



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 89 OF 2017

Manoj S/o. Bhimrao Chaudhante,
Age : 29 years, Occu. : Labourer,
R/o. : Govind Nagar, Nanded,
Taluka and District : Nanded

[At present the appellant is in
Nashik Road Central Prison, Nashik,
Taluka and District : Nashik]

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra,
Through the Police Station, Vimantal,
Nanded, Taluka and District : Nanded.

... Respondent
(Orig. Prosecution)

...
Mr. Rajendrraa Deshmukh, Senior Counsel i/b. Mr. Devang Deshmukh
a/w Mr. Govind Kulkarni, Advocates for Appellant.
Mrs. V. S. Choudhari, APP for Respondent - State.
...

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

RESERVED ON : 01st SEPTEMBER, 2023

PRONOUNCED ON : 12th SEPTEMBER, 2023

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

1. Feeling aggrieved and dissatisfied by the judgment and order of conviction passed by learned Sessions Judge, Nanded dated 28.12.2016 holding appellant Manoj guilty for the offence punishable under section 302 of the Indian Penal Code (IPC) and sentencing him to suffer imprisonment for life, the appellant has

preferred instant appeal by invoking section 374 of the Code of Criminal Procedure (Cr.P.C.).

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Siddharth Gajbhare was appointed as a President of the Committee constituted for celebrating Jayanti of Dr. Babasaheb Ambedkar at Govindnagar, Nanded. According to prosecution, accused Arunabai Choudhante and Bhimrao Chaudhante were upset and annoyed on account of such appointment of Siddharth. During the celebration, 7 to 8 boys at Panchsheel square were dancing by playing music. Around 12:00 noon, PW7 Siddharth unplugged the music system (DJ) and therefore, Bhimrao and Arunabai allegedly abused him. In the afternoon, it is the case of prosecution that Manoj assaulted Vicky by means of knife, whereas accused Sachin assaulted PW7 Siddharth also with knife, on the left side of waist. At such time, Ankush, Love and Balu assaulted younger brother of PW7 Siddharth, namely Gautam with sticks, whereas sister of PW7 Siddharth was assaulted by means of fists and slaps. Injured Vicky was taken to the hospital but on examination, he was declared dead.

PW6 Shilpa reported the incident to police and on her statement, Vimantal police station registered the crime bearing Crime No.54 of 2014 for offences punishable under sections 143,

147, 148, 149, 302, 325, 323, 504 of IPC. PW13 P.I. Jagdale and PW14 A.P.I. Pisse jointly carried out investigation and charge-sheeted accused and they were made to face trial.

3. On conclusion of trial, learned trial Judge reached to a finding that only accused Manoj has committed the offence of section 302 of IPC, whereas rest of the accused to be not guilty and so, by its judgment and order dated 28.12.2016, awarded sentence of imprisonment for life to the appellant. Hence the appeal.

SUBMISSIONS

4. Learned Senior Counsel for appellant, while questioning the legality, sustainability and maintainability of the judgment, would point out that evidence of prosecution is not free from doubt. Case has not been proved beyond reasonable doubt as expected by law. According to him, very informant, who had set law into motion, had not supported prosecution. That, learned trial Judge has considered and appreciated only the evidence of related witnesses. Independent witnesses are not examined by prosecution and therefore, according to him, when there was no independent corroboration, learned trial Judge ought not to have accepted the case of prosecution. He pointed out that even recovery and discovery being while accused were in handcuffed condition,

cannot be said to be voluntary and further it is also after inordinate delay.

5. He next submitted that, there was no premeditation or motive. That, incident had taken place all of a sudden in the backdrop of some quarrel which erupted during celebration and thus, according to him, case would not at all attract charge under section 302 of IPC. He found fault in the judgment of trial court for not considering above aspects and totally overlooking the backdrop in which incident took place. According to him, the case at the most would attract charge of culpable homicide not amounting to murder, as incident has taken place all of a sudden.

Lastly, while concluding he submitted that, on the same set of evidence, almost 8 accused are set free, but appellant alone is held guilty. According to him, there is no proper appreciation of evidence and settled law has also not been correctly applied, and so he prays to allow the appeal.

