

RMA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1492 OF 2011
WITH
INTERIM APPLICATION NO. 1629 OF 2022

Mahendra Vasudeo Gavas

Age : 36 Years, Occ. : Nil,
 R/o. Zarebambar, Gaothanwadi,
 Tal. Dodamarg, Dist. Sindhudurg.
 (At present in Kolhapur Central Prison)

Appellant /
 .. Accused

Versus**State of Maharashtra**

(Notice to be served on Public Prosecutor,
 High Court, Mumbai.)

.. Respondent

Mr. Sanjeev P. Kadam a/w Ms. Varsha Milind Thorat & Mr. Mayur
 Govind Sanap for Appellant
 Mr. S.S. Hulke, APP for State

**CORAM : A.S. GADKARI &
 MILIND N. JADHAV, JJ.**

Reserved on : 02nd August, 2022.
Pronounced on : 25th August, 2022.

JUDGMENT [PER MILIND N. JADHAV, J.] :

1. This Appeal is against conviction questioning legality of Judgment dated 25.04.2011 delivered by Court of Additional Sessions Judge, Sindhudurg at Oros in Sessions Case No. 16 of 2009, convicting Appellant for offence punishable under Section 302 of Indian Penal Code (for short, “IPC”); sentencing him to undergo imprisonment for life and pay fine of Rs. 5,000/- and in default of payment of fine, to suffer rigorous imprisonment for 3 months. Appellant is also convicted under Section 324 IPC and sentenced to undergo concurrent rigorous imprisonment for 6 months concurrently.

INCIDENTS:-

2. Appellant is the sole accused. Appellant faced trial for offence punishable under Sections 302 and 324 IPC for having caused death of his wife Mayuri by assaulting her with a weapon – Pal Koyta (scythe) on her neck and waist in the courtyard of his residence at about 7.00 a.m. in the morning of 12.01.2009 (first incident) and thereafter assaulting (P.W. 9) - Prakash Fati Gavas (neighbour) with the same weapon - (second incident), with the intention and knowledge of causing death of the victims.

3. Facts from the prosecution case which emerge for consideration are as follows:-

3.1. Kashinath Mukund Shetkar, resident of Zarebambar Village, eye witness to the incident and first informant (P.W. 1) along with Dhaku Gavas, eye witness (P.W. 8), heard screams at about 7:00 a.m. to 7.15 a.m. on 12.01.2009 originating from the residence of Appellant and rushed there and saw him assaulting his wife Mayuri by a weapon – Pal Koyta (scythe) on her neck, back and waist, in the courtyard of his house. Kashinath, Dhaku father of Appellant and both his sons pleaded with Appellant not to assault her, but after the assault on spotting P.W. 1 and P.W. 8 Appellant ran away from the incident spot with the blood stained weapon held in his hand and on the way, reached a grazing location 'Gadachi Shel' nereby where he confronted

Prakash Fati Gavas (injured) P.W. 9. When P.W. 9 inquired with him about the blood stains on his hand and weapon, Appellant inflicted a blow on his neck which was blocked by him with his right hand resulting in causing injury to his right hand; Appellant thereafter inflicted two more blows on his back and ran away. Hearing P.W. 9's screams, another neighbour Ramchandra Dhuri reached out to him and offered water to drink; by this time P.W. 1 and Pandurang Gavas (another neighbour) reached out to P.W. 9 and carried him to his house nearby. P.W. 9 was thereafter shifted to Rural Hospital, Dodamarg where he regained consciousness. Prosecution has come up with the motive for committing the offence namely the offence against deceased Mayuri due to Mayuri not taking care of the ailing mother and father of Appellant and mentally retarded sister of Appellant leading to constant quarrel between Appellant and Mayuri.

3.2. P.W. 1, first informant made a telephone call to the Police Station and informed about the assault. By this time, Police received information that Appellant assaulted P.W. 9 with a weapon and had caused injury to him. Police Station Officer Arolkar received telephone call from P.W. 1 and relayed the information to Nandkumar Vasantrao Deshmukh, Police Inspector (P.W. 13), who along with his staff reached the first incident spot in Zarebambar Gaothanwadi Village. In the courtyard of house no. 27, belonging to Appellant, P.W.

