

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 161 OF 2017
WITH
CRIMINAL APPLICATION NO. 1153 OF 2018**

Digambar s/o. Bhivsan Tribhuvan
Age 34 years, Occupation Agriculturists,
R/o. Nimgaon, Taluka Vaijapur,
District Aurangabad. ... Appellant

Versus

The State of Maharashtra
Through Police Inspector,
Police Station, Shivoor,
Taluka Vaijapur, Dist. Aurangabad. ... Respondent

.....
Mr. V. R. Dhorde, Advocate for the Appellant
Mr. A. M. Phule, APP for the Respondent-State
.....

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

DATED : 16.10.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Instant appeal is at the instance of the convict for offence under Section 302 of the Indian Penal Code [IPC] in Sessions Case No. 50 of 2015 dated 08.03.2017.

2. Shorn of details, in brief, case of prosecution is that there were rumors in the village about illicit relations between wife of appellant

and deceased Bharat. Both, appellant and his wife approached Bharat on 16.04.2015 around 6.00 p.m. According to prosecution, appellant waited at some distance while his wife Alka asked Bharat to settle the confusion. There was quarrel between Alka and Bharat. Appellant Digambar reached at the spot and he stabbed Bharat with knife. Deceased was taken to hospital but, on examination, was declared dead.

3. On receipt of information about occurrence, uncle of Bharat PW1 Bhausahab set law into motion on the strength of which crime was registered, investigation was carried out and appellant was chargesheeted and tried. On conclusion of trial, learned Additional Sessions Judge, Vaijapur, after appreciating the oral and documentary evidence and on hearing both sides, held the case of prosecution as proved and convicted appellant for commission of offence under Section 302 of IPC and consequently sentenced him to suffer rigorous imprisonment for life.

Said conviction and sentence is now challenged by invoking Section 374 of the Code of Criminal Procedure [Cr.P.C.] on various grounds mentioned in the appeal memo.

SUBMISSIONS

4. Learned counsel for appellant would submit that implication is false. There is no independent witness. It is pointed out that learned trial Judge has merely appreciated the prosecution evidence and has completely overlooked defence raised by appellant. According to him, during the occurrence, there was a scuffle. PW9 Narayan had whisked out a knife. In that scuffle, Bharat came in contact with knife and suffered injury. That, wife of accused i.e. Alka, who was also present there, had also lend support to appellant who has himself stepped in the witness box. But according to learned counsel, such defence has totally been lost sight of, not appreciated and not considered at all. It is further submitted that even so called recovery and discovery is doubtful because on alleged memorandum of disclosure, date is noted as 17.04.2015 whereas recovery was shown to be caused on 18.04.2015 and therefore, it is his submission that, circumstance of recovery is also under shadow of doubt. Learned counsel took us through the evidence of PW1 Bhausahab and would submit that he has hearsay information and not being direct eye witness, his testimony ought not to have been considered by trial court. He also took us through the evidence of sister-in-law of deceased i.e. PW3 Anita and would submit that even she cannot be said to be direct eye

witness because she claims to have merely heard commotion and had come out thereafter. Therefore, she is not a direct eye witness. Taking us through the evidence of PW9 Narayan, who is cousin brother of deceased, it is his submission that in fact he is the real culprit and he had come armed with knife and during quarrel, he had taken out knife to assault the appellant-accused, but unfortunately, in scuffle Bharat suffered injury. Therefore, it is his submission that evidence of even PW9 Narayan cannot be taken recourse to or relied by prosecution. While concluding his argument, learned counsel submits that if the court does not consider and appreciate the defence raised herein, it is submission that, in the alternative, taking into consideration the occurrence which had taken place suddenly in the quarrel, the case would at the most attract offence of culpable homicide not amounting to murder. In support of his such contention, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of *Premchand v. State of Maharashtra ; (2023) 5 SCC 522*.

5. In answer to above, learned APP would submit that prosecution has proved the charge beyond reasonable doubt by examining as many as 12 witnesses. According to learned APP, evidence of PW3 Anita (sister-in-law of deceased) and PW9 Narayan (cousin brother of deceased) is of relevance as they are eye witnesses to the occurrence.

