

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 837 OF 2018

1. Tukaram Kashinath Khambayat
Age 37 years, occ. Agri.

2. Rekhabai Tukaram Khambayat
Age 32 years, occ. Household

Both r/o Chaudhari Wada, Adawad
Tq. Chopda, Dist. Jalgaon.

3. Sushilabai Arun Barde
Age 52 years, occ. Household
R/o Sakegaon Tq. Bhusawal
Dist. Jalgaon.

Appellants

Versus

The State of Maharashtra

Respondent

Mr. D. P. Pande, Advocate for the appellants.

Mr. S. P. Sonpawale, APP for the State.

CORAM : R. G. AVACHAT &

R. M. JOSHI, JJ.

RESERVED ON : 5th DECEMBER, 2022.

PRONOUNCED ON : 13th DECEMBER, 2022.

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

1. An incident occurred on 19th May, 2016 at about 11.30 pm, when Ganesh, whose marriage was to be performed shortly, met with assault in which he died. In connection with the said crime,

present appellants were charged for the offence punishable under Section 302 of the Indian Penal Code and they came to be convicted by the learned Additional Sessions Judge, Amalner, in Sessions Case No. 19/2016. The convicts are taking exception to the said judgment by invoking Section 374 of the Code of Criminal Procedure by filing present appeal.

2. The case of prosecution runs as follows :-

On 19th May, 2016, there was a program of music arranged on eve of marriage of Ganesh and number of female invitees were performing dance therein. After the said program was over by 11.30 pm, a quarrel occurred between Tukaram (appellant/accused No. 1) and his wife Rekhabai (appellant/accused No. 2). At that time, Rekha and Sushilabai (mother-in-law of accused No. 1) raised cries for help. Ganesh went to the house of the accused and intervened in the said quarrel. At that time, Tukaram was hurt by his advice and therefore, he assaulted Ganesh at the middle of his neck with knife. In the said assault, Ganesh died. Tukaram had also assaulted Kishor who was present at the spot. On the basis of said information, given by Hiralal, offence came to be registered vide Crime No. 40/2016 with Adawad Police Station.

3. On the next day, at about 1.00 pm, supplementary statement of informant Hiralal was recorded wherein he stated that there occurred quarrel between Tukaram and Rekhabai on account of he performing dance amongst other females. It is further stated therein that Rekhabai and Sushilabai raised cries for help. Kishor, who was present on the spot, was assaulted with knife on his right hand whereas Ganesh was pulled inside the house by Rekhabai and Sushilabai and thereafter the door of the house was closed. When Hiralal went to the house of accused, he saw Ganesh being caught by Rekhabai and Sushilabai and Tukaram assaulting on his neck and chest.

4. During investigation of crime, police visited the spot and panchabnama of the spot was drawn. Accused persons came to be arrested. At the instance of accused Tukaram, pursuant to his memorandum statement, recovery of knife is done from the house of the accused. Clothes of accused and deceased were seized. Entire muddemal was sent for forensic examination. After filing of charge-sheet, case was committed to the Sessions Court for trial and since the accused abjured the charge, they were put on trial.

5. Prosecution examined in all eleven witnesses in order to prove guilt of the accused.

6. Learned advocate for the appellants/accused submitted that there is material variance in the first information given by Hiralal as well as his supplementary statement recorded on the next day. According to him, material improvements are made by informant in his version even before the Court in order to implicate accused No. 2 and 3 in this crime. It is submitted that the testimony of the alleged eye-witnesses i.e. Hiralal (PW 3) and Kishor (PW 5) shows that infact when they came to the house of accused, they saw Ganesh having fallen in the pool of blood in injured condition meaning thereby they did not see the actual occurrence of incident in which those injuries were sustained by him. It is submitted that these witnesses have alleged motive for accused to eliminate Ganesh that he was knowing the illicit relations of Rekhabai, but from cross-examination of these witnesses, it is clear that they did not have any knowledge about any such relationship nor Ganesh ever disclosed to them about it. Thus, according to him, there is absolutely no evidence on record to show that accused No. 2 and 3 had any reason to kill Ganesh or they shared any common intention to commit

murder of deceased. As far as appellant/accused No. 1 Tukaram is concerned, it is argued that the alleged recovery at the instance of this accused in the form of knife from his house is not reliable in view of the fact that prior thereto police had visited the house of the accused for the purpose of conducting spot panchanama and as admitted by panch witness, extensive search was taken on the spot. Thus, according to him, there is possibility of planting of the said knife, and hence said recovery of knife cannot become a ground for convicting the accused.