13 saw the dead body of Mayuri, wife of Appellant. At this time, P.W. 1 reached Police Station and recorded his statement and thereafter reached the first incident spot along with copy of F.I.R. and gave it to P.W. 13. Spot panchanama was prepared vide Exh. 76; Inquest panchanama was prepared vide Exh. 31 and dead body of deceased Mayuri was sent for postmortem, vide Exh. 75, clothes and ornaments on the person of dead body were seized. Vide Exh. 76, in the presence of panch witnesses, soil mixed with blood from first incident spot was collected, broken green glass bangles (Article 4), broken Mangalsutra (Article 5), Muhurtamani (Article 6) and red thread (Article 7) were recovered and seized. Thereafter Police proceeded to the second incident spot i.e. 'Gadachi Shel' to make inquiry; there police collected grass along with mud with bloodstains in presence of pancha witnesses. Appellant was arrested by police immediately thereafter. Vide Exh. 77, police seized black pant (Article 10) having blood stains worn by Appellant at the time of both incidents. Appellant was referred for medical examination to Rural Hospital, Dodamarg. On 14.01.2009 Appellant led the police to a nearby place, Lopatra, where he had hidden the weapon – Pal Koyta; weapon was seized (Article 22) vide Exh. 80; it had red and black blood stains on its sharp edge. Vide Exh. 39, blood stained clothes worn by injured P.W. 9 were seized by police. Blood group of P.W. 9 was ascertained under requisition to Medical Officer vide Exh. 35, as also blood group

of Appellant was ascertained vide Exh. 70. Seized articles were sent for forensic analysis vide Exhs. 78 and 88 and C.A. Reports were received vide Exhs. 89, 90 and 91.

3.3. Injured P.W. 9 was examined on 12.01.2009 by Dr. Dnyaneshwar Arjun Ahivale – P.W.12 and medical injuries certificate was issued vide Exh. 66. Following injuries were found on P.W. 9:-

- (1) CLW size : 7 cm. x ½ cm. x bone deep;
Side : right hand ulnar; side first metacarpal bone;
Fracture seen; Fracture ends of bone seen;
- (2) CLW size : 10 cm. x ½ cm. x bone deep;
Side : On back right scapular region;
- (3) CLW size : 5 cm. X ½ cm X bone deep;
Side : On back horizontal; 5 cm below base of skull.

3.4. P.W. 12 opined that above injuries may have been caused by sharp and hard object; Injury No. 1 is grievous whereas injury Nos. 2 and 3 are simple injuries.

3.5. On 12.01.2009, postmortem of deceased Mayuri was conducted by P.W. 12 and following external injuries were seen and recorded in the PM Notes :-

- (1) CLW over left side neck from center of neck to lateral side; size : 12 cm. x 7 cm. x 3 cm; all major neck vessels cut completely; spinal cord cut completely;
- (2) CLW from hepatic region towards back; horizontal; size : 20 cm. x upto organ depth x 2 cm; Liver torn completely;
- (3) CLW over right arm; horizontal. Size : (1) 5 cm. x 4 cm. x ½ cm; (2) 3 cm. x 2 cm. x ½ cm;

- (4) CLW over right shoulder size : 7 cm. x ½ cm. x ½ cm;
- (5) CLW over right scapula; size : 7 cm. x 1 cm. x ½ cm;
- (6) CLW over left shoulder horizontal; size : 10 cm. x 3 cm. x 2 cm.

3.6. PM report and advance medical certificate were issued vide Exhs. 67 and 68 stating cause of death of Mayuri due to cardio respiratory arrest because of (i) hypovoluminic shock; (ii) severe blood loss due to cutting of major vessels in the left side neck; (iii) liver injury and (iv) other multiple injuries.

3.7. Medical certificate confirming blood group of injured P.W. 9 as 'B⁺' was exhibited vide Exh. 69; medical certificate confirming blood group of Appellant, as 'B⁺' was exhibited vide Exh. 70.

4. Since offences were triable by Court of Sessions, learned J.M.F.C., Sawantwadi committed the case to the Court of Sessions. Charge was framed below Exh. 11 under Sections 302 and 307 IPC. Charge was read over and explained to accused in vernacular; accused pleaded not guilty and claimed to be tried; his defence being that of total denial and foisting a false case against him.

5. Prosecution examined 13 witnesses to bring home the guilt of accused; P.W. 1 – Kashinath Mukund Shetkar, P.W. 8 – Dhaku Mahadev Gavas and P.W.9 – Prakash Fati Gavas are eye witnesses. P.W. 1 is complainant whereas P.W. 8 accompanied P.W. 1 to the

first incident spot. P.W. 9 is the injured in the second incident and has deposed.

6. P.W. 2, P.W. 3 , P.W. 4, P.W. 5, P.W. 6 and P.W. 7 are pancha witnesses. P.W. 10 is the police officer who registered the offence whereas P.W. 11 is the Head Constable who seized articles and recorded P.W. 9's statement in hospital. P.W. 12 is Dr. Dnyaneshwar Arjun Ahivale who conducted the postmortem of the dead body of Mayuri (Exh. 67), gave medical cause of death certificate (Exh. 68); medical certificate to injured P.W. 9 (Exh. 69) and medical certificate to Appellant (Exh. 70). P.W. 13 is the Investigating Officer (I.O.). Defence has not examined any witness.

