

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.70 OF 2017

Chandrakant s/o Baburao Musane
Age: 40 years, Occu.: Agriculturist,
R/o. Patharwadi, Tq. Renapur,
Dist. Latur.

... Appellant

Versus

The State of Maharashtra
Through Police Station, Udgir Rural,
Tq. Udgir, Dist. Latur.

... Respondent

...

Mr. Satyajit S. Bora, Advocate for Appellant
Mr. S. J. Salgare, APP for Respondent – State

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 25th August, 2023.

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Aggrieved by the judgment and order of conviction dated 04.10.2014 passed by the learned Additional Sessions Judge, Udgir in Sessions Case No.26 of 2012 thereby convicting appellant for the offences punishable under Sections 302, 498-A, 504, 506 of Indian Penal Code (IPC) and under Section 25 of the Arms Act, the appellant has preferred instant appeal by invoking Section 374 of the Code of Criminal Procedure (Cr.P.C.).

PROSECUTION CASE IN BRIEF

2. The appellant was married to P.W.6 Bharatbai. Out of their wedlock they had three daughters. Accused put up a demand of money for purchasing a Tempo. When fourth time also P.W.6 was pregnant, at that time, accused insisted her to get the pregnancy terminated. P.W.6 herself was not willing as well as her parents were against said termination. At the time of occurrence P.W.6 was put up with her parents at their house. On 11.03.2012 appellant went to the place of his parents-in-law and again he insisted her to accompany him back, so as to enable him to get her pregnancy terminated. There was resistance to this count by P.W.6 as well as parents-in-law. Getting annoyed by the same, it is the case of the prosecution that, accused took out knife which he was already carrying on his vehicle and he stabbed father-in-law. The injuries turned out to be fatal and he succumbed to the same and, therefore, complaint/FIR came to be lodged, on the strength of which crime was registered.

P.W.13 Laxman Dnyanoba Kendre was entrusted with the investigation, during which he drew inquest panchanama, spot panchanama, got the postmortem done, recorded statements of witnesses under Sections 161 as well as 164 of the Code of Criminal Procedure. Panchanamas of clothes of both

deceased and accused were drawn. After completing investigation, he charge-sheeted accused.

Case was on the file of learned Additional Sessions Judge, Udgir, who frame and explain the charge Exhibit-10 and on its denial, he permitted prosecution to adduce evidence. Prosecution in support of their case has examined as many as thirteen witnesses and also relied on documentary evidence like FIR, inquest panchanama, postmortem report, spot panchanama etc.

After hearing both sides and on appreciating and analyzing the evidence on record, learned Trial Judge accepted the case of prosecution as proved and recorded guilt, which is now precisely questioned before us by appellant by invoking Section 374 of the Code of Criminal Procedure.

3. We have heard learned Counsel for the appellant as well as learned APP. The following submissions are raised while questioning the case of the prosecution :-

Submissions on behalf of appellant :

Firstly, there is no cogent and reliable evidence.

Secondly, motive is not established by the prosecution.

Thirdly, only interested witnesses are examined.

Fourthly, immediate neighbor has not supported prosecution.

Fifthly, panchanamas are not proved and are not free from doubt

Sixthly, there is total non application of mind on the part of the learned Trial Judge in appreciating the evidence and applying the correct law.

Submissions on behalf of State :

4. Per contra, learned APP supported the conviction and would submit that there is overwhelming direct evidence of none other than P.W.6 wife, P.W.7 mother-in-law and even independent witness P.W.8 Ramkishan. It is pointed out that occurrence was seen by them and they have accordingly deposed. Their evidence has remained unshaken. Accused went armed. He was apprehended after the occurrence at the very spot by the villagers. Therefore, it is submitted that with such quality of evidence, learned Trial Judge has committed no error whatsoever in recording guilt and he prays to dismiss the appeal.

5. In the light of above material, we proceed to sift the evidence placed before the learned Trial Judge by prosecution. The role, sum and substance of the prosecution case is as under :-

EVIDENCE OF PROSECUTION

PW1 Prakash Niwruddi Bembde is Pancha to inquest panchanama. He had identified the panchanama and the signature thereupon. He has also narrated the injuries noticed by him at the time of inquest panchanama. The inquest panchanama is at Exhibit-18.

