

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 240 OF 2016

Maroti s/o Mariba Gujalwad,
Age 36 years, Occu. Labourer,
R/o. Medankallur, Tal. Degloor,
Dist. Nanded.
[At present lodged at Central Prison,
Nashikroad, Nashik, Dist. Nashik]

... Appellant
[Orig. Accused No.1]

Versus

1. The State of Maharashtra
Through Police Station Officer,
Police Station Degloor,
Taluka Degloor, District Nanded.

2. Shobhabai Raju Jadhav
Age 44 years, Occ. Household,
R/o Medankallur, Taluka Degloor,
District Nanded.

... Respondents

.....
Mr. G. V. Wani, Advocate for the Appellant [appointed].
Mr. A. M. Phule, APP for Respondent No.1 State.
Mr. Amar D. Soman, Advocate for Respondent No.2 [appointed]

.....

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

DATED : 06 SEPTEMBER 2023

JUDGMENT [PER ABHAY S. WAGHWASE, J.] :-

1. Appellant Maroti is hereby taking exception to the judgment and order dated 02.03.2016 passed by learned Additional Sessions Judge, Biloli in Sessions Case No. 60 of 2014, by invoking Section 374 of the Code of Criminal Procedure [Cr.P.C.]

FACTUAL MATRIX

2. In nut shell, it is the case of prosecution that deceased Raju had extra marital affair with wife of appellant-accused no.1. Getting annoyed by the same, on 29.08.2014, when deceased was in front of shop of one Shankar alias Mariba s/o Gangaram, at that time all three accused intercepted deceased. It is specific accusation of prosecution that initially deceased was incapacitated by accused nos. 2 and 3 and they facilitated the assault at the hands of appellant-accused no.1 Maroti in the chest of deceased. Deceased was shifted to the hospital, but was declared dead.

3. Wife of deceased i.e. PW1 Shobhabai lodged report, on the strength of which, crime was registered and investigated by PW11 PSI Dilip Ingle, who even chargesheeted accused.

4. During trial, learned Additional Sessions Judge recorded evidence adduced by the prosecution, appreciated the same, heard both sides and reached to a finding that only accused appellant is responsible for the death of Raju and consequently convicted him and sentenced him to imprisonment for life for commission of offence punishable under Section 302 of the Indian Penal Code [IPC] and accused nos. 2 and 3 came to be acquitted.

Hence, appellant-convict is questioning the above judgment by way of instant appeal.

SUBMISSIONS

On behalf of the appellant:

5. Learned counsel for the appellant would point out that prosecution has miserably failed to bring home guilt of the appellant beyond reasonable doubt. He pointed out that only PW3 Dadarao seems to be the witness on behalf of prosecution, however, he emphasized that even going by his substantive evidence and the manner of answers given by him in cross, it is doubtful whether he was the eye witness at all. Learned counsel pointed out that the immediate neighbours and even relatives, including daughter of deceased, who allegedly reached the spot, are not examined, rather

son of deceased, who had not at all seen the occurrence, was made to step into the witness box. He pointed out that even PW3 Dadarao, who claims to be the eye witness, had not reported the occurrence immediately and he has given statement to the police after two to three days. For said reasons, his evidence cannot be considered as trustworthy. He pointed out that even the evidence of recovery is doubtful as PW3 Dadarao himself has acted as pancha to both seizure panchanama and inquest panchanama.

For all above reasons, he prays that the evidence of prosecution not being free from doubt, the appeal be allowed.

On behalf of the State:

6. Per contra, learned APP would submit that there is clinching evidence in the form of evidence of PW3 Dadarao. Prosecution has established the motive behind the incident. PW3 Dadarao has narrated whatever he saw. His evidence has remained unshaken and therefore, according to learned APP, there being cogent and reliable evidence, learned trial Judge committed no error whatsoever in holding appellant guilty. He would lay stress that the fact that other two co-accused are set at liberty itself is sufficient to hold that the learned trial Judge has meticulously appreciated the evidence.

Therefore, according to him, such findings, which are based on sound reasons, need not be disturbed. He prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

7. 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 12 witnesses have been examined by prosecution. Their status is as under:

PW1 Shobhabai Jadhav is the wife of deceased, who had set law into motion.

