

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.259 OF 2014

Rakesh @ Bhaiya Shambhuprasad Gupta
(At present undergoing sentence at Nashik
Road Central Jail) of Nashik
Indian Inhabitant and residing at
behind Mukti Dham, Near Sai
Mukti Lodge, Nashik road, Nashik. ... Appellant.

Versus

The State of Maharashtra
(at the instance of Nashik City
Police Station, Dist.Nashik) Respondents.

....
Mr Aniket Nikam, Advocate with Advocate Amit Icham and
Piyush Toshnival i/b Aashish Satpute for the Appellant.
Smt.M.M.Deshmukh, APP for the State.

.....
**Coram : Nitin W. Sambre &
R. N. Laddha, JJ.**

**Reserved on : 27 January 2023.
Pronounced on : 10 February 2023.**

Judgment (Per R.N.Laddha, J.) :-

In this Appeal, judgment and order of the learned Additional Sessions Judge, Nashik, in Sessions Case No.206 of 2012, is the subject matter of challenge. The Appellant was found guilty of

offences punishable under Sections 302 and 323 r/w Section 34 of the Indian Penal Code, 1860 (for short, 'IPC'). He was sentenced to undergo imprisonment for life and a fine of Rs.500/- and rigorous imprisonment for one year and a fine of Rs.1,000/-, with default stipulations, respectively. The co-accused, namely, Imran alias Balya Aslam Khan was, however, acquitted of the offence punishable under Section 302 IPC. He was convicted for the offence punishable under Sections 323 r/w 34 of the Penal Code.

2. Prosecution case, in a nutshell, is as follows :

On 28.6.2012, in the evening, there was a marriage function, and the order for a marriage dinner was placed with the first informant and his brother, Raju Singh. The Appellant and co-accused Imran had engaged there on daily wages as the waiters. They had come there by consuming liquor and started causing a nuisance to the servers. The brother of the complainant Raju Singh tried to pursue them. At about 10 p.m., after the dinner was over at the marriage party, the waiters were taking the feed. The Appellant and the co-accused again started causing a nuisance. At that time, Raju Singh had tried to pursue them, but they were not listening to Raju Singh. At about 11.30 p.m., Raju Singh asked them to leave the premises. Both the Accused then had gone from that place. However, they called Raju Singh to come outside the premises.

When the deceased had been to the Appellant and the co-accused Imran, they raised quarrels with him. The first informant had reached on the spot to intervene, but the Appellant had taken out the knife and attempted to give a blow of knife on his chest. The first informant, Bhavar Singh, had managed to catch hold the hands of the Appellant. He, however, sustained a cutting injury to his hand. It is also the case of the prosecution that co-accused Imran had caught hold neck of the first informant and made him fall to the ground. The Appellant then attacked Raju Singh. He gave a knife blow to his chest. Due to this, Raju Singh received an injury and collapsed on the ground. People gathered on the spot and caught hold of Rakesh. However, the co-accused Imran succeeded in running away from the site. Raju Singh was removed to the hospital but he succumbed to the injuries before admission.

3. At about 1.10 a.m. on 29.6.2021, the first informant Bhavar Singh (PW 1) went to Nashik Road Police Station and lodged the FIR (Exhibit 21). Accordingly, crime vide C.R.No.170 of 2012 was registered for the offence punishable under Sections 302, 323, 504 r/w Section 34 of the IPC. The investigation commenced thereon. The police visited the scene of the crime and drew Panchnama in the presence of public witnesses. While drawing Panchnama police seized plain earth and earth mixed with blood, and the knife with

blood stains. The police arrested the co-accused, Imran. Inquest on the dead body of the deceased was held. The post-mortem examination of the deceased was conducted. The police interrogated the witnesses and recorded their statements. The Appellant, Rakesh, was also admitted to the hospital. After his discharge, he was arrested.

4. The clothes of the first informant, the deceased and the Appellant, which they wore at the time of occurrence, were also seized. All the incriminating articles were sent to the Regional Forensic Science Laboratory, Nashik. Police procured post-mortem notes and reports from the Forensic Science Laboratory. As the investigation revealed the complicity of the Accused persons, the investigating officer lodged a charge sheet against them. The learned Magistrate, after ensuing compliance u/s 207 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), committed the case to the Court of Sessions, where the Accused were put to trial. The Accused persons abjured their guilt and had put the prosecution to the task of establishing levelled charge with a requisite standard of proof.