7. Learned APP supported the impugned judgment by placing reliance on the proved fact that the occurrence of the incident in which deceased died is in the house of the accused. The incident in question is said to have been proved through eye-witness Hiralal and injured witness Kishor, who narrated about the manner in which deceased was assaulted with knife. According to him, the ocular evidence gets corroboration from the recovery of blood stained clothes of the accused as well as knife which was used in the crime in question. It is submitted that the Medical Officer has also opined after examination of the said weapon that the injuries caused to the deceased are possible by the said knife. Thus, according to him,

there is no case made out by the appellants for causing any interference in the impugned judgment.

8. Testimony of Hiralal (PW 3) who is the informant and brother of deceased indicates that at the relevant time, some function was going on wherein accused also participated and thereafter everyone heard quarrel between Tukaram and Rekhabai in their house. Both the eye-witnesses i.e. Hiralal and Kishor candidly deposed about having heard cries for help by Rekhabai and Sushilabai. Though it is sought to be canvassed on behalf of prosecution that it was a plan of the accused persons to call Ganesh inside the house in order to commit his murder as he had knowledge about the illicit relations of Rekhabai with another person but the evidence on record however, does not support the said theory. On the other hand, Report (Exhibit 43), which is immediate after incident, specifically states about incident of assault was caused for the reason that Tukaram did not like interference and advice of Ganesh in the quarrel.

9. Evidence of Kishor (PW 5) shows that after hearing the cries of Rekhabai and Sushilabai, he along with Ganesh went to the

house of the accused and there was a talk between accused and Ganesh for about five minutes. He also stated that accused did not have knife in his hand however, he shows his inability to state as to how later knife was procured by the accused. This evidence also goes to show that there was no preparation to kill Ganesh as per theory propounded by prosecution. Otherwise, Tukaram ought to have been seen with knife since the inception of the incident.

10. Kishor, however, is candid to say that accused Tukaram caused assault on his right hand with knife and thereby injury was caused to his thumb. It is thus clear that it was accused Tukaram held knife to cause said injury to Kishor. There is no evidence to show that the knife has changed the hands thereafter.

11. Moreover, it has further come in evidence of Kishore that Tukaram and Rekhabai wanted to dance in the program and on the issue of dancing amongst women, there occurred quarrel between them and while quarreling they went to their home, which fact supports the first report given by Hiralal to police about the incident.

12. It is the case of prosecution that accused No. 2 and 3 pulled Ganesh inside the house but first information by Hiralal does not disclose the same. The said theory is belatedly introduced to the case. It is pertinent to note that both these witnesses have candidly admitted about having no knowledge in respect of any illicit relations of Rekhabai nor Ganesh has disclosed to them about it. Though Kishor claims that both ladies pulled Ganesh inside the house, after they reached home of accused, his cross-examination however shows that some neighbours were also present at the home of accused. He further stated that for 5 minutes Ganesh was separating quarrel. According to him, after 5 minutes of assault on him, Ganesh was assaulted but Ganesh did not intervene nor tried to flee from the spot. In the light of this evidence, it was necessary for the prosecution to examine neighbours present at spot, who were independent witnesses. Considering the improved version of informant and belated introduction of role of ladies, the examination of independent witnesses was must and in absence thereof, it is unsafe to accept the contention that both Rekhabai and Sushilabai pulled Ganesh inside house.

13. As far as actual occurrence of the incident of assault in which deceased Ganesh sustained injuries is concerned, cross-examination of Hiralal as well as Kishor shows that they went to the house of accused, the door was opened after giving kicks thereon and they saw Ganesh lying in injured condition in pool of blood. It clearly means that they did not have occasion to see the actual causing of assault on Ganesh. Therefore, on the basis of their evidence it cannot be held that Rekhabai and Sushilabai had caught hold Ganesh and Tukaram inflicted blow in the middle of his neck with the knife.

