

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPEAL NO. 293 /2014

* Kailash s/o Toliram Maraskolhe
Aged 33 years, occu: Labour
R/o Rongha, Tah.Tumsar
Dist. Bhandara. .. **..APPELLANT**

v e r s u s

The State of Maharashtra
Through Police Station officer
Andhalgaon, Dist. Bhandara. .. **RESPONDENT**

.....
Ms. S.O.Tapadia, Advocate for appellant
Ms. T.H. Udeshi, APP for respondent-State
.....

**CORAM: MRS. SWAPNA JOSHI &
AVINASH G. GHAROTE, JJ.
DATED : 17th August, 2021.**

JUDGMENT: (PER MRS.SWAPNA JOSHI, J.)

1. This Appeal has been preferred by appellant-Kailash Maraskolhe, against the judgment and order dated 27th March, 2014 delivered by learned Sessions Judge, Bhandara in Sessions Trial No. 12/2012, whereby the learned Judge convicted the appellant for offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer RI for life and to pay a fine of Rs.3000/-, in default, to

suffer RI for a period of six months.

2. The prosecution version as unfolded during the trial can be summarized as under:-

The complainant–Hariram Salame (PW1), who was the nephew of the deceased-Ranubai, lodged the report stating his aunt aged about 60 to 65 years had encroached upon the Government land for cultivation and constructed a house thereon. The appellant who is the neighbour of Ranubai, used to quarrel with her for the reason that his cattle used to enter the courtyard of Ranubai and destroy the crops. On this count, quarrels used to happen between Ranubai and father of the appellant. It was further stated that on 30.09.2011 when the complainant went to the house of Ranubai, he found her in a dead condition in her courtyard. He further informed that on 29.9.2011 between 9 and 10 pm, a quarrel took place between Ranubai and the accused on the count of grazing of cattle and the appellant assaulted Ranu by means of stick. The said information was given to the complainant-PW1 by the neighbour of Ranubai, namely, Tarabai Natwar (not examined) and Shantibai Ganjam (PW5). The complainant then proceeded to the house of Police Patil and along with him he went to the Police Station and lodged the report. An offence was registered

against the appellant punishable u/s 302 of the IPC.

3. PW-10 PI Vitthal Shase recorded the complaint. PW10 then visited the place of incident. He took the photographs of the scene of offence. A dog squad was called to the place of incident. A wooden rafter was seized from the place of incident; Inquest *panchnama* on the dead body was drawn vide Exh.43. The spot *panchnama* was recorded vide Exh.45. The dog pointed the house of the appellant. However the appellant was not found in his house. It was learnt that the accused had gone to the Police Station. PW10 then recorded the statements of the witnesses. The dead body was sent for *postmortem*. The query report with regard to the weapon was issued by the Medical Officer. The appellant pointed out the place of incident. Accordingly, the memorandum *panchnama* was drawn vide Exh. 70. From the place of incident, the weapon in concern with offence was taken charge.

4. After completion of investigation, charge-sheet was filed. The case was committed to the court of Sessions. On analysis of the evidence and after hearing both the sides, the learned trial Judge convicted the appellant, as aforesaid.

5. We have heard Ms. S.O. Tapadia, learned counsel for the appellant and Ms. T.H. Udeshi, learned Additional Public Prosecutor for the respondent-State. With their able assistance, we have carefully gone

through the entire record and proceedings of the case.

6. Learned counsel for appellant vehemently argued that the learned trial Judge has not considered the material discrepancies in the testimony of witnesses. She contended that no doubt the PM report shows as many as fourteen injuries on the person of deceased, however, the prosecution has miserably failed to point out the author of those injuries. She submitted that the only evidence available on record is of PW2–Rajkumar Uike and PW5- Shantibai, and both these witnesses speak about the quarrel between the appellant and the deceased, however, whether the said quarrel resulted into the incident of murder or not, there is absolutely no evidence and the prosecution is silent on that aspect. It is submitted that the dead body of the deceased was found on the next day, by PW 1-Hariram. She submitted that although PW5 informed about the quarrel between the deceased and the accused to the complainant, however, the complainant being related to the deceased, did not take pains to proceed to the house of the deceased and see as to what happened. It is further submitted that the evidence of PW5 is also not trustworthy as her cross-examination itself indicates that she had not personally seen the incident. It is submitted that even the credibility of the memorandum *panchnama* does not stand in respect of the stick seized from the place of incident. It is further

pointed out that although the CA report indicates that the blood stains were found on the clothes of the appellant which belong to the blood group of the deceased, however, the blood group of the appellant matches with the blood group of the deceased. Therefore, the CA report is of no assistance to the prosecution case. In these circumstances, the learned Advocate for the appellant prayed for allowing the Appeal.

