



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 229 OF 2019

Ranjeet s/o Haribhau Jadhav
Age: 31 years, Occu: Labour,
R/o Shingthala, Tq. Sailu,
Dist. Parbhani.

... Appellant
[Accused No.1]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Sudarshan J. Salunke, Advocate for the Appellant.
Mrs. V. S. Choudhary, APP for Respondent-State.
.....

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

DATED : 13.12.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Instant appeal arises out of the judgment and order passed by Sessions Judge, Parbhani dated 22.01.2019 in Sessions Case No. 121 of 2016 convicting appellant-accused no.1 for the offence punishable under Section 302 r/w 34 of the Indian Penal Code [IPC] and Section 27 r/w 5 of the Arms Act.

2. PW6 Jaya set law into motion by lodging report at Charthana Police Station on 03.06.2016 alleging that at around 12.00 noon on

on that day, appellant Ranjeet approached her and her husband while they were in the house and informed about some bad mouthing regarding her in the village. Deceased allegedly questioned appellant Ranjeet for defaming. According to her, around 3.30 p.m., while she, her husband and her mother-in-law's sister i.e. PW7 Nilabai were in the house, appellant came armed with handle of axe, abused deceased Datta and gave blows of handle of axe on head and chest and also stabbed him with knife in the rib part. Remaining accused, namely, Haribhau, Sonabai and Sakhubai used sticks in assaulting him. Thereafter, they fled. Datta was taken to Civil Hospital, Jintur but he was declared dead and therefore, she lodged report Exhibit 81 which was made the basis of registration of crime which was investigated by PW10 PI Sudarshan Bhange, who arrested the accused, got spot panchanama and inquest panchanama drawn and got postmortem conducted. Recovery-discoveries were caused on memorandum of accused persons. Clothes of both, accused as well as deceased, were seized for sending them to Forensic Science Laboratory and after gathering sufficient evidence, they came to be chargesheeted.

3. Learned Sessions Judge, who conducted trial, permitted prosecution to adduce evidence and prosecution examined as many as

10 witnesses and relied on documentary evidence which was appreciated on hearing both sides and learned Sessions Judge reached to a finding that offence under Section 302 of IPC and Section 27 r/w 5 of the Arms Act is made out only against present appellant. Remaining accused came to be acquitted from all charges.

Said judgment is now assailed before us on various grounds spelt out in the appeal memo.

4. In brief, it is the submission of learned counsel for the appellant that implication is on weak and insufficient evidence. There was no motive to kill. According to him, incident had taken place as a result of quarrel on petty count. He would submit that evidence of PW6 Jaya and PW7 Nilabai fails to inspire confidence in the light of answers given by them in cross. According to him, recovery is also doubtful. No independent witnesses or panchas are examined. Only related witnesses are examined. According to him, even learned trial Judge has not brought to the notice of appellant the entire incriminating material against him by posing relevant questions during recording statement under Section 313 of the Code of Criminal Procedure [Cr.P.C.] resulting into prejudice being caused. For all above reasons, he claims that it was not at all a case of homicide and

in the alternative, it is his submission that, even otherwise case would not travel beyond culpable homicide not amounting to murder and definitely it is not a case attracting Section 302 of IPC.

5. In answer to above, learned APP would submit that there was one incident in the afternoon that day and subsequently, accused party again visited house of deceased getting armed with deadly weapons like handle of axe, knife and sticks. Eye witnesses PW6 Jaya and PW7 Nilabai have narrated the occurrence and their evidence has not been rendered doubtful in spite of they being subjected to extensive cross. According to learned APP, when present appellant went armed with deadly weapons, his motive and intention is explicit. He has caused injuries on vital parts. Medical expert confirms ocular account and therefore, it is her submission that, no fault can be found in the appreciation done by learned Sessions Judge and consequently she prays to dismiss the appeal for want of merits.

6. In the light of above submissions, we have re-appreciated, re-examined and re-analyzed the entire evidence. At the threshold, there does not seem to be dispute that death is homicidal. Evidence of autopsy doctor, who conducted postmortem has also remained intact as regards the cause of death. Bare look at the nature, size and site of

injury, definitely death is shown to be only and only homicidal and not otherwise.

7. Here, though as many as 10 witnesses are examined, which include eye witnesses, panchas and police, we wish to deal with only the relevant evidence i.e. evidence which unfolds the occurrence.

8. **PW6 Jaya** i.e. wife of deceased, who was very much present and was in the very company of deceased, is examined at Exhibit 80 and it is she who has lodged the FIR. Her evidence shows that on 03.06.2016 around 12.00 noon, when she herself, her husband, daughter and sister of her mother-in-law (PW7 Nilabai) were sitting in front of their house, at that time appellant allegedly approached and after initial routine questioning regarding when they arrived, he allegedly told this witness that there were some bad talk regarding her in the village and during such interaction, she claims that, her husband questioned appellant for defaming. Her further evidence shows that around 3.30 p.m. same day, appellant Ranjeet revisited their house getting armed with handle of axe and questioned deceased for his utterance in the afternoon and mounted assault by means of handle of axe. Then she stated that he gave blows of handle of axe on head and chest of her husband. While they were proceeding

towards police station and when they had reached house of one Mathurabai Gore, at that time again appellant appeared there, this time getting armed with knife. Haribhau, Sonabai and Sakhubai were said to be holding sticks. She narrated that appellant gave first blow of knife on the left hand below the portion of wrist of her husband, whereas remaining accused gave stick blows on ribs, head, chest of her husband. She stated that second blow was inflicted by present appellant on the left ribs of her husband as a result of which, he became unconscious and blood started oozing from his ears, mouth and nose and thereafter all four assailants ran away. PW7 Nilabai gave call to police and her husband was shifted to hospital but on examination declared dead and therefore she lodged report. In her testimony, she has described the articles knife and sticks and identified it in court. She also gave description of clothes on the person of her deceased husband and the handle of axe (article 15). All accused, including present appellant were also identified by her in the court.

