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

CRIMINAL APPEAL NO.689 OF 2018

Rupesh @ Bablya s/o Harishchandra Satibawane,
Aged about 37 years, occupation – labour,
R/o Shankarpur, tahsil : Chimur,
District : Chandrapur. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
Through Police Station Officer,
Police Station Bhisil, tahsil : Chimur,
District : Chandrapur. **Respondent.**

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Shri A.M.Kukday, Counsel for the Appellant.
Shri T.A.Mirza, Additional Public Prosecutor for the Respondent/State.

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CORAM : V.M.DESHPANDE, & AMIT B.BORKAR, JJ.

DATE : MARCH 01, 2022

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

1. The appellant is before this Court to challenge judgment and order of conviction dated 3.7.2017 passed by learned Additional Sessions Judge, Warora in Sessions Case No.23/2014.

2. By the said judgment and order of conviction, impugned in the appeal, though learned Judge below has acquitted the appellant of offence punishable under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, he convicted the appellant for offence punishable under Section 302 of the Indian

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Penal Code and directed that the appellant shall suffer life imprisonment and to pay a fine Rs.1000/- and in default of payment of the fine amount to suffer simple imprisonment for six months.

3. The prosecution case in a nutshell is as under:-

Waman Kashinath Dharne (PW1), came to Bhis Police Station of district Chandrapur on 15.3.2013 and lodged his oral report (Exhibit-13). The said report was showing commission of a cognizable offence and, therefore, Assistant Police Inspector S.N.Dhoble of Bhis Police Station registered the same as Crime No.17/2013 for offence punishable under Section 302 of the Indian Penal Code.

4. As per the First Information Report, Waman Dharne (PW1) stays at Beghar Wasti of village Shankarpur, district Chandrapur along with his family. Adjacent to his house, his brother Ramu, the deceased, used to stay along with his family. Prior to four months, a dispute occurred between Ramu and the appellant on account of plucking of Marigold flowers unauthorizedly by the appellant from courtyard of Ramu resulting into quarrel between them and in the quarrel Ramu assaulted the appellant on his head by means of a stick and, therefore, the appellant lodged the report against Ramu resulting into registration of the crime against him. As per the First Information Report, on

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account of the said old enmity, when Ramu was near a chowk, on day of incident i.e. 15.3.2013, the appellant assaulted him by means of a knife in presence of Vandana (PW2) and Rajkumar (PW3), the wife and the son of Ramu, and others.

5. After registration of the crime, investigation was entrusted to Motilal Borkar (PW12) who at the relevant time was discharging his duties as Police Sub Inspector of Bhis Police Station. During course of investigation, he visited the spot of incident at Shankarpur. The spot of the incident was shown by Vandana (PW2), the widow of the deceased. Accordingly, spot panchnama was drawn in presence of panchas. The spot panchnama is at Exhibit-23. The Investigating Officer also seized blood mixed soil, simple soil, and chappals of the deceased from the spot under seizure memo (Exhibit-26). Inquest panchnama was also drawn (Exhibit-24). He, thereafter, sent the dead body of Ramu for its postmortem by giving a letter to Medical Officer. The dead body was taken to hospital by Police Constable Raju. He also seized clothes of the deceased under seizure memo (Exhibit-53). He arrested the appellant on 18.3.2013 under arrest panchnama (Exhibit-54). During course of his police custody remand, he agreed to give his disclosure statement for showing place where he concealed the weapon. Admissible portion is at Exhibit-55. Thereafter, the appellant led police party to village Doma

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and shown spot where he concealed the knife underground. The knife was recovered in presence of panchas and was seized and sealed. The recovery panchnama is at Exhibit-56. The Investigating Officer also seized clothes of the appellant under seizure memo (Exhibit-58). The Investigating Officer sent muddemal property in a sealed condition to Chemical Analyzer under a requisition (Exhibit-62). It was found during course of investigation that the deceased was belonging to caste "Mana." Therefore, the Superintendent of Police at Chandrapur, by issuing an order (Exhibit-76), entrusted the investigation to the Sub Divisional Police Officer Shri Prakash Halmarkar, Brahmapuri, district Chandrapur (PW14) who conducted remaining investigation and filed a chargesheet before the Court of law.

6. The case was registered as Special Case No.6/2013. Below Exhibit-9, a charge was framed for offences punishable under Section 302 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant denied the charge and claimed for his trial.

7. In order to bring home the guilt of the appellant, the prosecution has examined in all 15 witnesses and also relied upon various documents proved during course of trial. The accused has also

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examined Haridas Gaikwad (DW1) as defence witness. Learned Judge below, after appreciating the prosecution case, found that though the prosecution could not prove its charge for the offence under the “Atrocities Act”, recorded a finding that, the prosecution has proved its charge for the offence punishable under Section 302 of the Indian Penal Code and resultantly passed the judgment and order of conviction, impugned in the appeal.

Hence, this appeal.

8. We have heard learned counsel Shri A.M.Kukday for the appellant and learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State *in extenso*. With their able assistance, we have minutely gone through notes of evidence and record and proceedings.

9. Only submission that was advanced before this Court by learned counsel for the appellant is that the appellant is falsely implicated in the crime inasmuch as according to him, since there was old enmity between two families, the appellant is being falsely roped in by prosecution witnesses.