14. There is recovery of blood stained clothes of Rekhabai and Sushilabai. However, it is absolutely natural that their clothes to get stained with blood considering the fact that blood spilled all over the spot pursuant to assault caused on Ganesh. Spot panchanama (Exhibit 36) indicates that the blood was spilled over all the walls as well as on the floor of the house of accused. Thus, naturally, the clothes of the person present at the spot would get stained with blood irrespective of participation in assault or not. In the circumstances, the said sole fact, therefore, cannot be treated as conclusive evidence to connect them with the death of Ganesh.

15. Dr. Patil (PW 10) who conducted post mortem on the dead body has recorded in the post mortem note (Exhibit 67) that there was an oblique stab wound at the middle of the neck of the deceased. This, according to him, was the cause of death and there is no reason for us to disbelieve the opinion of the Medical Officer that it is a homicidal death.

16. As far as appellant Tukaram is concerned, apart from evidence to show that he held knife at spot, there is additional evidence on record to show his complicity in the crime in the form of recovery of blood stained knife pursuant to the statement made by him under Section 27 of the Evidence Act. As per the testimony of Ananda (PW 2), Tukaram made statement while in the custody of police that he has concealed the knife in his house and will show the same to the police. Said statement (Exhibit 40) is duly proved by this witness. According to him, thereafter accused took them to his house and removed blood stained knife from a plastic box. It is also categorically deposed that the said weapon was sealed at the spot. The witness has identified the said knife in the Court. It is sought to be argued on behalf of the accused that police had been to the house

of the accused earlier when spot panchanama (Exhibit 36) was done and that time, extensive search of the house was taken. It is necessary to note that the knife was not found kept in open in the house but it was concealed in the plastic box and hence it could escape attention of police. Thus, the knowledge about the said knife being kept in the said box was exclusively with the accused at whose instance the said recovery is done.

17. Dr. Patil (PW 10) who conducted post mortem was also referred with the said knife for his opinion about the injuries caused to the deceased. According to him, the injuries caused to the deceased are possible by the seized knife (Article I). The certificate issued by the Medical Officer (Exhibit 68) to that effect is duly proved by him.

18. There is evidence to show that seized knife was sent to Forensic Lab and C.A. report (Exhibit 98) shows that clothes of deceased were stained with blood of group 'B' and the blood of same group is found on knife. It is, therefore, clear that the recovery of weapon is at the instance of accused Tukaram which is duly connected with the incident of assault. Thus, there is more than

sufficient material evidence on record in order to show that accused No. 1 Tukaram is the author of the injuries caused to the deceased.

19. Considering the injury caused in the middle of the neck of the deceased attributes sufficient knowledge to accused No. 1 that the said injury is fatal, it therefore, can be safely said that at the time of inflicting said injury, Tukaram had knowledge that the said injury would result into death of the deceased. The circumstances on record also indicate that deceased died on the spot. Since accused Tukaram is found to have authored the said injury, no other motive is required to be proved by the prosecution against him to kill Ganesh. In the light of overall circumstances and material evidence on record the conviction recorded against accused No. 1 Tukaram cannot be faulted with.

20. As far appellants No. 2 and 3 are concerned, the entire case of the prosecution rests on the fact that Ganesh had knowledge about the illicit relations of Rekhabai and in order to prevent him from making the same public, they eliminated him. To support the said theory, there is absolutely no evidence on record. So also, there is no other evidence in order to connect these accused with the

crime in question for want of any incriminating recovery at their hands or any overt act being committed by them which would have indicated common intention shared by them with accused Tukaram. In the circumstances, appellants Rekhabai and Sushilabai deserve to be acquitted from the charge by extending benefit of doubt to them. In the result, following order is passed :-

ORDER

- i) Criminal Appeal is partly allowed.
- ii) The impugned judgment and order is confirmed to the extent of conviction of appellant No. 1 Tukaram Kashinath Khambayat.
- iii) The impugned judgment and order is set aside to the extent of conviction of accused No. 2 Rekhabai Tukaram Khambayat and accused No. 3 Sushilabai Arun Barde and they stand acquitted in Sessions Case No. 19/2016.
- iv) Bail bonds of appellant No. 2 and 3 stand cancelled.
- v) Refund fine paid, if any, to accused No. 2 and 3.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge