



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 788 OF 2018

Gorakh S/o. Vitthal Tadvi,
Age : 60 years, Occu. : Farmer,
R/o. : Nishanfali, Kuyada,
Tal. Sagbara, Dist. Narmada (Gujarat),
(Presently in Central Jail, Nasik).

... Appellant

Versus

The State of Maharashtra

... Respondent

...
Mr. Priteshkumar N. Jain, Advocate for Appellant.
Mr. S. D. Ghayal, APP for Respondent - State.
...

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

RESERVED ON : 30th OCTOBER, 2023

PRONOUNCED ON : 08th NOVEMBER, 2023

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

1. Getting dissatisfied by the judgment and order of conviction dated 01.10.2018 passed by learned Additional Sessions Judge, Shahada, District Nandurbar in Sessions Case No.11 of 2017, convict Gorakh Vitthal Tadavi by invoking section 374 of the Code of Criminal Procedure (Cr.P.C.) is questioning the legality, maintainability and sustainability of the conviction.

BRIEF CASE OF PROSECUTION IN TRIAL COURT IS AS UNDER

2. Relations between deceased Dwarkabai and appellant Gorakh were strained. Deceased objected drinking habits of Gorakh. According to prosecution, on 01.10.2016 while deceased was working in the field as labour along with informant and others, around 9:00 a.m. appellant came armed with a knife and assaulted Dwarkabai on the waist part. On being taken to hospital, she was examined at Akkalkuwa hospital and declared dead. PW1 Shakilabai set law into motion and on the basis of report lodged by her, crime was registered, which was investigated by PW7 API Ganesh Nhayade. Accused was challaned and tried by learned Additional Sessions Judge, Shahada, who, on appreciation of evidence held accused guilty.

Hence the appeal.

SUBMISSIONS

On behalf of appellant :-

3. Questioning the judgment, learned counsel for appellant would submit that, *firstly*, FIR by PW1 Shakilabai is a translated version and not original complaint. *Secondly*, FIR is registered after inordinate delay and even copy to the Magistrate is after two days of the occurrence, and therefore, he expressed possibility of concoction and afterthought report. Another ground

of attack is that, here prosecution has not proved the very spot of occurrence firmly and cogently and there are distinct spots as per prosecution witnesses. He further submitted that, ocular account material defers from medical account as according to him witness speak about assault on back, but there is no injury on such part. Further, medical expert, on examination of weapon reported the weapon to be double edged, however nature of injuries does not tallying with the said weapon. He further submitted that, even size of the injury does not tallying with the length and width of the weapon and therefore the weapon which allegedly to be seized cannot be connected to the death of Dwarkabai.

4. According to him, at one and the same time, presence of informant Shakilabai is noted at hospital as well as spot is shown to be pointed by her, according to learned counsel, further renders prosecution version unworthy of credence.

5. Learned counsel took us through the answers given by the prosecution witnesses and would submit that testimonies of these witnesses are rendered doubtful and unworthy of reliance.

6. As regard the recovery is concerned, he submitted that, knife which was allegedly seized had no blood stains.

Therefore, the memorandum of disclosure and seizure also cannot be relied. According to him, PW4 Murlidhar pancha to memorandum of discovery deposed about knife after seized being kept in Khaki envelop, whereas other witness speak about knife to be in polythene bag. Therefore, said variances also renders case of prosecution weak.

7. Lastly, it is submitted that, case not being proved beyond reasonable doubt, learned trial court ought not to have accepted the case of prosecution. Rather benefit ought to have been extended. The same not being happened, according to him, the judgment under challenge is required to be set aside by allowing the appeal.

On behalf of State :-

8. In answer to above, learned APP pointed out that there is independent eye witness account. There is recovery at the instance of accused. Medial evidence proved death of Dwarkabai to be homicidal one. Therefore there being overwhelming evidence of sterling quality. It is his submission that, no fault can be found in the appreciation, findings and conclusions. He prays to dismiss the appeal.

ANALYSIS

9. On re-appreciating the prosecution evidence, it is emerging that, in trial court case of prosecution is sought to be establish its case by examining following witnesses :-

PW1 Shakilabai is the informant and claimed to be direct eye witness. Her statement is at Exh.11.

PW2 Rukhmabai is the second direct eye witness. Her testimony is at Exh.14.

PW3 Dr. Balapure is the autopsy doctor, who conducted postmortem on the dead body of Dwarkabai and who identified the postmortem report Exh.18.

PW4 Murlidhar is the pancha to memorandum of disclosure and recovery (Exh. 21 and 22). His statement is at Exh.20.

PW5 Santosh seems to be pancha to spot panchanama (Exh.25). He is also a government official and he has deposed at Exh.24.

PW6 API Rajendra Bhavsar and **PW7** API Ganesh Nhayade are the Investigating Officers.

PW8 Nilesh is the pancha to seizure of clothes of deceased at Exh.47.

10. Here, prosecution has come with a case of availability and reliability of ocular account.

On scrutiny of the evidence of **PW1** Shakilabai informant; **PW2** Rukhmabai they seem to be crucial. On carefully analyzing their evidence, we find both of them deposing that they knew deceased Dwarkabai, who was married to accused. They both are consistent about strained relations between husband and wife. According to informant, appellant-accused was addicted to liquor and under its influence, he used to beat deceased. Regarding occurrence dated 01.10.2016, both are speaking about they themselves to be present and in the company of deceased and they were labouring in the field to cut paddy crops. They both are consistent about accused coming there with knife and assaulting Dwarkabai. PW1 Shakilabai informant deposed that she even tried to rescue deceased from the clutches of accused, but according to her, he threatened her by pointing knife. Same is the version of Rukhmabai (PW2) about accused fleeing from the field. Deceased being taken to Akkalkuwa hospital.

