

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

CRIMINAL APPEAL NO.615/2018

Deva alias Devendra s/o Ishwar,
Gabhane, aged 38 years, Occ. Labour,
r/o Walni, Tq. Pauni, Dist. Bhandara.
(at present detained in Central Prison,
Nagpur, Convict No.C-9933)

....APPELLANT

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

The State of Maharashtra through
Police Station Officer, Police Station,
Pauni, Tq. Pauni, Dist. Bhandara.

...RESPONDENT

Mr. S. G. Joshi, Advocate appointed for appellant.
Mr. M. K. Pathan, A.P.P. for respondent.

CORAM:- V. M. DESHPANDE AND
G. A. SANAP, JJ.
DATED :- 17.01.2022

ORAL JUDGMENT (PER: G. A. SANAP, J.)

1. In this appeal, challenge is to the judgment and order dated 21.02.2018 passed by learned Additional Sessions Judge, Bhandara in Special (Child) Criminal Case No. 12/2015, whereby, learned Additional Sessions Judge, convicted the appellant for an offence punishable under Section 302, 354D, 241, 504 and 506(II) of the Indian Penal Code. For the offence punishable under

Section 302 of the IPC, the appellant is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine, to suffer rigorous imprisonment for six months. For the remaining offences, sentence ranging from three years to fifteen days was separately awarded with fine and a sentence in default of payment of fine.

2. The facts leading to filing of this appeal are as follows.

The unfortunate deceased is Ku. Shilpa d/o Ramdas Jambhulkar, r/o village Walni, Tq. Dist. Bhandara. On the date of murder, she was studying in 11th standard in Zilla Parishad Junior College, Asangaon. For attending the college, she used to do up and down from her village on bicycle. The college would open at 7.30 a.m. The deceased along with girls of the village would attend the college.

3. On the fateful day of incident dated 20.02.2015, deceased along with Ku. Jija Ukare (PW3), Deepali There (PW5), Deepa Jambhulkar and Manisha Hatwar was proceeding to the college on bicycle. It is the case of the prosecution that on the way, near electricity DP, appellant Dewa alias Devendra Ishwar Gabhane was sitting near the brook. On seeing them, he came

towards them, stopped the bicycle of deceased and questioned the deceased Shilpa as to why she had beaten him. The deceased Shilpa answered that she did not beat him. Her mother beat him and therefore he should go to her mother and question her about it. The deceased Shilpa then proceeded ahead. When she reached near electric DP, the appellant followed her and by giving a cut to her bicycle, stopped his bicycle in front of her. The deceased fell down. Appellant caught her braid of hair, inflicted the blows on her neck with sickle. The deceased raised shouts to save her. Other girls accompanying the deceased tried to save their friend but the appellant extended the threat to kill them if they obstructed him. The girls therefore went to the college and narrated the incident to the teachers. The teachers went to the spot and after some time informed them that Shilpa died.

4. The appellant along with the weapon went to Police Station, Paoni. HC Balakram Nimkar (PW12) was station diary incharge. Appellant narrated the incident to him. The constable called two pancha witnesses and in their presence seized sickle stained with blood from the appellant. Similarly, he seized clothes of the appellant. Station diary incharge gave information to PI Rajendra Nagare (PW9). He went on the spot with two panchas.

PI Nagare drew the spot panchanama and seized the articles found on the spot.

5. Vilas Tighare (PW1) Police Patil lodged the report of the incident. On the basis of his report, PI Nagare (PW9) registered crime bearing No.20/2015 against the appellant. During the course of investigation, dead body was sent to post mortem. The medical officer conducted the post mortem and collected the samples. Samples were forwarded to the police station. During the course of investigation, statements of witnesses were recorded. The bicycle was discovered at the instance of the appellant. Samples were sent to the Chemical Analyzer (CA) for analysis. After completion of the investigation, the investigating officer filed charge-sheet in the Court of Judicial Magistrate First Class. On committal of the case to the Court of Sessions, charge Exh.-5 was framed against the appellant. The appellant pleaded not guilty. His defence was of denial and false implication.

