

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

CRIMINAL APPEAL NO. 713 OF 2015

Balaji s/o Narayan Nikas
Age – 33 years, Occu – Agriculture
R/o Pokhari, Taluka – Jafrabad
District – Jalna

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra
Through Tembhapuri Police Station,
Taluka – Jafrabad, District Jalna

... RESPONDENT

Mr. R. A. Tambe, Advocate for the appellant
Mr. R. V. Dasalkar, APP for the respondent/State

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.**

**RESERVED ON : 06TH DECEMBER, 2022
PRONOUNCED ON: 13TH DECEMBER, 2022**

JUDGMENT (PER- R. M. JOSHI, J.):-

1. Appellant/original accused being aggrieved by the judgment and order dated 7th August, 2015 passed in Sessions Case No. 195 of 2014 convicting him for the offence punishable under Section 302 of the Indian Penal Code has preferred this appeal under Section 374 of the Code of Criminal Procedure.

2. As per the report given by Mubarak on 5th June, 2014 at about 4.00 pm his nephew Rais came to the field where he was working and informed that Salim, son of the informant, being severely assaulted by Balaji (accused) in the field of Police Patil. He, therefore, went to the spot and found Salim dead. The said report (Exhibit 14) was given to the police on the same day at 8.15 pm.

3. After registration of crime investigation was done wherein police visited spot of the incident and panchnama was drawn. Inquest on the dead body was conducted and it was sent for post-mortem. Appellant came to be arrested and pursuant to his disclosure recovery of knife is done under panchnama. Investigation Officer recorded statements of witnesses and collected other relevant evidence. Seized muddemal was sent to the Chemical Analyzer for examination and as Investigating Agency found sufficient reason for filing charge-sheet, the same was filed against the appellant before JMFC. On committal the case was registered as Sessions Case No. 195 of 2014. Trial Court framed charge against the appellant at Exhibit 7. As

appellant abjured the charge he was put on trial. Prosecution examined 12 witnesses in order to prove the charge against him.

4. Learned counsel for the appellant submitted that Trial Court committed error in not considering the cross-examination of informant as well as eye witnesses Pawan and Mohan, which according to him indicates their testimonies unreliable. It is contended further that statements of eye witnesses were not recorded immediately and which makes it prone to concoction. It is also argued that it does not stand to any reason as to why appellant will go to the place and the distance of about 250 km from the spot to conceal weapon hence the said alleged recovery shown at instance of the appellant is not believable. According to him witness Haridas had reason for false implication of the appellant in this crime and with the help of child witnesses false evidence is created against him. By referring to the medical evidence it is submitted that the possibility of causing of the injuries to the deceased by more than one weapon is brought on record and hence in the light of this testimony of defence witness Ankush there is reason to believe that 2-3 persons who

were seen going from the spot of the incident could be perpetrators of crime. It is submitted that the evidence on record is not sufficient to prove guilt against the appellant conclusive and hence it is thus acquittal.

5. Learned APP opposed the said submissions by relying upon testimony of eye witnesses who according to him have consistently deposed about the incident of appellant causing assault on the deceased with knife. It is also pointed out from evidence that the appellant had motive for committing murder of the deceased as he used to suspect illicit relation of his wife with the deceased. According to him there is no reason for not accepting testimonies of child witnesses. As far as the defence witness is concerned, it is submitted that the said witness is cousin brother of appellant and is interested in securing his acquittal. Thus, according to him it is not a fit case to cause interference in the impugned judgment.

6. There is no dispute about the fact that on 5th June, 2014 at about 2.30 pm dead body of Salim was found at the

spot which is agricultural field of Police Patil. Spot panchnama (Exhibit 16) indicates that at the spot dead body of the deceased was lying under the tree in the blood. Inquest panchnama (Exhibit 17) which is proved through Abdulsha (PW-2) indicates that there were number of injuries found on the person of the deceased. The dead body of the deceased was sent for post-mortem which was conducted by Dr. Sabale (PW-11). He has noticed following external injuries on the person of the deceased.

- (1) Stab wound over right side of neck near the lower part of stemocledo mastoid muscle 3 x 1 x 2.5 cm, running from left mastoid towards axical clavicular joint.
- (2) Stab wound over sterno mandibnum junction oblique running from right nipple to sterno clavicular joint 2 x 1.5 x 1 cm.
- (3) Stab wound 2 cm. Above left nipple running from zipisternym to left anterior auxiliary fold 3 x 2 x 1.5 cm.
- (4) Stab wound oblique left to the zipisternum-epigastric region 5 x 2.5 x 10 cm.
- (5) Stab wound oblique over right hypochoderiac region against 8-9th constrocondra junction 5 x 3 x 5 cm right running from right flanks to zipistarnum.
- (6) Stab wound over right wrist joint to darsal and radial aspect horizontal 2.0 x 0.5 cm.

(7) Stab wound over left wrist joint 2 x 0.5 x 0.5 cm oblique, dorsal on the radial size.

(8) Stab wound side on right knee joint against lateral condyle of femur anteriorly oblique running towards patella.

(9) Left 3rd intercostal space through and through, stab wound 2.5 x 1.5 x 4 cm.

7. All these injuries were antemortem in nature and it was opined by him that the death of the deceased was caused due to hemorrhagic shock due to multiple stab injuries over the body. Defence was unable to elicit anything from the cross-examination of Medical Officer to discard his opinion about cause of death. The circumstances in which the dead body was found which are appearing from testimonies of eye witnesses and spot panchnama (Exhibit 16) and having regard to the nature injuries on the person of the deceased the prosecution has proved that deceased died homicidal death.

