

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 114 OF 2017

Shivaji s/o. Nivrutti Wagh
Age – 30 years, Occupation- Agriculture,
R/o. Harki Limbgaon, Taluka Majalgaon,
District Beed.

... Appellant
[Orig. Accused]

versus

1. The State of Maharashtra
2. Rani w/o Shivaji Wagh
R/o. Harki Limbgaon, Taluka Majalgaon,
District Beed. ... Respondents

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Smt. Ranjana E. Reddy, Advocate for the Appellant.
Mr. A. M. Phule, APP for Respondent No.1-State.
Mr. V. B. Deshmukh, Advocate for Respondent No.2.

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

DATED : 29.09.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Getting dissatisfied by the judgment and order of conviction dated 02.02.2017 passed by learned Additional Sessions Judge, Majalgaon, District Beed in Sessions Case No. 17 of 2016 for the offence punishable under Sections 302 and 307 of the Indian Penal Code [IPC], thereby sentencing appellant-accused to suffer rigorous imprisonment for life, the instant appeal has been preferred on various grounds raised in the appeal memo.

PROSECUTION CASE IN BRIEF IS AS UNDER

2. Convict appellant was married to PW6 Rani on 20.05.2013. Out of their wedlock, they have a child. A year and six months after marriage, respondent was treated well. According to prosecution, thereafter accused started suspecting fidelity of Rani and used to abuse and beat her. He also demanded money to be brought from her parents. At one time, in above backdrop, accused also tried to throttle her to death and therefore, she lodged complaint to that extent at Majalgaon Police Station. Because of strained relations, Rani was put up with her parents at Harki Limbgaon.

3. On 12.12.2015, around 6.30 p.m., when her mother Anita was tying cattle and she herself was cooking in the house, accused reached there and asked her to accompany her back with him for cohabitation. At that time, mother intervened and questioned visit of accused. Immediately thereupon, it is the case of prosecution that, accused whisked out knife from his waist, rushed towards her mother and stabbed her in the chest. When Rani intervened, accused stabbed her also in the abdomen, as a result of which, both collapsed. Accused took to heels after throwing the knife at the spot. Shortly thereafter, PW7 Shrikisan i.e. father of injured PW6 Rani reached there and her uncle PW5 Rambhau, on receipt of information, also reached there

and approached police station and lodged report, on the strength of which, crime was registered. Crime was investigated by PW13 API Jarad and accused was duly chargesheeted and was further tried by learned Additional Sessions Judge, Majalgaon, who, on appreciating the evidence on record, accepted the case of prosecution as proved and thereby convicted him as above. Hence the appeal.

SUBMISSIONS

On behalf of the appellant

4. Learned counsel for the appellant would take exception to the judgment under challenge and would criticize it by submitting that it is patently illegal, perverse and not sustainable as, according to her, testimonies of witnesses are inconsistent and full of material omissions and contradictions. She pointed out that according to injured PW6 Rani, twice knife blows were given, but medical expert has noticed only one injury and thus, it is her submission that, information of injured witness is unworthy of credence.

5. She pointed out that even Kalawati, who was material witness, has not been examined by prosecution for the best reasons known to it. Thus, according to learned counsel, there is suppression and withholding of material witnesses. She points out that even other brothers are not examined.

6. Questioning the testimony of PW7 Shrikisan and PW8 Shankar i.e. father and uncle of injured, she would submit that though they claim to be reaching the spot immediately, their versions are not worthy of credence for the simple reason that they are giving contrary versions. Learned counsel took us through the evidence of both these witnesses and would point out that they are not lending support to each other and their testimonies are also full of material omissions and contradictions. Thus, according to her, the entire evidence of prosecution, including the evidence of so called injured eye witness, is not inspiring confidence. She points out that even other witnesses, though examined by prosecution, have reached subsequent to the occurrence and as such, there is no reliable evidence in support of the case of prosecution about accused to be author of so called injuries suffered by injured as well as deceased.

7. She would point out that even in support of motive, prosecution could not bring trustworthy evidence. According to learned counsel, as accused had refused to marry cousin sister of injured, out of annoyance, there is false implication. Even the complainant party was annoyed because injured had refused to cohabit with accused. Merely because relations between injured and accused were strained, there is apparently false implication.

8. Lastly, while concluding, learned counsel submitted that learned trial court has not considered the available evidence in its correct perspective and law on appreciation of evidence has not been applied as required and resultantly, she prays that appeal deserves to be allowed.

On behalf of the State

9. Refuting the above submissions, learned APP would submit that here, there is evidence of injured eye witness. That, PW6 Rani was forced to stay with her parents because of doubtful and suspicious nature of husband. She was in the company of deceased i.e. her mother. Accused had reached there and on her refusal to accompany him, accused, who had come armed with knife, initially assaulted mother of injured and thereafter, also assaulted her and fled from the spot. Therefore, according to learned APP, there is direct eye witness of none other than injured eye witness. Her testimony has remained unshaken. According to learned APP, information was passed by injured to her father and uncle and they had also reached the spot. Within few minutes of the occurrence, they both had seen accused fleeing from the spot. Therefore, there is overwhelming evidence regarding involvement of accused. The theory put forth by prosecution about injury to be possible due to attack of cattle, has

been rejected by the very medical expert who has conducted postmortem. Therefore, it is pointed out that, learned trial court has correctly appreciated the available evidence and has rightly held the case of prosecution as proved beyond reasonable doubt and no illegality has been committed in recording guilt.

