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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 955 OF 2015

Shankar Shrirang Gulik,

Age : 40 years, Occu: Labour,

R/o. Dahigaon, Taluka Malshiras,

Dist. Solapur.

(presently in Kolhapur Central Prison.)

.. Appellant

Versus

The State of Maharashtra,

[Through Natepute Police Station,

Taluka Malshiras, Dist. Solapur].

.. Respondent

Mrs. Nasreen Ayubi, Appointed Advocate for Appellant.

Mr. H.J. Dedhia, APP for Respondent – State.

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

RESERVED ON : 05th September 2022.

PRONOUNCED ON : 26th September 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

. This Appeal questions legality of Judgment and Order dated 30.01.2015 passed by learned Additional Sessions Judge, Malshiras, District Solapur (for short “**Trial Court**”) in Sessions Case No.10 of 2013 convicting Appellant (Original Accused) under Section 235(2) of the Criminal Procedure Code, 1973 (for short “**Cr.P.C.**”) for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short “**IPC**”) and sentencing him to suffer rigorous imprisonment for life alongwith fine of Rs.10,000/- and in default thereof to suffer rigorous imprisonment for two years.

2. Prosecution's case is based on ocular evidence of a child witness, aged 12 years which has been accepted by the Trial Court.

Prosecution case relates to an incident which took place on 05.07.2012 resulting in the death of one Chhaya Shinde at the hands of Appellant.

3. Facts of the prosecution case which emerge from the record are as under:

3.1. Deceased Chhaya and Ankush Shinde had four children. Chhaya was residing in village Natepute, Taluka Malshiras alongwith her two minor children, son Anil and daughter Renuka – 12 years whereas Ankush Shinde was residing in Mumbai alongwith their two elder children. Chhaya was working as sugarcane cutting labour. Appellant – Shankar Shrirang Gulik resident of a nearby village, Dahigaon in Taluka Malshiras also worked as sugarcane cutting labour alongwith Chhaya. According to prosecution, there were illicit relations between Chhaya and Appellant for more than one year prior to the date of incident. Appellant persisted with Chhaya to come and reside with him at Dahigaon, whereas Chhaya was reluctant to go with him, hence there were frequent quarrels between the two. At times Appellant used to stay in Chhaya's house during night.

3.2. On 04.07.2012, i.e. one day prior to the incident, Appellant once again persisted with Chhaya in the house of PW-5 – Dattamaie

Kachare to consider moving with him at Dahigaon. There was an exchange of words between the two, however Appellant assured Chhaya that henceforth he would not insist about the said issue. Thereafter both returned back to Chhaya's house in the evening.

3.3. On 05.07.2012, Anil and Renuka were awakened due to a quarrel between Chhaya and Appellant at about 05:30 a.m. in the morning. Both of them saw Appellant inflicting a blow with the scythe (sickle) on Chhaya's face. Chhaya sustained a grievous injury on her chin and fell down in a pool of blood. Appellant threw away the scythe in the house and ran away. Anil rushed to the police station and informed the police. Chhaya was taken to the Rural Hospital at Natepute, however considering the seriousness of her injury, she was referred to Civil Hospital, Solapur. Chhaya succumbed to her injury during treatment on 11.07.2012.

3.4. Police authorities informed Chhaya's brothers about the incident on 05.07.2012. One of her brother, PW-2 - Baba Rane lodged complaint against Appellant alleging attempt to murder Chhaya. Crime was registered as C.R. No.79 of 2012 in Natepute Police Station against Appellant, initially for offence punishable under Section 307 IPC and subsequently the provision of Section 302 IPC was added.

3.5. PW-11 - Namdeo Shinde carried out the investigation of crime. Spot panchanama was carried out vide Exh.23 and seizure

panchanama vide Exh.25 in the presence of PW-3 and PW-4. One blood stained scythe (sickle), one blood stained blouse, one blood stained plastic gunny bag and soil mixed with blood were seized from the spot of incident. Appellant was arrested and as per memorandum and seizure panchanama clothes of Appellant namely shirt, pant, underwear and baniyan were seized (Article "A-1 to A-4"). Investigating Officer ("IO") obtained injury certificate of Chhaya from Rural Hospital, Natepute where she was initially treated immediately after incident. IO received all relevant documents from the Civil Hospital, Solapur *inter alia*, postmortem report (Exh-49), advance date certificate, and inquest panchanama (Exh.63), which were duly proved in evidence. IO sent the seized clothes and other muddemal to the Regional Forensic Laboratory, Pune for chemical analysis. After completing investigation and recording of statements IO submitted chargesheet against Appellant in the Court of Judicial Magistrate First Class (JMFC), Malshiras. Since the offence punishable under Section 302 IPC is triable by the Court of Sessions, the learned JMFC committed the case to the Sessions Court for trial.