7. Appellant was arrested between 12 noon and 12.30 p.m. on 12.01.2009 i.e. on the date of incident. Prosecution declared P.W. 1 complainant and PW 8 Dhaku Gavas, both eye witnesses as hostile. Hence case of Appellant for causing death of his wife Mayuri is entirely based on circumstantial evidence. P.W. 9 is examined by prosecution in respect of the second incident; both incidents, incidentally happened on the same day in succession but at different places and circumstances.

8. Prosecution case is that after fatally assaulting his wife Mayuri, Appellant ran away from the first spot of incident and reached 'Gadachi Shel' (second incident spot) where he confronted P.W. 9 who

was grazing his cattle; at that time, Appellant was carrying the weapon – Pal Koyta having blood stains on it; on seeing his hands and clothes smeared with blood stains, P.W. 9 enquired with Appellant about the blood stains; Appellant became enraged and inflicted a blow with the weapon - Pal Koyta on his neck; he blocked the blow with his right hand and sustained injury on right palm; Appellant thereafter inflicted two more blows with the weapon on his back and ran away from the incident spot. Thus, according to prosecution Appellant is involved in two incidents; viz; fatal assault on his wife Mayuri in the courtyard of his house and assault on P.W. 9 in ‘Gadachi Shel’; at a distance of 15 to 20 minutes from the first incident spot.

8.1. Two days after the incident, when Appellant was in custody, volunteered to recover the weapon and led police to a densely growing grass area (Lopatra) nearby where he had hid the weapon - Pal Koyta with which he committed both crimes. Weapon was recovered vide recovery (Exh. 79) – panchanama dated 124.01.2009. However, P.W. 2 and P.W. 4 both, pancha witnesses turned hostile denying witnessing discovery and recovery of weapon. In this regard therefore case is based on ocular evidence of P.W. 1 supported by CA report vide Exh. 90, which has concluded that, the weapon Pal Koyta had human blood having blood group ‘B’. To connect the dots prosecution has proved that blood group of both Appellant and P.W. 9

was 'B' vide Exh. 69 & and Exh. 70 thus connecting assault by the weapon on P.W. 9. This coupled with medical evidence given by P.W. 12 – Dr. Ahiwale would show that injuries inflicted upon both victims was by the weapon - Pal Koyta with intention of causing death or with intention of causing bodily injury as is sufficient in the ordinary course of nature to cause death and that Appellant had knowledge of his acts that in all probability his acts would cause death and hence acts of Appellant amount to culpable homicide.

9. On careful scrutiny of the medical evidence on record which corroborates the ocular evidence of P.W. 1 and P.W. 9 (injured) and taking into account nature of injury Nos.1 and 2 inflicted on deceased Mayuri, it is seen that the principal injury is on her neck from the center to the lateral side resulting in completely cutting of all major neck vessels and the spinal cord; second injury inflicted on her is a contused lacerated wound (CLW) inflicted by the weapon from the hepatic region towards her back resulting in tearing of her liver completely. Dimensions of both these injuries are such as to show that the infliction of blow by the weapon is right up to the organ depth. Such grave injuries inflicted by Appellant would naturally result in fatality. That apart, there are other contused lacerated wounds (CLW) of various dimensions seen over the right arm, right shoulder, right scapula and left shoulder of Mayuri of varying dimensions inflicted by

Appellant. Therefore, on careful appreciation of the evidence it is clear that Appellant assaulted deceased Mayuri and caused her death amounting to murder with intention to cause her death. Thereafter Appellant also caused serious injuries to P.W. 9 who testified and deposed before the trial court, medical evidence in support of his injuries clearly show that three blows were inflicted on P.W. 9 resulting in contused lacerated wounds (CLW) on his right hand first meta carpal bone, right scapular region and below base of his scalp; all three injuries are bone deep of varying dimensions; medical evidence clearly opines that the said injuries were caused by sharp and hard object. It is seen from the medical certificate Exh. 9 that injury No. 1 inflicted on P.W. 9 is a grievous injury whereas injury Nos. 2 and 3 are simple injuries; admittedly they are bodily injuries inflicted on P.W. 9 with intention to cause death or likely to cause death by weapon and therefore amount to voluntarily causing hurt and committing offence punishable under Section 324 IPC.