10. In the light of above submissions, we have examined the entire record for re-appreciation, re-examination and re-evaluation of the prosecution evidence. We have noticed that here, as many as 13 witnesses have been examined by prosecution. Their role and status is as under:

EVIDENCE BEFORE THE TRIAL COURT

- PW1** Shamsundar Aarde is pancha to inquest panchanama [Exh.14] and spot panchanama [Exh. 15].
- PW2** Abdul Faqueem is pancha to seizure panchanama [Exh. 17] of clothes of injured Rani i.e. PW6
- PW3** Anandkumar Deshmuk is pancha to seizure panchanama of clothes of deceased [Exh.19].
- PW4** Ram Kulkarni is pancha to seizure panchanama of clothes of deceased as well as accused [Exhibits 19 and 22].
- PW5** Informant Rambhau Kolhe is the uncle of injured Rani [PW6]

PW6 Rani Wagh, an injured witness, is wife of accused and daughter of deceased.

PW7 Shrikisan Kolhe is husband of deceased and father of injured Rani [PW6].

PW8 Shankar Waghe is the resident of same locality and acquaintance of accused as well as PW7 Shrikisan.

PW9 Dr. Sumant Wagh is the doctor who treated injured Rani and issued injury certificate [Exh. 37] which he identified while in the witness box.

PW10 PHC Sarjerao Wanve is carried of *muddemal*.

PW11 Dr. Dashrath Choure is the autopsy doctor.

PW12 Vilas Kolhe is cousin brother of injured Rani [PW6].

PW13 API Sharad Jarad is the Investigating Officer.

11. Before advertng to the so called ocular account, we wish to get ourselves satisfied that death of Anita is shown by the prosecution to be homicidal one. To find answer to the same, we are required to visit evidence of autopsy doctor i.e. PW11 Dr. Choure, who, in his substantive evidence, has deposed about conducting postmortem along with another doctor and coming across following injury:

Stab injury over left chest anterior aspect just below left nipple measuring 6x3 cm, piercing anterior chest wall, ribs, parietal pleura, lungs, pericardium, myocardium, upper angle laterally and lower angle medially. The injury was diverted medially, backwards and slightly upwards.

The autopsy doctor has further deposed about finding multiple ribs fracture on left side of chest and on internal examination, he has noted fracture of 4th, 5th and 6th rib near costo chondral junction anteriorly, left side pleura was ruptured and hemorrhagic on anterior and medial aspect, sharp cut injury over left lung anteriorly 7 cm. linear, pericardium was ruptured and hemorrhagic and oblique incised injury to left lateral side of heart up to atrial and ventricular cavity 7x3x3 cm. The autopsy doctor has opined cause of death as “cardiogenic shock due to stab injury”. On confronting him with the seized weapon [article 1], he has deposed that the above injuries are possible by the same.

In cross-examination, the medical expert has denied about possibility of above injuries by horn of a bullock i.e. on being attacked by a bullock.

12. Taking into account the nature and sites of injuries as narrated by PW11 Dr. Choure and even taking into account the nature of his cross, we are also of the opinion that death of Anita is shown to be not only unnatural, but homicidal one.

ANALYSIS

13. Here, it is the case of prosecution that after initial one year or so of marriage, accused started suspecting character of his wife injured Rani. Because of strained relations and his such nature, injured went to her parents' house and therefore alleged occurrence had taken place. Taking stock of the entire evidence of prosecution, in our considered opinion, here, only evidence of injured Rani [PW6], her father Shrikisan [PW7] and an acquaintance, namely, Shankar [PW8] assumes importance. Therefore, we propose to re-examine and re-evaluate only their evidence. Rest of the witnesses are either panchas or medical experts and police officials.

14. It is noticed that injured **PW6** Rani has deposed in her evidence at Exhibit 27 that accused used to doubt her character and he had pressed her throat and therefore, she had lodged report to that extent at Majalgaon Police Station. According to her, on 12.12.2015 in the evening, her mother left the house to go to flour mill, but she shortly

returned saying that her father met her on the way along with PW8 Shankar and instead of her, father of this witness took the grains for grinding at the flour mill. Further, according to her, around 6.45 p.m., while she was cooking in the house and her mother was tying the cattle, accused came from backside of the house and asked her whether she is ready to come for cohabitation or not. According to this witness, she replied that after the judgment of court she would come with him for cohabitation. Thereupon, accused started abusing and beating her. At such point of time, her mother came and asked accused why he had come to their house saying that he had no concern. At that time, accused took out big knife from his waist, rushed at her mother and stabbed on the chest part of her mother. She claims that when she tried to rescue her mother, accused gave knife blows on left side of her abdomen and also left forearm and because of bleeding injuries, she and her mother both collapsed and fell unconscious. According to her, after four to five days, in civil hospital, she regained conscious and thereafter she gave statement as well as statement under Section 164 of the Code of Criminal Procedure [Cr.P.C.] before the Magistrate, Majalgaon. She has identified the same. She has also identified the weapon confronted to her.