3.6. Charge was framed against Appellant vide Exh.6; its contents were read over and explained to him in vernacular; he pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of Appellant, prosecution

examined 15 witnesses in all. PW-2 – Baba Rane, brother of Chhaya is the first informant. PW-1 is pancha witness who proved memorandum and seizure panchanama vide Exh.16 pertaining to seizure of clothes of Appellant which he was wearing at the time of incident. PW-3 is a pancha witness for spot panchanama (Exh.23) and in his presence the weapon (scythe) used by Appellant, blood stained blouse and plastic gunny bag were recovered and seized from the spot. PW-4 is another pancha witness for seizure panchanama and in his presence clothes of deceased Chhaya were seized. PW-5 – Dattamaie Kachare is Chhaya's friend and Godmother and has deposed that Chhaya was her *Gurulek* (follower daughter). She has further deposed that there were illicit relations between Chhaya and Appellant for more than 7 – 8 years prior to the incident; that she had intervened and compromised several and frequent quarrels between the two at times.

5. PW-6 – Renuka Shinde is the daughter of deceased Chhaya and star prosecution child witness. She is eye witness to the incident and has in detail narrated the entire incident of having seen Appellant inflicting blow with scythe on Chhaya's face resulting in Chhaya's death. PW-7 is a Member of Natepute Police Station Dakshata Committee and in her presence police recorded statements of Anil and Renuka, minor children of Chhaya. PW-9 – Dr. Hemant Dixit is a Medical Officer who first treated Chhaya in Rural Hospital, Natepute

at about 07:00 a.m. on 05.07.2012. In his deposition, he has given a detailed description of the injuries noticed by him on Chhaya's body; he has stated that he issued *yadi* to the police station since Chhaya was not brought to the hospital by police. He has proved the injury certificate issued by him vide Exh.47. PW-10 - Dr. Shrikant Shinge is the doctor who performed postmortem on the dead body of Chhaya and proved the postmortem (PM) Report vide Exh.49. PW-11 is IO who carried out the investigation. PW-15 was the Police Officer on duty in Civil Hospital, Solapur who prepared inquest panchanama of the dead body of Chhaya vide Exh.63 and sent her body for conducting postmortem. PW-12, 13 and 14 are Police Officers who identified the muddemal in Court, produced clothes of deceased and identified them from the muddemal (Exh.60) and proved the recording of complaint by PW-2, brother of Chhaya vide Exh.19 and 16.

6. We have heard Mrs. Nasreen Ayubi, learned Advocate appointed represent the Appellant and Mr. H.J. Dedhia, learned APP and with their able assistance perused the entire evidence and record of the case.

7. It is seen that Chhaya was injured on the morning on 05.07.2012 at about 05.30 a.m. and thereafter taken to Rural Hospital, Natepute. PW-9 – Dr. Hemant Dixit examined Chhaya at

around 07:00 a.m. in Rural Hospital and found that she had an incise wound on her chin with fracture of mandible on the left side. According to him the injury was grievous and dangerous to life as it was caused by a sharp edge cutting weapon.

8. The deposition of PW-9 is fully supported and corroborated by the evidence of PW-10 – Dr. Shrikant Shinge who conducted the postmortem on the dead body of Chhaya and proved PM report vide Exh.49. In his deposition, PW-10 clearly opined that cause of death of Chhaya was due to the grievous injury sustained by her on her chin/face. Both these Medical Officers have been examined by prosecution and their evidence deserves to be accepted. In cross-examination, it was attempted to suggest to them that injury caused to Chhaya could be possible due to fall on a sharp edged tin sheet, however both Medical Officers have flatly denied the said suggestion. There is no material evidence on record to show that Chhaya had accidentally sustained injury due to fall and caused by any sharp object. Another notable feature which deserves to be considered is the fact that none of the prosecution witnesses have denied the fact that there was illicit relationship between Chhaya and Appellant. PW-5 the godmother of Chhaya, has deposed that Chhaya and Appellant had kept illicit relationship for several years. That there were frequent quarrels between them due to Appellant insisting that Chhaya should

reside with him at Dahigaon and Chhaya was reluctant to oblige and PW-5 had on several occasions intervened in their quarrels and attempted to settle them. Hence, the fact that there was illicit relationship with Chahya and Appellant and there were intermittent quarrels between the two cannot be denied and stands proven.

9. In the aforesaid backdrop, the deposition of PW-6 - Renuka Shinde, 12 year old daughter of Chhaya assumes critical importance. She is the eye witness to the incidence, according to her she and her brother Anil were present in the house when the incident took place. Her presence cannot be denied and is required to be admitted since spot panchanama which is duly proved by PW-3 vide Exh.23 gives the description of the place of incident as a single room admeasuring 15 ft. x 8 ft. Renuka has deposed that on the previous night i.e. 04.07.2012 there was quarrel between Chhaya and Appellant. They all slept in the same room and at 05:30 a.m. in the morning she was awakened due to quarrel between Chhaya and Appellant and saw Appellant inflicting a blow with the scythe on Chhaya's chin. She has further deposed that after the assault Appellant threw the scythe in the house and ran away. By the seizure panchanama Exh.23 the weapon (scythe) has been seized from the spot of incident. Though Renuka has been cross-examined at length there is nothing incongruous appearing therein so as not to believe her evidence. Several

