



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 54 OF 2018

Kishor S/o. Laxman Mungulwar, }
Age : 29 years, Occu. : Nil., }
R/o. Rajegaon, Tq.Majalgaon, Dist. Beed. }
Presently at - }
Nashik Road Central Prison, Nashik. }

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra, }
Through Police Station Officer, }
Majalgaon Rural Police Station, }
Tal. Majalgaon & Dist. Beed. }

... Respondent

...

Mr. Vilas P. Sawant, Advocate for Appellant.
Mrs. V. S. Choudhari, APP for Respondent - State.

...

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

RESERVED ON : 03rd NOVEMBER, 2023

PRONOUNCED ON : 08th NOVEMBER, 2023

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

1. Instant appeal arises out of judgment and order passed by Additional Sessions Judge, Majalgaon, Dist. Beed dated 09.12.2016 in Sessions Case No.52 of 2015, holding present appellant Kishor guilty for the offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced him to suffer imprisonment for life and to pay fine of Rs.2,000/-.

2. On 09.09.2015, deceased Angad was playing cards with accused at around 3:00 p.m.. Quarrel took place between accused no.1 Kishor and deceased. At around 5:00 p.m., accused Nos.1 to 3 came to the spot where deceased was sitting and accused no.1 Kishor stabbed him, whereas other accused beat by stone, fists and kick blows. He was taken to the hospital, but on examination, he was declared dead.

His brother PW1 Mukund lodged report resulting into registration of crime, which was investigated by PW12 Bhausahab and all three accused came to be charge-sheeted and tried by Additional Sessions Judge, Majalgaon, who, on appreciating the evidence, held the charges proved only as against appellant Kishor and accordingly convicted him. Remaining two accused Ramu @ Rameshwar and Chitrabai stood acquitted.

The sole convict has now taken exception to the above judgment and order on various grounds raised in the appeal memo.

SUBMISSION IN BRIEF

On behalf of Appellant :-

3. Learned counsel for appellant would submit that, implication and further conviction is in absence of cogent and

reliable evidence. He pointed out that on same evidence accused nos.2 and 3 are acquitted, whereas appellant only convicted. He pointed out that, evidence is only of relatives and interested witnesses. No independent witness has been examined. Further, evidence of witnesses are not consistent and are rather full of material omissions, contradictions and therefore, it is his submissions that, conviction recorded is misplaced. He further pointed out that so called witnesses are shown to be away i.e. more than 50 feet from the spot, and therefore, it is doubtful whether they could at all be called as eye witnesses. He further submitted that, seized weapon had no blood stains and further it was not sent for CA analysis. There are several irregularities and major lapses during investigation and therefore, it is his submission that, it was a case of benefit of doubt as case was not proved beyond reasonable doubt. Hence, he prays to allow the appeal.

On behalf of State : -

4. In answer to above, canvassing in favour of impugned judgment, learned APP would submit that, there is direct eye witness account. Occurrence had taken place in day light. Witnesses were present with deceased and they had watched arrival of accused and assault from close proximity. Their evidence has not been shaken or rendered doubtful. There was background

to the assault as few hours before there was quarrel between deceased and accused. Accused subsequently came armed with deadly weapon knife and put it to use for stabbing. Medical expert has confirmed death to be homicidal. Hence, according to learned APP, no fault can be found in the judgment and so she prays to dismiss the appeal.

5. Record shows that prosecution adduced both oral and documentary evidence of in all 12 witnesses and also sought reliance of documentary evidence like FIR, inquest panchanama, spot panchanama, recovery discovery panchanama, P.M. report etc. The status of the witnesses and the sum and substance of their testimonies are as under :-

PW1 Mukund is the brother of deceased and informant. According to him, on 09.09.2015, when he was in the field, he learnt from his nephew Radhakisan regarding assault on his brother Angad, causing him serious injuries, so he went to Government hospital. Their also he learnt about assault by accused no.1 on the count of amount while playing play cards. Brother had suffered injury in the stomach. Doctor examined him and advised to be shifted to Majalgaon and their he was declared dead and this witness lodged report.

PW2 Sunil, pancha to spot panchanama (Exh.24), seizure of articles, like blade of knife, stone from the spot.

PW3 Ramnath, pancha to memorandum of disclosure regarding handing over wooden grip of the knife and accordingly its recovery at his instance from the grass near country liquor shop (Exh.26).

PW4 Hanumant, pancha to inquest at Exh.30.

PW5 Ram, pancha to seizure of clothes of deceased and accused (Exhs. 32 & 33 respectively).

PW6 Radhakishan, nephew of deceased deposed that, on 09.09.2015, when he was going from house to market yard (Bazar tal), at that time, he saw quarrel between deceased Angad, accused Kishor and Ramu on account of Rs.10. He claims to have intervened and separated them. He stated that, he sent them to their houses. While he, one Madhukar and Asaram were chit-chatting near market yard, deceased Angad was also sitting there. Witness claims that he asked deceased to go to field for bringing she buffalo and while deceased was going towards field, accused nos.1 to 3 came near deceased, accused Kishor removed one knife from his pocket and stabbed Angad. Accused Chitrabai caught him by neck and deceased was made to fall down and thereafter he was

hit by means of stone on back side of his head. He himself and Asaram shifted deceased Angad in a jeep to the hospital. PW1 Mukund came there and deceased was declared dead on examination by the doctor.

