

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Appeal No. 247 of 2020

Sadanand S/o. Maroti Gurnule (In Jail)
Age 35 Years, Occupation - Labour,
R/o Dongargaon, Tahsil Mul,
District Chandrapur.

... Appellant

- Versus -

State of Maharashtra
Through Its Police Station Officer,
Police Station Mul, Tahsil Mul,
Dist. Chandrapur.

... Respondent

Mr. R. R. Vyas, Advocate for the appellant
Mr. T. A. Mirza, APP for the State/respondent

**CORAM : ROHIT B. DEO AND
URMILA JOSHI-PHALKE JJ.**

Date of reserving judgment : 08-12-2022
Date of pronouncing judgment : 04-01-2023

JUDGMENT (Per : Rohit B. Deo, J.)

Appellant - Sadanand Maroti Gurnule is assailing the judgment dated 30-5-2020 rendered by the learned Additional Sessions Judge, Chandrapur in Sessions Case 54/2017 whereby Sadanand Maroti Gurnule (accused) is convicted for offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to suffer rigorous imprisonment for life and to payment of fine of Rs. 500/-

(Rupees Five Hundred) and in default to undergo further rigorous imprisonment for six months.

2. The incident occurred on 31-3-2017 at Village, Dongargaon. One Madhukar Keshav Shende was observing the 13th day of his father's death. Villagers including Shankar Shende, Dayaram, Sadanand Gurnule, Dadaji Devgirkar, Ghansham Lengure and others were having food in the ritualistic function. Dadaji and Dayaram were discussing politics. The accused, who is Dayaram's brother, asked Dayaram not to indulge in unnecessary talks and to finish his meals quietly. A verbal altercation ensued between Dayaram and the accused which turned physical. Shankar Shende intervened and temporary quietus was put to the altercation.

3. At 8.45 to 9.00 p.m., one Ravi Tikle went to the house of Shankar Shende with the news that the accused had assaulted his elder brother Dayaram with knife. Shankar Shende rushed to the Gandhi Square and saw Dayaram lying with blood oozing from injury to the chest. The father of Dayaram and accused, one Maroti and others requisitioned the four wheeler of one Sandip Poreddiwar and took Dayaram to the Sub District Hospital, Mul where the Doctor declared Dayaram dead. Shankar Shende lodged report with Police Station, Mul

on the basis of which offence punishable under Section 302 of IPC was registered against the accused.

4. The accused was arrested. The investigation proceeded on the usual lines. Spot panchanama was recorded. The drops of blood found on the spot were collected and seized and statements of witnesses recorded. While in custody, the accused gave memorandum of disclosure on the basis of which the knife used in the commission of the offence was recovered and seized. The clothes which the accused was wearing at the time of the incident were also seized. The autopsy report was obtained and the blood samples of the accused and the deceased collected. The muddemal articles were sent to the Chemical Analyser (C.A.) for forensic evidence.

5. The police filed charge-sheet under Section 302 of IPC in the Court of the jurisdictional Magistrate who committed the case to the Sessions Court. The learned Sessions Judge (learned trial Judge) framed charge, Exhibit 4. The accused pleaded not guilty and claimed trial. The defence was of denial.

6. The prosecution examined eleven witnesses to bring home the charge. P.W. 1 Rajkumar Hemke is the panch to the spot panchanama (Exhibit 14) and seizure panchanamas, Exhibit 15 and

Exhibit 16 whereunder the blood from the spot was collected and the sample of the clay and blood mixed earth was seized. P.W. 1 is not cross-examined.

7. P.W. 2 Shankar Shende is the Police Patil of the village who lodged the report. P.W. 2 has deposed that on the 13th day ritual function at the house of Madhukar Shende, he witnessed the first part of the incident i.e. the accused objecting to Dayaram's conversation on politics and the resultant verbal and physical altercation between the brothers. P.W. 2 has then told the learned trial Judge that at 8.45 p.m., Ravi Tikle informed him that the accused had pierced knife into the stomach of Dayaram. P.W. 2 and Ravi Tikle went to the spot, saw that Dayaram was lying in front of the house of Ashok Devgirkar with injury to left side of stomach. P.W. 2 then speaks of Dayaram being taken to the Government Hospital, Mul, the doctor declaring Dayaram dead and he lodging report, Exhibit 18.