6. Supporting the judgment passed by learned trial Judge, learned APP would point out that, though incident had taken place during celebration and procession, appellant-accused was said to be armed with deadly weapon knife. He had targeted

deceased on the vital part like chest and there is injury to the heart. That, accused party was already annoyed with deceased and his brothers. That, there is recovery of knife at the instance of accused. Evidence of injured brother, who was also present at the spot, has remained unshaken. Thus, according to learned APP, there is trustworthy and credible eye witness account. That, the same has been taken into account by learned trial Judge while appreciating the evidence of prosecution and the learned trial Judge has committed no error whatsoever in recording the guilt. So, she prayed to dismiss the appeal for want of merits.

7. Being first appellate court and last fact finding court, as contemplated under law, we have undertaken the exercise of reanalyzing, re-appreciating and re-evaluating the evidence of prosecution to find the correctness of the findings in the judgment.

8. In trial court, prosecution seems to have rested its case on the evidence of following witnesses :-

PW1 Dayanand is the pancha to spot (Exh.29) and seizure of articles like wooden log, the sheath of knife and blood mixed with earth and without earth;

PW2 Raju is the pancha to memorandum of disclosure by accused Sachin regarding handing over weapon (Exh.31) and discovering knife vide Panchanama (Exh.32). He also acted as pancha to the seizure of clothes of accused Sachin (Exh.33);

PW3 Balaji is the pancha to seizure of articles like wooden log, sticks and clothes vide Panchanama (Exhibits 35 and 36), but he has not supported prosecution.

PW4 Dayanand is the pancha to seizure of clothes of injured Siddharth (Exh.38);

PW5 Mukesh is the pancha to inquest panchanama (Exh.40), memorandum of disclosure at the instance of accused Manoj (Exh.41) and seizure which followed (Exh.42);

PW6 Shilpa is the informant;

PW7 Siddharth is the brother of deceased and an injured;

PW8 Anjali and **PW9** Sujata are residents of Govindnagar and alleged eye witnesses;

PW10 Gautam is the second brother of deceased as well

as PW7 Siddharth. He is also an injured witness;

PW11 Dr. Abdul Sami is the Medical Officer, who examined injured and issued medical certificate;

PW12 Dr. Maroti is the autopsy doctor, who conducted postmortem and issued report and opinion about the cause of death as due to stab injury to heart and left lung;

PW13 P.I. Jagdale and **PW14** API Pisse are the Investigating Officers.

9. In the light of charge, at the outset, we need to get satisfied that death of Vicky Pundlik Gajbhare is homicidal or not.

On visiting inquest panchanama and on evidence of medico legal expert (PW12 Dr. Maroti), deceased Vicky seems to have suffered following injuries :-

“1. Stab injury present over left side of chest at sixth intercostal stage obliquely placed with upper medial angle acute, margins clean cut, situated 7 cm lateral and below to nipple and 15 cm lateral to midline anteriorly of size 3 cm x 1 cm x cavity deep, on approximation of margins length of injury 3.5 cm, stab injury pierces to skin subcutaneous tissue, sixth intercostal muscles on left side, left parietal plura, cutting lower lobe of left lung at anterior border, left side pericardium, left ventricle lateral surface of length 8 cm and entering into left ventricular cavity, stab wound

is directed medially, upwards and backwards, blood oozing from stab injury with margins reddish.

2. *Abrasion present on dorsum of left hand at the base of index finger of size 0.2 cm x 0.2 cm red in colour.*

3. *Grazed abrasion present on dorsum of all right toes directed downwards of sized ranging from 3 x 1 cm to 1 x 1 cm of red in colour.*

The injuries mentioned in column No.17 of postmortem notes are antemortem in nature.”

On internal examination, autopsy doctor noticed following injuries :-

“1. *Brain was pale and oedematous.*

2. *There was stab injury on thoracic wall, left plura, left lung, pericardium and heart corresponding to injury No.1 in column No.17, with 1.5 liter fluid blood present in left plural cavity.*

3. *Stomach was containing 100 ml reddish semi digested food material with alcohol smell perceived, mucosa pale.*

4. *All other internal organs were impact and pale, large vessels of thorax were empty.”*

In the opinion of doctor death was due to stab injury to heart and left lung.

