

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

CRIMINAL APPEAL 784 OF 2019

Shamrao Markuji Deokar,
aged 50 years,
r/o. Kharda, Tahsil Babhulgaon,
District Yavatmal.

.....APPELLANT

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

State of Maharashtra,
through Police Station Officer,
Babhulgaon Police Station,
Yavatmal

...RESPONDENT

Mr. R.D. Hajare, counsel (appointed) 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 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. 500/- (Rupees Five Hundred) and in default of payment of fine to suffer rigorous imprisonment for three months, by judgment dated

28.6.2019, rendered by the learned Sessions Judge, Yavatmal, in Sessions Trial 67/2018, which is impugned herein.

2. We have heard the learned appointed counsel Mr. R.D. Hajare for the accused and the learned APP Mr. T.A. Mirza for the State and with their assistance, the record is scrutinized.

3. The case of the prosecution is that the incident occurred at 3.00 p.m. or thereabout on 21.9.2018 when Tukaram Gadekar and Namdeo Kumare were sitting and chitchatting on the platform, at the weekly market, outside the village Kharda. The accused accosted them with an Axe and inflicted a blow on the head of Tukaram and fled. Namdeo tried to stop the bleeding from the wound with his scarf and called for help. With the assistance of the other villagers, Namdeo took injured Tukaram to the Rural Hospital, Babhulgaon. Medical Officer Prakash Chimne referred Tukaram to Government Hospital, Yavatmal after

administering preliminary treatment. However, at Government Hospital, Yavatmal, Tukaram succumbed to the fatal head injury. Namdeo accompanied by the wife and daughter of Tukaram reported the matter to Babhulgaon Police Station. Namdeo's report was recorded by PW 8-API – Vinod Deshmukh, who registered Crime 381/2018, under Section 302 of the IPC and investigated further.

4. PW 8 – API Mr. Vinod Deshmukh recorded the spot panchanama, seized the sample of earth mixed with blood, the inquest panchanama was drawn, the clothes of the first informant and the accused were seized and the autopsy report was obtained. The accused was arrested and statement of witnesses were recorded. While in custody, the accused gave statement under Section 27 of the Indian Evidence Act and as a consequence of the disclosure, one Axe concealed by the accused, was recovered and seized. The weapon was sent to the Medical Officer of Rural Hospital, Babhulgaon and report was obtained. The seized articles were sent to the Chemical Analyzer and on completion of

investigation, the final report was submitted in the Court of jurisdictional Magistrate, who committed the case to the Sessions Court.

5. The learned Sessions Judge framed charge (Exhibit6), which was explained to the accused, who abjured guilt and claimed trial. The accused claimed false implication.

6. The prosecution examined the eye witness and first informant – Namdeo Kumare (PW 1), panch witnesses Prabhakar Shirbhate and Ravindra Thote (PW 3 & PW 4), Medical Officer Dr. Prakash Chimnani and Medical Officer Dr. Shobhit Kamble (PW 2 and PW 5), Medical Officer Dr. Akash Morey (PW 6), Police Constable Mr. Sagar Belsare (PW 7) and Investigating Officer API Mr. Vinod Deshmukh (PW 8) and further relied on the First Information Report Exhibit 13, the Spot Panchanama Exhibit 19, Inquest Panchanama Exhibit 21, Seizure Panchanamas Exhibits 14, 20, 36, 37 and 42 and the Memorandum Statement Exhibit

24 and Seizure Panchanama Exhibit 25. Apart from the Injury Certificate and the Post Mortem Report Exhibit 16 and Exhibit 30, respectively, the prosecution relied upon the Chemical Analysis Reports.

7. It is not disputed that the death of Tukaram is homicidal. Dr. Prakash Chimnani, who then was attached to the Rural Hospital, Babhulgaon, examined injured Tukaram and noticed crush injury on his scalp. The injury was open and situated on mid occipital area of the scalp. The probable age of the injury was within three hours preceding the examination at 4.55 p.m. The Post Mortem Report Exhibit 30 which is proved by Dr. Akash Morey reveals that the injury was on the right parietal region which extended to occipital region. The internal examination of the body revealed the following injuries:

1. Evidence of underscalp haematoma over both parietal region involving temporal and occipital region corresponding to the injury No. 1 mentioned in Col. No. 17 of the postmortem report.

