

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

CRIMINAL APPEAL NO. 74 OF 2019

Maroti s/o Somaji Masaram,
Aged about 23 years, Occ. Driver,
R/o Salai (Rani), Tahsil – Umred,
District Nagpur.

...APPELLANT

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station, Bela,
Tahsil, Umred, Dist. Nagpur.

...RESPONDENT

Shri Amit Kukday, Advocate (appointed) for appellant.
Shri S.M. Ghodeswar, A.P.P. for respondent.

CORAM:- V. M. DESHPANDE AND
AMIT BORKAR, JJ.

DATE:- MARCH 22, 2022

JUDGMENT (Per: V. M. Deshpande, J.)

By this appeal the appellant is challenging the judgment and order of conviction passed by the learned Additional Sessions Judge, Nagpur dated 28.02.2018 in Sessions Case No.321 of 2014, whereby the learned Judge convicted the appellant under Section 302 and 324 of the Indian Penal Code (for short “IPC”). After holding guilty for these two offences, the punishment was awarded. The punishment, which was awarded for the offence under Section 302 is life imprisonment and

payment of fine of ₹200/- with default clause whereas offence under Section 324 punishment was one year simple imprisonment with payment of fine of ₹100/-.

2. The prosecution case is a very short compass which can be seen from the First Information Report lodged by Shamlata Uikey (PW1). From her oral report (Exh.16), it is brought on report that deceased Dilip was her elder brother. Deceased's wife predeceased him. The appellant is brother-in-law of the deceased (साळ). From the report dated 29.04.2014 the appellant used to picked-up quarrel with Dilip as to why he permitted his nephew to visit his house. As per report, the incident in question has occurred on 29.04.2014 at about 8:30 p.m. when the first informant was present in the house. At that time, the appellant came to the house in the courtyard of the first informant and picked-up quarrel and challenged him that today he will finish him. That thereafter caught hold his collar dragged him that time in order to rescue him, first informant-Shamlata as well as her elder sister-Pushpa (PW2) followed. During this, when their brother was sat on *Ota* that time appellant took out big knife and gave two stab blows on his abdomen. His intestine protruded therefore that was tied

down in the meanwhile one Shriram Rode called an Ambulance and took Dilip to the Medical College, Nagpur. In the meanwhile the matter was reported to the police.

3. On the basis of report lodged by Shamlata, Police Officer – Vinod Rokde (PW16) registered the offence initially against the appellant for the offence punishable under Section 307 of the IPC vide Crime No.18 of 2014. In the meanwhile, on 30.04.2014 at about 01:40 a.m. information was received from Nagpur Medical College about death of Dilip therefore the offence converted from Section 307 to Section 302.

4. The investigating officer took all steps for completing the investigation and after completion of the investigation filed charge-sheet before the learned Jurisdictional Magistrate. The learned Magistrate found that the offence is exclusively triable by Court of Sessions therefore the case was committed in the Court of Sessions and was registered as Session Trial No.321 of 2014. The charge was framed against the appellant by the learned Additional Sessions Judge, Nagpur under Exh.3 for the offence punishable under Sections 302 and 324 of the IPC. The appellant denied the charge and prayed for its trial.

5. In order to prove the charge against the appellant the prosecution has examined in all 13 witnesses and also relied upon various documents which will be proved during the course of the trial. After appreciation of the prosecution case the learned Judge, who have conducted the trial, passed the impugned judgment.

6. Heard Shri Amit Kukday, learned counsel for the appellant and Shri S.M. Ghodeswar, learned Additional Public Prosecutor for the respondent.

7. With their able assistance, we have gone through the entire record and proceedings and evidence.

8. Both the learned counsel vehemently submitted their respective case and claimed for their respective relief.

9. The incident in question has occurred on 29.04.2014 at 8:30 p.m. and information was immediately received at Police Station, Bela on very same day at 21:30 hour and it was reduced vide General Diary Entry No.31 of 2014 at 22:15 hour. Thus,

prompt steps were taken by the first informant to narrate the incident to the police. Not only that, police also took the immediate steps for registration of the crime against the culprit. Lodgement of First Information Report has its own importance inasmuch as it completely rules out the false implication, deliberation by the first informant.

