

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

CRIMINAL APPEAL NO.47 OF 2017

. Dashrath @ DK s/o. Laxman Kasbe
Age: 23 years, Occu.: Education,
R/o. Dongre-Pimpla, Taluka Ambajogai,
Dist.Beed. ..Appellant

Versus

. The State of Maharashtra
Through Police Station Officer,
Ambajogai (Rural) Police Station,
Tq.Ambajogai, Dist.Beed. ..Respondent

...
Mr.Sudarshan J.Salunke, Advocate for Appellant
Mr.S.D.Ghayal, APP for Respondent

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

**RESERVED ON : 24 AUGUST, 2023
PRONOUNCED ON : 4 SEPTEMBER, 2023**

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

1. Here is a appeal by convict for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC) against judgment and order passed by the learned Additional Sessions Judge, Ambajogai dated 16-12-2015.

FACTS IN BRIEF

2. Ambajogai Rural Police Station, District Beed chargesheeted accused

Dashrath and accused Prakash on allegations that on 14-07-2014 at public water tap, there was dispute between accused no.1 on one hand and PW5 Namdeo Kasbe on other hand on taking tap water. Deceased Nanabhau intervened and merely questioned accused as to why they are abusing Namdeo, a fatherly figure. Getting annoyed by the same, it is the case of prosecution that, accused Dashrath ran to his house, returned with a dagger. Accused Prakash caught-hold of Nanabhau and accused Dashrath stabbed deceased Nanabhau in his stomach. Deceased was taken to the hospital. While undergoing treatment, he succumbed to injury and hence, **PW2** Vasant Kasbe approached Police and set law into motion resulting into investigation at the hands of PW9 Choudhari (PI).

On being challaned and tried, learned trial Judge held the case of prosecution as proved and thereby convicted appellant. Hence, the appeal.

3. Before advertng to merits of the case, we wish to take note of the fact that present appellant Dashrath and accused Prakash were both chargesheeted by invoking Section 34 of the IPC. However, as accused Prakash was absconding, trial came to be separated and present appellant alone came to be tried.

SUBMISSIONS

On behalf of appellant :

4. According to learned Counsel for the appellant impugned judgment is

patently illegal, perverse and not maintainable in the eyes of law for the reason that there is total failure to appreciate available evidence in its correct perspective. According to learned Counsel, at the outset, there was no motive to commit the offence. No independent witnesses are examined. Except interested witnesses like PW3 Pandurang and PW5 Namdeo, there is no other reliable evidence. According to learned Counsel, whatever incident allegedly took place was a result of sudden quarrel. There was no preparation, no premeditation, but still learned trial Judge has recorded guilt under Section 302 of the IPC. That while undergoing treatment, injured had died and therefore, injury was not fatal. However, still the learned trial Court has held case of prosecution as proved and has recorded guilt of accused. It is his last submission that even otherwise, taking into account the nature and manner of occurrence and backdrop in which it took place, it is not at all an offence which would attract charge under Section 302 of the IPC.

On behalf of State :

5. In answer to above and while supporting the judgment under challenge, learned APP would submit that both accused were present at the spot and their presence was marked by PW3 Pandurang and PW5 Namdeo. They both had seen accused persons arriving at the spot of incident and insisting to fill water to their satisfaction. They were seen accused persons raising quarrel with PW5 Namdeo and abusing him and only for that reason, deceased

Nanabhau merely questioned them why they were abusing PW5 Namdeo and in that backdrop, deceased was taken away from the tap. This was watched by PW3 Pandurang. That accused Dashrath was spotted running to the house and returning with a deadly weapon like dagger and he has assaulted deceased by the same. Thus, there is ocular account and medical evidence is supporting the ocular account. Therefore, the learned trial Court has rightly framed the charge under Section 302 of the IPC and has also rightly held accused guilty for the same. According to learned APP, there is no merit in the appeal and hence he prayed to dismiss the appeal.

6. This being appeal under Section 374 of the IPC, we are now called upon to re-appreciate, re-analyze and re-evaluate entire evidence adduced by the prosecution in the trial Court.

On doing so, we have noticed that in support of its case, prosecution has examined in all nine witnesses and their brief introduction is as under:

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Murlidhar s/o Sheshrao Pawar is Pancha to spot panchanama. His evidence is at Exh.11. He identified spot panchanama Exh.12.

