

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

CRIMINAL APPEAL NO.600 OF 2008

Gangaram @ Narendra Dewidas Ingole,
 Aged about 26 years,
 R/o Kasawi, Tq. Murtizapur,
 Dist. Akola. **APPELLANT**

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

The State of Maharashtra,
 through Police Station Officer,
 Murtizapur Police Station,
 Dist. Akola. **RESPONDENT**

 Mr. A. B. Mirza, Advocate for Appellant.
 Mr. N. S. Rao, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**

DATE OF RESERVING THE JUDGMENT : 04.12.2021
DATE OF PRONOUNCING THE JUDGMENT : 04.01.2022

JUDGMENT:

The appellant is assailing the judgment dated 01.08.2007 rendered by the Sessions Judge, Akola in Sessions Trial 170/2007 whereby the appellant is convicted for offence punishable under Section 323 of the Indian Penal Code (IPC) and is sentenced to suffer rigorous imprisonment for period of one year and to payment of fine of Rs.1000/- (Rupees One Thousand), and in default of payment of fine, to suffer further imprisonment

for period of two months.

2. The case of the prosecution is that the deceased Vitthal Dhanaji had lent Rs.20/- (Rupees Twenty) to the appellant, who shall be hereinafter referred to as the accused. Vitthal Dhanaji demanded return of the said amount from the accused, in the presence of a person, which left the accused embarrassed and enraged. The accused assaulted Vitthal Dhanaji in the evening of 01.08.2007 with fists and kick blows. Kailash Sheshrao Nasle took Vitthal Dhanaji to the auto-rickshaw stop to proceed further for availing medical assistance. At the auto-rickshaw stop, Vitthal and Kailash met the son of the deceased Balu who was with Dilip Raut. The deceased disclosed the assault to Balu and Dilip. Vitthal was then taken to Police Station, Murtizapur and a report lodged. Vitthal was then taken to the hospital and after availing treatment he returned home. Vitthal, Balu and Dilip were at Vitthal's home when the accused came there and threatened that if the complaint is not withdrawn he would assault Balu too. The accused again assaulted Vitthal. The next morning Balu noticed some swelling on Vitthal's chest and took him to the hospital at Murtizapur from where he was referred to the hospital at Akola. Vitthal succumbed to injuries

suffered. Autopsy was conducted and on 04.08.2007 pursuant to report lodged by Balu, offence punishable under Sections 302, 504 and 506 Part-II of the Indian Penal Code (IPC) was registered. The investigation proceeded on the usual lines. The statements of witnesses were recorded. The accused was arrested and after completion of the investigation the final report under Section 173 of the Criminal Procedure Code, 1973 (Code) was submitted in the court of the jurisdictional Magistrate, who committed the case to the Sessions Court.

3. The learned Sessions Judge framed charge (Exhibit-23), the accused pleaded not guilty and claimed a trial. The defence is of total denial and false implication. The prosecution examined seven witnesses including PW-1 Balu and PW-5 Dilip Raut. Mohan Aoghate, who is examined as PW-2 is also a material witness, since according to the prosecution it was in his presence that the deceased demanded refund of the loan which met with a violent reaction from the accused. The accused did not step into the witness box nor did he examine any witness in defence. The learned Sessions Judge, held that while the accused is indeed responsible for the death, neither the requisite intention nor knowledge as is envisaged under Sections 299 and

300 of IPC can be attributed, and therefore, the offence shall not fall under Section 302 of IPC. The learned Sessions Judge convicted the accused for offence punishable under Section 323 of IPC. The learned Sessions Judge further held that offences punishable under Sections 504 and 506 Part-II of IPC are not proved.

4. The learned counsel for the accused Mr. Mirza argued that adverse inference ought to have been drawn against the prosecution since Kailash Nasle is not examined. It is further argued that the learned Sessions Judge failed to appreciate that PW-1 and PW-2 were not present at the time of the alleged first incident near Mahadeo temple and that the evidence of the witnesses suffers from *inter se* inconsistencies. In rebuttal, the learned APP Mr. Rao would argue that the appreciation of evidence on record by the learned Sessions Judge is unexceptionable and that the accused, if at all, is shown indulgence and is granted the benefit of the doubt to the extent a finding recorded is that he neither had the intention nor the knowledge as would categorize the offence as culpable homicide.

5. With the assistance of the learned counsel for the

accused Mr. Mirza and the learned APP Mr. Rao, I have scrutinized the evidence on record, and having done so, I have no hesitation in recording that the judgment of conviction must be confirmed.

6. The genesis of the offence is the incident which took place on 01.08.2007, near the Mahadeo temple in the village. PW-2 Mohan Aoghate is a witness to the said incident. PW-2 told the court that when the deceased demanded refund of Rs.20/- (Rupees Twenty), he was assaulted with fists and kick blows, by the accused. In the cross-examination, the defence elicited that except PW-2 and the deceased, there was no other person sitting at the *ota* near the Mahadeo temple. The learned Sessions Judge has rightly observed that in the teeth of such elicitation, the doubt sought to be cast by the defence on the version, on the premise that the spot of the incident is in a populated area and yet no one rushed to the rescue of the deceased, is misplaced. The evidence of PW-2, which is believed by the learned Sessions Judge, and which I, too, find credit worthy, is sufficient to establish that in the evening of 01.08.2007 the accused assaulted the deceased near the Mahadeo temple.

