



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 360 OF 2016
WITH
CRIMINAL APPLICATION NO. 4233 OF 2022

Nandu @ Santosh s/o Pandit Thakre,
Age : 22 years, Occupation : Labour,
R/o. Lakh, Tq. Aundha (N),
District Hingoli.

.... Appellant.

Versus

The State of Maharashtra

.... Respondent.

...
Mr. Nilesh S. Ghanekar, Advocate for Appellant
Mr. S. J. Salgare, APP for Respondent - State
...

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

DATED : 31st AUGUST, 2023

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

1. Appellant - accused No.1 Nandu is challenging the judgment and order passed by learned Additional Sessions Judge, Basmath dated 13.04.2016 in Sessions Trial No.45 of 2012 by which he is held guilty for offence punishable under section 302 of Indian Penal Code (IPC) and sentenced to suffer imprisonment for life and to pay fine.

CASE OF PROSECUTION IN BRIEF IS AS UNDER

2. Appellant was married to deceased Vaishali in 2007.

For initial period, she was treated well by her husband and in-laws. However, precisely two and half years prior to the incident in question, harassment had commenced in the backdrop of not bringing dowry of Rs.5,000/-. Husband and in-laws were also allegedly upset for not giving proper honour during marriage. In-laws were instigating husband to beat deceased Vaishali. Deceased used to inform her family about such treatment meted out to her.

3. On 16.05.2012, at around 3:45 a.m., while appellant was in the company of deceased, he slit her throat. She succumbed to the same and therefore, PW1 brother Sachin set law into motion vide report dated 16.05.2012 (Exh.44).

PW17 P.I. Hake, who was entrusted with the investigation, carried out the same and charge-sheeted accused persons and they were duly tried by learned Additional Sessions Judge, Basmath, who, on appreciating the evidence adduced by prosecution and on hearing respective parties, acquitted accused Nos.2 to 5 from all charges and only appellant has been held guilty for charge under section 302 of IPC and sentenced to suffer imprisonment for life. The said judgment is now questioned before us by filing instant appeal on various grounds raised in the appeal memo.

SUBMISSIONS

On behalf of appellant :-

4. Learned counsel for appellant would submit that prosecution has miserably failed to establish the charge. It is pointed out that there is no proper appreciation of available evidence. That, implication is false and out of annoyance. That, no independent witness has been examined and rather, only family members of deceased are examined. Learned counsel pointed out that learned trial court has disbelieved the prosecution story about ill-treatment and cruelty and has already acquitted other accused, but has unfortunately held husband alone guilty. That, evidence of so called witnesses is also full of material omissions and contradictions. That, evidence shows that deceased had refused to accompany appellant to her in-laws house and therefore, appellant had alone returned. Therefore, possibility of some unknown person assaulting Vaishali cannot be ruled out. Resultantly, it is his submission that, there is no convincing and legally acceptable evidence on record, but learned trial Judge has straightway accepted the story narrated by prosecution witnesses and the answers given by them in cross are not at all taken into consideration and hence according to him, the judgment is not legally maintainable and sustainable and is liable to be set aside.

On behalf of State :

5. Favours the judgment passed by learned trial court, learned APP pointed out that there is overwhelming, clinching and credible evidence. Informant was also present in the house when the incident took place. He had upon hearing shouts and cries of his sister, entered the house and had seen her throat cut with a knife. Appellant was in her company and he had run away from there with weapon. There is recovery of incriminating material from the scene of occurrence. Evidence of none of prosecution witnesses has been rendered doubtful. There being concrete evidence regarding involvement, guilt has been fastened and as such, he prays that there is no merit in the appeal and so seeks dismissal of the appeal.