PW2 Vasant s/o Sambhaji Kasbe - informant is father of deceased who set law into motion by approaching Ambajogai Rural Police Station on 15-07-2014 naming accused for committing murder of his son Namdeo. His evidence is at

Exh.17.

PW3 Pandurang s/o Namdeo Kasbe is cousin of deceased. He claims to be present at the spot when there was initial quarrel between his father Namdeo and accused persons and in the same deceased Nanabhau had allegedly intervened. He has narrated whatever he saw, in his testimony at Exh.21.

PW4 Yogiraj Dhondiram More is Pancha to memorandum of disclosure under Section 27 of the Indian Evidence Act and recovery of clothes of accused.

PW5 Namdeo Sambhaji Kasbe is father of PW3 Pandurang with whom there was initial quarrel by accused on 14-07-2014 at a public water tap. He also narrated occurrence dated 14-07-2014 in his evidence at Exh.27.

PW6 Dr.Sachin Rajaram Potdar is the Doctor to whom his colleague Doctor, after conducting surgery on deceased, handed over knife, which was extracted during the treatment alongwith clothes of deceased and which were allegedly seized by Police Officer by drawing panchanama Exh.31. His evidence is at Exh.30.

PW7 Dr.Rupesh Gopalrao Thakare is treating Doctor, who has undertaken surgery on deceased and has extracted the weapon i.e. dagger. His evidence is at Exh.32.

PW8 Dr.Vishwajeet Govindrao Pawar is Autopsy Doctor, who conducted post mortem and issued provisional death certificate Exh.36. His evidence is at Exh.35. Post mortem report is at Exh.37.

PW9 Chandrashekhar Tukaram Choudhari is the Investigating Officer. His

evidence is at Exh.43.

7. In the light of charge, it is to be first seen that death of Nanabhau is homicidal or otherwise. To find answer, we need to visit testimony of **PW8** Dr.Pawar, Autopsy Doctor. He in his evidence at Exh.35 claimed about going through inquest and doing post mortem on dead body of Nanabhau on 15-07-2014. He narrated following internal and external injuries noticed by him in paragraph nos.2 and 3 of his evidence.

External injuries :

1] Stitch wound present over the midline of abdomen 26cm in size vertical in direction [for therapeutic purpose] 29 in number stitches were present.

2] Stitch wound present over the left side of the abdomen 4cm in size oblique towards left, 1 cm from mid-line on opening 4cm x 1.4cm in size. Edges inverted margins clean cut, right angled at corners.

Both injuries were ante-mortem in nature.

Internal injuries :

4] Small intestine stitched with suture material.

5] Right kidney shows incised wound over the posterior aspect 1.5cm x 0.8cm in size oblique downward on right side in direction, reddish in colour, weight 130 gms. of right kidney and weight of left kidney 110 gms.”

In his opinion, cause of death is due to hemorrhagic shock due to stab wound over left side of abdomen. He identified provisional cause of death certificate Exh.36 and post mortem report Exh.37.

Above witness in **cross-examination** is asked whether he collected blood of the victim for alcohol test. He assigned the reason for such testing by stating that in many cases it is noticed that assault is caused under influence of alcohol and therefore, such test was undertaken. He denied that there was smell of alcohol from the mouth of victim. He is asked for how long smell of alcohol could emanate from the mouth and he answered that it depends on quality and quantity of alcohol consumed. He answered that symptoms of alcohol remain present in the blood collected from the body of patient for 3-4 months on adding preservative therein.

8. Taking audit of medico legal expert's evidence, here there is absolutely no cross-examination on the manner of death. Doctor has clearly noticed external and internal injuries and has noted them in the post moretem report as well as narrated the same in his testimony. Opinion about cause of death has virtually remained unshaken. Resultantly in our opinion, prosecution has successfully shown that death of Nanabhau is nothing but homicidal.

ANALYSIS

9. Now it is to be seen that, as claimed by prosecution, there is any direct

eye witness out of nine witnesses. It is noticed that though **PW2** Vasant, father of deceased has set law into motion, he seems to have received information from **PW3** Pandurang. But this witness has seen his son lying in injured condition shortly after occurrence of assault and therefore, he cannot be said to be an eye witness.