suggestions have been put to Renuka in cross-examination. One of the suggestion was that at the time of incident there was darkness in house to which she has answered that though there was no electricity, there was a kerosene lamp in the house. Nothing in her deposition appears to be unbelievable, her credibility does not appear to be shaken at all. On the issue of her ability and capacity to understand the circumstances, we are inclined to consider her age. Her age at the time of incident was 12 years. Her evidence is reliable and believable. Her testimony stands duly corroborated and supported by the deposition of other prosecution witnesses. Spot panchanama and seizure panchanama duly corroborate and support her testimony. Her ocular evidence stands fully corroborated by the medical evidence given by PW-9 and PW-10 as discussed and alluded to hereinabove. According to us therefore version and deposition given by Renuka deserves to be accepted and admitted. She had identified the weapon used by the Appellant during assault. The seizure memorandum of blood stained clothes of deceased through the C.A. Report have proven the presence of human blood stains of Group 'A'. The C.A. Report also confirms that the blood found on Chhaya's blood stained clothes at the time of incident and the blood stains on the weapon i.e. scythe, blouse and plastic gunny bag found at the spot of incident had blood stains of one and the same group i.e. blood Group 'A'.

10. From the aforesaid evidence of prosecution witnesses it is seen that the presence of Appellant at the spot of incident cannot be denied or ruled out. PW-6 – Renuka's evidence clearly proves that she, Anil, Chhaya and Appellant, all four went to sleep in the house together on the night of 04.07.2012 and the incident occurred in the early morning hour of 05.07.2012 right in front of her eyes. Another reason for not disbelieving Renuka's deposition is the fact that Appellant was not unknown to her. Appellant was living in Chhaya's house alongwith Renuka and Anil and was on visiting terms in their house and fully acquainted with the children. Hence the identity of Appellant by Renuka of having assaulted Chhaya with the weapon stands proved and deserves to be accepted. Merely because Renuka is minor and hence her deposition should not be admitted cannot be a ground for the Appellant to argue in the present case. Her ocular evidence proves presence of Appellant at the scene of crime and she has seen him with having assaulted Chhaya and causing a fatal injury to her. It is undoubtedly clear from a minute perusal of her evidence that she has the capacity to understand the questions put to her and has been able to give rational answers to the same. Her evidence inspires absolute confidence about its genuineness and truthfulness and deserves to be accepted. It is further seen that the medical evidence given by PW-9 and PW-10 are further relevant and important circumstances which fully support the prosecution case. So also, spot

panchanama and seizure of articles and the C.A. Report linking the blood group of deceased Chhaya with the blood stained weapon recovered from the spot leaves no doubt in mind that the chain of circumstances fully corroborate and support the ocular evidence of PW-6. From the testimony of the prosecution witnesses the intention of Appellant to kill Chhaya is also clearly gathered as she had repeatedly refused to go and stay with him at Dahigaon on his insistence. Further nature of injury suffered by Chhaya clearly indicates about Appellant's intention to cause her death. In the face of the testimony of the eye witness, the guilt of Appellant stands proven beyond all reasonable doubts.

11. In the case of *Alagupandi Vs. State of Tamil Nadu*¹; the Supreme Court has emphasised the need to accept the testimony of a child witness with caution after substantial corroboration before acting upon it. The Supreme Court has held that it is a settled principle of law that a child witness can be a competent witness provided, statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. It is held that the Court in such circumstances can safely rely upon the statement of the child witness and it can form the basis of conviction as well. Though the evidence of a child witness and credibility thereof would depend upon the circumstances of each case, the only precaution which the Court

¹ (2012) 10 SCC 451

should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. In a catena of judgments it has been held that the evidence of child witness must find adequate corroboration before it can be relied upon. This is more a rule of practical wisdom than law.

12. Applying the aforementioned settled legal principles to the facts and circumstances of the present case, it is seen that ocular evidence of PW-6 stands fully corroborated and supported by medical evidence given by PW-9 and PW-10 and the recovery evidence as well.

13. Learned Trial Court has appropriately dealt with all the aforementioned aspects in its Judgment and Order. There is no room for doubt that the guilt of Appellant stands proven beyond all reasonable doubts and it is the Appellant only who has committed the offence of culpable homicide amounting to murder of Chhaya. No error is committed by the Trial Court and its Judgment and Order dated 30.01.2015 is confirmed.

14. Criminal Appeal is accordingly is dismissed.

15. Before parting with the Judgment, we would like to place on record appreciation for efforts put in by Mrs. Nasreen Ayubi learned appointed Advocate appointed by High Court Legal Services Committee, Mumbai for espousing the cause of Appellant, she was

thoroughly prepared in the matter and rendered proper and able assistance to the Court.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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