It is elicited that Dayaram used to consume liquor. Witness volunteered that the consumption was intermittent. The suggestion that Dayaram used to quarrel with people under the influence of liquor is denied. The witness concedes that since Dayaram was involved in politics, he has opponents in the village. Certain suggestions are given suggesting that the witness was not present at the 13th day function

where the accused and Dayaram had an altercation, which suggestions are denied. The witness agrees that Dayaram and the accused were having cordial relations. The witness concedes that while having meal, Dayaram was intoxicated. The suggestion that Dayaram was abusing the supporters of rival political party is denied. The suggestion that the witness and the accused are not on cordial terms is denied.

8. P.W. 3 Balkrushna Talande along with P.W. 1 Rajkumar are witnesses to the spot panchanama. P.W. 3 is also witness to the disclosure made by the accused while in custody on the basis of which the knife was recovered. P.W. 3 has told the learned trial Judge that he and Sambha went to the police station. Police made enquiries with the accused in their presence. The accused disclosed that he had inflicted knife wound on Dayaram and that the knife is kept on the roof of his house and he is ready to produce the same. P.W. 3 has proved the disclosure memorandum, Exhibit 23 by identifying his signature and those of Sambha and the accused. The witness has then narrated that the accused led the police and panchas to his house at Zenda Chowk, Dongargaon and produced the knife from the roof, which was seized by the police. The seizure panchanama, Exhibit 24 is proved and the knife, Article-A is identified by the witness. The witness has also told the

learned trial Judge that at the same time the accused also produced the clothes of the deceased (Exhibit 25 and Exhibit 26).

The cross-examination is cryptic. Apart from suggesting that the spot panchanama was already written when the witness went to the spot, and further that the accused did not make any disclosure, no serious attempt is made to demolish the testimony. The only relevant material elicited is that at the house of the accused, his parents and wife were present. The presence of adult family members is presumably brought on record to suggest that the place from where the knife was discovered was not within the exclusive knowledge or in exclusive possession of the accused.

9. P.W. 4 Ravi Tikle is witness to the first part of the incident which is the verbal and physical altercation at the 13th day function of Shende. He is also examined to prove the other part i.e. the assault. However, P.W. 4 denied that the accused stabbed Dayaram and that he went to the house of Police Patil Shende and narrated the incident. The Prosecutor sought permission to put questions in the nature of cross-examination. However, the witness continued to deny that he saw the accused assaulting Dayaram.

10. P.W. 5 Madhuri Gurnule is the widow of Dayaram. She told the Court that on the day of the incident, she was at home. Hearing the noise, she rushed to the square and saw that her husband was lying on stool. P.W. 5 told the learned trial Judge that she did not see any blood and did not make any enquiry, and that she went to the house of the police patil and took her husband to the hospital. The demeanor of the witness is recorded by the learned trial Judge. P.W. 5 refused to answer the question whether police made enquiries with her about the incident. P.W. 5 was declared hostile to prosecution and she was cross-examined by the learned Prosecutor. She denied every suggestion put to her by the learned Prosecutor. Finally, she denied the suggestion that she was attempting to save the accused, who is her brother in law.

11. P.W. 6 Dr. Devendra Lade is the Medical Officer who conducted the autopsy. P.W. 6 has told the Court that he noticed an oval shaped stab wound over the left side chest below nipple slightly medially aspect of which the edges were 1 inch, depth 1½ inch and centre width ½ inch. The sixth rib on the lateral side was fractured. Subcutaneous haemorrhage was present and the injury was antemortem. The Doctor also confirmed the opinion in column 20 of the autopsy report and told the learned trial Judge that a stab wound was present over the right ventricle medial to apex. The depth was up

to the heart cavity and the edges were 2 inches. The pericardium was also cut and pool of blood had accumulated in pericardial space due to massive haemorrhage. The cause of death was haemorrhagic and hypovolumic shock due to loss of blood. The Doctor proved the autopsy report, Exhibit 38 and the knife, Article-A which was sent to him for opinion. The Doctor confirmed that the injuries to the deceased could be caused by weapon, Article-A. The Doctor further deposed that clothes of the victim were also examined by him and he noticed that the shirt was torn below the shirt pocket on left side, the tear admeasured 1 inch and the shirt was stained with blood. In the cross-examination, an attempt is made to show that knife, Article-A was not sent to the witness for examination. The witness, however, denied all suggestions which were put to him to establish the said theory. The witness has confirmed in the cross-examination that the clothes were in sealed condition when he received them.