He also opined that injury mentioned in column no.17 and corresponding internal injury no. 20 of the postmortem notes

to be possible by weapon Article-16 and the injury was sufficient in ordinary course of nature to cause death.

10. In cross of autopsy doctor (PW12 Dr. Maroti), he answered that weapon Article-16 can be termed as a dagger or big knife having one sharp margin and other margin in distal end to be blunt on its proximal part. He admitted that said Article was not shown to him during or after postmortem. He answered that he went through the inquest panchanama. He is questioned about presence of rigor mortis and time taken for its development. He is asked about handing over gauze piece and viscera. He denied that, because of stab injury, the death must be instantaneous and he volunteered that it is immediate death. He is asked about exact time of molecular death. Rest is all denial.

Taking into account the nature of injuries, above evidence of medico legal expert and inquest panchanama, prosecution has in fact established death of Vicky Gajbhare to be not only unnatural, but also homicidal one.

11. Now, we sift the evidence to ascertain whether, as claimed by prosecution, appellant is the author of the fatal injury.

12. We have noticed that out of 14 witnesses, only **PW7** Siddharth, **PW8** Anjali, **PW9** Sujata, **PW10** Gautam are crucial witnesses. PW7 Siddharth and PW10 Gautam seem to be brothers as well injured witnesses. PW8 Anjali and PW9 Sujata, are claimed to be direct eye witnesses and are the residents of same locality where incident took place.

13. Unfortunately, informant **PW6** Shilpa has not supported prosecution, but her entire evidence need not be discarded as she, in the initial part of her chief, spoke about quarrel between Vicky and Sonu on account of dance during celebration of Jayanti of Dr. Babasaheb Ambedkar. However, she is very categorical that there was quarrel between Sonu and Vicky and because of assault by Sonu, Vicky fell down. Thereafter, she seems to have not supported prosecution.

While under cross at the hands of learned prosecutor, she has admitted accused to be also resident of Govindnagar. She is also found to be admitting that along with deceased Vicky, all injured were taken to the civil hospital and she visiting Vimantal Police Station and reporting the incident to police. Thereafter, she again retracted and has not supported prosecution. Therefore, her entire evidence need not be discarded. Law is fairly settled that so much part of the evidence of hostile witness, which supports

prosecution, can definitely be taken into consideration. Her evidence suggests about quarrel and some persons getting injured, thereby occurrence has been established.

14. Prosecution claims that there is injured eye witness account in the case i.e. in the form of evidence of Siddharth, Gautam and independent witnesses Anjali and Sujata.

In the light of above, we have meticulously gone through the testimonies of both injured brothers PW7 Siddharth and PW10 Gautam and other two witnesses. On analyzing their evidence, they all seem to be consistent on the point of occurrence and assault.

What is discerned from evidence of **PW7** Siddharth is that this witness was elected as a Chairman of Celebration Committee of the Jayanti of Dr. Babasaheb Ambedkar. Initially, around 9:00 to 9:30 a.m., there was programme of flag hoisting and it lasted upto 12:00 noon. According to this witness, he unplugged electricity supply of music system (DJ). According to him, thereupon Bhimrao and Arunabai started giving abuses. Manoj (present appellant) assaulted Vicky on left side of his ribs with knife and Sachin assaulted this witness also with knife on the waist part. Brothers of Manoj assaulted younger brother of this witness,

namely Gautam with sticks and his sisters were assaulted by means of fist and slaps. Vicky was taken to the hospital and doctor declared him dead.

In initial cross, there are questions pertaining to his occupation; appointments of other office bearers of the Jayanti; submitting an application to the police for permission to use loudspeakers; about function of distribution of Khichadi and playing songs. Thereafter, directly he is asked regarding in what condition deceased Vicky was lying and further questions are on the other aspects. Resultantly, there is no effective cross on the point of actual occurrence of assault by appellant.