PW2 Laxman Sopanrao Bembde is the Pancha to the spot and he has also deposed about articles knife, sheath, earth with or without blood, shoes etc. He has identified the panchanama and signature over it. The spot panchanama is at Exhibit-20.

PW3 Govind Ganapati Bembde is the neighbour. His evidence shows that he is not aware of the ill treatment allegedly subjected to PW.6, however, he claims that on the day of incident, he was sitting on the platform with his wife and he heard cries and they rushed towards the house of Namdeo. He claims that he saw Namdeo lying on the ground and he has sustained injuries. He, one Ram Kondgire, Ramesh and others took Namdeo to hospital in a Tempo, however, he denied seeing the assault by accused. His evidence is at Exhibit-21.

PW4 Kamalbai Govind Bembde is also a neighbour and wife of P.W.3. According to her P.W.6 never disclosed anything to her. She too has not supported, as she has stated that she did not see accused assaulting deceased.

She has only deposed about hearing shouts and seeing Namdeo injured. Her evidence is at Exhibit-22.

PW5 Venkat Ganpatrao Bembde is the Pancha to panchanama of seizure of clothes of deceased. He has identified panchanama Exhibit-24 and the contents and signatures thereupon. His evidence is at Exhibit-23.

PW6 Bharatbai Chandrakant Musane, is the wife of appellant. She has stated about the marriage, having three daughters and she to be pregnant for the fourth time. She has deposed about the ill treatment and beating on account of demand of money for purchasing Tempo. That, appellant also insisted her to get pregnancy terminated and on such count also, he ill treated her. Regarding occurrence, she states that accused came in Tempo, he abused her saying that “your father is not giving amount and not even terminating your pregnancy” and saying so, he started abusing, so her mother went to Ramkishan Pundge and Venkat Pitle and said persons gave understanding to accused. Thereafter Venkat Pitle went and sometime thereafter her father returned from the field at about 5.45 p.m. She stated that when her father leaned down in the cattle shed, at that time, accused by holding knife in his hand assaulted her father on the abdomen, right side ribs near naval and groin. She herself, her mother attempted to catch hold of accused, but he pushed them away and accused also hit Ramkishan with a wooden stick. Others came, accused threw the knife and was about to run, but he was

apprehended by the gathering. Then thereafter she approached Udgir Police Station and lodged report Exhibit-26. She identified the articles and clothes of her father as well as her statement under Section 164 of the Code of Criminal Procedure. Her evidence is at Exh.25.

PW7 Shardabai w/o Namdeo Chalwad is the mother of P.W.6 and she in her evidence at Exhibit-28 also deposed on the same lines i.e. about ill treatment, demand and accused coming and raising quarrel with P.W.6 and so, she went to other villagers to seek their intervention for giving understanding to the appellant. Regarding occurrence, she states that at the relevant time she was sitting on the platform. Accused came in a Tempo. He insisted P.W.6 to accompany him for terminating her pregnancy. Therefore, she went to the house of Ramkishan Kundgir, as there was no other male member in the house. According to her, Ramkishan gave understanding to accused. Thereafter, her husband came at about 5.30 p.m. and when he proceeded to the cowshed to tie the cow and when he bend down to tie cow, accused went towards Tempo, returned with a knife and inflicted blow on the chest and the abdomen. Thereafter, accused threw the knife on the spot and fled. Her husband died in the hospital. She has identified her statement recorded under Section 164 of the Code of Criminal Procedure Exhibit-29.

PW8 Ramkishan Eknathrao Kundgir gave evidence that on 11.03.2012 at about 5.00 p.m. P.W.7 approached him and requested him to come and give

understanding to accused, who had come and was quarreling with her daughter. Witness claims that accordingly, he came to the house of Namdeo. He speaks about seeing accused quarreling with his wife. He claims that he gave understanding, but still accused continued to abuse his wife. Around 5.15 to 5.30 p.m. deceased came with cow. Witness stated that accused started abusing him also. According to this witness, accused pushed this witness, hit him with stick on the hand and thereafter went towards Tempo, returned with a knife and assaulted Namdeo with knife. According to him, he gave three assaults and, thereafter, accused threw the knife and he tried to run away. The gathering caught accused there itself. He also identified the statement under Section 164 of the Code of Criminal Procedure Exhibit-31. His evidence is at Exhibit-30.