10. Though the prosecution has examined in all 13 witnesses, the star witnesses in the prosecution case are; Shamlata (PW1) and Pushpa (PW2). Shamlata apart from the fact that she is first informant is also an eye witness. Similarly, Pushpa is not only the eye witness but she is injured witness also. Shriram Rode (PW3) is the person, who helped the family of the deceased for taking the deceased, when was alive, to the Government Medical College, Nagpur. This witness also acted as a Panch for seizure panchanama (Exh.19) of the clothes of the deceased. Similarly, in his presence on 01.05.2014 the appellant gave his disclosure statement (Exh.30 & 31). The admissible portion of the said disclosure statement, which led to the discovery of the knife which was concealed by the appellant at a place which was specially within his knowledge. After the disclosure statement of the

appellant was recorded, he led police party along with Shriram Rode (PW3) to his house where he concealed the weapon i.e. knife. He took out the same on the spot itself, which was seized and sealed. The recovery panchanama is at Exh.31. Perusal of the Exh.31 would show that the knife was a big knife having blade of 23 cm.

11. One Arjun Bhojane (PW4), who acted as a panch when spot panchaman (Exh.36) was drawn by police. In his presence the police has seized the simple and blood mix soil from earthen under seizure memo (Exh.37).

12. Anil Dhurve (PW7) is a panch for inquest panchama (Exh.64). Vijay Gajghate (PW8) a Circle Officer, who has drawn the map of the site of incident (Exh.69). Rajendra Meshram (PW11), Alsam Navrangabade (PW12) and Narendra Durge (PW13) are the police constable and they performed their duty as directed by the investigating officer Vinod Rokde (PW16).

13. On 29.04.2014, Dr. Amol Varade (PW9) when he was working as Casualty Medical Officer at Government Medical

College, Nagpur, that day he examined Pushpa (PW2). He found that she sustained injury on her posteiror orricular area i.e. behind her left ear. The said injury he mentioned in the medical report, which is at Exh.53. The injury certificate of Pushpa (PW-2) was also proved by Dr.Kunal Sirsat (PW6). The same is at Exh.55 as the same was issued on 20.06.2014.

14. The *post mortem* of deceased was conducted by Dr. Swapnil Akhade (PW5). During conducting post mortem he found total 6 external injuries :

The first injury was incised wound having size 2 cm x 0.05 cm x 0.03 on anterior aspect of left side of chest in 7th inter-coastal space along with middle clavicular region with obliquely shaped, with tailing present at upper medial end for 0.2 cm. Margins were clean-cut and red.

Second was the stab injury on left side of chest along anterior axillary line at the level of 6th inter-coastal space, vertically placed wedge shaped, upper end blunt and lower end sharp with margins bruised. It was red in colour of size 3.5 cm x 1 cm x cavity deep, directed backwards and medially. (Perforating injury to the lower lobe of left lung and penetrating injury to apex

of heart.) Cavity deep means such deep which may touch to the internal organs. This more deep than the muscle deep.

Third injury was stab injury to the left side of abdomen obliquely placed with upper medial end blunt situated 1 cm. left infero lateral to 3.2 cm x 2 cm x cavity deep. Margins were bruise with tailing present at lower lateral end for 2 cm, directed laterally, red in colour. The injury was directed backwards and medially upwards.

Fourth injury was wound on right side of abdomen transversely placed with medial end situated cm, to the right infero lateral to umbilicus of size 3 cm x 0.5 cm x 0.2 cm with tailing present at medial end for 2 cm., red in colour.

Fifth was stab injury on lateral $1/3^{\text{rd}}$ of left inguinal region obliquely placed with upper medial end sharp and lower lateral and blunt of size 1.5 cm x 0.5 cm x muscle deep directed backwards and medially.

Sixth injury was stab injury on right side of back 4 cm below the lower end of right scapular region, transversely placed, both the ends sharp with lower margins abraded throughout the width for 0.3 cm. red in colour of size 3 cm x 1 cm x cavity deep, directed obliquely upwards and forwards.