This witness is extensively cross-examined. Relevant cross is at para 7 and 8. In para 7, omissions are brought in the statement given by her before learned Magistrate under Section 164 of Cr.P.C. and in para 8, omissions are brought about not stating regarding accused pressing her throat by suspecting her character and about her mother tying the cattle or relieving the cattle. As regards the actual occurrence is concerned, there does not seem to be very effective or serious cross on the point of assault or the sequence narrated by this witness. Therefore, her testimony about accused suspecting her character and she lodging complaint, parting with accused and staying with deceased and accused visiting in the evening of 12.12.2015, questioning her and thereafter amounting assault has virtually remained unchallenged and unshaken.

15. Similarly, on close scrutiny of the evidence of **PW7** father Shrikisan and **PW8** Shankar, who was said to be in the company of PW7 father, it is seen that they both are speaking about they to be together in that evening and deceased meeting them on the way and asking PW7 Shrikisan to take the grains to flour mill and thereafter deceased returning back.

According to **PW7** Shrikisan, while they went to flour mill, after short time he received call from his daughter on the mobile of **PW8** Shankar about assault on herself as well as mother and to come home immediately, and therefore, he claims that he rushed home and saw his wife and daughter both in injured condition and thereafter his nephew Vilas shifting injured Rani to hospital.

Similarly, **PW8** Shankar also stated that deceased met them on the way and thereafter, they both went to flour mill. However, according to this witness, when he and **PW7** Shrikisan were taking tea in his house, at that time call was received from **PW6** Rani informing about the incident. However, he further stated that they both rushed there and saw injured as well as deceased having suffered bleeding injuries and lying on the spot. He also spoke about knife lying at the spot. **PW8** Shankar claims that he reached later than **PW7** Shrikisan and **PW7** told him about assault by accused.

Even both these witnesses are found to be subjected to extensive cross. No doubt there is variance in their statement, but only to the extent of **PW7** visiting house of **PW8** for having tea. **PW7** has spoken about receiving phone call of injured while they were at the flour mill, whereas **PW8** Shankar has stated that phone call of

injured was received while they were in his house. However, fact of call being received from injured on mobile of PW8 Shankar for having talk with PW7 Shrikisan is consistent. This aspect has not been damaged or rendered doubtful in their cross. Merely because PW7 Shrikisan did not speak about receiving call from injured while they were taking tea, as stated by PW8 Shankar, itself will not be sufficient to disbelieve their actual version about receiving news of occurrence. Both these witnesses have reached the spot subsequently one after the other. They have seen both, PW6 Rani and deceased Anita, lying in injured condition and being taken to hospital.

16. Even informant **PW5** Rambhau had reached the spot on receiving information from his nephew Vilas and it is he who has set law into motion. Said Vilas is also examined by prosecution as PW12. Therefore, here, occurrence of assault has been established through the evidence of PW6 Rani, PW7 Shrikisan, PW8 Shankar as well as PW5 Rambhau and PW12 Vilas.

17. The doctor, who examined injured Rani, is **PW9** Dr. Wagh. He, in his evidence at Exhibit 36 has categorically narrated the site and nature of injury. According to him, the injury would have turned out to be fatal had it not been treated. Therefore, medical expert's evidence lends support to the ocular account.

18. Likewise, **PW11** Dr. Choure, who conducted autopsy, has also opined about external and internal injuries injury on the person of deceased which are discussed in the foregoing para and, according to him, death is due to “cardiogenic shock due to stab injury”. Knife is also seized from the spot.

19. All witnesses like PW6 Rani, PW7 Shrikisan and PW8 Shankar are identifying the article knife as well as clothes of both, accused as well as deceased. The Chemical Analyzer’s evidence is full proof. Therefore, apart from Section 307 of IPC, the required ingredients of Section 302 of IPC are also completely available in the prosecution evidence and therefore, there is no hesitation to hold that charges are cogently established by prosecution. Defence could not dislodge the testimonies of prosecution witnesses, more particularly that of injured eye witness. It is settled law that testimony of injured eye witness always assumes higher place on the pedestal and unless it is shown to be improbable, it carries much credence and can safely be relied. Therefore we too, like the trial court, accept the case of prosecution as proved.

20. We have gone through the judgment under challenge. We have noticed that learned trial court has correctly appreciated the

prosecution evidence. Sound reasons are assigned for the findings reached at. In appeal, no patent perversity or illegality has been brought to our notice calling for interference. Even the compensation awarded to injured PW6 Rani under Section 357 of Cr.P.C., which is directed vide clause [6] of the impugned order to be paid out of the fine amount, is also justified and needs to be maintained. Therefore, finding no merit in the appeal, the same is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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