PW9 Ranidevi Apparao Kadam is the Autopsy Doctor. She conducted postmortem of the dead body and issued postmortem report. She identified both postmortem report as well as provisional death certificate. In the opinion of doctor death was “due to haemorrhagic shock due to injury to liver and spleen”. Her evidence is at Exhibit-37. Postmortem report is at Exhibit-38.

PW10 Vitthal Bapurao Mamdge has acted as Pancha to the panchanama of seizure of clothes of accused on 12.03.2012. He has identified panchanama, his signatures as well as seized clothes article Nos.6, 7 and 8. His evidence is at Exhibit-41.

PW11 Ramkishan Tulshiram Chalwad is the brother of deceased, but he seems to have received information from his son regarding incident and he narrated to that extent. His evidence is at Exhibit-50.

PW12 Namdeo Gangaram Khandade is also the relative of deceased. He has received information and on the strength of the same, he has deposed. His evidence is at Exhibit-54.

PW13 Laxman Dnyanoba Kendre is the Investigating Officer, who has taken all steps during investigation till filing of charge-sheet. His evidence is at Exhibit-57.

DISCUSSION AND ANALYSIS

6. In the light of above submissions and taking into account the prosecution evidence, in our opinion, here star witnesses for prosecution are PW.6 wife of accused - appellant, PW.7 his mother-in-law and PW.8 Ramkishan, a fellow villager of deceased. We have meticulously gone through their substantive evidence i.e. both examination-in-chief as well as cross-examination. Here, wife claims that after marriage, accused put up a demand of money for purchase of Tempo and on its insistence and non fulfillment, she was subjected to ill treatment. Even mother-in-law speaks to that extent. However, neither of them are found to be elaborating as to when such instances took place and what was the exact nature of ill treatment meted out

to her. Therefore, in our opinion, here, there is scanty evidence on the point of ill treatment. Specific incidences of ill treatment are not quoted. We have also noticed that on one hand wife speaks about demand for purchase of Tempo, however, the prosecution evidence itself shows that accused had already purchased Tempo on hire purchase and the vehicle was on hypothecation. It seems that appellant was to pay installments, however, details of the same are not coming from any of the witness on behalf of prosecution. Immediate neighbours are not supporting prosecution. Apparently marriage is seven years old. There is no independent evidence about PW.6 to be pregnant at that time. Therefore, for above reasons, we are more than convinced that here there is no sufficient evidence on the point of Section 498-A of Indian Penal Code.

7. As regards the occurrence of assault is concerned, we have noticed that wife is admittedly present in the very house of deceased. Evidence of PW.6 and PW.7 is also found to be mirror image of each other and is consistent about accused arriving to the house of deceased that day around 5.00 p.m. to 5.30 p.m. They both speak about quarrel raised by accused in the backdrop of his alleged demand, his insistence for getting her pregnancy terminated. Both claim to be sitting on the platform of house when accused arrived in a Tempo. They both are also marking presence of accused around 5.30 p.m. After the quarrel, PW.7 claims that as there was no male member in the family, she went

to P.W.8 Ramkishan to seek his assistance and to intervene. Even P.W.8 Ramkishan seems to have responded and visited accordingly the house of deceased. He too claims about seeing accused quarreling with his wife. P.W.6, P.W.7 and P.W.8 are thus unequivocal about accused going towards the Tempo, returning with a knife and further stabbing Namdeo, who had returned from the field and was about to tie the cow. Therefore, their evidence can be said to be of sterling quality on the point of assault. Though above witnesses have been cross-examined by the accused, it is noticed that the manner of cross itself shows that occurrence is not denied and on the contrary, it shows that there is no serious dispute about the occurrence. Therefore, in the light of above quality of evidence, there is no hesitation to hold that the prosecution has discharged its primary burden of proving assault at the hand of accused.

8. Here, it is noticed that apart from Sections 498-A and 302 of Indian Penal Code, accused is also charge-sheeted for commission of offence under Sections 504 and 506 of Indian Penal Code. Sections 504 and 506 of Indian Penal Code reads as under :-

***“Section 504. Intentional insult with intent to provoke breach of the peace.—** Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment*

of either description for a term which may extend to two years, or with fine, or with both.

Section 506. Punishment for criminal intimidation. –Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. – And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Very recently, the Hon’ble Apex Court in the case of **Mohammad Wajid and another Vs. State of U. P and Ors., [MANU/SC/0846/2023]** has held and observed as under :

“25. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If

abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised self control or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the Court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.”

