



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.152 OF 2019

Santosh Gunaji Dudhmal,
Age : 34 years, Occu. : Labour,
R/o. Dabhad, Tq. Ardhapur,
Dist. Jalgaon.

... Appellant.

Versus

The State of Maharashtra

... Respondent.

...
Mr. Satej S. Jadhav, Advocate for Appellant.
Mrs. Uma Bhosale, APP for Respondent - State.
...

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

RESERVED ON : 07th DECEMBER, 2023

PRONOUNCED ON : 19th DECEMBER, 2023

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

1. Vide instant appeal exception is taken to the Judgment and order of conviction passed by learned Additional Sessions Judge, Nanded dated 14.01.2019, convicting appellant Santosh for offence punishable under section 302 of Indian Penal Code (IPC) and sentencing him to suffer life imprisonment and to pay fine of Rs.1,000/, in default to suffer rigorous imprisonment of one month.

2. In brief, prosecution was launched by Ardhapur Taluka police Station, alleging civil dispute between accused Santosh and

deceased Gunaji in the backdrop of some partition of land. According to prosecution, incident took place on 29.04.2016, in which present appellant allegedly assaulted deceased by means of iron spade and wooden log. Informant reported the occurrence to the police, who registered crime bearing no.77 of 2016, which was investigated by PW9 PSI Avachar and PW10 API Dantulwar, respectively and Ardhapur police challaned appellant with charge of 302 of IPC. This was followed by trial by Learned Additional Sessions Judge, Nanded, who, on appreciating the evidence on record, vide judgment dated 14.01.2019 held charges proved and passed the impugned Judgment of conviction, which is questioned before us by way of instant appeal.

SUBMISSIONS

Appellant :

3. Learned counsel for appellant would submit that, apparently there is no convincing evidence regarding alleged occurrence. He pointed out that, motive attributed is some quarrel on account of partition, but he would point out that there is no oral and documentary evidence on this point. According to him, here, informant himself has not supported prosecution and therefore, he submits that, very case of prosecution was rendered weak. That, even very wife of deceased PW5 Rukhminibai has not supported prosecution. That, none of independent witnesses also have

supported prosecution, i.e. PW3 Manoj. He pointed out that only evidence of PW8 Shankar has been taken into account and relied by learned trial Judge. However, answers given by this witness in cross are not taken into account. Thus, it is his submission that, there was little or weak evidence, however, learned trial Judge has still accepted the prosecution evidence and believed the prosecution story and in absence of cogent and reliable evidence, guilt has been recorded. Therefore, he prays for re-appreciation and re-analysis of evidence and to allow the appeal.

Prosecution :-

4. In answer to above, learned APP pointed out that, it is true that, informant has resiled and was apparently won over, still there was evidence of PW8 Shankar and which was inspiring confidence. Evidence of informant PW1 Suresh, PW3 Manoj and PW5 Rukhaminibai though hostile, as per settled law, it need not be discarded in its entirety and so much part of it, which is corroborating prosecution story can be relied and same has been rightly applied by the learned trial Judge. Death is shown to be homicidal one. There being direct evidence, story of prosecution is rightly accepted by learned trial Judge and so she would submit that, no fault can be found in the appreciation and conclusion drawn by learned trial Court and so she prays to dismiss the appeal.

PROSECUTION EVIDENCE

5. In the light of above submissions, we wish to define the status and role of prosecution witnesses :-

- PW1** Suresh is the informant. His testimony is at Exh.12. He has not supported prosecution.
- PW2** Dnyaneshwar is pancha to spot panchanama, at Exh.17.
- PW3** Manoj is immediate neighbour, also did not support the prosecution.
- PW4** Gajanan is the carrier, who carried seized Muddemal to the Analyzer.
- PW5** Rukhaminibai is a wife of deceased Gunaji, but she has not supported prosecution.
- PW6** Dr. Ranjana Deshmukh is the autopsy doctor, who conducted postmortem and issued report (Exh.30).
- PW7** Satish Gaikwad is Police Inspector, who registered crime bearing no.77 of 2016.
- PW8** Shankar is an independent witness. His statement is at Exh.45.
- PW9** PSI Avachar and **PW10** API Dantulwar, respectively are the Investigating Officers.

6. There being charge of homicide, we wish ourselves also to get assured that death of Gunaji is proved to be homicidal one. The best witness and evidence on such issue can undoubtedly be autopsy surgeon (PW6 Dr. Ranjana Deshmukh) and she is

examined at Exh.29. Dr. Ranjana claims to have conducted PM on dead body of deceased on 30.04.2016 and she has reproduced following external injuries noticed by her.