15. **PW8** Anjali also deposed about celebration of Jayanti since 9.30 a.m. till 12:00 noon. According to her, between 3:00 to 4:00 p.m., she heard noise of quarrel and therefore she came out from her house to see what happened. According to her, Bhimrao and Arunabai were quarreling with PW7 Siddharth as to why he became President of the Jayanti Mandal and abusing him. According to her, in the quarrel, appellant stabbed Vicky with knife on left side of his ribs and Sachin gave blow with knife to Siddharth on his waist, whereas Love, Ankush and Chakuliya assaulted Gautam with sticks and Rahul and his brothers assaulted his parents and sisters with slaps and blows. This witness has named

Asha Jhadte, Sonabai Jadhav, Jaiwanta Edke, Sagarbai Bhare to have witnessed the occurrence.

In her cross, initially there are questions about her occupation, her family and the initial programme upto 12:00 noon that day. Even in cross, she has answered that, from around 12:00 noon to 3:00 p.m. nothing happened. She is asked whether there were speeches and whether she had been to civil hospital along with family members. She volunteered that she went to police station. She is repeatedly questioned about playing of song and boys dancing. She answered that she had seen Vicky, who was lifted and brought near the house from flag hoist where he was injured with knife and she answered that there were trails of blood upto his house. She is asked about other family members of her house. Rest is all denial. She denied that deceased Vicky gave blow with stick on the head of Sonu and therefore Sonu assaulted Vicky out of anger. She has denied that she was not present at the time of incident of assaulting Vicky.

16. **PW9** Sujata also on the occurrence deposed that, on that day, after programme of flag hoisting at around 1:00 p.m., the parents of Manoj abused PW7 Siddharth. Around 3:00 p.m., appellant came and she heard noise and therefore, she went to see

what happened. She deposed that, Vicky was present there and appellant assaulted Vicky with knife, whereas Sachin assaulted Siddharth with knife and Vicky fell down. This witness stated that she went there. Vicky's mother raised shouts. Choudhante peoples were assaulting them i.e. Gautam, Shilpabai and her parents.

17. This witness is also extensively cross examined, but it is noticed that she is cross examined only about programme of Jayanti, knowing people of the locality, who were present there and number of houses in the locality. She denied seeing Soniya sustaining blood injury. She marked presence of all family members of complainant party. She is asked about habits of deceased and about function of distribution of *Kheer*. In para 3 and 4 of the cross, suggestion put about no occurrence took place is denied by her. Resultantly, even there is no effective cross of this independent witness about the occurrence of assault.

18. **PW10** Gautam is the injured brother of PW7 Siddharth and deceased. Even he stated about programme of Jayanti since 9:00 a.m. to 12:00 noon and that around 3.00 p.m. Arunabai and Bhimrao came and started giving abuses. That, they were questioning Siddharth as to why he become President. According to him, Manoj gave blow with knife on left side ribs of his brother Vicky, whereas Sachin gave blow with knife to his brother

Siddharth on left side of waist. Arunabai and her other relatives beat him, his mother and sisters, whereas Love, Ankush and Chakuliya assaulted him. His brother was taken to the hospital and doctor declared him dead.

We have also examined the answers given by this witness in the lengthy cross, but questions are found to be posed either about events taking place prior to 3:00 p.m. and there is no meaningful cross even to this witness on the point of assault on deceased Vicky, Siddharth and Gautam.

19. On critical analysis of above evidence, it is emerging that prosecution, by examining above witnesses, has brought the actual occurrence of assault on record. All above witnesses, who are injured and independent witnesses, are found to be consistent about parents of appellant abusing informant and thereafter, appellant stabbing deceased Vicky, whereas his brother Sachin assaulting Gautam. All are consistent about programme which commenced at 9.00 a.m. and had ended up by 12:00 noon and thereafter accused party came towards the house of deceased and injured. The manner of cross suggests that the attempt has been made to show that some spark fell on the background of stopping music system (DJ) while dancing, however said incident was

already concluded by 12:00 noon. There is no material suggesting any serious incidence taking place by such time. Independent witnesses speak about arrival of appellant around 3:00 to 4:00 p.m. Evidence of injured witnesses show that appellant had come armed with knife. After abuse by Bhimrao and Arunabai, assault seems to be carried out.

20. Learned Senior Counsel tried to impress upon us that there was sudden quarrel and incident is outcome of the same. It seems to be his attempt that Exception 4 of section 300 of IPC comes into play and thereby he tried to drag the case from the ambit of section 302 of IPC to culpable homicide not amounting to murder.

