

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

CRIMINAL APPEAL 567 OF 2019

Ajay s/o. Chandrabhan Bansod,
aged 40 years, Occ. Labour,
r/o. Bela, Tahsil & District Bhandara

.....APPELLANT

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

State of Maharashtra,
through Police Station Officer,
Bhandara, Tahsil & District, Bhandara

..RESPONDENT

Mr. A.V. Muley, counsel for appellant.
Mr. T.A. Mirza, APP for respondent/State.

CORAM:- ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATED :- 06.12.2022

ORAL JUDGMENT (Per: Rohit B. Deo, J.)

The appellant – accused is assailing the judgment dated 13.10.2005, rendered by the learned 2nd Adhoc Additional Sessions Judge, Bhandara, in Sessions Trial 36/2005, whereby he is convicted of offence punishable under Section 302 of the Indian Penal Code (“IPC”) and is sentenced to suffer rigorous imprisonment for life and to payment of fine of Rs. 10,000/- (Rupees Ten Thousand) in

default of which further rigorous imprisonment for one year shall be suffered.

2. According to the prosecution case, after the accused was held guilty, and prior to sentencing, he escaped and absconded from custody and was apprehended after span of fourteen years, precisely on 21.3.2019. This Court allowed the application preferred by the accused seeking condonation of delay and admitted the appeal for final hearing vide order dated 24.7.2019.

3. We have heard learned counsel Mr. A.V. Muley for the appellant and the learned APP Mr. T.A. Mirza for the State, and with their able assistance, the record is scrutinized. The prosecution case is that the fateful incident occurred at 8.00 a.m. on 2.2.2005. PW 3 – Sakharam Nimbarte and the deceased Bramhadas Selokar purchased kharra (mixture of betel-nut and tobacco) from pan kiosk of Pramod Gedam and went to answer the call of nature. On the way back, while returning home, PW 3 was following

Bramhadas. Accused was standing at the canal bridge near his house with both hands behind his back. Bramhadas was walking with his head bowed. Accused assaulted Bramhadas by iron kata (large Knife) above the right eyebrow. Bramhadas covered his eye by his hands to stop the flow of blood. Accused rushed towards his house, fetched an Axe and initially assaulted Bramhadas on his back with the blunt side. Bramhadas fell down and the accused delivered successive blows on the head and one blow on the finger by the sharp side of the Axe. PW 3 was frightened and he rushed to the house of Bramhadas informing the family members of the incident and when he returned to the spot, the accused had fled and several persons had assembled. Bramhadas was taken to the hospital where the doctor declared him dead.

4. The completion of the investigation culminated in the submission of final report in the Court of jurisdictional Magistrate, who committed the case to the Sessions Court. The learned Sessions Judge framed charge and recorded the

plea of the accused, who abjured guilt. The prosecution examined eleven witnesses. PW 1 – Prakash Landge is the panch witness to the spot panchanama and the seizure of the articles from the spot. He is also witness to the seizure of the clothes of the accused. PW 2 – Pandhari Thaokar claims to have seen the accused armed with Axe and to have further seen the accused running away and Bramhadas lying on the road near the bridge in a pool of blood. PW 3 – Sakharam Nimbarte is the eye witness, who is the first informant. PW 4 – Duryodhan Panchabudhe is examined as an eye-witness, however, he has not supported the prosecution. PW 5 Bhagwan Selokar is the son of the deceased, who has deposed on the aspect of motive. PW 6 – Yadav Tangale is an eye-witness to the incident. PW 7 – Sunil Bhure is examined as witness to seizure panchanama Exh. 29, who did not support the prosecution. PW 8 Vasanta Selokar is the panch to the memorandum under Section 27 of the Indian Evidence Act and the disclosure of the place where the accused concealed the weapons used in the commission of the offence. PW 9 – Dr. Deepak Nirvan conducted the autopsy.

PW 10 – Sangarsh Bharatkar is the police constable, who carried the muddemal to the Chemical Analyzer and PW 11 – Nana Karde is the Investigating Officer.

5. The accused did not examine any witness in defence. The text and tenor of the cross-examination and the examination of the accused under Section 313 of the Code of Criminal Procedure (“Code”) reveals that the defence is that there was a quarrel between the accused and the deceased previous night and it was the accused who reported the matter to police and therefore, he is falsely implicated.

6. It is not even argued that the death is not homicidal. Mr. A.V. Muley has twin submissions to canvas. The first submission is that the evidence is fragile and the accused is entitled to the benefit of doubt and the second submission is that in the absence of premeditation, the accused is entitled to the benefit of exception 4 to Section 300 of IPC, and can only be convicted, if at all, under Section 304 (Part-I) and not 302 of IPC.

7. We have given due consideration to the twin submissions canvased by Mr. A.V. Muley, and we regret our inability to be impressed by either of them.