- 1. CLW on forehead 8 x 2 cm.*
- 2. Fracture frontal bone with parietal region.*
- 3. Fracture both orbit.*
- 4. Fracture nasal bone.*
- 5. Fracture maxilla on right side.*
- 6. Fracture mandible.*
- 7. CLW right angle of mouth 3 x 2 cm.*

All these injuries as above were ante-mortem.

According to her, on internal examination, she noticed following injuries :-

“Fracture frontal bone and parital bone vault brain tissue was crushed, Cerebrum frontal region also crushed.”

She further deposed that, injuries spelt out in column no. 17 are possible by use of wooden log. According to her, injuries noted therein are sufficient in the ordinary course of nature to cause death and she also confirmed potential of wooden log to inflict such nature of injuries.

7. In cross, she has answered that there were no injuries to ribs and cartilages and further admitted that, crush injury is

sufficient to cause of death. She is unable to state age of the injuries. She is also unable to state exact time that after sustaining these injuries the molecular death has been caused.

On analyzing of medical expert's evidence, taking into account the nature of injuries, its size, its location and medical opinion that, injuries are sufficient in the ordinary course of nature, there is no hesitation to hold that Gunaji made homicidal death. In fact, there is no effective cross on the mode and the nature of death or to disbelieve the opinion issued by doctor. Resultantly, death is shown to be homicidal one.

8. Now, let us ascertain whether as claimed by prosecution, appellant herein is responsible for the homicidal death.

As pointed out, here, out of 10 witnesses, PW1 Suresh informant, PW5 Rukhaminibai wife, PW3 Manoj neighbour and an acquaintance have retracted and resiled from their earlier version. Therefore, case of prosecution merely hinges on testimony of PW8 Shankar and therefore, we propose to re-appreciate his evidence which is at Exh.45.

9. This witness namely, Shankar (PW8) claims that on

30.04.2016, while he was returning from answering call of nature at 6:30 a.m., he heard shouts raised by one Suresh requesting this witness to catch a person and accordingly he caught him near the canal and that person told him that, his father has destroyed his life and he deliberately killed his father and he also going to the police station and therefore, this witness left him loose and went for his work. He further stated that, the person to whom he caught was Santosh i.e. appellant. He stated that, he can identify the accused. [As the accused was not produced in the court that day, it seems that, photo of the arrested accused was confronted to him and he identified the person caught by him accordingly.]

10. We have visited his cross, wherein he has admitted that, he is illiterate. That, the distance between field of Jadhav and that of Dudhmal is one kilometer. He merely answered that, prior to the incident, he had not previously seen Santosh (Appellant), but he does not specifically state that, he is not knowing him. Then, he is questioned where he used to go to answer call of nature i.e. whether he used to go to the field of Jadhav and not towards the canal. He admitted that, he does know anything about the alleged incidence. He flatly denied that, Suresh did not give him a call, asking him to catch a person. There is omission regarding the word "Mama". He admitted that, the person, to whom he caught did not tell anything. Rest is all denial.

11. Now, let us visit evidence of another witness i.e. very informant (PW1 Suresh), who has unfortunately retracted from earlier version as he deposed that, his field is situated at Bamni. There is field of Gunaji adjoining to his field. He denied that, Gunaji used to come to sleep in his field. However, he deposed that, Gunaji was having two sons namely, Santosh and Murli. He also deposed that, incident took place prior to two years. Thereafter, he has denied by stating that, it did not happen on 29.04.2016 at about 10:00 p.m., while he was in his Akhada for sleeping and deceased had come and informed him regarding quarrel which took place between Gunaji and his son and therefore, had requested this witness whether he can sleep in his Akhada. He deposed that, he does not know whether Gunaji slept in his Akhada and his son killed him at about 5:45 a.m. Taking his such evidence into witness box into consideration, learned APP after seeking permission of the learned trial Judge cross examined his own witness, which commenced from paragraph no.2.

12. While under cross he answered that, he is studied upto 9th standard. He identified his signature over the report, which was marked at Exh.13. He also admitted that, on 30.04.2016, he had been to Ardhapur police station. Thereafter, he has started resiling

by denying that, he narrated the incident to police. He answered that, he does not know whether Gunaij came to his field for sleeping, saying that, there was quarrel in his own house with his son and therefore, came to sleep and this witness allowed him to sleep. He answered that, he does not know whether on 30.04.2016 around 5:30 a.m. deceased and he himself woke up and deceased went to answer call of nature and he himself went to milk the buffalo and around 5:45 a.m., when deceased came towards the Akhada, at that time, appellant came, pelted stone on the back side of his father, but the stone landed on the buffalo and appellant picked up spade to beat Gunaji, so he intervened and appellant pushed him questioning his indulgence and appellant again picking up sharp wood of neem and assaulted Gunaij, who pleaded to save and hearing such shouts, neighbours came. He also denied knowing persons gathering there and he making called to brother Ligoji and persons making phone call to police. However, he admitted that, he went to police station, but denied giving anything in writing, rather, only causing signature. Though there are denial in paragraph nos. 3 and 4 of cross, he has admitted in paragraph no. 5 that, his statement was recorded under section 164 of Cr.P.C. which he identified to be at Exh.14 and his signature over it. He also admitted that, as per his narration, his statement was recorded by learned JMFC. He admitted accompanying police to

the spot and in his presence a spade, a neem wood, earth with and without blood being collected and photos of the spot being drawn.