5. At the trial, to bring home the Charge against the Accused, the prosecution examined in all eight witnesses, namely, Bhavar

Singh Balwant Singh Bhati (PW 1), the first informant and the alleged eyewitness to the occurrence; Arjun Dattatraya Bhor (PW 2), a public witness to the spot-cum-seizure Panchnama (Exhibit 25); Shivaji Pandurang Gaidhani (PW 3), a public witness to the inquest Panchnama (Exhibit 29); Waman Muralidhar Bhor (PW 4), the alleged eyewitness to the occurrence; Narendra Singh Mukhtar Singh Patil (PW 5), a public witness to the memorandum statement (Exhibit 23); Shashikant @ Sachin Prakash Salve (PW 6), a public witness to the seizure panchanama of clothes of deceased Raju Singh (Exhibit 38); Dr Pratibha Prashant Pagar (PW 7), Medical Officer, Civil Hospital, Nashik, who conducted post-mortem; PI Mukund Kashinath Deshmukh (PW 8), the investigating officer, who furnished the details of investigation.

6. After the closure of the evidence from the prosecution side, a statement of the Accused under Section 313 Cr.P.C. was recorded. Thereafter, on appreciation of evidence, believing the evidence of eyewitnesses and considering the nature of the injury sustained by the deceased, the learned trial Court convicted the Appellant for the offence punishable under Sections 302, and 323 r/w Section 34 of the IPC. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the learned trial Court, the Appellant has preferred the present Appeal.

7. We have heard Mr Aniket Nikam, learned Counsel for the Appellant, and Mrs M.M. Deshmukh, learned Additional Public Prosecutor for the State.

8. It is the prosecution case that on 28.06.2012, at about 11.30 p.m. at Om-Tulaja Lawn, Nashik Road, the Accused/Appellant had inflicted a knife blow at the chest of the deceased Raju Singh and caused his death. The prosecution endeavoured to establish that the Accused/Appellant had committed homicidal death amounting to the murder of deceased Raju Singh. Since the Accused was charged with committing culpable homicide amounting to murder, the crucial question that would arise for consideration is the nature of the death of the deceased.

9. At this juncture, recourse to medical evidence becomes necessary. The cause of death, as deposed by Dr Pratibha (PW 7), was the injury sustained on the chest by the deceased. While conducting a post-mortem, PW 7 observed the following injuries on the body of the deceased. During the course of external examination, PW 7 found the following injuries.

“Stab injury seen over left side chest middle below nipple length 5 cm. Breadth 2.5 cm., penetrating wound going medially depth 6.5 cm. Left side rib was cut medially 3 cm. from the sternum.”

On internal examination, PW 7 found the following injuries.

- i) Wall, ribs, cartilages-stab wounds seen in left side chest. Left side 5th rib was cut medially 3 cm. from the sternum.*
- ii) Plura-pale.*
- iii) Right lung and left lung-pale.*
- iv) Pericardium-puncture wound, blood clots were seen in the whole pericardium.*
- v) Heart was in normal size. Puncture wound seen in right atrial wall throughout, length 1.5 cm. On the cut section, both chambers were empty.*

10. It revealed from the record that the defence has not specifically challenged the nature of injuries or cause of death of deceased Raju Singh. According to Dr Pratibha (PW 7), all injuries were antemortem and were possible by the knife (Article A). In her opinion, the cause of death was “*haemorrhagic shock due to puncture heart due to stab injury.*” The post-mortem Report (Exhibit 43) came to be proved in her evidence. There is no suggestion of an alternative possibility of such injuries to infer otherwise. Nay, no endeavour was made to show that the deceased met a death other than homicidal. We have gone through the post-mortem report. The injuries were on the vital part of the body and were antemortem. Therefore, it is evident that there were severe injuries on the person of the deceased. On the aspect of the cause of death of the deceased, the nature of the injuries rules out the

possibility of death other than homicidal. Moreover, the inquest panchanama (Exhibit 29) shows that there was an injury on the left side of the chest of the deceased. Thus, considering the overwhelming evidence and particularly the nature of injury, it can be safely concluded that a sharp-edged weapon caused the homicidal death.

11. This leads us to the pivotal question of authorship of the aforesaid homicidal injuries. The prosecution endeavoured to establish the authorship of the Accused/Appellant by showing evidence of the eyewitnesses to the occurrence and the circumstantial evidence in the form of discovery and seizure of incriminating articles.