PW7 Madhukar also deposed that, when he and PW6 Radhakisan were talking near market yard, deceased was sitting there. PW6 Radhakisan asked him to go to the field for bringing she buffalo and while he was proceeding accused came there, accused Kishor stabbed Angad with knife, accused Chitrabai beat him by means of stone. PW6 Radhakishan shifted him to hospital.

PW8 Ashok @ Asaram, also stated that while he was chit-chatting with PW6 Radhakishan and PW7 Madhukar, Angad was sitting near them and when on direction of Radhakishan deceased was going to the field, accused Kishor came and stabbed deceased in the stomach by knife, whereas Chitrabai beat Angad by fists, kicks blows and stones. PW6 Radhakishan took injured to the hospital.

PW9 Gajanan, autopsy doctor, who conducted P.M. and issued P.M. notes with opinion as “death due to hemorrhagic shock due to stab injury over abdomen”.

PW10 Sandeep and **PW11** Mukund are the carrier of muddemal to the Analyzer.

PW12 Bhausahab is the Investigating Officer, who narrated all steps taken by him till filing of charge sheet.

6. Pointing to the above evidence, learned counsel for appellant seems to have questioned legality of the judgment on the grounds that, *firstly*, there is no convincing evidence. *Secondly*, only interested witnesses are examined. *Thirdly*, evidence of witnesses are full of material contradictions and omissions. *Fourthly*, absence of blood stains on the weapon and weapon not sent for analysis.

7. Here, on taking survey and audit of entire evidence, it is seen that, only evidence of PW6 Radhakishan, PW7 Madhukar and PW8 Ashok @ Asaram is of relevance and their evidence show that they were very much present together at one place. They all are unanimous about deceased Angad also to be sitting there. On directions of PW6 Radhakishan, when deceased was about to proceed to the field, all these witnesses are consistently deposing regarding accused persons arriving. They are all categorical and specific about appellant Kishor taking out knife and stabbing

deceased Angad. PW1 Mukund, informant has admittedly received information and on receipt of the same, he had been to the hospital and on deceased being declared dead, he has set law into motion. Therefore, evidence of PW6 Radhakishan, PW7 Madhukar and PW8 Ashok @ Asaram has remained intact in spite of being cross examined at length. The core of the accusation about accused appellant Kishor stabbing deceased in the stomach has virtually gone unchallenged. Occurrence has taken place at around 5.00 p.m. PW6 Radhakishan, PW7 Madhukar and PW8 Ashok @ Asaram are unanimous that deceased was sitting near them while they all were chatting. They had all seen deceased proceeding towards field on directions of PW6 Radhakishan and at such time, incident of assault has taken place right in their presence. They have shifted injured to the hospital where he was declared dead.

8. Learned counsel for appellant would argue that, only interested witnesses are examined. Mere witness to be related is no good ground to cast doubt on their version. Law is fairly settled that merely because witnesses are related, they cannot be branded as interested witnesses. Law to this extent has been time and again propounded in various rulings and the few noted cases are as under:

1. *Bhagwan Jagannath Markad v. State of Maharashtra;*
(2016) 10 SCC 537.
2. *Ravasaheb @ Ravasahebgouda and Others v. State of Karnataka;* (2023) 5 SCC 391.

Consequently, merely because witnesses are related, their evidence need not be looked upon suspicion. There is no material to indicate that appellant is falsely involved. Even no suggestion to that extent has put to any of the witnesses.

9. As regards to objection of inconsistency, omissions and contradictions in the evidence of prosecution witnesses, which are tried to be brought to our notice, in our opinion, they are not on material count. Only omissions and contradictions which renders core of the prosecution evidence doubtful, are of significance. Variances on timing, distance, who shifted injured to the hospital, which clothes wear on the person of deceased and which of them seized are virtual insignificant.

10. As regards to non availability of blood stain or failure to seek CA report, also does not assumes importance, more particularity, when there is consistent, trustworthy and reliable eye witness account. Recovery part is also not seriously challenged before us.

11. Therefore, having dealt with the above grounds and objections, we do not find any force or merit in the same. Evidence of PW6 Radhakishan, PW7 Madhukar and PW8 Ashok @ Asaram having remained intact and unshaken on the core accusation. Case of prosecution can definitely be said to be proved beyond reasonable doubt. Witness speak about previous quarrel while playing cards. This much part is also not challenged in spite of witness has been cross examined at length.

12. Therefore, with such quality of evidence, the opinion reached at by the learned trial Judge is the only opinion that could emerge even on re-appreciation and re-analysis. Hence, finding no merits in the appeal, we proceed to pass following order :-

ORDER

The appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)