12. P.W. 7 Ashok Deogirikar is examined as an eye witness. Ashok told the learned trial Judge that he was sitting at the square when the accused assaulted Dayaram with knife. It is elicited in the cross-examination that the house of the witness is situated at the square, that darkness had spread as it was 8.30 p.m. and further that the deceased was not conversing with him at the time of the incident.

Ashok denies the suggestion that Dayaram was at a distance of 60 to 70 feet from him. He further denies that he went running to the spot after the occurrence of the incident. He denied that at 8.30 p.m., it is not possible to see what happens at a distance of 50 to 60 feet. Finally, he denies the suggestion that he is not on good terms with the accused.

13. P.W. 8 Darshana is the wife of P.W. 7. She has told the learned trial Judge that after hearing the noise, she came out of her house and requested the accused not to assault his brother. The father of the accused and the deceased tried to intervene and yet the accused assaulted Dayaram with knife on the right side of the chest. She further deposed that Dayaram fell in front of her house, she brought water and gave the same to Dayaram and wiped the blood from the injuries sustained by him. She has identified Article-A as the same weapon used by the accused.

That the incident occurred at 8.30 p.m. and that P.W. 8 Darshana came out of her house and then told the accused not to assault his brother, are omissions which are proved through the evidence of P.W. 11 Vishal Hire. To the extent, the witness stated that the deceased was assaulted on “right side” is an omission proved. It is suggested to the witness that there was darkness in front of her house, the witness denied the suggestion and asserted that there was a lamp.

14. P.W. 9 Dinkar Shende is an eye witness to the incident who has told the learned trial Judge that between 8.15 and 8.30 p.m. on 31-3-2017, he was present at the square when the deceased was telling his father Maroti that there was an altercation between him and the accused. The wife of the deceased then shouted that her brother-in-law had come with knife. Dinkar then deposed that accused approached Dayaram. Their father Maroti intervened and without paying any heed, the accused assaulted Dayaram with knife. Dinkar has identified the knife, Article-A as the weapon of offence. Dinkar denied the suggestion that it was dark in the square, that Dayaram's wife did not shout in his presence and that the accused did not assault Dayaram. Dinkar further denied the suggestion that since the accused is a political rival, he is deposing against him. As a fact, what is deposed is that Dinkar was not on talking terms with the deceased due to some dispute although he was on talking terms with the members of his family. Dinkar agrees that knife, Article-A, which is shown to him is similar to the knife which is found in every house in the village.

We note from the cross-examination of P.W. 11 Vishal Hire that the only omission in the police statement is the absence of the words "brother-in-law" and "I have seen". As a fact, there is no omission as such and the choice of words is projected as an omission or variance. In

any event, the purported omission is not such as can be characterized as contradiction.

15. P.W. 10 Manohar Koreti is the Police Officer who registered the offence, recorded the spot panchanama and seized the articles from the spot and arrested the accused. It is elicited in the cross-examination that the sketch map which is drawn in accordance with the situation found on the spot does not refer to electricity pole.

16. P.W. 11 Vishal Hire has conducted the major part of the investigation as the SDPO, Mul. He seized the clothes of the deceased and the blood sample, recorded the memorandum of disclosure of the accused and proved that the place where the knife was hidden was discovered, and the knife seized on the basis of the disclosure made by the accused. P.W. 11 has told the learned trial Judge that the accused removed the knife which was kept hidden in the upper part of the *warni* in front of the house. P.W. 11 identified his signature on the seizure panchanama, Exhibit 24 as well as the signatures of the panchas and the accused and he further identified Article-A as the knife produced by the accused. P.W. 11 then deposed that T-shirt with blood stains and grey bermuda were seized from the accused in presence of the panchas which he identified in Court. P.W. 11 has then deposed as

regards the various steps taken by him during the course of investigation.