PW2 Vijay Patil is the pancha to spot panchanama Exhibit 36, who claims that in his presence some articles were seized from the spot.

PW3 Dadarao Jadhav is the so-called eye witness who has also acted as pancha to inquest panchanama and seizure panchanama under Section 27 of the Evidence Act.

PW4 Bhimrao Deokar is the pancha to seizure of clothes of accused persons.

PW5 Shahu Jadhav is the son of deceased.

PW6 Sunita Gujalwad is the wife of accused who has not supported prosecution.

PW7 Pancha to seizure of clothes of appellant-accused Maroti. He too has not supported prosecution.

PW8 Sopan Gujalwad and **PW9** Ananda Gujalwad are the alleged eye witness who turned hostile.

PW10 PC Devidas Ingole is the carrier of muddemal.

PW11 PSI Dilip Ingle is the Investigating Officer [IO].

PW12 Dr. Shaikh Anis is the autopsy doctor.

8. Before adverting to the so called ocular account, we wish to get ourselves satisfied that death of Raju 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. PW12 Dr. Shaikh Anis, who, in his substantive evidence, has deposed about coming across three stab injuries on chest and abdomen and fracture of cartilage of right side of chest. The measurement and sites of stab injuries are as under:

1. stab injury on right side of chest near ziphisternum of size 2.5 cm X 1 cm X 13.5 cm direction towards upwards.

2. stab injury over epigastric region (upper) of size 2.5 cm X .7 cm X 2.5 cm.
3. over epigastric region 2.5 cm below of size 2.5 cm X 0.5 cm X 9 cm straight in direction.

According to the autopsy doctor, the cause death is multiple stab injuries over chest and abdomen with hepatic laceration right lobe with huge retro-peritoneal bleed with penetrating injury to right ventricle of heart with haemopericardium with haemothorax. Autopsy doctor as further opined that above injuries are possible with a knife having blade of 6 inches.

9. Taking into account the nature and sites of injuries as narrated by PW12 Dr. Shaikh Anis and even taking into account the nature of his cross, we are also of the opinion that death of Raju is shown to be not only unnatural, but homicidal one.

ANALYSIS AND SUMMATION

10. On scrutiny of the evidence, it is revealed that though FIR is at the instance of wife of deceased, namely, Shobhabai (PW1), her

evidence suggests that she reached the spot on getting news and by that time, occurrence was over and she found her husband lying near the drainage. Therefore, apparently informant is not an eye witness. Her evidence is only regarding suspicion raised by accused about affair of deceased with his wife.

11. **PW3** Dadarao seems to be the star witness for prosecution and therefore, his evidence is re-appreciated and re-examined meticulously. According to him, on 29.08.2014 around 6.30 p.m., when he had reached near the shop of Shankar @ Mariba, he saw that appellant accused no.1 Maroti had caught hold of deceased by neck by use of handkerchief and then he gave blow on the chest of deceased Raju. He claims that out of fright, he rushed to his own house. Then he stated that immediately thereafter, daughter of deceased had come to the shop and she returned crying saying that someone had killed her father. Surprisingly, he further claims that immediately thereafter he again came back to the spot and saw informant wife crying near the dead body and so, he claims that, he passed on information to the President of Tanta Mukti of the village, who in turn informed the police. He also seems to have acted as pancha to the inquest panchanama Exhibit 40 on the next day i.e. 30.08.2014 and again he had attended police station on 06.09.2014

to act as pancha to the memorandum of disclosure allegedly given by appellant-accused regarding handing over knife.

We have visited his cross wherein he has admitted that in the memorandum panchanama, place is not mentioned. He admitted that therein, there was reference of incident dated 28.08.2014. He further admitted that accused-appellant informed police not to beat him and that he is ready to show the weapon. He further admitted that place of concealment of weapon is also not reflected in the memorandum panchanama. He conceded that though it is stated in the panchanama that the knife had handle, the knife shown to him had no handle at all and that there was no seal over the knife. His further cross shows that he had not stated portion marked "A" in his statement to police i.e. about "Baliram Jadhav informing relatives in the village about the incident and news being spread in the village, and relatives and villagers being gathered at the spot, he too went to the spot". He answered that he did not see any injury on the neck of deceased but merely saw slight swelling on the neck and that there was no blood on the road. He admitted that when police arrived, at that time he was present at the spot. He further answered that police recorded his statement on 31.08.2014.

There are omissions about daughter of deceased crying and saying that someone had killed her father and about villagers being called for *panchayat* on account of alleged extra-marital affair of deceased.

12. On carefully analyzing the above evidence of **PW3** Dadarao, the so called star witness, his testimony does not inspire confidence for the simple reason that in spite of claiming to have seen assault, he has not promptly reported to police who had reached at the spot immediately. Rather his evidence shows that he went to his own house and did not even inform wife of deceased (informant) in spite of claiming to have seen her during his second visit to the spot shortly. He admitted that his statement was recorded by police on 31.08.2014 i.e. after two to three days of alleged occurrence. It is surprising to note that in spite of acting as a pancha to inquest panchanama on 30.08.2014, he has not informed police on his own about seeing the alleged assault. For all above reasons, his testimony is unworthy of credence and therefore unsafe to rely on.

13. **PW5** Shahu seems to be the son of deceased but his evidence shows that when he reached the spot, he had found his father lying in the gutter and he merely rushed home to inform his mother. He claims that he learnt from his mother about assault by accused. But as

stated above, informant herself had reached the spot after the incidence was over. Therefore, there is no question of she informing her son PW5 Shahu about assault by accused. Daughter of deceased, who had first seen injured and went and informed informant, is not examined by prosecution. Therefore, even evidence of PW5 Shahu is of no avail to prosecution.

14. **PW6** Sunita, **PW7** Alimkhan, **PW8** Sopan and **PW9** Ananda have not supported prosecution. **PW2** Vijay Patil and **PW4** Bhimrao Deokar are panchas, where as **PW10** PC Devidas Ingole is carrier of muddemal and **PW11** PSI Dilip Ingle is the Investigating Officer (IO).

15. **PW11** IO admitted in cross that spot is not in front of shop of Shankar Gujalwad. He admitted that in the memorandum panchanama, place of concealment is not reflected and that in discovery panchanama Exhibit 43, there is overwriting.

16. Therefore, taking into account above quality of evidence, firstly, there is no direct eye witness; learned trial court has accepted the case of prosecution but only as against appellant-accused no.1 and remaining two accused are set at liberty on the same set of evidence; motive is also not proved and therefore, apparently evidence was

weak in nature; recovery is rendered doubtful for above reasons; neither owner of the shop where incident took place is examined, nor other independent witnesses are examined; sole testimony of PW3 Dadarao is not worthy of credence and lastly, in spite of occurrence taking place on 29.08.2014, spot panchanama is not drawn immediately, rather it is drawn on 30.08.2014 without any explanation. Therefore, case is not full-proof.

17. We have gone through the impugned judgment. On re-appreciation, we have noticed that there is no credible evidence. Learned trial court has not considered the aspects noticed by us on careful re-appreciation and re-examination. Therefore, said judgment cannot be allowed to be sustained. Resultantly, we find it a fit case for interference and accordingly, we proceed to pass the following order:

ORDER

I. The appeal stands allowed.

II. The conviction awarded to the appellant Maroti s/o Mariba Gujalwad by learned Additional Sessions Judge, Biloli, District Nanded, in Sessions Case No. 60 of 2014 on 02.03.2016, after holding guilty of committing offence punishable under Section 302 of the Indian Penal Code, stands quashed and set aside.

III. The appellant stands acquitted of the offence punishable under Section 302 of the Indian Penal Code.

IV. The appellant be set at liberty, if not required in any other case.

V. We clarify that there is no change in the order as regards the disposal of muddemal is concerned, however, we set aside the order of granting compensation to the respondent no.2-original informant, out of fine amount, as the entire sentence has been set aside.

VI. We acknowledge the assistance rendered by learned Advocate Mr. A. D. Soman appointed to represent the cause of respondent no.2.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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