidence. She has no reason to falsely implicate the appellant-accused in the present crime. Learned APP submits that on the date of incident at about 8.00 p.m. PW-3 Anjanabai had witnessed the quarrel between deceased Bhamtibai and appellant-accused. They came from across the river quarreling. PW-3 Anjanabai had further deposed that appellant-accused hit deceased Bhamtibai with an axe. She tried to persuade the appellant-accused not to beat her, however, the appellant-accused had tried to assault her. Learned APP submits that the prosecution has proved the homicidal death of the deceased Bhamtibai in this case and PW-9 Dr. Pardeshi, who conducted the postmortem on the dead body of deceased Bhamtibai on 12.11.2007, has opined that the

cause of death was shock due to head injury and the injuries mentioned in column no.17.

8. Learned APP submits that deceased Bhamtibai had sustained six external injuries out of which injury no.1 is fatal. The postmortem examination report is at Exhibit 41. Learned APP submits that the prosecution has proved the homicidal death of deceased Bhamtibai in this case. The prosecution has also proved the seizure of an axe as well as clothes of deceased Bhamtibai also the articles seized at the time of drawing spot *panchanama* through the evidence of the Investigating Officer. The C.A. report is in favour of the prosecution. The prosecution has thus proved the case against the appellant-accused beyond the reasonable doubt. The appeal is liable to be dismissed.

9. Learned counsel for the appellant-accused has not seriously disputed the homicidal death of deceased Bhamtibai. The prosecution has examined PW-9 Dr. Pardeshi, who has conducted the postmortem examination on the dead body of deceased Bhamtibai. He noticed the following external injuries on the dead body of deceased Bhamtibai :-

1. Contused Lacerated wound on center of frontal region scalp size 5 cm x 1 cm x 3 cm deep. Bone deep with fracture of frontal bone underlying.
2. CLW on right elbow joint outer surface 2 cm x 1 cm.
3. Abrasion on left wrist joint 1 cm x 1 cm.
4. Abrasion on right knee joint 2 cm x 2 cm.
5. Abrasion on left side neck 1 cm x ½ cm.
6. Abrasion on right side of neck 1 cm x ½ cm.

10. During the course of postmortem examination PW-9 Dr. Pardeshi found that the said injuries were *ante-mortem* in nature. He has also noted that the blood clots seen under injury no.1 of column no.17 of size 3 cm x 2 cm. He has also recorded the fracture of frontal bone seen below injury no.1 of column no.17. Brain coverings tear below injury no.1 of column no.17, and blood clots seen under brain coverings below injury no.1 in column no.17 of size 2 cm x 1 cm. In her opinion the cause of death was shock due to head injury and injuries mentioned in column no.17. The postmortem report is at Exhibit 41. PW-9 Dr. Pardeshi has also opined that the injuries on the person of the deceased were possible by the axe shown to him before the Court.

11. PW-9 Dr. Pardeshi has stated in his cross-examination that it is less likely that injuries as mentioned in column no.17 would be possible, particularly injury no.1, if a person comes tumbling down in a river bed and hit by stone. However, he has stated that other injuries are possible due to person rolling down on the slope in river bed. There is nothing in the cross-examination to suggest any other inference about death of deceased Bhamtibai. The prosecution has proved beyond reasonable doubt that deceased Bhamtibai died a homicidal death.

12. So far as PW-3 Anjanabai is concerned, we find that she is a trustworthy and reliable witness. She had no reason to falsely implicate the appellant-accused in connection with the present crime. She has not only witnessed the incident, but when she tried to intervene in the quarrel, the appellant-accused had tried to assault her. PW-3 Anjanabai has thereafter rushed to inform the same to the son of the appellant-accused namely Fulsing. Even at that time, deceased Bhamtibai informed to PW-3 Anjanabai that the appellant-accused had severely beaten her and she had sustained injury on her head. After the said incident, the appellant-accused, deceased Bhamtibai and

PW-3 Anjanabai went to their respective houses. It is very unlikely on the part on the PW-3 Anajanabai to rush to the police station and lodge complaint when deceased Bhamtibai talked to her that appellant-accused extending beating to her severely. Only in the morning, when she came to know about the death of deceased Bhamtibai, she chooses to lodge the complaint in the concerned police station. We do not find that the pre-incident and post incident conduct of the PW-3 Anjanabai is unnatural.

13. Even though the witnesses on the various *panchanamas* have not supported the prosecution case and even Fulsing, the son of the appellant-accused, has also not supported the prosecution case in order to save the appellant-accused from the punishment, however, the prosecution has proved the contents of the various *panchanamas* through the Investigating Officer. PW-8 Dilip, who is the Sarpanch of the said village, is the *panch* witness of the *inquest panchanama* and spot *panchanama* Exhibit 37 and Exhibit 38 respectively. He has supported the prosecution case. However, on the basis of some stray admissions on his part as to the place where the inquest *panchanama* was carried out, his evidence cannot be discarded.

14. So far as the seizure of the weapon axe at the instance of the appellant accused by drawing *panchanama* under Section 27 of the Indian Evidence Act is concerned, PW-3 Anjanabai has stated in her cross-examination that the mother of the accused gave axe to Fulsing and Fulsing gave it in turn to the police. There is no doubt that an axe seized in connection with the present crime was having blood stains and as per the C.A. report Exhibit 56 blood was found on the axe. Blood of group 'B' was found on the blade and handle of the axe. As per the C.A. report Exhibit 58, the blood of the deceased is of group 'B'. Thus, it is clear that the said weapon axe was used in the assault.

15. We have carefully gone through the evidence of PW-3 Anjanabai to find out as to whether the trial Court has correctly recorded the conviction for the offence punishable under Section 302 of IPC against the appellant-accused. It appears from the evidence of PW-3 Anjanabai that at about 8.00 p.m. deceased Bhamtibai and appellant-accused came from across the river quarreling. During the course of said quarreling, the appellant-accused hit deceased Bhamtibai with an axe. It appears from the postmortem report Exhibit 41 that external

injury no.1, which is in the form of contused lacerated wound on center of frontal region of scalp i.e. the center of head, is the only fatal injury. The other injuries are CLW on right elbow joint, abrasion on left writ joint, abrasion on right knee joint, abrasion on left side and right side of the neck. PW- 9 Dr. Pardeshi has also admitted in her cross-examination that except injury no.1, other injuries are possible due to person rolling down on the slop in the river bed. PW-3 Anjanabai has also admitted in her cross-examination that grass and bushes had grown on the side of stream. She has further stated in her cross-examination that for descending into the stream bed, there is only half feet wide foot-way. There was water in the stream in that season. She has further admitted in her cross-examination that appellant-accused dealt only one blow to deceased Bhamtibai. It thus appears that the possibility of the sustaining the other injuries due to rolling down on the slopy surface of the river bed cannot be ruled out. We also find that the said injury no.1 is the outcome of t one single blow given by the appellant-accused on the head of the deceased Bhamtibai by using the weapon axe. The said incident had taken place in a sudden quarrel without any premeditation. In view of the same, in our

opinion, the appellant-accused has committed offence of culpable homicide not amounting to murder. PW-9 Dr. Pardeshi has described the external injury no.1, which is on the center of frontal region of scalp of size 5 cm x 1 cm x 3 cm deep and bone deep with fracture of frontal bone underlying. During the course of internal examination (column no.19), blood clots seen under injury no.1 and also fracture of frontal bone. There was brain coverings tear below injury no.1 and the blood clots seen under brain coverings. It is thus clear that though the accused had given single blow by using an axe on the head of the deceased Bhamtibai, however, it was given with such a force that deceased Bhamtibai had sustained the head injury in the form of injury no.1 with corresponding internal injuries as described above. However, we find that there was no intention to commit the offence of murder. On the next day, in the morning, the appellant-accused on his own went to the house of PW-3 Anjanabai and informed to her that Bhamtibai is no more. Had it been his intention to commit murder, he would have fled away from the spot in the night itself.

16. Thus, considering the entire aspect of the case and particularly the nature of the injury no.1 with corresponding internal injuries, we are of the opinion that the appellant-accused has committed an offence punishable under Section 304 Part-I instead of offence punishable under Section 302 of IPC. Thus, the following order would meet the ends of justice.

O R D E R

- (i) Criminal appeal is hereby partly allowed.
- (ii) The judgment and order of conviction passed by the Additional Sessions Judge, Nandurbar 11.03.2014 in Sessions Case No. 08 of 2008 thereby convicting the appellant-accused Gulab Gimblya Valvi (Naik) for the offence punishable under section 302 of Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.1,000/- (Rs one thousand only), in default to suffer imprisonment for one year is hereby altered and

instead;

the appellant-accused Gulab Gimblya Valvi (Naik) is convicted for the offence punishable under Section 304 Part-I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years with the same amount of fine and default sentence as per the order passed by the trial Judge.

(iv) The appellant-accused Gulab Gimblya Valvi (Naik) shall execute a P.B. Rs.15,000/- (Rupees Fifteen Thousand) with one surety of the like amount to appear before the higher court as and when the notice is issued in respect of any appeal or petition filed against the judgment of this Court. Such bail bonds shall remain in force for a period of six months from the date of its execution.

(v) Criminal appeal is accordingly disposed of.

17. Since Mr A.R. Borulkar, learned counsel is appointed to prosecute the cause of appellant-accused, we quantify his legal fees as Rs.10,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P. Rane