We are not ready to accept such contention and suggestion for the simple reason that in the morning session, celebration of dance was already over by 12:00 noon. Two to three hours thereafter, accused party went and abused informant. As stated above, appellant was armed with knife and he stabbed on the vital part like ribs. Medico legal expert claims to have noticed injuries to the heart and lungs. This indicates that the weapon had penetrated beyond the rib-cage, and as such the impact of assault turned out to be fatal. Inference that follows is assault was with

considerable force. Going by the sequence, it is emerging that, there was annoyance brewing with the accused party on account of selection of Siddharth as a President of the Celebration Committee of Jayanti. Going armed is an indication of intention. Putting it to use imputes intention as well as knowledge that injury is likely to cause death. Therefore, for above reasons, the case cannot be taken away from the purview of section 302 of IPC as is tried to be made out during appeal.

21. That apart, there is recovery and discovery at the instance of appellant and that has not been rendered doubtful. Knife seems to be hidden at such a place which was to the exclusive knowledge of the appellant. Therefore, there are incriminating circumstances coupled with eye witness account.

22. According to learned Senior Counsel, here, both, genesis as well as injuries suffered by accused Sonu, are not explained by prosecution and therefore case of prosecution ought not to have been accepted.

In our opinion, the genesis is very evident as accused party was uneasy on account of selection of Siddharth as a president of Celebration Committee of Jayanti. Bhimrao and Arunabai expressed their annoyance and there is evidence of

independent witnesses to that extent. Resultantly, genesis is writ large.

As regards to second objection about non explanation of injury on the person of accused Sonu in spite of defence witness examined to that extent, it is trite law that prosecution is not always obliged to explain the injury on accused, more particularly, when there is clear cogent and convincing evidence. Such proposition has been enunciated in the case of Apex Court decided by three-Judge Bench in the case of ***Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors.*** (2001) 6 SCC 145, wherein earlier three-Judge Bench decisions in the cases of ***Rajender Singh v. State of Bihar*** (2000) 4 SCC 298; ***Ram Sunder Yadav v. State of Bihar*** (1998) 7 SCC 365 and ***Vijayee Singh v. State of U.P.*** (1990) 3 SCC 190 were dealt and discussed and we propose to borrow the observations which are as under :-

“The view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-

explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.”

23. In the light of above settled legal position, we have visited the evidence of **DW1** Dr. Abdul Sami. His evidence is regarding examining Sonu on a history of assault. However, in the light of above discussed law, accused party apparently seems to be aggressors. It is they who went towards deceased and injured. Even no plea of exercise of right of private defence has been taken. Therefore, in our considered opinion, failure of prosecution cannot be said to be fatal. It is pertinent to note that prosecution itself has examined **PW11** Dr. Abdul Sami as their own witness and hence it cannot be said that no attempt is made by prosecution to explain injuries on the person of Sonu.

24. Criticism is also made by learned counsel by submitting that prosecution had deliberately withheld independent witnesses, namely Asha Jhadte, Sonabai Jadhav, Jaiwanta Edke, Sagarbai Bhare.

On above objection we wish to state that it is fairly settled law that only material witnesses need to be examined by prosecution. If the story of prosecution is getting unfolded even through a single witness, if reliable, can be relied to accept the case of prosecution. Here, apart from injured witnesses, two independent witnesses have already unfolded the genesis of the incidence. There is clinching and overwhelming evidence and so, to avoid repetition, prosecution is free to chose and examine only such witnesses. Resultantly, the above aspect of non examination of those witnesses does not reflect on the prosecution version.

25. Taking into consideration overall circumstances and ocular account, more particularly of injured witnesses, coupled with evidence of independent witnesses, culpability of appellant is established beyond reasonable doubt. Therefore, there is no merit in the appeal. What was the perversity or illegality at the hands of learned trial Judge has not been pointed out, except above objections which have already been reasoned out in aforesaid paragraphs.

26. We have gone through the judgment under challenge. We find that evidence adduced by prosecution is correctly appreciated. Testimonies of witnesses are accepted as worthy of

credence by assigning reasons. No perversity is noticed so as to interfere in the same. Hence, appellant fails and accordingly, we proceed to pass following order :-

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)