According to prosecution, **PW3** Pandurang and **PW5** Namdeo are crucial witnesses and star witnesses for prosecution.

PW3 Pandurang in his evidence at Exh.21 deposed that his parents used to fetch water from public water tap located near Samaj Mandir. According to him, incident took place at around 06:00 p.m. and he was present on the road. He stated that accused Prakash and accused Dashrath prevented his father from fetching water from the tap. At that time, deceased Nanabhau questioned both Prakash and Dashrath as to why they are causing quarrel with **PW5** Namdeo, who is of the age of their father. According to this witness, thereafter, both Prakash and Deashrath abused deceased Nanabhau and by pushing him brought near Neem tree. According to this witness, accused Dashrath asked deceased as to why he came in their way and saying so he went to his house and returned back with a knife. This witness stated that accused prakash caught hold of deceased Nanabhau from back side and accused Dashrath stabbed with dagger in his stomach. Nanabhau cried loudly. On hearing the same, his father came. Seeing father of Nanabhau coming, both Prakash and Dashrath ran away from the spot. Thereafter, vehicle was

called and Nanabhau was taken to the hospital. He identified both accused in the Court.

In **cross-examination**, he has admitted that accused Dashrath is his distant cousin. He gave location of his house from Samaj Mandir, which is approximately 300 ft. from his house. He gave distance between house of Vasant and Samaj Mandir. He admitted that deceased Nanabhau has his own private tap. He answered that on that day, he did not go anywhere. He stated that on that day, Nanabhau and his father went to Ambajogai for some work, but they returned back to village at 05:00 p.m. In further cross-examination, he has admitted that there is cement road. He answered that near about 10-15 persons were gathered at the water tap and they are all his kinsman. He admitted that when his father was abused, he himself was present at tar road. He admitted that till quarrel lasted, he was present on the tar road. He stated that quarreling party came towards Neem tree and thereafter, he started proceeding towards Neem tree from tar road. He claims that he also enquired with Prakash and Dashrath as to why they had raised quarrel with his father. He claims that he and other persons tried to rescue Nanabhau from the clutches of Prakash, but they could not succeed. He stated that house of accused Dashrath is 10 feet away from the spot of incident.

10. Now let us visit evidence of father of this witness i.e. **PW5** Namdeo, who is also examined on point of occurrence. It is his evidence that, on 14-07-2014

at around 06:00 p.m., as it was water time, he came to the public water tap. That some people were fetching water. Subsequently, his turn came, at that time, accused Prakash and Dashrath came there. According to him, they said that unless they fill up water in their 12 water pots, they will not leave the public water tap and they started abusing loudly. Witness added that he asked accused not to abuse and water supply is for short span, however, accused started to raise quarrel. PW3 Pandurang and Bhausahab came there. Nanabhau also came there. According to him, Nanabhau asked accused as to why they are abusing to the person who is like their father. Witness stated that he himself, accused Dashrath, accused Prakash and deceased Nanabhau went towards Neem tree and there accused Dashrath asked Nanabhau as to why he was intervening and they said that they would show him his way. Later on, accused Dashrath rushed to his house and came with a dagger. Prakash caught hold of Nanabhau from backside and Dashrath stabbed dagger into his stomach as a result of which, Nanabhau cried loudly and fell down on the ground. On hearing cries, father of deceased came and seeing him coming, both accused ran away. He claims that he had seen the dagger. Its one edge is sharp and other edge is like saw. Subsequently, Nanabhau died in the hospital.

Above witness is subjected to **cross-examination**, wherein he has initially admitted that he and accused persons are kinsman. There were cordial relations prior to the incident. He gave distance between his house

and house of Vasant. He denied that he has own water tap. He denied that Pandurang went anywhere for any work. He denied all the suggestions except admitting that PW3 Pandurang and deceased Nanabhau came to support him. He stated that entire incident of abuse, bringing dagger and stabbing has taken place within one and half minutes.