EVIDENCE ON BEHALF OF PROSECUTION

Role, status and sum and substance of the evidence of prosecution witnesses are summarized as under :-

PW1 Sachin is the informant - brother of deceased. According to him, his sister was ill-treated in the backdrop of dowry demand and for not giving honour. That, her husband and in-laws used to say that they did not like her. His sister used to

promptly report ill-treatment meted out to her. According to this witness, he himself got married on 01.05.2012 and on that day also, appellant had raised quarrel with his sister and beaten her. On 15.05.2012, after attending marriage at Parbhani, his sister and appellant returned and stayed in the house. At that time, this witness, his wife and cousin brother Kailash (PW3) were present in the house and after dinner, they all went to sleep. Appellant and deceased were sleeping in a separate room. At around 3:45 a.m., he heard shouts and heard his sister weeping, so he and Kailash knocked the door to ask what happened. At that time, appellant opened the door and hurriedly ran after pushing both of them and they saw him holding knife in his hand. This witness also noticed that there was blood upon the said knife. Thereafter, they rushed towards the room and saw Vaishali lying in pool of blood with her throat slit. She was taken to the hospital and she expired. In the morning, he set law into motion by lodging report.

PW2 Anuja is the wife of PW1-Sachin. She also stated about accused and deceased coming to Shiradshahapur on 14.05.2012 for attending the marriage and they had halted in her house. Even according to her, on 15.05.2012 after dinner they all went to sleep and at around 3:45 a.m. on 16.05.2012, they heard shouts of Vaishali and when they went, they saw appellant

hurriedly opening the door and running outside with a knife in his hand and deceased lying on the bed in injured condition. Her throat was cut.

PW3 Kailash, cousin brother of PW1 Sachin, also stated that, that night, when after dinner they all were sleeping, around 3:45 a.m., they heard shouts of Vaishali and they saw accused coming out of the room with a knife and running out of the house and he saw she had suffered injury to the throat.

PW4 Dr. Bothikar is the treating doctor, who examined Vaishali and referred her to Sub District Hospital, Basmath. He issued certificate (Exh.55).

PW5 Gajanan is the medical staff posted at Primary Health Center, Shiradshahapur and who was on duty on the intervening night of 15.05.2012 and 16.05.2012. He gave evidence about patient named as Vaishali, brought with bleeding neck injury, treated and thereafter, referred to the hospital. According to him, in the hospital, deceased made noting on the register.

PW6 Chaya, also a staff posted at Primary Health

Center (PHC), deposed about seeing patient being brought to the PHC and kept on the cot and examined by doctor. Even she claims that in her presence, deceased wrote in the register "*Mazya Navryane Marle Ahe, Adhich Mazya Kadun Bond Lihun Ghetla Ahe, ki dusryachya Hatane Marat Ahe*".

PW7 Shaikh Najib is the neighbour. He deposed about hearing shouts at around 3:45 a.m. and PW1 Sachin coming and informing him about husband of his sister cutting her throat and so he went and saw blood oozing from her throat. According to this witness, he accompanied PW1 Sachin while shifting Vaishali to PHC and he claims that in his presence, doctor examined patient, applied bandage and patient gave something in writing.

PW8 Dr. Rajurkar is the autopsy doctor, who conducted post mortem and issued opinion about death due to asphyxia due to cut throat and hemorrhagic shock due to cut of jugular and caratoid artery left side. He identified post mortem report (Exh.77).

PW9 Bhagwat is the spot pancha.

PW10 Gopinath is the pancha to seizure of clothes of deceased and accused.

PW11 Vilas is the pancha to memorandum of disclosure at the instance of accused and seizure panchanama (Exh.86). He identified Article Knife.

PW12 Suresh, pancha to seizure of motorcycle, has not supported the prosecution.

PW13 Sham is the pancha to inquest panchanama.

PW14 Sahebrao is the Police Head Constable, who drew inquest panchanama (Exh.90) as well as carried seized Muddemal.

PW15 Pandurang is the father of deceased. He stated about ill treatment to his daughter, about receiving call from his son Sachin on 16.05.2012 at about 5 to 5:30 a.m. regarding assault on his daughter by her husband.

PW16 Subhash is the Nayab Tahsildar, who drew map (Exh.96).

PW17 P.I. Hake is the Investigating Officer.