12. According to the prosecution, the Accused had inflicted a knife blow at the deceased's chest and caused his death. In order to establish this issue, the prosecution relies heavily on the evidence of Bhavar Singh (PW 1) and Waman Bhor (PW 4), eyewitnesses to the incident. Waman Bhor (PW 4) is in unison with Bhavar Singh (PW 1) on the core and even sequel to the occurrence. The first informant Bhavar Singh (PW1) stated in his evidence that on 28.6.2012, at Om-Tulza Lawns, when the dinner of the marriage function was going on, both the Accused by consuming liquor came there and started causing a nuisance. He asked his brother

Raju Singh to look after the matter. Accordingly, his brother Raju Singh met with them, paid money and asked them to go outside the pandal. Consequently, they both left the place from the kitchen side gate. Thereafter, the Accused called Raju Singh and asked him to come outside the premises. He, therefore, had gone outside the premises and thereafter, both the Accused again started quarrelling with him. After hearing the commotion, he reached there and tried to pacify them.

13. Further, it revealed from the evidence of Bhavar Singh (PW 1) that the Appellant had taken out a knife from his pant pocket and had attempted to inflict knife blow at his chest. However, he succeeded in holding the hands of the Accused. In the process, he, however, sustained an injury on his right hand. He also stated that co-accused Imran had assaulted and pulled him to the ground. Further, he claimed that the Accused/Appellant attacked his brother Raju Singh with a knife on his chest. At that time, Waman Bhor (PW 4), the owner of Om-Tulza Lawns, rushed to the spot. The Appellant then threw that knife. Raju Singh was removed to the hospital.

14. Similarly, the another eyewitness, namely, Waman Bhor (PW 4), deposed that in June 2012, he had given a contract for a dinner

for a marriage function to Bhavar Singh and Raju Singh. On the day of the incident, at about 10.00 p.m., there was a hot talk between Bhavar Singh and Raju Singh on one side and both the Accused on the other side. However, the dispute was settled, and both the Accused were paid Rs.100/- and were driven out. After half an hour, both the Accused returned and called Raju Singh outside, where again the quarrel took place between both the Accused and Raju Singh. According to him, when he heard the commotion, he and Bhavar Singh rushed to the spot where they found that Imran had caught hold of the neck of Bhavar Singh and, due to assault Bhavar Singh fell on the ground. He also stated that Accused Rakesh had taken out the knife, stabbed it in the chest of Raju Singh and thrown the knife in the grass field. According to him, people attending the marriage gathered on the spot. Co-accused Imran fled from the site, but Rakesh was caught and assaulted by the mob. Injured Raju Singh was then removed to the hospital, but he succumbed to the injuries before admission.

15. In this backdrop, the learned Counsel for the Appellant argued that the evidence of PW 1 and PW 4 are not consistent with each other. He submitted that in the evidence of PW 4, he claimed that when he heard the commotion, he, along with Bhavar Singh (PW 1), rushed to the spot. However, this fact is not finding a

place in the evidence of PW 1. The submission of the learned Counsel for the Appellant, however, does not deserve acceptance for the reason that Bhavar Singh (PW 1) and Waman Bhor (PW 4), in unison, stated that on hearing the commotion, they rushed to the spot. The only difference in their evidence is that PW 4 had indicated that at the relevant time, he, along with PW 1, rushed to the spot, whereas PW 1 had not stated so. But the fact remains that they both, on hearing the commotion rushed to the spot of the incident. PW 1 and 4, in no uncertain terms, specifically stated that at the relevant time Appellant/Accused inflicted a blow of knife on the chest of the deceased.

16. In *Rammi alias Rameshwar Vs. State of Madhya Pradesh*¹, the Hon'ble Supreme Court, in the context of discrepancies in the evidence of the eyewitnesses, has expressed thus :

“ When eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too

1 Cri.Appeal No.61 of 1999
with Cri.Appeal No.33 of 1999.

serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

17. In this context, the alleged inconsistencies appearing in the substantial evidence of the eyewitnesses are only in the nature of minor discrepancies of the peripheral circumstances and not in the occurrence of the incident itself. These discrepancies were not so incompatible with the credibility of the version of the eyewitnesses as to enable the Court to reject the evidence. Undoubtedly, the incident occurred at a place where the marriage party was going on, and several persons had an opportunity to observe the same. Hence, it is hard to digest that there was darkness at the time of the incident, and nobody recognised the Accused who had been falsely implicated. Besides, FIR was lodged naming the Accused as an assailant. There was no question of mistaken identity. Instead, the cross-examination of these witnesses revealed that their acquaintance with the Accused is not under the challenge at all.