8. We need not refer to the plethora of authorities which establish the position of law that motive will be more relevant if the prosecution case is based on circumstantial evidence and may not be a significant factor if the eye-witnesses account of the incident establishes the culpability of the accused. We say so, in view of the submission of Mr. A.V. Muley that since it was the accused, who was at the receiving end and lodged police report as regards the incident which occurred on the previous night, there was no reason for the accused to commit the alleged murder. All that has come on record is that there was some incident and the accused lodged a police report. It would be hazardous, and indeed within the realm of surmises and conjectures to speculate on the exact incident and whether there was motive, formidable or slender. We are satisfied, that in the

teeth of the ocular evidence which is sufficiently corroborated, motive pales into relative insignificance.

9. PW 3 – Sakharam is an eye-witness, who has given vivid description of the assault. The assault is in two parts. The first assault is with the Knife and then by the Axe which the accused fetched. The accused delivered blow on the back with the blunt side of the Axe causing Bramhadas to collapse and then on the fallen Bramhadas blows were given by the sharp side of the Axe. This testimony is not shaken in the cross-examination. The learned Sessions Judge has believed PW 3, and we are also inclined to accept the testimony of PW 3 as confidence inspiring.

10. Although, PW 2 – Pandhari has not seen the actual assault, he has remained steadfast in the assertion that he did see the Axe in the hand of the accused and that he and others approached the accused, who fled on his motorcycle and Bramhadas was lying on the road in a pool of blood. PW 2 – Pandhari substantially corroborates the testimony of the

witness PW 3 – Sakharam. PW 6 – Yadav is the other eye-witness examined by the prosecution, who claims to have seen the accused assaulting Bramhadas by the Axe near the small bridge near his house. While PW 6 – Yadav does not speak of assault with Knife, we have already noted that the assault is in two parts and conceivably PW 6 – Yadav has seen the latter part. Interestingly, in the cross-examination, the presence of the accused at the spot is brought on record. The suggestion given to the witness is that the accused and the deceased were surrounded by 8 to 10 persons. It is true, as submitted by Mr. A.V. Muley, that the prosecution has not been conducted with care and caution required. The bloodstained clothes of the deceased and the accused and the weapon seized pursuant to the discovery, were not produced by the prosecution presumably as the same were not received back from the Chemical Analyzer. However, we are satisfied, that having regard to the credible ocular account of the incident, mere non-production of the bloodstained clothes of the deceased and the accused and the weapon cannot be a ground for reversing the conviction. Irregularities or

deficiencies, either in the investigation or in the conduct of the trial, need not invariably lead to acquittal. The only and ultimate test is that judicial conscience must be satisfied on the basis of admissible evidence on record that the charge is proved beyond reasonable doubt.

11. We are further not inclined to hold that the offence which is proved is culpable homicide not amounting to murder, as would attract the provisions of Section 304 of IPC. PW 9 – Dr. Deepak, who conducted the autopsy has noticed five external injuries, which are described thus:

1. A lacerated wound 2x2 cm on the dorsum of left hand at the base of left finger index.
2. Incised wound 7 cm long 2 cm in width and 4 cm in depth extending horizontally upper part of nose to lateral end of right eye brow ending at distance of 10 cm from right pinna.
3. Incised wound 4 cm above left ear on scalp angle shape skull bone fracture at the base of wound deep upto brain matter.

4. Incised wound 4x2cm, 7 cm posterior to left pinna skull fracture present at the base of wound.

5. Incised wound in sagittal plain just anterior to vertex 5x1cm in size, 1 ½ cm deep, no skull fracture at the end.

The doctor noticed the following internal injuries:

1. Skull fracture 3x2x2cm anterior to vertex.
2. Skull fracture 2x1x1/2 cm, triangular, posterior to left ear.

Brain parenchymal damage associated with both above injuries.

12. The Post Mortem Report Exh. 36 opines that the probable cause of death is head injury and neurogenic shock. Considering the nature of the injuries inflicted on the vital part i.e. the head and the skull fractures suffered and the successive blows inflicted on the fallen man, it is clear that the accused intended to cause death, and in any event, to cause such bodily injury as he knew to be likely to cause death. In such a situation, it would only be if one of the five exceptions to Section 300 is probalilized, that the question of

considering the penal provisions of Section 304 shall arise. Exception 4 is invoked by Mr. A.V. Muley. However, we note that the act is premeditated. The accused appears to have been lying in wait. The accused first assaulted with Knife and then fetched Axe and delivered successive blows. It is not even the case of the defence that there was a sudden fight or quarrel. We outrightly reject the submission that the accused is entitled to the benefit of exception 4 to Section 300 of IPC.

13. On re-appreciating the evidence on record, we agree with the findings recorded by the learned Sessions Judge. We are satisfied that the prosecution has brought home the charge beyond reasonable doubt.

14. The appeal is dismissed.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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Digitally Signed By:BELKHEDE
RAVINDRA SURESHRAO
P.A. to the Hon'ble Judge
Signing Date:19.12.2022 17:54