6. Case of prosecution appears to be that on the intervening night of 15.05.2012 and 16.05.2012, accused and deceased had been to Parbhani to attend the marriage and after attending it, they both had halted in the house of PW1 Sachin. While they were in one room, accused slit throat of Vaishali and she died because of said injury.

7. To ascertain whether death of Vaishali is homicidal or not, we are required to visit the evidence of autopsy doctor.

PW8 Dr. Rajurkar, who conducted post mortem, has deposed about coming across incised wound on front of neck, supra hyoid bone complete tear of trachea, left side jugular vein and left caratoid artery. Size of the injury according to him, 8 cm x 4 cm x 6 cm cut throat. He also found 2 cm cut anterior on the Oesophagus. Laceration 1 x 1 cm to the left shoulder. Fracture dislocation of second and third phalanges of middle finger of the left hand. According to him, all such injuries were ante mortem in nature. He also narrated about the internal impact noticed by him during autopsy. In his opinion, death was due to asphyxia due to cut throat and hemorrhagic shock due to cut of jugular caratoid artery left side.

On going through his cross, it is found that he has answered that due to cut of caratoid artery and jugular vein, the person may die on the spot and any sharp edged weapon could cause such injury. He also answered that due to such injury, there could be heavy bleeding. He admitted that, it is not mentioned in the post mortem notes that said injury was due to sharp edged weapon.

Taking into account above substantive evidence of medico legal expert, it is seen that two vital arteries and vein has been cut. Opinion of doctor is that, death is precisely due to said injury. Hence, it has been shown that death of Vaishali is homicidal one.

ANALYSIS

8. Now let us get satisfied whether, as claimed by prosecution, appellant-husband is the author of the said injury.

In our opinion, evidence of **PW1** Sachin, **PW2** Anuja and **PW3** Kailash seem to be crucial. PW1 Sachin is the brother of deceased, whereas PW2 Anuja is the wife of PW1 Sachin and PW3 Kailash is cousin brother of deceased.

On going through their evidence, all three are found to be consistent about appellant and deceased coming to Parbhani for attending the marriage and that night, they had halted in their house. Cousin brother of PW1 Satish, namely Kailash was also present in his house. Upto 9:00 p.m. deceased and appellant were watching T.V.. Thereafter, PW1 Sachin and PW2 Anuja went in another room, whereas Kailsh (PW3) went to sleep in the courtyard and deceased and appellant occupied one room. They all are also unanimous that around 3:45 a.m., Vaishali was heard

screaming and shouting. According to PW1 Sachin, they knocked the door as well as latch and asked Vaishali as to what happened. He stated that even Kailash (PW3) was knocking the door. After sometime, appellant opened the door and after pushing this witness, he hurriedly went out with a knife in his hand. After going in the room, he found Vaishali moaning out of pain and there was blood on her throat. He claims that he asked her what happened and that time deceased allegedly told him that her husband cut her throat with a knife. Appellant by that time went on his motorcycle. Vaishali was initially taken to Primary Health Center and from there, referred to Basmath in an Ambulance. But, on the way to Sub District Hospital, Basmath, she expired.

Similarly, evidence of PW2 Anuja i.e. wife of PW1- Sachin and evidence of PW3 Kailash is corroborating and lending support to the evidence of PW1 Sachin as regards accused and deceased coming for attending marriage at Parbhani and thereafter taking halt at their house. After dinner, Kailash (PW3) went to sleep in the courtyard, whereas appellant, deceased and their children slept in the front room. At 3:45 a.m. cries of Vaishali were heard. All rushed there. Both these witnesses PW2 Anuja and PW3 Kailash are found to be consistent regarding, appellant hurriedly opening the door of the room and after pushing, running

outside. There was blood to the knife held by him. They are unequivocal about noticing bleeding injury to the throat of Vaishali and she being taken to hospital, but while further she being taken to Basmath, she expired on the way.