18. The evidence of Bhavar Singh (PW 1) and Waman (PW 4) is consistent on the material point of assault. Both of them have firmly asserted that the Accused/Appellant assaulted the deceased by means of a knife at his chest. The consistent evidence of these

witnesses inspires complete confidence. The evidence of Bhavar Singh (PW 1) could not be rejected on the facile ground that he was the brother of the deceased. There is no reason for him to implicate the Accused falsely nor defence suggested so. It is a settled principle of law that relationship is not a factor affecting a witness's credibility. It is more often than not that a relationship would not conceal the actual culprit and make allegations against an innocent person. The Hon'ble Supreme Court in ***Salim Sahab Vs. State of M.P.***², highlighted this position.

19. Similarly, in ***Hari Obula Reddy & Ors. Vs. State of Andhra Pradesh***³, the Hon'ble Supreme Court, while discussing the credibility of the evidence of interested witnesses, held thus :

“It is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor it can be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary, is that the evidence of interested witnesses would be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be

² (2007) 1 SCC (Cri)425.

³ (1981)3 SCC 675.

sufficient, in the circumstances of the particular case, to base a conviction thereon”.

20. The conspectus of the aforesaid decisions would show that the evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. The evidence of PW 1 could not be rejected merely because he was related to the deceased. There is no reason for him to implicate the Accused falsely. The factum of relationship with the deceased does not reduce him to the position of being an interested or partisan witness.

21. It is argued that the prosecution has not examined the independent eyewitnesses to the occurrence. According to Mr Nikam, learned Counsel for the Appellant, non-examination of these witnesses dents the prosecution. In this context it is a settled principle of law that there is no necessity for the prosecution to examine any other witnesses when the evidence of eyewitnesses inspires full confidence. Already, we arrived at a conclusion that the eyewitnesses examined by the prosecution are reliable and trustworthy and Court can safely act on their testimony. In *Vijendra Singh Vs. State of Uttar Pradesh*⁴, it was held that if testimony of witnesses is reliable and trustworthy, non examination of any other witnesses available does not affect case of the prosecution.

4 2017 ALL MR (Cri) 883 (SC).

22. Now, so far as the submission on behalf of the Appellant/Accused that there is a difference between the inquest panchanama and the post-mortem report having regard to the injuries as found on the body of the deceased. It is submitted that the prosecution case suffers from the grave suspicion warranting, in any event, a doubt in favour of the Accused.

23. Upon perusal of the inquest panchanama and post-mortem report, it reveals that there is no material difference which would otherwise affect the trial because of a doubt as regards the reliability of the prosecution case. The inquest report can not be termed to be a basic or substantive evidence being prepared by police personnel, a non-medical man and at the earlier stage of the investigation. In a similar vein, the post-mortem report by itself is not substantive evidence. Still, it is the doctor's statement in Court, which has the credibility of a substantive evidence and not the report, which in normal circumstances ought to be used only for refreshing the memory of the Doctor or to contradict whatever he might say from the witness box.

24. In *Munshi Prasad and Ors. Vs. State of Bihar* ⁵, the Hon'ble Supreme Court held that the preparation of an inquest report is a part of the investigation within the meaning of the Criminal

⁵ 2002 SCC (Cri) 175.

Procedure Code. Neither the inquest report nor the post-mortem report can be termed to be basic evidence or substantive evidence, and discrepancy occurring therein can neither be termed to be fatal nor even a suspicious circumstance, which would warrant a benefit to the Accused and the resultant dismissal of the prosecution case. It is, thus, strictly speaking of no consequence in the event of a discrepancy occurring in the inquest Panchnama and post-mortem report.

25. The Accused has come up with a plea of false implication. However, in the absence of cogent material, the said plea cannot be accepted. In *Shama Vs. State of Haryana and Others*⁶, it was held that in absence of specific instances to show that police had a grudge against the Accused, the plea of false implication can not be accepted. In the present case no potential reason for false implication or reason for the first informant/or eyewitnesses to haul him in the crime. Therefore, in our view, the theory of false implication also gets diluted.

26. The next question is whether there was a motive for Accused to commit a crime. It is settled law that evidence of motive becomes important when only circumstantial evidence exists. Invariably, the motive is hidden in the culprit's mind, hence, quite challenging to

⁶ 2017 ALL MR (Cri) 448 (SC).

establish. The present case is, however, based on direct evidence and therefore, in the true sense, motive loses its significance. If the prosecution can establish a motive, then it would make the prosecution's case stronger. In *Sheo Shankar Singh Vs. State of Jharkhand & Anr.*⁷, the Hon'ble Supreme Court has observed that the proof of motive recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. This is because if the Court, upon a proper appraisal of the deposition of the eyewitnesses, concludes that the version they gave is credible, the absence of evidence to prove the motive is rendered inconsequential.