2. Evidence of linear fracture of skull of L shape, right temporoparietal region of length 10 cm. and hi parietal region of length 10 cm. Margins are torn, irregular and blood infiltrated, corresponding to fracture side.

3.The weight of brain was 1230 grams. Meninges torn corresponding to injury No. 1 mentioned in Col. No. 17 and corresponding to fracture mentioned in Col. No.19(ii) of the postmortem report.

4.Evidence of subdural haematoma all over brain. Subarchonoid haemorrhage over left cerebral hemisphere and lateral surface of right cerebral haemesphere.

5. Evidence of lacerated wound over middle one third of medial border of left cerebral hemesphere. Area of brain corresponding to fracture mentioned in Col. No. 19.

(ii) Margins are irregular and blood infiltrated.

Dr. Akash Morey has deposed that cause of death is injury 1 and the corresponding internal injuries which are sufficient in ordinary course of nature to cause death. It was

PW 2-Dr. Prakash Chimnani, who first examined the deceased and he has deposed that the injury suffered by Tukaram is possible with Axe which was sent to him for opinion. The medical evidence rules out any other hypothesis except homicidal death.

8. While the defence appears to be that Tukaram was under the influence of alcohol, he lost his balance and fell on sharp edged stone, the said defence is not probabilized. We find that the learned Sessions Judge has rightly noted that it is not even suggested to the first informant Namdeo and then to the panch witnesses that at the spot, there was a sharp edged stone which the police did not seize nor such suggestion is given to the Investigating Officer. While PW 2 states that the deceased had consumed alcohol, Chemical Analysis Report Exhibit 57 did not reveal presence of alcohol in the liver and stomach of the deceased. The doctor, who conducted autopsy has denied the suggestion given to him that if a person falls on a sharp edged stone, the injuries which are noticed in the autopsy can be suffered.

9. We have given due consideration to the testimony of PW 1 – Namdeo, who has deposed that it was the accused, who accosted Tukaram and inflicted Axe blow on the scalp which ultimately proved fatal. We have further considered the relatively cryptic cross examination in which the suggestion given is that the witness did not see the assailant, which is denied. The witness further states that he cannot tell why the accused assaulted Tukaram. In our considered view, the testimony of PW 1-Namdeo has stood the test of cross-examination and we see no reason to disbelieve the said witness. We further find that the ocular evidence is consistent with the medical evidence on record. The prosecution has examined PW 4 – Ravindra Thote to prove the memorandum statement of the accused which resulted in the discovery of the place where the accused had concealed the Axe used in the commission of the offence. We have scrutinized the testimony of PW 4 – Ravindra, who has deposed that it was in his presence that the accused stated that he was willing to show the place where the weapon was concealed and then proved recovery of the bloodstained Axe

at the instance of the accused from the bushes near the boundary of agricultural field. Nothing is brought out in the cross-examination of the said witness as would dilute the worth of the testimony. It is brought on record that the witness is not in a position to state the registration number of the government vehicle in which he accompanied the accused and the police squad to the agricultural field from where the Axe was recovered. The witness further asserts that the vehicle was a jeep. In any event, the fact that the witness cannot tell the registration number of the vehicle is not of any consequence given that the testimony has otherwise withstood the test of cross-examination. The Axe which is recovered at the instance of the accused ("Article D") is shown to PW 1 Namdeo, who states that the Axe is similar to that used by the accused. The Axe Article D is further sent to Dr. Prakash Chimnani for his opinion, who has deposed that the injury mentioned by him in the certificate Exhibit 16 can be caused by the said weapon. The Chemical Analysis Report is that the Axe is stained with human blood although the blood group cannot be precisely determined.

10. We note that in the examination under Section 313 of the Criminal Procedure Code, the accused is asked to generally clarify on the Chemical Analysis reports including the Chemical Analysis report as regards the detection of the blood on the Axe. However, while the attention of the accused is specifically drawn to the bloodstained clothes, the accused is not asked to explain the detection of blood on the Axe. However, even if we keep out of the consideration that part of the incriminating material to which the attention of the accused is not specifically drawn, we are satisfied that on the basis of the ocular evidence, the prosecution has established the charge beyond reasonable doubt.

11. We see no reason to interfere in the well reasoned judgment of conviction rendered by the learned Sessions Judge.

12. The appeal is dismissed.

13. The fees of the learned appointed counsel
Mr. R.D. Hajare be quantified and paid as per rules.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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