8. In the instant case Mubarak, PW-1, father of the deceased lodged report to the police at around 8.15 pm on the date of incident itself. He has deposed about getting information

from his nephew Rais about the assault on the deceased by appellant. After he went to the spot he found dead body of Salim in the pool of blood lying under fig tree. He also found stab injuries on his neck, chest and abdomen. Evidence of this witness shows that the report to the police about the incident is prompt. He has also stated therein that the appellant while leaving the spot of the incident had threatened Pawan and Mohan not to disclose this incident to anyone.

9. Pawan who was aged about 11 years at the time of incident has candidly deposed about the occurrences on the fateful day. According to him he along with Salim went for swimming and came back near the cattle shed of Haridas. Thereafter Salim brought food article from village on his motorcycle and they had lunch together. He further stated that he along with Salim and Bandu went to the field of Police Patil on motorcycle. As there was summer heat Salim sat under the tree. Balaji (appellant) came to the spot and after the occurrence of incident of falling of box removed knife from his pocket. Salim initially thought that appellant was making fun and started

laughing but appellant stabbed him with the knife on his abdomen and chest. He thereafter rushed to the cattle shed of Ankush to call him. They were threatened by appellant not to go to the spot and thereafter he left on his motorcycle. There is support to his testimony from the evidence of Mohan (PW-7) who was aged about 8 years at the relevant time. He also deposed about Salim sitting under the tree and appellant coming there and drawing knife from his pocket to assault Salim. He also claimed that initially Salim laughed at him thinking that the appellant is making fun of him. But thereafter appellant stabbed him with knife. He thus, deposed consistently with the testimony of Pawan.

10. From the cross-examination of these witnesses nothing could be elicited by the prosecution in order to disbelieve their version about the occurrence of the incident. Except for the fact that their statements were recorded on the next date of the incident defence could not make out any reason for keeping their evidence out of consideration. These witnesses are child witnesses and in absence of any material to believe

that they were tutored or had interest on their own or acted at the instance of someone else to falsely depose against appellant, we find no reason to disbelieve and discard their testimonies.

11. There is further evidence against the appellant in the form of seizure of knife at his instance pursuant to the memorandum statement made by him while in police custody. Subhash (PW-6) who acted as panch witness has proved the said statement (Exhibit 26) and specifically deposed about the place where the appellant took police and removed knife kept beneath a stone. Except for admission of this witness that in memorandum panchnama (Exhibit 26) there is no mention of knife but there is a mention of weapon. We find that, causing of such discrepancy in the statement of witness after lapse of one year is possible and would not be sufficient to discard his evidence. Completely, which is otherwise found worthy of credence. Investigating Officer (PW-12) specifically deposed about seizure and sealing of knife at spot and sending it along with other muddamal for forensic examination. It is not

suggested to Investigating Officer that there is tempering of evidence. CA report (Exhibit 58) shows that the said knife was stained with blood group 'B', which is of deceased. Thus, there is further evidence to connect knife recovered at instance of appellant upto actual assault on deceased.

12. In this regard it is material to note that Medical Officer Dr. Sable (PW-11) has deposed about possibility of sustainment of the injuries to the deceased with knife (article 7). In the cross-examination though it is admitted by him that there is possibility of use of more than one weapon in this assault owing to the difference in the length, width and breadth of the injuries but still it is his opinion and not a concrete piece of evidence. In case where there is unimpeachable direct evidence showing occurrence of the incident in a particular manner, the evidence in form of Medical Officer cannot override ocular evidence. In the facts and circumstances of the case and on considering ocular evidence of eye witnesses, we do not find any reason to accept evidence in form of opinion to override, other conclusive evidence.

13. Learned counsel for the appellant drew attention of this Court to the evidence of defence witness Ankush and submitted that same evidentiary value needs to be attached to this testimony as weightage is given to the evidence of prosecution witness. There cannot be two opinions about the said proposition canvassed by the learned counsel for the appellant and that evidence of defence witness cannot be undermined or can not be looked upon with tainted glasses. However, test of reliability and credibility must be applied to evidence of defence too. Consideration of the evidence of Ankush (DW-1) shows that he tried to claim that he found dead body of Salim inside cattle shed. This evidence of the witness runs contrary not only to the ocular evidence of eye witnesses but also to the spot panchnama (Exhibit 16) wherein the place where the dead body of deceased is clearly seen under the tree and not inside the cattle shed. This fact itself is more than sufficient to disbelieve testimony of this witness. Apart from this it is relevant to note that the witness is paternal cousin brother of the appellant and certainly can be said to have interest in seeking acquittal of the appellant. In the facts and

circumstances of the case his evidence is found wholly unreliable in order to place any reliance thereupon.

14. Prosecution apart from the ocular evidence was also successful in bringing on record that the appellant had motive or reason for committing murder of the deceased. Though on the face of it, it seems that over the issue of fall of the box the incident triggered however evidence of Mubarak-informant as well as suggestion made by the defence to Pawan shows that appellant was murmuring at the time of causing assault on deceased about illicit relations of his wife with deceased. Thus, there is reason to believe that appellant was aggrieved by the relationship between them and which provided a motive for him to eliminate deceased. Finding of number of injuries on the person of deceased also indicate the intention of appellant.

15. The prosecution thus was able to prove from the ocular evidence of Pawan and Mohan who had witnessed the incident in question that it was appellant who with the help of knife seized at instance of appellant with blood stains of group of

deceased thereon. The medical evidence supports the case of the prosecution as the post-mortem note shows as many as 09 stab injuries on chest, abdomen and neck of the deceased which found on vital part of the body. The number of injuries caused to the deceased with knife on vital part of body indicates the intention behind assault was to commit murder of the deceased. In this circumstance, no fault can be found with the judgment recording conviction of the appellant passed by the learned Trial Court. In the result, appeal must fail. Hence order.

ORDER

. Criminal Appeal No. 713 of 2015 is dismissed.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

ssp