Again in cross, he has supported the defence that, there was discussion in the village and therefore, Sarpanch and police patil informed occurrence to the police, who came to spot and that police asked him to come to police station and so accordingly, he went there and caused signature on the request of police. He admitted and answered that, some people were talking about implication of accused and that before his statement to JMFC, he was called at police station and due to pressure of police, he gave statement before the court and that he is unaware about the contents of the report.

13. Another witness PW5 Rukhaminibai, who has not supported the prosecution is wife of deceased. According to her, there was partition of agricultural land. That, after partition, there was no protest by accused son. She denied knowing how her husband died and that her appellant son killed her husband.

On being cross examined by learned APP, she admitted regarding her statement recorded by police on 30.04.2016, but she denied stating portion mark "A" stated to police. Rest is all denial.

14. Therefore, as pointed out by learned APP, though PW1 Suresh and PW5 Rukhaminibai have been declared hostile for not supporting prosecution, their evidence thus carry information about occurrence dated 30.04.2016 in the vicinity of field of PW1 Suresh informant. His cross clearly suggests that, he has informed police regarding whatever he saw at 5:45 a.m, when deceased, who spent night in his field and returned after answering call of nature. Paragraph no.1 of his chief shows that, incident had taken place two years back. He has admitted that, he approached Ardhapur police station on 30.04.2016. He has also identified his signature over report (Exh.13). Though, thereafter he has resiled in paragraph no.5 of his cross and has admitted regarding giving statement under section 164 of Cr.P.C. to the JMFC, which was duly noted on his narration and his signature to be over it i.e. Exh.14 and thereafter, also accompanying police to the spot and in his presence Articles being seized.

15. Therefore, in our view, so much part of his evidence which confirms occurrence, can definitely be taken into account. Though, PW5 Rukhaminibai wife of deceased and mother of accused has not supported prosecution, she admitted that, her statement was recorded by police on 30.04.2016.

16. Consequently, here, entire evidence of PW1 Suresh informant need not be discarded. Law is loud and clear that even if witness has resiled so much part of his evidence which supports prosecution version can definitely be taken into account, i.e. such part of his evidence supports prosecution. Law to that extent is dealt in following landmark cases :-

- 1] **Ravasaheb v. State of Karnataka, (2023) 5 SCC 391;**
- 2] **Gudu Ram v. State of H.P., (2013) 11 SCC 546;**
- 3] **Bhagwan Singh v. State of Haryana ; (1976) 1 SCC 389**

17. Therefore, appellant has been spotted by PW8 Shankar in the vicinity of scene of occurrence. He has apprehended accused on the request of Suresh. Though appellant not being produced before the court, PW8 Shankar has identified him in the witness box on the basis of photograph. There is no illegality in such identification and the said mode of identification has not been objected to by accused.

18. Therefore, part evidence of informant and evidence of PW8 Shankar, which clearly established involvement of appellant, and definitely be put to use to reach the conclusion. PW9 PSI Avachar and PW10 API Dantulwar, who are investigating officers, they have deposed about all steps taken by them after receipt of

report from PW1 Suresh. They have deposed about whatever was narrated by PW1 Suresh, PW5 Rukhaminibai and PW3 Manoj and their versions to that extent have been marked and exhibited.

19. Though before us attempt has been made that there is no distinct evidence about motive of partition and very wife of deceased, who is mother of appellant has not supported, above discussed material can definitely be taken into account. Reason for her subsequent hostility is obvious as she had lost husband, might not be willing to loose son. PW8 Shankar is an independent witness. His evidence has not been dislodged or rendered doubtful. Medical evidence confirms death of Gunaji homicidal one. There is seizure of one Neem wooden log with blood stains, simple and blood mixed soil and one iron spade with blood stains and the blood stained clothes of the deceased and the accused. Reports are placed on record.

20. We have gone through the judgment under challenge. In our opinion, learned trial Judge has correctly appreciated the evidence, more particularly, that of PW1 Suresh and PW8 Shankar and has rightly applied law in spite of resiling and turning hostile. That much part of their testimony which was supporting prosecution has been taken into account while arriving to the

conclusions. There cannot be any perversity or illegality in appreciation of evidence of witness, like informant. Consequently, finding no merits in the appeal, we proceed to pass following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)