6. The prosecution, in order to bring home the guilt of the appellant, examined in all 13 witnesses. On consideration and analysis of the evidence, the learned Additional Sessions Judge

held the charge framed against the appellant as proved and convicted and awarded a sentence, as above. Being aggrieved by this judgment and order, the appellant has come before this Court in appeal.

7. We have heard Mr. Joshi, learned counsel appointed through High Legal Services Sub Committee, Nagpur and Mr.Pathan, learned A.P.P. for the State. We have perused the record and proceedings.

8. Learned Advocate for the appellant submitted that evidence adduced by the prosecution is not sufficient to prove the charge against the appellant beyond reasonable doubt. Learned Advocate while commenting upon the evidence of eye witnesses Jeeja (PW3) and Deepali (PW5) submitted that evidence does not appear to be natural. Learned Advocate took us through their depositions and submitted that on material points, their evidence is not consistent. In the submission of learned Advocate, inconsistency on material point creates doubt about their credibility. The learned Advocate submitted that the evidence of mother of the deceased Tulsabai (PW4), by applying any standard, falls short to prove the motive for the commission of crime. As far

as the police witnesses are concerned, learned Advocate submitted that there are number of loopholes and lacunae in the investigation and therefore without proper explanation of the same, the benefit must go to the appellant.

9. Learned Advocate took us through evidence of Dr. Jyoti (PW7), Medical Officer, who conducted the post mortem and submitted that even if the first part of the report is accepted as it is, the learned Additional Sessions Judge, at the most, could have convicted appellant either under Section 304-I or II of the IPC. Learned Advocate took us through other evidence and submitted that there was a dispute between mother of the deceased and appellant on money transaction. It is pointed out that mother of the deceased and the appellant were literally at loggerheads. It has come on record in the evidence that prior to this incident, the mother of the deceased had beaten the appellant. Learned Advocate, therefore, submitted that at the most the act committed by the appellant could be said to be under grave and sudden provocation. In the submission of the learned Advocate, therefore, at the most, offence of culpable homicide not amounting to murder would get attracted.

10. Learned A.P.P. Mr. Pathan would submit that by leading cogent, concrete and clinching evidence, the prosecution has proved guilt against appellant beyond reasonable doubt. Learned A.P.P. took us through the judgment of the trial Court and submitted that the learned Additional Sessions Judge has recorded sound reasons in support of the finding arrived at by him. The learned A.P.P. further submitted that during the course of cross-examination of the eye witnesses Jeeja (PW3) and Deepali (PW5) not a single admission has been elicited either to doubt their presence on the spot or to create doubt about the credibility and veracity of their evidence. Learned A.P.P. submitted that immediately after incident Jeeja (PW3) and Deepali (PW5) went to college and informed their teachers about the incident. In short, the learned A.P.P. submitted that there is no material on record to create doubt about the veracity and credibility of evidence of Jeeja (PW3) and Deepali (PW5). Learned A.P.P. would submit that evidence of eye witnesses has been corroborated by contemporaneous documentary evidence, conduct of the appellant and by other oral evidence. Learned A.P.P. would submit that the submissions advanced on behalf of the appellant that the offence in this case would at the most be culpable homicide not amounting to murder, cannot be accepted at all in

the teeth of the oral and documentary evidence. The learned A.P.P. drawing our attention to the post mortem report and evidence of Dr. Jyoti (PW7) submitted that 24 injuries were found on the person of the deceased. Learned A.P.P. would submit that majority of the injuries were incised wounds. The learned A.P.P. submitted that therefore defence of culpable homicide not amounting to murder, in the teeth of the cogent and concrete evidence, is not at all available to the appellant.

