



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 617 OF 2017

Babu s/o. Baban Warale
Age : 56 years, Occu. : Agriculture,
R/o. Shinde Vasti, Mhase Kd.,
Tq. Parner, Dist. Ahmednagar.

... Appellant

Versus

The State of Maharashtra,
Through Police Inspector,
Police Station, Parner,
District Ahmednagar.

... Respondent

...
Mr. Manoharrao A. Tandale, Advocate for Appellant.
Mr. S. D. Ghayal, APP for Respondent – State.
...

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

RESERVED ON : 11th SEPTEMBER, 2023

PRONOUNCED ON : 21st SEPTEMBER, 2023

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

1. Aggrieved by the judgment and order of conviction passed by the learned Ad-hoc District Judge-3 and Additional Sessions Judge, Ahmednagar dated 18.11.2015, convicting appellant/original accused for the offence punishable under sections 302, 307 and 342 of Indian Penal Code (IPC), appellnat has preferred instant appeal by invoking section 374 of the Code of Criminal Procedure (Cr.P.C.).

PROSECUTION CASE IN BRIEF IN THE TRIAL COURT

2. Accused is husband of informant and deceased is their son. Accused-appellant entertained suspicion that there was illicit relation between his wife and his own son and there used to be quarrel on such count. Around midnight of 23.09.2012, when informant, her daughters and daughter-in-law slept in another room, another son slept outside in Ganpati temple and when accused and deceased were in one room, at that time, accused assaulted his own son Ravindra by means of axe while deceased was sleeping on the cot. Thereafter, appellant-accused came to the informant and he inflicted blows with axe on her head also and thereafter, he escaped and locked the door from outside. Daughter-in-law Ujjwala telephoned another son Ramdas, who rushed to the spot and opened the door and thereafter, information was passed to uncle of deceased, who came and injured were shifted to the hospital. Being critical, deceased Ravindra was shifted to Pune in Sassoon hospital. There, while undergoing treatment, he succumbed to the injuries. While in hospital informant-wife of accused gave statement, on the basis of which crime was registered and investigated by two successive Investigating Officers, who, after gathering evidence against the accused, charge-sheeted him.

3. Case came to be committed on the file of learned Ad-hoc District Judge-3 and Additional Sessions Judge, Ahmednagar, who conducted trial, heard both sides and appreciated the evidence and held accused guilty for charges under sections 302, 307 and 342 of IPC.

SUBMISSIONS

On behalf of appellant :-

4. Learned counsel for appellant would submit that prosecution has miserably failed to establish the charges. According to him, there is no evidence in support of motive. Further, according to him, there is no independent witness. He pointed out that, possibility of false implication cannot be ruled out because of strained relations between informant and appellant. That, important witnesses like Ramdas and Ujjwala are not examined and even immediate neighbours, who allegedly reached at the spot and are independent witnesses, have not been examined. Thus, according to him, case of prosecution is only based on interested witnesses. That, learned trial Court failed to consider and appreciate the evidence and has reached to the erroneous findings. That, even recovery of weapon is doubtful, as in the memorandum of disclosure as well as Investigating Officer admitted that, there is material about accused informing regarding cleaning the weapon and thereafter hiding it. However, it is

pointed out that in seizure memo, there is a reference of blood stained weapon. Resultantly, it is his submission that there is apparently false implication. For all above reasons, he submits that the case of prosecution is not free from doubt and not being proved beyond reasonable doubt, conviction ought not to have been recorded.

On behalf of State :

5. In answer to above, learned APP would submit that, this is an unfortunate case where the appellant-accused had committed murder of his own son that too, by suspecting his relations with his own mother. That, the incident had taken place in the house in the night when all were present including deceased. That, informant has also been assaulted. Unfortunately injured son died. Thought there was murderous assault on informant, she survived and on her statement, FIR has been registered. Therefore there is direct evidence. There is no reason of false implication. Available evidence has been correctly appreciated and so according to him there is no merit in the appeal and he prays to dismiss the same.

6. This being first appellate court and last fact finding court, as required by law, we have minutely and carefully re-

examined and re-appreciated the available evidence.

EVIDENCE ON BEHALF OF PROSECUTION

Prosecution in support of above case has examined in all 9 witnesses. The role and status of prosecution witnesses are as under :-

PW1 Latabai is the informant, who, while undergoing treatment in the hospital, gave statement resulting into FIR.

PW2 Rani is the daughter of PW1 Latabai, who had come to stay with her parents on that relevant day.

PW3 Ramesh is the pancha to memorandum of disclosure and the recovery and discovery at the instance of accused.

PW4 Riyaz Ahmed, PSO who registered the FIR.

PW5 P.S.I. Somwanshi, **PW7** A.S.I. Ghorpade and **PW8** P.I. Shivarkar are the police officials and Investigating Officers.

PW6 Dr. Kokare is the doctor, who treated informant.

PW9 Dr. Shinde is the autopsy doctor.