9. We have gone through the extensive cross faced by all above witnesses. It is revealed that, presence of accused that night in the house of PW1 Sachin and PW2 Anuja has not been denied or rendered doubtful. Therefore, taking into consideration the manner of cross, there is no hesitation to hold that appellant alone was in the company of deceased wife and he is answerable for the injuries suffered to his wife. He has not taken any other plea or any defence nor has offered any explanation about injuries suffered by his wife. Mere denial at the time of facing examination under section 313 of Cr.P.C. will not absolve him when he was shown to be custodian of his wife that night.

10. It seems that prosecution has also come with a case that while at Primary Health Center, i.e. before being shifted to Basmath, deceased made some noting on the register, thereby implicating husband. In support of such assertion, prosecution is relying on the evidence of PW4 Dr. Bothikar, PW5 Gajanan and PW6 Chaya.

11. We have minutely visited the evidence of PW4 Dr. Bothikar. He seems to be the doctor posted at Primary Health Center, Shiradshahapur. According to him, around 4:00 a.m., peon informed about serious patient being brought to PHC and so he rushed there and found blood oozing from the neck of a lady. Doctor deposed about asking the lady what happened but, according to him, she was not able to speak and she made gestures and demanded pen and register and accordingly it was supplied and she wrote that her husband assaulted her and then put her signature. He identified the contents of the register at Exh.55, which he had carried in the court.

12. PW5 Gajanan and PW6 Chaya also seem to be deposing on the same lines and these two witnesses are also posted at PHC in the capacity of peon and sister and they are lending support to PW4 Dr. Bothikar about deceased making some noting on the register.

Even these witnesses are subjected to extensive cross, but unfortunately their evidence about deceased being brought first to the hospital and she had suffered throat cut injury and made some noting in the register, which is placed on record, has not been rendered doubtful.

13. According to prosecution, while in custody, accused gave memorandum regarding handing over knife and the same was seized at his instance. PW11 Vilas is examined on this count and his evidence is at Exh.84. According to this witness, on 18.05.2012 accused gave memorandum at police station and it was duly noted which is at Exh.85. Thereafter, accused took them towards agricultural field of one Kundlik Suryatal and from the said agricultural land, where there was ploughing was already done, he took out knife and the same was blood stained and seized vide panchanama (Exh.86).

We have gone through the cross faced by this witness who is a Professor. He is asked at what time he went to police station and what discussion took place between him and police and after how much time they proceeded to the spot. He has denied accused being in frightened and handcuffed condition. Witness has merely used the term '*Sura*' instead of 'knife'. Therefore, recovery evidence is also credible. Occurrence has allegedly taken place on 16.05.2012 at 3.45 a.m. and within two days, there seems to be recovery of the knife. PW1 brother Sachin, his wife PW2 Anuja, and PW3 Kailash, they are all unequivocal about accused escaping from the room with a knife in his hand. They have all identified Article knife shown to them.

14. Though, father of deceased PW15 Pandurang is examined, at that relevant time, he had been to Parbhani with his wife and after attending the marriage, they both had remained there, but he spoke about his daughter Vaishali and accused returning back to Shiradshahapur and thereafter he got phone call from his son PW1 Sachin passing the information of the occurrence.

15. Therefore, here, there is evidence of witnesses, i.e. brother, cousin brother and sister-in-law of deceased. These witnesses were occupying adjoining rooms of the same house. These three witnesses have heard shouts and cries around 3.45 a.m. and thereafter, accused fled from the spot and deceased was noticed with throat cut injury to which she succumbed. Therefore, none but appellant is the author of the injury and consequently responsible for the death.

16. We have gone through the judgment under challenge. We find that evidence adduced by prosecution is correctly appreciated. No perversity has been brought to our notice so as to interfere in the same. Substantive evidence of crucial witnesses has been correctly appreciated and conviction has been rightly handed down by learned trial court. There is no reason to interfere

in the said findings, which are based on sound reasons and proper appreciation. Resultantly, finding no merits, we proceed to pass the following order :-

ORDER

- (i) Criminal appeal stands dismissed.
- (ii) In view of dismissal of the appeal itself, Criminal Application No.4233 of 2022 does not survive and it is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)