17. PW. 11 agrees that in the statement recorded vide Exhibit 23, there is no mention that the knife is kept on the roof of the house and that the accused is ready to produce the same. We note from the memorandum of disclosure, Exhibit 23 that the accused stated that he has hidden the weapon of offence at a place and he shall produce the same. PW. 11 denies the suggestion that the accused did not make any confessional statement and that nothing is recovered. PW. 11 admits that the accused did not make any statement regarding willingness to produce the clothes worn by him at the time of the incident. PW. 11 states that the seizure of the clothes were from the person of the accused. He agrees that there is no specific mention in the seizure panchanama, Exhibit 25 that the clothes are seized from the person of the accused. The witness explains that in column 3 of Exhibit 25, there is a reference to possession/involved and that the clothes had been seized from the accused. The witness further clarifies that it was when the accused took the police and the panchas to his house that the clothes were seized from his person and that is why the place of seizure is shown to be the residential house. General suggestions are given on

the aspect of investigation, particularly the recording of the statements, which the witness has denied.

18. The evidence on record is held sufficient by the learned trial Judge to conclusively establish that the death was homicidal and that the author of the crime was the accused.

19. That the death was homicidal is not in dispute. Learned counsel for the accused Mr. Vyas has not even argued that the death was accidental or suicidal. The absence of challenge apart, we are satisfied from the medical evidence on record that the death can only be homicidal.

20. The incident has occurred in two parts. The first part of the incident is the verbal and physical altercation between the two brothers at the 13th day ritual dinner at the house of Shende. The consistent versions of the witnesses is that the accused berated the deceased for indulging in unnecessary talks on politics which led to verbal and physical altercation between the brothers.

21. The learned trial Judge has considered the evidence on record holistically and has held that the ocular account which is corroborated by forensic evidence is sufficient to bring home the charge.

22. Mr. Rajnish Vyas would argue that P.W. 4 Ravi Tikle and P.W. 5 Madhuri, who is the wife of the deceased have not supported the prosecution. It is true that P.W. 4 and surprisingly, P.W. 5 Madhuri have not supported the prosecution. Prosecution witnesses turning hostile is not uncommon. However, it is disconcerting that P.W. 5 Madhuri obviously suppressed facts within her knowledge. We have already recorded that her demeanor was noted by the learned trial Judge. Madhuri refused to answer the question whether police enquired with her. She further went to the extent of telling the learned trial Judge that she did not see any blood when she reached the spot of incident. We have no hesitation in recording that P.W. 5 is not a truthful witness and she has attempted to save the accused although the victim was her husband.

23. Mr. Vyas would argue that the father of the deceased Maroti was not examined which is a serious infirmity. The reasons for not examining Maroti are not far too seek. Considering that the wife of the deceased suppressed the truth, it is obvious that Maroti would not have supported the prosecution. Maroti had two sons. One was the victim and the other, accused of the killing. Maroti may have his reasons for not cooperating with the police in order to save the other son from the consequences of the act.

24. We have scrutinized the evidence of the other eye witnesses giving due consideration to the argument of Mr. Vyas that their ocular account cannot be believed. While it is true that the evidence of spot of incident being illuminated has not come on record, the evidence must be appreciated keeping in mind that in the small village, everybody knew the others quite well and that the incident, according to P.W. 8 Darshana occurred at the square in front of her house. P.W. 8 Darshana has told the learned trial Judge that she requested the accused not to assault his brother and notwithstanding the attempt of Maroti, the father of the accused and the deceased, to intervene and save the deceased, the accused stabbed Dayaram. She has then spoken of giving water to the deceased. The evidence of P.W. 8 Darshana is consistent with the evidence of her husband P.W. 7. We see no reason to nurture any doubt as to the identification of the appellant by P.W. 7 and P.W. 8. Assuming that darkness had spread, considering that the incident occurred in extremely close proximity, witness Darshana requested the accused not to assault his brother, she deposed that the father Maroti intervened and yet accused assaulted Dayaram, and we find P.W. 8 Darshana to be reliable witness, we are not inclined to accept the submission that due to darkness, there could not have been identification. P.W. 9 Dinkar has also corroborated the version of P.W. 8

Darshana on all material aspects including the attempt by Maroti to prevent the assault.