Thus, here it is noticed that what was the exact form of abuse has not come on record. From above discussed law, it is clear that for constituting offence under Section 504 of Indian Penal Code, one of the essential element is that there should be an act or conduct amounting to intentional insult. In absence of specific words, it is not possible to hold whether the required

ingredients of intentional insult are attracted or not. Further, the occurrence was not taken place in a public place so as to hold that there was breach of any public peace. There is no element of criminal intimidation, which is also an essential feature of the said charge.

Thus, though accused is charge-sheeted for commission of offence under Sections 504, 506 of Indian Penal Code and even under Section 25 of the Arms Act, we are afraid that in absence of evidence in support of such charge, the said charges cannot be said to be proved beyond reasonable doubt. It is surprising to find that in Charge at Exhibit-10, there is no reference of provisions of charge under Arms Act, but still learned Trial Judge has convicted accused and has thereby erred.

9. Learned Counsel for the appellant would strenuously submit that going by the sequence of evidence, firstly there was no premeditation and even no intention. Secondly, according to him, incidence being outcome of quarrel, the case would at the most fall under Section 304 Part-I or 304 Part-II of Indian Penal Code i.e. culpable homicide not amounting to murder.

We are not impressed with above submissions for the simple reason that here the appellant – accused was annoyed with wife as well as parents for not permitting P.W.6 to get her pregnancy terminated. This is evident from testimony P.W.6 and P.W.7 mother-in-law. Note of the fact is taken that accused

had himself been to house of deceased and that too carrying arm in his vehicle. Therefore, he was already equipped with weapon thereby reflecting his intention. Before arrival of deceased on the spot, he was already quarreling with wife and insisting her to accompany him for getting the pregnancy terminated. He has also stated that his parents-in-laws are opposing and in above backdrop, he seems to have rushed towards his vehicle i.e. after arrival of deceased and returned back armed with a knife. He has inflicted blows on the vital parts like chest and abdomen. Both P.W.6 and P.W.7 are giving locations and places of blows. P.W.8 an independent witness is also lending support to their evidence. These three witnesses are around the appellant. P.W.8 has attempted to intervene and has also become a victim of being hit with a stick. Though P.W.3 and P.W.4 have denied seeing actual assault, they both are confirming arrival of accused in a Tempo and after hearing shouts and cries, they seem to have rushed to the scene of occurrence and not only marked the presence of accused, but they have also seen Namdeo in injured condition. Autopsy doctor has confirmed the injury. Therefore, here direct evidence is finding support from ocular account. The very act of accused rushing to the vehicle and returning with the weapon like knife, his intention is explicit.

Consequently, for such reasons, we are not convinced with the above submission that case would at the most attract for the offence of culpable

homicide not amounting to murder. Resultantly, we reject the above submission.

10. We have gone through the impugned judgment under challenge. As discussed above, we are interfering only to the extent of Sections 498-A, 504, 506 of Indian Penal Code and under Section 25 of Arms Act for want of evidence. Learned Trial Court seems to have not appreciated the evidence on behalf of prosecution to see whether the required ingredients for attracting said charge are available on record. Therefore, interference to such extent is called for. However, findings of the learned Trial Court as regards offence of Section 302 of Indian Penal Code is concerned, need not be disturbed, because the conclusion reached at is based on sound reasons. Hence, the following order :-

ORDER

- I) The appeal stands partly allowed.
- II) The conviction awarded to the appellant – **Chandrakant s/o Baburao Musane** by learned Additional Sessions Judge, Udgir, Dist. Latur in Sessions Case No.26 of 2012 on 04.10.2014 for the offences punishable under Sections 498-A, 504, 506 of Indian Penal Code and under Section 25 of the Arms Act stands set aside.

III) Fine amount deposited, if any, imposed for the offences punishable under Sections 498-A, 504, 506 of Indian Penal Code, be refunded to the appellant.

IV) The conviction awarded to the appellant by learned Additional Sessions Judge, Udgir, Dist. Latur in Sessions Case No.26 of 2012 on 04.10.2014 for the offence punishable under Section 302 of Indian Penal Code is hereby maintained.

V) We clarify that there is no change in the order of disposal of muddemal passed by the learned Trial Judge.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

scm