7. In the light of charge, at the outset, we need to get satisfied that death of Ravindra is homicidal or not.

On visiting evidence of PW9 Dr. Shinde, it appears that he has noticed following external and internal injuries :-

External injuries :-

1. *Stitched wound present over right fronto parietal temporal region, 26 c.m. in length with 37 metallic stitches, elliptical in shape.*
2. *Stitched wound with non-metallic stitches present over forehead on right side inferior medially 9 c.m. in length, 10 stitches insitu.*
3. *Abrasion present over right side of forehead 3 X 2 c.m.*
4. *Abrasion present over left side of forehead 3 X 2 c.m.*
5. *Brownish abrasion over mid parietal region 4 X 0.5 c.m.*
6. *Injection mark over right wrist, right cubital fossa, left wrist (therapeutic).*

All the injuries mentioned in column No.17 were ante mortem.

Internal injuries :-

- “1. *Scalp hematoma over left frontal region 6 X 4 c.m.*
2. *Evidence of craniectomy right fronto temporo parietal region over an area 12 X 8 c.m., bone piece removed. Absent bone piece on right side.*
3. *Sutures present over duramater on right side 4 stitches insitu.*
4. *Subdural hematoma on right side 10 X 8 c.m. reddish seen on right side.*
5. *Sub arachnoid hemorrhage 6 X 3 c.m. over right parietal region, twin layer.*
6. *Brain matter soften.”*

This witness deposed that, injury Nos.1 and 2 are sufficient in the ordinary course of nature to cause death.

Taking into consideration the medico legal experts' evidence and nature of injuries, there is no hesitation to hold that the death is homicidal one.

ANALYSIS

8. Here, this is an unfortunate case where appellant-accused suspected relations between his wife and his own son. Admittedly, there cannot be any evidence on that count. Therefore, though motive is not forthcoming, it being case based on direct evidence, there is no necessity of proving motive.

9. Here, PW1 Latabai and PW2 Rani seem to be the star witnesses and even PW1 Latabai herself is an injured witness.

On carefully going through their evidence, it is emerging that, they both were present in the house that night. They both are found to be deposing about accused raising suspicion against his own son. Both of them speak about they residing in separate rooms. According to them, deceased had returned at around 11:00 p.m. and he slept on the cot in the same room where accused was said to be sleeping on the sofa. Both these witnesses are speaking about hearing shouts and waking up and going to the room. PW1 Latabai claims that she saw accused quarreling with their son and then picking up axe and mounting assault by giving blows. She claims that even he came towards her and inflicted blow on her head with the same axe and thereafter he went out of the house and put latch to it from outside. Her daughter PW2 Rani

has also lend complete support to the above version and she has also narrated about the occurrence taking place that night. Other son Ramdas, who was said to be sleeping outside, was called and thereafter, both injured were taken to the hospital.

10. Though above witnesses PW1 Latabai and PW2 Rani are subjected to extensive cross. In our opinion, nothing damaging is brought on record, more particularly, as regards the actual occurrence of assault is concerned. In fact there is no serious cross on the aspect of assault by accused. Resultantly, testimonies of these two eye witnesses have virtually remained intact.

11. Much emphasis is laid by learned counsel for appellant by submitting that there is no statement of deceased. It is pertinent to note that the evidence shows that the doctor who treated PW1 Latabai had also examined deceased and he, in his evidence, speaks about referring deceased to Pune, being in critical condition. Investigating Officer also speaks of attempting to go and record his statement, but for want of fitness to give statement, he could not record it.

12. Be it so, here, PW1 Latabai while in hospital had given statement, naming her own husband for first assaulting her son

and thereafter assaulting her too. There are medical papers of PW1 Latabai of Wighnaharta Hospital. Deceased Ravindra was reported to have succumbed while undergoing treatment. We have already held that it is established that death is shown to be homicidal one. Taking into account the same and the injuries on the person of PW1 Latabai, in our opinion, there is clinching evidence about murder of Ravindra and attempt to murder on PW1 Latabai.

13. Investigating machinery claims to have recovered and discovered the axe at the instance of accused. While arguing, learned counsel pointed out that in memorandum of disclosure it is noted that accused had cleaned the weapon and thereafter concealed it. However, in seizure panchanama, there is reference of blood stained axe. It is true that on going through the memorandum and seizure panchanama, the above variance is emerging and even Investigating Officer has admitted to that extent, but merely on such count, entire recovery and discovery will not be rendered doubtful. Direct eye witnesses have identified the axe. Resultantly, even this circumstance is incriminating as against appellant.

14. Panchas to the memorandum and Medical Officers

have deposed about injuries which are apparently on vital part, resulting into death and murderous assault on deceased and PW1 Latabai respectively.

15. With such quality of evidence, in our opinion, learned trial court has committed no error whatsoever in accepting the case of prosecution and handing down judgment of conviction. In appeal, no perversity is brought to our notice. Findings of the trial court are supported by reasons and therefore there is no reason to cause interference. Finding no merits in the appeal, we proceed to pass following order :-

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)