25. In our considered view, there is no material on record to suggest that P.W. 7, P.W. 8 and P.W. 9 are falsely implicating the accused or that there was no reasonable possibility of the witnesses identifying the assailant.

26. The ocular account is corroborated by the discovery of the place from where the accused produced the knife used in the assault. Mr. Vyas points out that P.W. 11 states that the knife was produced from the upper part of the saywan (*warni*) in front of the house and in the cross-examination refers to the place as the roof. In the first instance, we have not come across any statement in the cross-examination that the accused produced the knife from “roof”. As a fact, it is a suggestion given to P.W. 11 that there is no reference in Exhibit 23 that the knife was kept on the roof of the house. In our considered view, the memorandum of disclosure is proved and so is the place where the accused kept the weapon of offence and the seizure of the knife. Nothing is elicited in the cross-examination of the panch witnesses and P.W. 11 to disbelieve the recording of the memorandum of disclosure and the seizure of the knife, except bringing on record certain discrepancy as regards the time of recording the memorandum,

Exhibit 23 stated by P.W. 3 Balkrushna. The learned trial Judge has reasoned that discrepancy here and there as regards exact timings of events which have occurred two years ago is not sufficient to disbelieve P.W. 3. We are in complete agreement.

27. The weapon seized is identified by P.W. 8 and P.W. 9 as the weapon of offence. While we may not attach great weight to the identification, considering that P.W. 9 admits that similar weapon is found in every household of the village, P.W. 6 Dr. Devendra Lade has deposed that the knife was stained with blood. The C. A. report, Exhibit 71 reveals that the blood detected on the knife was of Group B. While both the accused and the deceased have the same blood group, there is no explanation whatsoever offered by the accused for the presence of human blood on the knife.

28. At this stage, we may observe that we found it appropriate to put further questions to the accused to seek explanation as regards the incriminatory material *inter alia* the contents of the C.A. reports, Exhibits 71, 72 and 73. We recorded the additional statement of the accused under Section 313 of the Code of Criminal Procedure, 1973. We may extract the three questions put to the accused and his answers.

“Question No. 1 : It has come in the evidence of Chemical Analyser’s Report (Exhibit-71) that blood stains found on clothes

of the deceased, A-1 and A-2 and on your clothes B-1 and B-2 Half T-shirt, Barmuda, and knife, are of Blood Group “B”. What do you want to say about the same ?

Answer : It is false.

Question No. 2 : It has come in evidence of Chemical Analyser’s Reports Exhibits-72 and 73 that blood of the deceased as well as your blood is of Blood Group “B”. What do you want to say about the same ?

Answer : It is false.

Question No. 3 : Do you want to say anything additionally about the above said evidence ?

Answer : No.”

29. We have found that the evidence on memorandum of disclosure and the discovery of the place where the knife was hidden, and the seizure of the knife is believable and, therefore, in the absence of any explanation on behalf of the accused, the presence of blood on the weapon seized is certainly of corroborative value to the prosecution case.

30. Considering the evidence on record, we are satisfied that the prosecution has successfully brought home the charge.

31. We are further not inclined to accept the submission of Mr. Vyas that the offence falls under Section 304 Part-I of IPC. None of the exceptions to Section 300 of IPC is attracted. We are satisfied that the act was intentional and was premeditated. The earlier altercation took place at the venue of the 13th day ritual function of Shende. It has come in evidence that due to the intervention of the other guests, a quietus was put to the altercation between the two brothers who were persuaded to have meals. It was later that the accused fetched knife, came to the square where the deceased was present, and despite the attempt of Maroti to save one son from assaulting the other, the accused struck the knife blow on the vital part. Nothing has happened in the spur of moment or without premeditation.

32. We see no substance in the appeal, which is accordingly dismissed.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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