11. In order to appreciate the rival submissions, at the outset, it would be necessary to make note of the admitted facts. After commission of the crime, appellant went to the Police Station with the weapon. It is an admitted fact that the weapon smeared with blood and clothes of the appellant were seized on the same day. This conduct of the appellant to a great extent, would reflect upon the defence of the false implication. Dr. Jyoti (PW7) had conducted post mortem on the dead body. She found following injuries on the dead body:

- i. Abrasion over right knee joint dorsally of size 0.5 x 0.5 c.m. reddish in colour.
- ii. Incised wounds over left hand near the web space of thumb and index finger ventrally extending

from base of right index finger. Ventrally and curved ventrally till dorsal aspect of thumb laterally of size 4 x 3 x 2 c.m. Underlying first inter-falling of first index finger bone was visible and visible muscle and tissues.

iii. Incised wound over left hand at the base of ring finger dorsally, size 3 x 2 c.m. It was muscle deep and reddish in colour.

iv. Abrasion over left hand little finger dorsally, near upper 1/3rd aspect, size 2 x 1 c.m., reddish in colour.

v. Incised wound over left elbow dorsal laterally muscle deep, size 5 x 2 x 2 c.m., reddish in colour.

vi. Incised wound elliptical in shape over left arm ventro laterally of size 13 x 3 x 3 c.m muscle deep and red in colour.

vii. Incised wound over right side lower thoracic region over anterior axillary region of size 14 x 3 x 4 c.m. Reddish in colour and muscle deep.

viii. Incised wound over left side of infra scapular of lower aspect of back laterally of size 4.5 x 2.5 c.m. It was cavity deep, blood was visible.

ix. Incised elliptical wound over right side of supra scapular region size 3 x 1 x 1.5 c.m., reddish in colour.

x. Incised wound over right shoulder laterally of size of 4 x 2 c.m., reddish in colour.

xi. Incised wound over right shoulder medially of size 3 x 1 c.m., reddish in colour.

- xii. Incised wound over right arm upper 1/3rd Doro laterally, size 4 x 3.5 x 2.5 c.m., reddish in colour.
- xiii. Incised wound over right hand dorsally near base of thumb, size 2 x 1 x 1 c.m., reddish in colour.
- xiv. Incised wound over right hand below the thumb dorsally, size 4 x 1 x 2 c.m. reddish in colour.
- xv. Incised wound over right hand index finger dorsally near the base, size 2 x 1 c.m.
- xvi. Incised wound over right hand palm ventrally, size 4 x 0.5 c.m. reddish in colour.
- xvii. Incised wound over dorsal aspect of middle finger, size 2 x 0.5 c.m., reddish in colour.
- xviii. Incised wound over ring finger dorsally, size 2 x 0.5 c.m. and it was dark reddish in colour.
- xix. Abrasion over right arm dorsally, size 3 x 0.5 c.m. and it was brownish in colour.
- xx. Multiple incised wounds over posterior aspects of neck region more on right side, size ranging from 2 to 4 c.m. x 0.5 to 1 c.m., reddish brown in colour.
- xxi. Incised wound over posterior neck region near the lower side of occipital region, size 10 x 2 x 3 c.m. underlying muscle and tissue was exposed and it was reddish brown in colour.
- xxii. Incised wound over lower occipital region of neck, size 9 x 2 x 3 c.m. It was muscle deep and reddish brown in colour.

xxiii. Incised wound over left supra scapular region of back, size 3 x 2 c.m., reddish in colour.

xxiv. Contusion over left shoulder posteriorly, size 2 x 3 c.m. and it was dark brown in colour.”

12. On the basis of the injuries and examination, the medical officer opined that the probable cause of death was due to hemorrhagic shock with hemo thoracic and hemo peritoneum due to injury to vital organ like right kidney, right side lung and liver. The Medical Officer also observed that the possibility of spleen cord injury, cervical region cannot be ruled out. The Medical Officer was thoroughly cross-examined. Perusal of the cross-examination would show that there is hardly any dispute about the presence of the injuries on the dead body. The cross-examination has been directed on the point that some of the injuries could not be directly responsible for causing death of the deceased. The evidence of the Medical Officer is relevant on two points. First; to ascertain the intention of the appellant when he inflicted blows on the person of the deceased, and secondly, to record a finding on the point as to whether the death is homicidal, suicidal or otherwise. At this stage, for the purpose of nature of death, perusal of the evidence of Medical officer in entirety would show

that the Medical Officer has recorded the observations and opinion to come to the conclusion that the death was homicidal. The injuries have been mentioned in column no. 17 of the post mortem report at Exh.-38. In column no. 18, the medical officer has recorded that all the injuries were ante mortem.