7. It is not as if the version of PW-2 Mohan Aoghate is

not corroborated. PW-1 Balu has deposed that at 06:30 p.m. he saw Kailash bringing his father on his two-wheeler, and his father disclosed that he was assaulted by the accused since he demanded refund of the loan. PW-2 Mohan told the court that he took his father to Police Station Murtizapur and the report was reduced to writing. Further corroboration to the evidence of PW-2 Mohan is available in the evidence of PW-5 Dilip Raut who also told the court that it was Kailash who brought the deceased to the auto-rickshaw stand at Murtizapur and the deceased disclosed the incident of assault by the accused.

8. In my considered view, holistic appreciation of the evidence on record conclusively establishes that in the evening of 01.08.2007 the accused assaulted the deceased with fists and kick blows since the deceased demanded refund of loan of Rs.20/- (Rupees Twenty).

9. I note that there was some debate in the trial court, as to the admissibility of the disclosures made by the deceased to PW-1 Balu and PW-5 Dilip, and the defence argued that Section 32 of the Indian Evidence Act would not come into play. The learned Sessions Judge reasoned that the words, “the cause of his death”

and “or as to any of the circumstances of the transaction which resulted in his death” in Section 32 (1) of the Indian Evidence Act would be relevant and the disclosures made by the deceased to PW-1 Balu and PW-5 Dilip would be admissible. I entirely agree with the reasons recorded by the learned Sessions Judge. The disclosures indeed pertain to the circumstances of the transaction which resulted in Vitthal’s death. The learned Sessions Judge is also right in observing that apart from Section 32 (1), Section 8 of the Indian Evidence Act will make the statements and disclosures admissible.

10. If at all any further corroboration is required, as regards the first assault, PW-7 PI Ambalkar has proved the report which the deceased lodged on 01.08.2007.

11. The defence argues that since Kailash is not examined the prosecution version of the first incident is doubtful. It is difficult to agree. The first incident is well and truly proved by the other witnesses examined and there is no reason to doubt the prosecution case only due to the omission to examine Kailash.

12. In so far as the second part of the incident, it is well

established in the evidence of PW-1 Balu and PW-5 Dilip that on the same night the accused came to the house of the deceased and threatened that unless the police report is withdrawn, he would assault Balu, too. PW-1 and PW-5 have told the court that even as PW-5 Dilip attempted to reason out with the accused, the deceased was assaulted by the accused. PW-1 Balu was cross-examined as to the contents of the report Exhibit-31 lodged on 04.08.2007 and the fact that the report did not refer to the assault with kick blows. PW-1 Balu explains the omission by telling the court that his father had died and he was not in a proper state of mind. I am not inclined to reject the consistent evidence of PW-1 Balu and PW-5 Dilip for reasons more than one. The explanation given by PW-1 Balu is not unreasonable. Moreover, the report is not supposed to be an encyclopedia and it would be unreasonable to insist that precise words must be used to describe the assault. PW-1 has told the court that the accused floored his father who fell in a drain. That the accused assaulted the deceased after coming to his house and issuing threats is well established.

13. The evidence is that the deceased was in excruciating pain in the night of 01.08.2007 and he expired on the next day.

PW-3 Dr. Ramteke conducted the autopsy on 03.08.2007. Abrasions and contusions were noticed on chest and other parts of the body of the deceased. The doctor told the court that abrasion on the left side of the base of the nose and the contusions on the upper chest and the neck correspond to the injury which is likely to have caused death. The injuries could result in neuro-genic shock, is the expert opinion. In the cross-examination PW-3 Dr. Ramteke did confirm that the injuries were simple.

14. While the second part of the incident is also established beyond reasonable doubt, the learned Sessions Judge held that the accused neither had the requisite intention nor can the requisite knowledge be attributed as would bring home the charge of murder. The prosecution has not challenged the judgment of conviction and I need not make any further observation except to state that the conviction recorded for offence punishable under Section 323 of IPC will have to be confirmed.

15. While the learned counsel Mr. Mirza did argue that considering the passage of time, the sentence be reduced, I see no reason to do so. A precious life is lost. The accused not only

assaulted the deceased, when the deceased demanded refund of Rs.20/- (Rupees Twenty), the accused returned to the house of the deceased, threatened the family members and again assaulted the deceased. No leniency is deserved, and none can be shown.

16. The appeal is sans merit, and is dismissed.

17. The bail bond of the accused shall stand cancelled.

18. The accused shall surrender before the jurisdictional court, in two weeks, to serve the sentence.

19. If the accused does not surrender within the next two weeks, the Murtizapur Police Station shall take him in custody and produce him before the jurisdictional court.

JUDGE

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