27. In the instant case, the presence of Bhavar Singh (PW 1), brother of the deceased, and Waman Bhor (PW 4), owner of the Lawn where the marriage party was going on, at the scene of occurrence can not be doubted. They emerged unshaken from the ordeal of a lengthy and searching cross-examination. These eyewitnesses' accounts could not be shaken on the principal act of the Accused/Appellant in stabbing the deceased. The direct evidence of these eyewitnesses received assurance from the medical testimony regarding the nature of the stabbing weapon knife. The FIR was lodged immediately after the incident, naming the Accused as an assailant, and the Informant had no time to concoct a

⁷ AIR 2011 SC 1403.

false story. Moreover, the defence has admitted the presence of the Accused at the time of occurrence. Further, it emerges from the evidence that the blood-stained clothes of the Accused, the first informant, and the deceased came to be seized. The reports of the Chemical Analysis (Exhibit 47 and 49) duly establishes that the blood group on the clothes of the Accused, deceased, and the first informant (PW 1) who carried the deceased to the hospital and the knife used for the assault and that of the deceased was 'B'. The Accused accord no plausible explanation to this circumstance. The aforesaid evidence, as such, connects the Accused with the crime.

28. In *Madhav Balaji Dangare & Anr. Vs. State of Maharashtra*⁸, it was held that finding blood stains having blood group of deceased on the clothes of the Accused without plausible explanation is an incriminating circumstance.

29. It is submitted that in the post-mortem notes, the Doctor has not mentioned the shape of the injury, and her opinion was not sought by showing the weapon knife. The conviction can not be assailed merely because of some lacuna in the investigation. Any failure of the investigating officer can not render the prosecution case doubtful as the present case is fully established by the direct evidence of the eyewitnesses duly corroborated by the

⁸ 2014 ALL MR (Cri) 3500.

circumstantial evidence.

30. In *Amar Singh Vs. Balwinder Singh & Ors.*⁹, the Hon'ble Supreme Court while dealing with the lapses on the part of investigating agency observed that in a case where the investigation is found to be defective the Court has to be more circumspect in evaluating the evidence. But it would not be right to completely throw out the prosecution case on account of any such defects, for doing so would amount to playing in the hands of the investigating officer who may have kept the investigation designedly defective.

31. The conspectus of the aforesaid discussion is that the core of the prosecution version that the Accused assaulted the deceased using a deadly weapon i.e. knife remained intact. The eyewitnesses, whose presence on the spot can not be doubted. They also identified the weapon knife. There is sufficient evidence which unerringly points towards the act of the Accused as detailed above.

32. This takes us to the nature of the offence. It emerges from the evidence that the Appellant/Accused took out a knife and stabbed the deceased in the chest, which is a vital part of the body and caused the death of deceased Raju Singh. The Appellant/Accused is proved to have been carrying a knife,

⁹ (2003)2 SCC 518.

meaning thereby that it was not a sudden affair to use the weapon. The force employed in causing injury was such that the rib was cut and the heart was punctured. Admittedly, there was only one blow, but the medical evidence demonstrates that the severity of the blow was such that it was sufficient to cause death. The evidence of the prosecution witnesses indicates that after sending the Accused outside the premises, he called the deceased and stabbed his chest. This shows that the incident was not occurred by chance. The Appellant had chosen a knife as a weapon of offence. An injury suffered by the deceased can not be said to be inflicted as a matter of chance while grappling with each other. The injury sustained by the deceased not only exhibits the intention of the Accused in causing the death of the deceased but knowledge of the Accused as to the likely consequence of the such attack, which could be none other than causing the death of deceased Raju Singh. The situation on the spot rules out the possibility of an offence being committed due to grave and sudden provocation. The Accused can only escape if it can be shown or reasonably deduced that the injuries were accidental or otherwise unintentional. However, it is neither argued nor is it a case of defence that either incident took place on sudden provocation or without premeditation in a sudden fight so as to claim exception to Section 300 of IPC. The act of the Accused, thus, clearly falls within the tentacles of Section 300 of

the Penal Code. The trial Court has discussed the entire evidence in detail and, in our opinion, has reached the right conclusion that the prosecution has been able to establish the case against the Accused beyond a reasonable doubt.

33. Resultantly, this appeal fails and is hereby dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]