13. The inquest panchanama has been proved. All the injuries mentioned in the post mortem report were found on the dead body and recorded in the inquest panchanama. Similarly, the weapon of offence has been seized. Two eye witnesses have provided first hand account of the incident. In our view, this evidence is sufficient to record a finding that the death in this case was homicidal death.

14. With this finding, it would be necessary to minutely scrutinize and appreciate the evidence of two eye witnesses; Jeeja Ukre (PW3) and Deepali (PW5). Jeeja Ukre (PW3), deposed about the incident in her evidence in great details. She has narrated the incident. She has deposed that on 20.02.2015, Dipali There, Dipa Jambhulkar, Manisha Hatwar and Shilpa Jambhulkar, the deceased and herself were proceeding on their bicycles to the college. On the way, the appellant was sitting near the

brook/nullah. He came on the road and obstructed the bicycle of deceased. He questioned as to why she beat him. The deceased told him that she did not beat him. Her mother beat him and, therefore, he should go and question her mother. After this, they proceeded ahead. She has further stated that appellant came from behind on bicycle and gave a cut to the bicycle of Shilpa. Deceased Shilpa fell down. She further deposed that the appellant was holding a sickle. He inflicted the blows with sickle on the neck and other parts of body of the deceased by holding her braid of hair. She has deposed that all the girls told the appellant not to beat the deceased. However, the appellant threatened them to kill if they stop him. Thereafter, they went to the college and informed about the incident to the teachers.

15. Deepali (PW5) is another eye witness. Her evidence is similar to the evidence of Jeeja (PW3). She has also narrated the first hand account of the incident. On the basis of their evidence, the presence of the appellant on the spot has been established. Similarly, the evidence is sufficient to prove the brutal attack by appellant with sickle on the deceased. The deceased as well as these two eye witnesses and the other girls, at the relevant time were studying in the 11th standard. After seeing this merciless and

brutal attack on her friend, they made an attempt to desist the appellant from assaulting their friend. However, the appellant, instead of paying heed to their request, extended threats of dire consequence of killing them. Therefore, they went ahead to the college and informed their teachers. In our opinion, on minute appreciation of their evidence, we are convinced that their conduct could not be unnatural. Their conduct in the given fact situation is consistent with the conduct of the man of ordinary prudence.

16. These witnesses were cross-examined. The grueling and searching cross-examination conducted on behalf of the appellant was directed to create a doubt about their presence on the spot. Similarly, an attempt has been made to bring on record the inconsistency in the evidence. On minute perusal of their evidence, we are convinced that there are no major inconsistencies or omissions in their evidence to create a doubt of their presence on the spot. Their evidence is sufficient to dispel such possibility sought to be brought on record by the defence. The college going girls have lost their friend. They have had no reason to implicate the appellant in such a brutal and gruesome crime. Therefore, we are not convinced to accept the said defence propounded by learned Advocate for the appellant to doubt their evidence. The

evidence of two eye witnesses, in our view, is cogent, concrete and as such reliable. The evidence clinchingly prove the incident of brutal attack on the deceased Shilpa by the appellant.

17. Naresh Motghare (PW8) is a teacher. At the relevant time, he was teaching the students of 11th and 12th standards in Zilla Parishad Junior College of Asgaon. The girls from the spot went to the college and informed about the incident to Naresh Motghare (PW8) and another teacher Mr. Gaidhane. Naresh Motghare (PW8) deposed that Jeeja (PW3) and Deepali (PW5) along with other girls informed him and Mr. Gaidhane about the incident of brutal assault on Ku. Shilpa by appellant on Walni to Asgaon road. The conduct of Naresh (PW8) and Mr. Gaidhane, as can be seen from their evidence, is consistent. Naresh Motghare (PW8) and Mr. Gaidhane went to the spot of the incident. On the spot they found that the deceased was lying in a pool of blood. She was wearing college uniform. Naresh Motghare (PW8) has further deposed that the girls informed them that the appellant assaulted the deceased Shilpa by sickle. Evidence of Naresh Motghare (PW8) corroborates the oral testimony of Jeeja (PW3) and Deepali (PW5). Evidence of Jeeja (PW3), Deepali (PW5) and Naresh Motghare (PW8), on conjoint reading, would largely reflect

upon their natural conduct in the given situation. The evidence of Naresh Motghare (PW8), in our view, therefore, lends a strength and assurance to the testimony of Jeeja (PW3) and Deepali (PW5).