According to Doctor, injuries nos.2, 3 and 6, mentioned in column No.17 of post mortem report (Exh.50) which are corresponding injuries mentioned in column Nos.20 & 21 are sufficient in ordinary course of nature to cause death. According to the evidence of Doctor, the injury No.2 of column No.17 was able to cause the immediate death of the person. All injuries were found to be ante-mortem injuries.

15. From the evidence of Dr. Swapnil and his finding which is recorded while conducting the post mortem (Exh.50), we have no hesitation in our mind to record a finding as recorded by the learned Judge of the trial Court that the death of Dilip was homicidal one.

16. According to the prosecution, the appellant is the person responsible for his death whereas as per submission of the learned counsel for the appellant and from the line of the cross-examination his defence was he has falsely implicated in the crime.

17. The prosecution has examined two sisters of deceased Dilip and according to prosecution they are the eye witnesses. The

attempt was made before this Court by the learned counsel for the appellant that they being sisters of the deceased they are having interested and therefore their evidence needs to be discarded.

18. We are not ready to accept this submission in absence of anything that is not brought on record to show these witnesses were not the eye witnesses or those were having any reason to implicate the appellant falsely. Merely because prosecution witness closely related to the deceased that by itself their evidence does not earn disqualification.

19. In this case, Pushpa (PW2) is not only an eye witness but she is injured witness also. According to Dr. Amol (PW9), when he examined Pushpa, he found the injury which can be caused by weapon like knife and the injury was fresh. Pushpa was examined immediately. She was examined as per the evidence of Dr. Amol on 29.04.2014 itself and as per Exh.53 she was examined at 11:20 p.m. Thus, the injury suffered by Pushpa corresponds to the time when assault was made on the deceased. According to this prosecution witness, when she tried to intervene to rescue her brother she was assaulted by the appellant.

The entire cross-examination of this prosecution witness does not shake her evidence. Independently we found that her evidence is trustworthy and is free from any exaggeration and/or embellishment therefore there is no difficulty for us to accept Pushpa as the ocular witness.

20. Another witness is Shamlata (PW1). She is a first informant and also sister of deceased Dilip. She has deposed from the witness box on the line of her oral report (Exh.60). During her cross-examination nothing could be brought on record to show that there were any discrepancies and/or improvement or contradiction qua first informant. Her evidence is also found to be trustworthy by us after independent scrutiny by the learned trial Judge.

21. It is to be mentioned here that the appellant also was having injuries when he was examined by Suresh Mane (PW10). On 30.04.2014, when appellant was examined by Suresh Mane found following three injuries :

(i) Injury to right medial finger measuring 0.5 x 0.2 x 02 cm.

(ii) Injury on the index finger of the right hand measuring 0.5 x 0.2 x 0.2 cm.

(iii) complaint of pain and bleeding from aforesaid injuries.

As per Suresh Mane's evidence, appellant disclosed to him that he suffered those injuries at the time of quarrel. His evidence however further shows that nobody has caused injuries to him but he self injured. Further, it is always possible that looking to the nature of the injuries and the part of the injures it is quite possible that those injuries can be caused while handling a large sharp edged weapon.

22. During the course of the investigation the investigating officer sent muddemal property to CA under sealed condition. CA requisition is at Exh.87. As per the CA report (Exh.145), the blood group of blood of deceased was determined as group 'B'. Similarly, the blood group of the appellant was also determined as group 'B'. The weapon i.e. knife and clothes of the appellant were found to be having human blood of group 'B'. No explanation was offered for the same when appellant was examined under Section 313 of the Code of Criminal Procedure.

23. On reappreciation of entire prosecution case we are of the view that the appellant is the author of the injuries that caused untimely death of Dilip. The incident was witnessed by two witnesses, whose evidence is found to be trustworthy. Similarly, prosecution evidence shows that the scientific also support the prosecution. Consequently, we pass the following order:

ORDER

The Criminal Appeal stands dismissed.

JUDGE

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