11. Therefore, analyzing above evidence of **PW3** Pandurang, it is emerging that alleged incident had taken place at public water tap at 06:00 p.m. **PW5** Namdeo is the person with whom there seems to be initial quarrel by accused persons. PW3 Pandurang is son of PW5 Namdeo and he claims to be in the same vicinity but on the tar road. Their evidence shows that there was quarrel between Namdeo and accused at the water tap itself as accused allegedly declared that they will fill 10 to 12 water pots belonging to them. PW5 Namdeo seems to have asked them not to quarrel and to save time as water source remains for a very short span. Hearing abuses at the hands of accused persons, deceased Nanabhau, who was present there, seems to have came and questioned them saying that they should not abuse Namdeo, who is a fatherly figure. This seems to have further resulted into quarrel between accused and deceased. PW3 Pandurang and PW5 Namdeo both are consistent about deceased being pushed towards Neem tree and further questioned. Both these witnesses are consistent about accused Dashrath questioning deceased and rushing to his house and returning with a knife. Both are consistent about

deceased being caught-hold by accused Prakash and accused Dashrath stabbing him with dagger and on hearing cries, informant seems to have rushed there.

Therefore, the sum total of evidence of these two witnesses i.e. PW3 Pandurang and PW5 Namdeo and from the evidence of PW2 Vasant informant, it is clear that accused Dashrath and Prakash, after raising quarrel, abused Namdeo. After accused Prakash facilitated Dashrath, he seems to have stabbed deceased. Even when all these three witnesses are cross-examined, their evidence has remained virtually unshaken on actual abuse, quarrel and assault. Therefore, there is credible eye witness account in this case.

12. It is pertinent to note that prosecution has examined the **PW7** Dr.Thakare, who had performed surgery and extracted dagger and handed over it to **PW6** Dr.Potdar, who is also examined by the prosecution and said weapon and clothes of deceased are seized by drawing panchanama. Medico legal experts are thus confirming about dagger being stabbed in the midline of abdomen. **PW8** Dr.Pawar, Autopsy Doctor confirms ocular account of **PW3** Pandurang and **PW5** Namdeo. Therefore, here ocular account finds support from medical evidence. Death is attributed to stab injury. **PW8** Dr.Pawar, in post mortem report, has given the description of injuries. One side of the weapon is having sharp edge whereas other side is having inverted edges. Seized weapon is examined by us. It apparently matches to description of

injury. Therefore, such evidence further lends credence to the case of prosecution about accused Dashrath stabbing with dagger.

13. Learned Counsel for the appellant would at the end point out that there was no intention or premeditation and that infact incident had taken place out of sudden quarrel.

We disagree with such submission for the simple reason that here though quarrel has taken place at water tap and it was on account of fetching water, note of evidence of direct eye witnesses needs to be taken into consideration. It is regarding accused Dashrath, after hurling abuses, had rushed to his house and had returned with a deadly weapon like knife / dagger. He has stabbed it with such a force that dagger got stuck and embedded in the body and was required to be operated and extracted. Therefore, knowledge about bodily injury, which is sufficient to cause death or bodily injury likely to cause death, can definitely imputed to accused Dashrath. His assault was facilitated by absconding accused Prakash. Therefore, above submission about case to be falling in the category of ‘culpable homicide not amounting to murder’ cannot be entertained.

In our opinion, clause *3rdly* of Section 300 of the IPC is clearly attracted for the reason that taking into account the sufficiency of the injury to cause death and its probability to cause death in the ordinary course of nature is high, as the weapon used is extremely deadly as is evident from its bare look

and secondly, it was used with such force that it apparently got pierced to such an extent that it did not come out after stabbing and as stated above was required to be removed upon only a surgery. Therefore, here probability of death is apparently on the higher side.

In the light of above material, inference can safely be drawn that appellant intended to cause fatal injury. PW8 Dr.Pawar, Autopsy Doctor in his examination-in-chief has confirmed that injury was caused in forceful manner thereby damaging internal organs including right kidney and knife article "A" before the Court is heavy one. Therefore, taking into account such material, we reiterate that clause *3rdly* of Section 300 of IPC is gravitated.

14. We have gone through the impugned judgment. It is apparent that the learned trial Judge has appreciated available evidence in its correct perspective and relevant law has been applied and taken recourse to. No perversity or infirmity is brought to our notice so as to entertain the appeal. Resultantly, following order is passed :

ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)