He submitted that by examining autopsy doctor PW4 Dr. Chavala, death is proved to be homicidal one. It is pointed out that appellant suspected affair between his wife and deceased and therefore there was motive and he went armed and equipped with knife which he had also put to use and so, it is submitted that, charge is squarely brought home. According to him, learned trial Judge has rightly appreciated the evidence. That, defence evidence has also been considered and is discarded by learned trial Judge as it failed to inspire confidence. Resultantly, it is submitted that, there is no merit in the appeal and so he prays to dismiss the appeal.

6. We being dealing with the matter in the capacity of first appellate court, we re-appreciated, re-analyzed and re-examined the prosecution evidence adduced in the trial court. The following are the witnesses along with their role who are relied by prosecution. :

PW1 Bhausahab Laxman Tribhuvan is the uncle of deceased. He is the informant.

PW2 Ganesh Sakahari Tribhuvan has acted as pancha to spot panchanama Exhibit 18.

PW3 Anita Sharad Tribhuvan is the sister-in-law of deceased and and eye witness.

- PW4** Dr. Nitesh Dhavara Chavala is the autopsy doctor. He issued cause of death to be hemorrhagic shock due to injury to vital organ. He identified postmortem report Exhibit 25.
- PW5** Syed Yusuf Syed Shamim, retired police official who acted as carrier of muddemal.
- PW6** Devidas Ramnath Kadam acted as pancha to inquest panchanama Exhibit 28.
- PW7** Machhindra Revji Shinde is pancha to seizure of clothes of deceased vide panchanama Exhibit 30.
- PW8** Archana Bharat Tribhuvan is wife of deceased.
- PW9** Narayan Kachru Tribhuvan is cousin brother of deceased and an eye witness.
- PW10** Baliram Haribhau Tribhuvan is pancha to seizure of clothes of accused vide panchanama Exhibit 38.
- PW11** Dnyaneshwar Sahebrao Tribhuvan has acted as pancha to memorandum of disclosure Exhibit 41/A and recovery of knife at the instance of accused vide panchanama Exhibit 41/B.
- PW12** PI Shriram Tukaram Chaudhari is the Investigating Officer.

Defence has also examined appellant accused himself as **DW1** and his wife Alka as **DW2**.

7. We have noticed that here, there is absolutely no challenge to the manner of death to be homicidal one. Still, when we visited evidence of autopsy doctor PW4 Dr. Nitesh Chavala, considering his substantive evidence containing nature and site of injury and the manner of his cross, we are also of the firm opinion that death of Bharat is proved by prosecution to be homicidal one.

8. Now let us reassess the evidence to ascertain whether, as put forth by prosecution and as held by learned trial Judge, appellant is the author of the injury and responsible for the death and further, whether trial Judge committed any illegality or perversity in appreciating the evidence as claimed by the appellant.

9. We are of the firm opinion that informant PW1 Bhausahab having reached the spot subsequently on receipt of information, cannot be said to be an eye witness. However, testimonies of PW3 Anita, PW9 Narayan and to some extent, evidence of DW2 Alka i.e. wife of appellant is crucial as it unfolds the actual occurrence.

10. On carefully sifting their evidence, it is noticed that occurrence had taken place on 16.04.2015 at around 6.00 p.m. There is history to the occurrence as it is emerging from above three witnesses, including

informant uncle of deceased, that there were talks in the village about illicit relations between wife of appellant and deceased Bharat. Very wife of appellant, namely, Alka seems to have approached house of deceased for settling the matter. Sister-in-law of deceased, namely, Anita [PW3] in her substantive evidence has stated that Alka came to her and asked whereabouts of Bharat as she wanted Bharat to settle the quarrel. Anita deposed that Alka told her that since morning Alka's husband was assaulting her and therefore she asked her the whereabouts of Bharat. Even DW2 Alka in her substantive evidence confirms that she and appellant both had gone to the house of Bharat because of dispute and so, on her suggestion, they had approached Bharat to clear the rumors. Therefore, PW3 Anita (sister-in-law of deceased) and DW2 Alka (wife of accused) are themselves confirming visit of Alka to the house of deceased to clear the air of suspicion. Though they are cross examined, above aspect has virtually remained unshaken. Rather, suggestions itself show that visit of Alka to Bharat has not at all been touched.

11. On further going through the evidence, in our opinion, PW9 Narayan is also very crucial witness because his evidence suggests that on relevant day he and deceased had been to Vaijapur and they had returned around 6.00 p.m. In his evidence he stated that four to

five days back he learnt about appellant suspecting that Bharat had illicit relation with his wife. PW3 Anita, DW2 Alka and PW9 Narayan are thus found to be unanimous about alleged affair between deceased and Alka. Evidence of PW3 Anita clearly shows that on account of beating by appellant to Alka, she had come to Bharat. This suggests that appellant was annoyed and he entertained a motive.