10. Though prosecution has examined two eye witnesses namely, P.W. 1 and P.W. 8 for proving the incident leading to death of Mayuri, wife of appellant and though both turned hostile, on reading of the entire evidence of these two witnesses, it cannot be said that their evidence can be discarded completely. Certain material facts stand clearly proved namely that, when both these eye witnesses

reached the first incident spot, they saw that Mayuri was lying hacked to death in the courtyard of the house and Appellant was standing at a distance of 5 to 6 feet away from her, armed with the weapon – Pal Koyta and on noticing these two witnesses fled towards the eastern side of his house in the direction of the second incident spot. This evidence is admissible and cannot be discarded.

11. Mr. Kadam, learned counsel for Appellant has taken us through the evidence of P.W. 1 and P.W. 9 and contended that none of the said prosecution eye-witnesses have actually seen Appellant committing assault on Mayuri and P.W. 9; hence there is no eye-witness to both incidents; that there is every probability of some third party having committed both offences and hence it cannot be established that prosecution has proved its case beyond reasonable doubt and that Appellant is the author of both crimes.

12. On analysis of the evidence, it is an admitted fact that on seeing the presence of P.W. 1 and P.W. 2 at the first incident spot, Appellant ran away from the spot. This would not be a normal human conduct on the part of Appellant to leave the bleeding body of his wife at the incident spot and run away on spotting the presence of P.W. 1 and P.W. 2, if he has not committed the act. If Mr. Kadam's submission is to be countenanced, then Appellant ought to have helped and assisted his bleeding wife / or sought help from P.W. 1 and

P.W. 8 who arrived at the incident spot, rather than run away from the spot. Statements of Appellant under Section 313 Cr.P.C. in the present case were recorded on 16.04.2010 and 24.03.2011; both statements reveal that Appellant has not explained the circumstances which are now sought to be argued by the learned counsel before us.

13. Mr. Hulke, learned APP on behalf of Respondent State submitted that there is substantial evidence recorded and produced in the present case to indict the Appellant; oral evidence of P.W. 1 and P.W. 9 injured fully supports the prosecution case in its entirety and blood groups of deceased Mayuri, Appellant and P.W. 9 having been matched and established on the weapon and clothes seized by the I.O.; that apart, blood stains on the weapon are proven to be of the same blood group as that of the Appellant and P.W. 9; that medical evidence and nature of injuries caused fully corroborates the oral testimony of prosecution witnesses namely P.W. 1 and P.W. 8 and point the needle of suspicion towards Appellant and no one else. Hence, he has prayed for dismissal of Appeal.

14. It is pertinent to note that P.W. 1 in his deposition has stated as under :-

(i) that he heard screams originating from house of Appellant and rushed there; that screams were of his father and two sons pleading with him not to assault Mayuri;

(ii) that he saw Appellant standing armed with the weapon- Pal Koyta at a distance of 5 to 6 ft. away from the dead body of Mayuri;

(iii) that on spotting P.W. 1 and P.W. 8, Appellant ran away from the incident spot towards the eastern side in the direction of 'Galache shed';

(iv) that he followed Appellant on his trail and encountered injured P.W. 9;

(v) that P.W. 9 informed him about Appellant's attack/assault on him by the same weapon;

15. Appellant was arrested; weapon Pal Koyta used by Appellant has been recovered and seized; blood stains on the weapon are of blood group "B" which is incidentally the blood group of Appellant, P.W. 9 and deceased Mayuri; on his arrest, blood stained clothes of Appellant have also been recovered and seized; CA Reports presented in evidence prove blood stains of Appellant, P.W. 9 and Mayuri on weapon and the Articles seized; evidence of P.W. 9 injured witness regarding the sequence of events of the attack/assault on him by Appellant needs to be accepted and cannot be discarded in so far as the second incident is concerned. This material evidence stands fully corroborated by the Medical evidence of injuries inflicted on deceased Mayuri and P.W. 9 and leave no doubt in the mind to infer that it is

the Appellant who has committed both offences with the same weapon – Pal Koyta.

16. From the evidence adduced it is seen that injuries caused to Mayuri are extremely violent, gruesome and ghastly. The exhibited injury certificate prove the same.

17. On analysing the ocular and medical evidence hereinabove we have reached the conclusion that prosecution has been able to fully establish the chain of circumstances to prove that Appellant committed culpable homicide amounting to murder of his wife Mayuri, the deceased, and is guilty for the same under Section 302 IPC. In so far as assault on P.W. 9 is concerned, we agree with the findings returned by the learned trial court in paragraph 18 of its Judgment on the basis of the injuries caused to P.W. 9 and holding the Appellant guilty for offence punishable under Section 324 IPC. We see no reason to differ from the same and arrive at the same conclusion.

18. In view of the above discussion and findings, we find no merit in the Appeal. Appeal dismissed. Interim Application No. 1629 of 2022 accordingly stands dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]