7. As against this, learned APP supported the impugned judgment and contended that the learned trial Judge has rightly assessed the evidence led by the prosecution and has convicted the accused. She vehemently submitted that since the deceased and the accused were lastly seen together by PW2-Rajkumar and PW5-Shantibai it must be the appellant who committed the murder of the deceased.

8. The prosecution has examined in all ten witnesses. In order to substantiate its case, the prosecution has heavily relied upon the testimony of PW2 Rajkumar Uikey and PW5-Shantibai Ganjam. On a perusal of the entire case papers, it is found that so far as the actual incident of murder is concerned, there is no eye witness to the said incident. It is not disputed by the defence that deceased- Ranubai died homicidal death. The PM report indicates as many as 14 injuries on the dead body of Ranubai. The cause of death is stated to be due to multiple fracture with haemorrhagic shock. The query report (Exh.67)

indicates that the injuries mentioned in the PM report can be caused by a wooden rod. Thus, the aforesaid evidence indicates that death of Ranubai was caused due to the said wooden stick.

9. So far as the evidence with regard to incident of quarrel is concerned, we have gone through the testimony of PW2-Rajkumar Uikey, who claims to be an eye witness. The testimony of PW2 shows that he was residing in the vicinity where deceased Ranubai was staying. The appellant was neighbour of Ranubai. On the count that the cattle of appellant used to enter and graze the field of Ranubai and damage the paddy crops, there used to be quarrel between them. On the day of incident at about 8 to 9 pm, when PW2 returned to his house from the field, he heard the noise of the quarrel and that the appellant and the deceased and abusing each other in a filthy language. The scuffle took place between them. PW2 further states that in the next morning he found Ranubai in a dead condition and a stick was lying near her dead body. PW2 also acted as a *Panch* on the inquest *panchnama* (Exh.45); the seizure *panchnama* of the blood mixed with earth (Exh.48); the seizure *panchnama* of the stick (Exh. 49), clothes of the deceased(Exh. 50) so also the clothes of the accused Exh.51. Interestingly there is an improvement in the testimony of PW2 with regard to the fact that there was a scuffle between the deceased and

the appellant. The said version of PW2 goes to the root of the case and creates a serious doubt about the PW2 noticing the quarrel between the deceased and the appellant. Thus the evidence of PW2 is not found to be trustworthy.

10. As regards the testimony of PW5-Shantibai is concerned, who is the neighbour of the deceased, according to her, at the time of incident, she was very much present in the courtyard of her house. She contended that a quarrel between them was going on. Devkabai, ie. mother of the appellant scolded the appellant. The appellant was assaulting Ranubai. PW 5 stated that on the next day she found Ranubai dead. The cross-examination of PW5 clearly indicates that she had not personally seen the appellant and Ranubai quarreling with each other. She clarified that she heard only their voices. Her evidence also shows improvement in her version that the appellant was assaulting Ranubai. The testimony of PW5 is of no assistance to the prosecution and she was not found to be a reliable witness.

11. Thus, the evidence of PW2 and PW5 does not throw any light on the aspect of the appellant assaulting the deceased and thereby committing her murder.

12. In view of the facts and circumstances, we are of the considered opinion that the prosecution as miserably failed to prove its case beyond reasonable doubt. In the result, the Appeal is to be allowed. Hence the following order :-

ORDER

- (a) Criminal Appeal No.293/2014 is allowed.
- (b) The impugned judgment and order dated 27.03.2014 in Sessions Trial No. 12/2012 passed by learned Sessions Judge, Bhandara is set aside.
- (c) The appellant/accused is acquitted of the offence punishable u/s 302 of the IPC.
- (d) The appellant is on bail. His bail bonds shall stand cancelled.
- (e) Fine amount if any paid, shall be refunded back to appellant.

JUDGE

JUDGE

sahare