12. Further, PW9 Narayan in his evidence stated that when they reached house of Bharat at around 6.00 pm, wife of appellant came, met Bharat and told that since four to five days there are quarrels in her family and so she asked Bharat to settle the dispute. PW9 Narayan further deposed that at that time, appellant was on the other side of the road. Even sister-in-law of deceased i.e. Anita in her evidence stated that she saw Bharat, PW9 Narayan and Alka standing in the land of Bharat near the road and from other side, she saw Digambar coming in hurried condition but she stated that thereafter she went inside the house as she was cooking. However, after hearing commotion she came out and saw the occurrence.

13. PW9 Narayan gave details about appellant catching hold of Bharat and giving him fist blows. He claims that he tried to catch appellant to take him to one side but appellant allegedly pushed him,

got himself freed, went towards Bharat, took out a knife from his pocket and assaulted Bharat on his left rib as a result of which Bharat suffered injury.

14. Even PW3 Anita has stated that when she came out with her child, she saw appellant catching hold of collar of deceased, giving fist blows, taking out knife and assaulting him.

15. Both the above witnesses i.e. PW3 Anita and PW9 Narayan are subjected to extensive cross, but nothing fruitful has been elicited which would damage their testimonies or would render their evidence doubtful. Both of them, as claimed by prosecution, appear to be eye witnesses.

16. Learned counsel for appellant would point out the case put forth by accused in trial court that, there was scuffle and at such time Narayan took out knife which he had brought to assault appellant and during the scuffle which followed quarrel, deceased Bharat suffered injury and Narayan has blamed appellant for the injury. We are not convinced with the stand taken by appellant. PW3 Anita and PW9 Narayan are shown to be direct eye witnesses. Their evidence is inspiring confidence. Deceased was in the company of PW9 Narayan

during the day and they had both reached the house of deceased around 6.00 p.m. Neither deceased nor PW9 Narayan expected visit of appellant towards their house. Only because of beating and quarrel with Alka, she had approached Bharat and therefore there was no question of PW9 Narayan coming armed with a knife so as to assault appellant. The stand taken by appellant is not convincing. PW9 Narayan has categorically stated that after giving fist blows to deceased on seeing him in quarrel with Alka, appellant took out knife from his pocket and stabbed deceased Bharat. Therefore, case advanced by learned counsel for the appellant about Bharat suffering accidental injury during scuffle is apparently a futile attempt unsupported by any material regarding PW9 Narayan to be the culprit. Question is why would PW9 Narayan attempt to assault appellant. No reason is put forth by appellant in that regard.

17. Both, appellant and his wife, stepped in the witness box and though they are unequivocal about Bharat suffering injury in scuffle, evidence of PW3 Anita and PW9 Narayan disproves their such case. On the contrary, because of suspicion appellant had beaten his own wife Alka and in that backdrop she had approached deceased to clear the air. Alka has marked presence of her husband appellant to be accompanying her to the house of Bharat. Anita and Narayan both

have also marked presence of appellant and he to be waiting at some distance. It is only after quarrel raised by deceased with Alka, appellant rushed to the spot and he was armed with knife. Case of appellant that occurrence was sudden and in quarrel cannot be accepted for the simple reason that there was quarrel between Alka and deceased and not between deceased and appellant. Therefore, when appellant came and stabbed deceased on the vital part, the very aspect of coming armed and putting it to use shows that his intentions were manifest. Hence, it cannot be said to be a case, at least for appellant, that occurrence is a fall out of sudden quarrel and that it was not intended or premeditated so as to seek conversion of offence under Section 302 of IPC to Section 304 of IPC.

18. We have considered the impugned judgment. In the light of nature and quality of evidence adduced by prosecution, the view taken by learned trial Judge is the only view that could emerge on appreciation of the evidence. No fault can be found as no perversity is brought to our notice in the judgment under challenge. Resultantly, no interference at the hands of this Court is called for. Hence, we proceed to pass the following order :

ORDER

I. The appeal is hereby dismissed.

II. In view of dismissal of appeal, Criminal Application No. 1153 of 2018 also stands disposed of.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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