18. In this case, mother of the deceased girl has been examined to prove the motive for the commission of this gruesome crime by the appellant. Her evidence would show that there was a dispute between the appellant and her on account of money transaction. The appellant owed a sum of Rs.480/- to the mother of the deceased. When the deceased made a demand of the said money, the appellant abused the deceased and her mother in filthy language and gave a threat to see them. Oral evidence has been corroborated by the contemporaneous documentary evidence. As per Tulsabai (PW4), this incident occurred on 22.09.2014. Report of the incident was lodged at Police Station, Paoni. The report is produced on record and marked as Exh.-27. A perusal of the report would show that on the basis of this report, a non cognizable case was registered against the appellant under Section 506 of the IPC. Tulsabai (PW4) has been cross-examined. In her oral evidence and particularly in cross-examination she has made a consistent statement that on account of this money dispute, the appellant had threatened to see them. There is other evidence to

prove that the dispute was settled 7-8 months prior to the incident in question. The evidence of Vilas Tighare (PW1) Police Patil is relevant on this point. The evidence would prove that appellant had a grudge against the family of the deceased. It is pertinent to mention that motive is always locked in the mind of the appellant. The evidence adduced by the prosecution is sufficient to prove the motive of the accused. The motive, which is locked in the mind of the appellant can be unlocked and proved by leading evidence. In this case, motive has been proved on the basis of concrete evidence.

19. In the fact situation, we cannot ignore the conduct of the appellant after commission of the crime. The appellant, after committing murder of an innocent girl, went to Police Station with the weapon. The weapon as well as clothes on the person of the appellant were stained with blood. The sickle, article 'A', was seized. HC Balakram Nimkar (PW12), to whom the appellant met in the police station, has deposed about the events. The appellant has not denied this fact in his examination under Section 313 of the Code of Criminal Procedure. The appellant, as can be seen from his conduct, might have repented over the crime. It is, therefore, apparent that due to sheer remorse and repentance, he

did not think it proper to go elsewhere than the Police Station. The brutal and gruesome killing of the college going girl and after seeing the scene on the spot, the appellant would have reacted in this manner. This subsequent conduct of the appellant, in our opinion, lends an assurance to the case of the prosecution.

20. There is other corroborative evidence. It is nobody's case that the appellant went to the police station on bicycle. The appellant was arrested on the same day. The bicycle was hidden by the appellant at some place on the way to police station. During the investigation, he made discovery that he would point out the bicycle from the place where he had concealed it. His statement was recorded in presence of the panchas by police. Rajnarayan (PW10) is pancha witness to this memorandum panchanama and recovery panchanama of bicycle. Memorandum panchanama is at Exh.-48. He has stated that the appellant in his presence and in presence of another pancha, made a statement that he would produce bicycle from the place where it was hidden. The appellant led them to the place where the bicycle was hidden. The bicycle was recovered under the seizure panchanama Exh.-49. This is an important corroborative piece of circumstance.

21. The investigating officer seems to have taken abundant precaution to collect every possible corroborative evidence. Baliram Bawane (PW11) is Head Master of Zilla Parishad High School and Junior College at Asgaon where the deceased and other girls examined in this case as eye witnesses were studying. On the written request of the investigating officer at Exh.-55, Baliram (PW11) has provided the information of the deceased vide Exh.-56. It is mentioned in this document that the deceased was studying in school from 10th July, 2014 and on the date of the incident, she was in 11th standard. The school timings were from 07.30 a.m. to 11.00 a.m. Exh.-57 is certificate prepared on the basis of school record. Exh.-58 is requisition from the investigating officer to the Head Master for obtaining the information of the other girl students namely; Deepali There, Jeeja Ukre, Ujwala Ambekar, Geeta Hatwar and Geeta Jambhulkar. The information was provided in writing. It is at Exh.-59. In this document, Baliram (PW11) has specified that these girls were studying in the 11th standard. He has further mentioned in this document that on 20.02.2015, Deepali, Jeeja and Ujwala attended the school at about 7.20 a.m. to 7.25 a.m. In our view, this evidence of Baliram (PW11) and documents produced by him lend an assurance to the