10. *Per contra*, learned Additional Public Prosecutor for the respondent/State supported the judgment and order of conviction

questioned in this appeal.

11. After the dead body of Ramu, the deceased, was sent by the Investigating Officer for conducting postmortem to Rural Hospital at Chimur, Dr.Samir Patil (PW13) conducted postmortem and found following external injuries:

“[1] Stab wound over left side chest wall over fifth intercostal space just medial to mid clavicular line measuring 4 x 0.5 cm cavity deep directed inwards through and through penetrating left ventricle of heart and coming out on back at medial border of scapula forming an exist wound measuring 3 x 0.5 cm;

[2] Stab wound over left side chest wall at seventh intercostal space over mid clavicular line measuring 4 x 0.5 cm cavity deep;

[3] Stab wound over left hypocondrial region just medial to mid axillary line measuring 4 x 1 cm cavity deep, Abdominal viscera (intestine) is protruding out from the wound opening.”

Similarly, he found following internal injuries:

“[1] Stab wound continued from left side chest wall is present perforating the left side pericardium, penetrating left ventricle of heart through and through measuring 4 x 0.5 cm;

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[2] Intrathorasic haemorrhage noted;

[3] Abdominal cavity purporated at left hypocondrial region by stab wound with with protrusion of abdominal viscera (intestine) through wound opening.”

According to Dr.Samir Patil, probable cause of death is cardio respiratory arrest due to haemorrhagic shock due to injuries to vital organs due to stab wound. He proved postmortem report (Exhibit-70). Though Dr.Samir Patil was cross-examined, his cross-examination is cryptic one and does not lead anything to question the opinion given by the said doctor in Exhibit-70 as well as during his substantial evidence about cause of death. In view of the said, there is no difficulty to us to record a finding that death of Ramu was homicidal one.

12. According to the prosecution, it is the appellant who caused injuries to Ramu, the deceased, resulting into his death.

13. Though the prosecution has examined 15 witnesses, evidence of Manohar Meshram (PW4) and Deorao Sonune (PW6) need not be discussed as said witnesses are formal witnesses. Chandrabhan (PW8); Ashish (PW9); Milind (PW10), and Mahesh (PW11) have turned hostile and they have not supported the prosecution case at all.

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14. Bharat Chaudhary (PW7), is panch witness and he has proved spot panchnama (Exhibit-23); inquest panchnama (Exhibit-24), and seizure panchnama (Exhibit-26). Tarachand Shivarkar (PW15), has proved admissible portion of disclosure statement (Exhibit-55) of the appellant and recovery memo (Exhibit-56).

15. From First Information Report (Exhibit-13), it is clear that first informant Waman (PW1) is not eyewitness to the incident. However, from the First Information Report and from his substantive evidence, it is clear that there was old enmity between the appellant and Ramu, the deceased, on account of the appellant plucking Marigold flowers and on that account Ramu assaulted him and, therefore, against Ramu the prosecution was lodged. Even, Vandana (PW2), the widow of the deceased, also stated the said thing in her cross-examination. In her cross-examination, she has also stated that due to assault made by her husband Ramu upon the appellant, Ramu was arrested. Later on, he was released on bail and a criminal case is still going on in Criminal Court at Chimur. Thus, in our view, learned Judge below is absolutely right that there was a motive on the part of the appellant for earlier assault on him by Ramu.

16. The prosecution has examined Vandana (PW2), Rajkumar

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(PW3), the widow and son of deceased Ramu, and Vanita (PW5), the wife of first informant Waman (PW1) as eyewitnesses. With assistance of learned counsel for respective parties, we have gone through depositions of these eyewitnesses. According to eyewitnesses, on the day of the incident, Ramu, the deceased, returned from Brahmapuri at 5:00 p.m.. At about 6:30 p.m., he went to pan kiosk. Evidence of these eyewitnesses shows that they were going for dinner to house of one Waghmare. Their evidence further shows that they noticed an assault near house of one Ismail. The evidence of these eyewitnesses corroborates with the evidence of each other on the point of the assault on Ramu. Learned counsel for the appellant was unable to point out anything to this Court to discard their evidence.

17. The weapon, i.e. knife, used in the commission of the offence was also recovered on memorandum statement from a place which was within a special knowledge of the appellant. The said weapon was sent to Dr.Samir Patil (PW13). After examining the said weapon, Dr.Patil gave his opinion (Exhibit-71) that injuries found on the person of the deceased, as per postmortem report (Exhibit-70), can be caused by the weapon sent to him for examination. Exhibit-48 is Chemical Analyzer's Report. Human blood was found on the knife which was recovered at the instance of the appellant. As per Exhibit-47,

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Blood Group of the deceased was “B”. Clothes of the appellant were found to be stained with human blood having Blood Group “B”. Thus, the prosecution case is also having corroboration from scientific evidence.

18. Perusal of the judgment and order of conviction, impugned in the appeal, shows that learned Judge below has rightly recorded the finding that the appellant has committed the offence punishable under Section 302 of the Indian Penal Code. We are of view that there is no reason for this Court to disbelieve the said finding.

19. In this view of the matter, we pass following order:-

ORDER

The criminal appeal stands **dismissed** and disposed of accordingly.

JUDGE

JUDGE

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by BHUSHAN
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