During cross, initially questions are put regarding her father's native, whether her children accompanied her, regarding marriage of her cousin sister, duration of stay at Rampuri, ages of her children, ailment suffered by her father-in-law and questions are also put

regarding she eloping from her matrimonial house with a person and that quarrel resulted between her and her husband and all such suggestions are denied by her. She is then questioned regarding her arrival from village Rampuri, distance between her village and village Mantha where her mother-in-law had been to meet her sister etc. Para 15 and 16 pertain to questions regarding the occurrence but on carefully going through these two paragraphs, it is clear from the manner of questions and suggestions put therein to this witness that very occurrence, i.e. one that took place at 12.00 noon and other that took place around 3.30 p.m., are not disputed at all. Rather, occurrence of assault has been clearly admitted. Even no major omissions or contradictions are brought in her cross examination.

9. Another witness PW7 Nilabai, who is examined at Exhibit 82, has also reiterated the occurrence which took place on 03.06.2016 and is apparently a mirror image of what PW6 Jaya deposed. She also was present at the time of incident. Even her cross shows that the aspect of occurrence has not been seriously doubted or disputed.

10. Apart from above two witnesses, even evidence of PW1 Sahebrao goes to show that this acquaintance of deceased and accused has in his evidence given the same timing of occurrence and

according to him, while he was sitting in the house of one Tukaram, he heard noise and so when he went there, he claims to have seen deceased lying there with bleeding injury on left side ribs, whereas present appellant was holding knife.

Therefore, apart from evidence of PW6 Jaya and PW7 Nilabai, who are relatives of deceased and are natural witnesses, there is testimony from independent corner also. Ocular account is apparently finding support from medical witness PW4 Dr. Shankar Raut.

11. Pancha to the recovery of articles is also examined as PW9 Sajjan Nikalje but he did not support except stating that he did not read the contents of the document which he caused signature on, i.e. Exhibit 96. Further also, while under cross at the hands of learned APP, he admitted that pancha, accused and police proceeded in a Government vehicle and accused took them to village Singthala, accused got down from the vehicle, proceeded towards a wall and they all followed him and he produced knife and handle of axe which was seized vide panchanama Exhibit 97.

12. The Investigating Officer PW10 PI Sudarshan Bhange has also confirmed said seizure. Clothes on the person of both, accused and

deceased, are said to be seized for analysis. C.A. reports at Exhibits 70 to 73 show that blood group of deceased is “O” and that of accused is “A” and blood stains are found on the clothes of accused. Therefore, here, apart from reliable ocular account, there is scientific evidence confirming involvement of appellant.

13. As regards the objection of learned counsel for the appellant that only interested witnesses are examined and that no independent witness is examined, same is apparently false because PW1 Sahebrao has been examined by prosecution who has supported its story. Even otherwise, as held by the Hon’ble Apex Court in ***State v. Saravanan and another*** ; 2008 SCC OnLine 1529, mere relation of witnesses with deceased itself is no ground to doubt or discredit their testimony, more particularly when they are natural witnesses. Only precaution when primarily witnesses are related is that their testimonies are required to be examined with caution and on doing so, we find evidence of wife of deceased i.e. PW6 Jaya as well as PW7 Nilabai to be worthy of credence. Taking into consideration their testimonies and the evidence of independent witness, occurrence of assault has been successfully brought on record. Medical expert confirms death to be homicidal. The sequence of events that took place in the afternoon resulting into only questioning by deceased to accused for defaming

and later, around 3.30 p.m., appellant along with others returning, that too armed with deadly weapon and further putting it to use on vital part, having cogently proved, there is no manner of doubt that there was intention as well as knowledge and therefore he is rightly held responsible for the said offence and charges can be said to be thereby firmly established against him.

14. As regards the objection of prejudice for not posing questions about offence under Section 27 r/w 5 of the Arms Act, also we find no force in it for the simple reason that firstly, what and how prejudice has been caused to the appellant is not demonstrated by learned counsel for the appellant. Secondly, though there are no specific questions about offence under Section 27 r/w 5 of the Arms Act, there is apparently recovery under Section 27 of the Evidence Act at the hands of appellant and question no. 13 posed under Section 313 of Cr.P.C. also suggests that he was made aware about recovery of weapon as well as its measurement. Taking such material into consideration, we find no force in the above ground and resultantly, we discard the same as no prejudice is shown to have been caused.

15. We have carefully gone through the judgment passed by learned trial Judge. In our considered opinion, available evidence has

been correctly appreciated, required law has been applied and the most logical opinion that could be derived on appreciation of evidence has been reached at. The view taken is supported by cogent reasons and as such, no fault can be found to hold any non-appreciation or perversity. Consequently, the appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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