credibility of the evidence of Jeeja (PW3), Deepali (PW5) and a teacher, Naresh Motghare (PW8).

22. Another piece of corroborative evidence is CA report. Madhukar (PW13), investigating officer had deputed Pramod Chetule to CA Nagpur to carry the muddemal. The CA report Exh.-83 pertains to the analysis of blood found on dupatta, full shirt and full pant of appellant. The CA has opined that blood group of the blood found on article was 'B'. The CA also opined that the blood on some of the articles was human blood. The sickle was also sent to the CA. On analysis, the CA opined that the blood on the sickle was human blood of group 'B'. It is pertinent to mention that in this case, the CA has not conclusively opined about the blood group of the deceased as well as the appellant. However, since the blood was found on the clothes of the appellant and the sickle, which is a weapon used in crime, the appellant was expected to offer a reasonable explanation in his statement under Section 313 of the Cr.P.C. In our view, therefore, C.A. report corroborates the oral and documentary evidence. It is not the case of the appellant that he had sustained injuries on his body and his blood had fallen on his clothes. The appellant, on his own, had gone to the police station with weapon. He was taken in

custody by police Head Constable Nimkar (PW12). He was arrested on 20.02.2015 at 17.00 hrs. by P.I. Rajendra Nagar (PW9). The arrest panchanama is at Exh.-44. A perusal of the arrest panchanama would show that at the time of arrest of the appellant, the injuries were not noticed on his body. In view of this factual position, a reasonable judicial inference has to be drawn that the blood group of the deceased was 'B'. The blood found on the weapon as well as on the clothes of the deceased and the appellant was of the deceased.

23. In view of above, we are of the opinion that the learned Additional Sessions Judge has not committed any mistake in holding the appellant guilty for the above offence. The learned Advocate in the fact situation submitted that the offence committed by appellant would be culpable homicide not amounting to murder punishable under Section 304-I or II of the IPC. Perusal of the judgment and order passed by the learned Additional Sessions Judge would show that the said plea was raised before the learned Additional Sessions Judge. The learned Additional Sessions Judge, for the reasons recorded in his order was pleased to reject it. We have given our thoughtful consideration to this submission in juxta position with oral and

documentary evidence brought on record. It is pertinent to mention that the dispute about the money transaction was not immediately preceding the date of murder. The appellant, on account of the old dispute, carried grudge in his mind. The appellant followed the deceased with weapon used in the crime. This fact would indicate that he made a planning and preparation. The appellant knew that the deceased in the morning as usual would go to the college with her friends. The appellant chased them; accosted the deceased and within a few minutes of verbal conversation between them brutally assaulted the deceased. He inflicted 24 injuries on the body of the innocent girl. The friends of the deceased tried to persuade the appellant that he should not kill their friend. However, the appellant did not pay any heed. The intention of the appellant to murder the deceased would be writ large by taking a look at the weapon used and the series of blows inflicted on the vital parts of the body of the deceased. In our view, therefore, the submission made by the learned Advocate that the offence made out would be a culpable homicide not amounting to murder, cannot be accepted. The murder committed by the appellant is a brutal. The appellant did not stop inflicting blows till the deceased fell on the ground and died.

24. In view of this position, we are of the opinion that there is no substance in the appeal. Perusal of the judgment recorded and order passed by learned Sessions Judge would show that learned Additional Sessions Judge has taken entire material into consideration. The judgment and order is well reasoned one. Therefore, we are not inclined to interfere with the well reasoned judgment passed by the learned Additional Sessions Judge. The appeal accordingly fails and hence it is dismissed.

JUDGE

JUDGE

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