11. PW1 Shakilabai also deposed in para 3 that marital relations between appellant-accused and deceased were strained and so she had come to reside at her brother's place at Sendhwan. Both PW1 Shakilabai and PW2 Rukhmabai claimed themselves to be eye witnesses and they have also identified the knife confronted to them.

12. Both PW1 Shakilabai and PW2 Rukhmabai are subjected to extensive cross. PW1 Shakilabai admitted that she was illiterate, but she refuted that she never saw accused drunk and under influence of it beating deceased. Suggestion is tried to be given that after cutting maize crop its roots remain which are strong and sharp. Then she is asked for how much time she was in the hospital. She answered that on 03.10.2016, her thumb impression was obtained by police of Akkalkuwa. However, she volunteered that her thumb impression was obtained when she was in Akkalkuwa hospital. Rest all suggestions are turned down by her.

Even PW2 Rukhmabai in cross admitted that she is illiterate, but she flatly defined about not seeing quarrel between accused and deceased. Then she is questioned about political status of brother of victim. She denied that she was not present at the spot. Rest all suggestions are turned down by this witness also.

13. From the manner and answers given in cross, learned counsel for appellant would submit that, these witnesses had cut down maize crop and admitted that its roots to be sharp and pointed and therefore possibility of Dwarkabai accidentally falling and landing on it and suffering injury cannot be ruled out. We

outright reject this submission for the simple reason that the above submission is without any foundation. There is nothing to indicate that roots of maize crop were in such exposed conditions, so as to believe the above possibility. Spot panchanama does not show blood to roots of cut maize. Appellant had not shifted his wife to the hospital. Rather he kept himself away till being arrested. He had not reported the occurrence about his wife suffering injuries as claimed by him. Even autopsy doctor denied possibility of injury by roots of maize. Here, there is direct eye witness account in the form of PW1 Shakilabai and PW2 Rukhmabai and their evidence has remained intact and unshaken regarding assault by use of knife. Therefore, above ground holds no water.

14. PW3 Dr. Balapure, autopsy doctor has noted the injuries on the person of deceased Dwarkabai in paragraph no. 17 of the P.M. report, which are reproduced as under :-

i) Penetrating (stab) wound at left lower back of cheol in size 4 x 2 x 10 cm., running vertically from 8th rib to back of abdomen upto to level of upper pole of left kidney.

ii) Penetrating (stab) wound at right upper inner quadrant of gleutus region in between posterior superior illiac crest and lower level of 4th lumbare vertebra size 4 x 2 x deep to pelvic canty by cutting overlong gluteus major and gleutes minor muscle.

In substantive evidence, doctor has issued opinion about death due cardio respiratory arrest due hypovolumic shock due to excessive bleeding. He further opined that such injuries are possible due to sharp pointed weapon. He opined that, the same are possible by article "A" i.e. knife.

Therefore evidence of PW1 Shakilabai and PW2 Rukhmabai finds support from medical evidence. PW1 Shakilabai - informant in her substantive evidence is very categorical about assault on waist part of Dwarkabai. Therefore, injury nos.1 and 2 are shown to be caused by use of knife.

15. PW4 Murlidhar, pancha to memorandum of disclosure and recovery. In his evidence at Exh.20, he deposed about he being called at police station and in his presence accused gave memorandum regarding handing over knife and concealed beneath the roof of the house. He has identified memorandum at Exh.21 and further deposed about accused taking them to his house and from beneath the roof taking a knife and handed it to the police and its panchanama being drawn at Exh.22. He is a government official. He had no reason to false implicate appellant. Therefore, recovery is also shown at the instance of accused.

16. No much capital can be allowed to be made on the point

of knife after seizure to be kept in envelop or polythene bag. PW3 Dr. Balapure, autopsy doctor in cross itself has stated that he signed on the wrapper which was affixed to the envelop and therefore, mere distinct container use for keeping knife itself is no good ground to disbelieve the version of prosecution which comprises of trustworthy and credible eye witness account.

17. Prosecution story is also attacked by learned counsel for appellant on the ground that actual spot is not proved by prosecution.

PW5 Santosh seems to be the pancha to spot panchanama. He is also a government official and he has deposed at Exh.24 that spot was shown by PW1 Shakilabai. The spot was agricultural field having crops like, rice and makai. Spot panchanama Exh.25 is drawn on 01.10.2016 itself. Therefore, even spot is proved which is scene of occurrence, wherein PW1 Shakilabai and PW2 Rukhmabai were present with others.

18. Therefore sum total of the evidence on behalf of prosecution clearly shows that accused and deceased were husband and wife, independent witnesses like PW1 Shakilabai and PW2 Rukhmabai deposed about strained relations between husband and wife, they are also witnesses to the arrival of accused

while deceased was in their company and she being assaulted by knife. Medical evidence proves death of Dwarkabai to be homicidal one. Consequently, in our opinion also, charges are squarely brought home.

19. On going through the judgment under challenge, there is nothing perverse or contrary to the evidence as is tried to be submitted. Findings and conclusions are supported by sound reasons. There is no reason to disturb or upset the findings. Hence, we proceed to pass following order : -

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)