

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL 339 OF 2019

Sunil Santosh Kosare,
Aged about 45 yrs, Occ. Labour,
R/o. Mz. Titur Shivar, Tahsil Kuhi,
District Nagpur Bhandara

.....APPELLANT

...V E R S U S...

State of Maharashtra,
through Police Station Officer,
Police Station Kuhi,
Tahsil and District Nagpur

..RESPONDENT

Mr. Saurabh Singha, counsel (appointed) for appellant.
Mr. M.K. Pathan, APP for respondent/State.

CORAM:- ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.

RESERVED ON :22.11.2022

PRONOUNCED ON :04.01.2023

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

The appellant – Sunil Santosh Kosare, who shall be hereinafter referred to as the accused, is assailing the judgment dated 06.02.2018, rendered by the Special Judge, Nagpur, in Special Atrocity Case 39/2014, whereby the accused is convicted, along with co-accused Balya @ Krishna

Sakharkar for offence punishable under Section 302 read with Section 34 of the Indian Penal Code (“IPC”) and is sentenced to suffer imprisonment for life and to payment of fine of Rs. 1,000/- (Rupees One Thousand), in default to suffer simple imprisonment for two months and is further convicted for offence punishable under Section 450 read with Section 34 of IPC and is sentenced to suffer rigorous imprisonment for three years and to payment of fine of Rs. 500/- (Rupees Five Hundred), in default to suffer simple imprisonment for one month and is also convicted for offence punishable under Section 354 read with Section 34 of IPC and is sentenced to suffer rigorous imprisonment for one year and to payment of fine of Rs. 250/- (Rupees Two Hundred Fifty), in default to suffer simple imprisonment for 15 days.

2. The prosecution case is that Dinesh Thakre lodged report at Kuhi Police Station, the gist of which is, that he appointed Shankar Shelke as caretaker of agricultural field situated at village Titur. Shankar Shelke and his wife were residing in the bungalow constructed on the said agricultural

field. Co-accused Sunil Kosare was looking after the agricultural field prior to the appointment of Shankar Shelke. The accused nurtured grudge against Shankar Shelke since they perceived him to be responsible for the loss of employment. On 29.5.2014, the accused came to the agricultural field of Dinesh Thakre and had an altercation with Shankar, during the course of which, the accused threatened Shankar with dire consequences. Dinesh Thakre intervened and drove the accused out. In the night intervening 29.5.2014 and 30.5.2014, Dinesh Thakre was telephonically informed by Police Patil of village Titur that Shankar's wife came to him and narrated that the accused assaulted her husband with stick and balli and her husband was seriously injured. Dinesh Thakre went to his agricultural field and saw that Shankar was lying on the terrace in injured condition. Dinesh Thakre took Shankar to the Mayo Hospital, Nagpur. Shankar succumbed to injuries suffered while being treated. Dinesh Thakre lodged report (Exhibit 35).

Initially, Crime 71/2014 was registered under

Sections 307, 450 read with Section 34 of IPC and later on offence under Sections 302, 354 read with Section 34 of IPC and the relevant provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (“Atrocities Act”) were added. The investigation took the usual course. Spot panchanama was recorded, articles lying on the spot were seized in presence of panchas, inquest panchanama of the body was drawn, the autopsy done and report obtained. The seized articles were sent to the chemical analyzer, statements of witnesses were recorded, the accused were arrested and while in custody, accused Sunil Kosare disclosed that he was ready to show the wooden log (balli in vernacular) and iron pipe used as weapons of offence. On the basis of the disclosure, wooden log and iron pipe hidden in sugarcane field were seized vide seizure panchanama Exhibit 34. The clothes of the deceased and accused were also seized. Since the offence was registered under the Atrocities Act, further investigation was assigned to PW 4 - Ramesh Kenkewar, who recorded further and additional statements and filed the chargesheet.

The learned Special Judge framed charge Exhibit 21 under Sections 302, 354, 450 read with section 34 of the IPC and Section 3(2)(v) of the Atrocities Act. The accused pleaded not guilty and claimed trial. The defence was of total denial and false implication.

3. The prosecution examined eleven witnesses. PW 1 is Dinesh Thakre, who is the owner of the agricultural field and the first informant, PW 2 - Krishna Shahane is Police Patil and panch witness, PW 3 - Laxman Dhengade is the first Investigating Officer, PW 4 - Ramesh Kantewar is the Investigating Officer, who took over after the registration of offence under the Atrocities Act, PW 5 - Narendra Kagdemeshram is a witness, PW 6 - Dr. Nilesh Tumram performed the autopsy, PW 7 - Nitinkumar Hingole and PW 8 - Balasaheb Waghmode are examined to prove the caste. PW 9 - Shankarsingh Rajput is the third Investigating Officer, PW 10 - Mahesh Varma is the Magistrate and the most important witness is PW 11 - Annapurna Shelke, who is the wife of deceased and an eye witness.

4. The accused did not enter the witness box nor did he examine any witness in defence. The text and tenor of the cross-examination and the answers in response to questions put in the examination under Section 313 of the Code of Criminal Procedure (“Code”) reveals that the defence is of false implication.

5. The learned Special Judge held that the prosecution proved that the death of Shankar Shelke is homicidal. The learned Special Judge further held that accused Sunil Kosare and co-accused Balya Sakharkar assaulted Shankar Shelke in furtherance of their common intention which was to cause death or inflict such injuries as the accused knew shall result in death. The accused are further held guilty of outraging the modesty of PW 11 - Annapurna Shelke. However, the offence punishable under the Atrocities Act is not proved.

6. The learned Special Judge considered the evidence on record threadbare. The evidence of the eye-witness

Annapurna Shelke is held believable and trustworthy. Corroboration is sought from the discovery and seizure of the weapons of offence on which dried bloodstains were detected. The blood group is AB which is the blood group of the deceased. The learned Special Judge did note the submission on behalf of the accused that the blood group of accused Balya Sakharkar is also AB. However, the learned Special Judge held that it was the duty of the accused to explain how blood was detected on the weapons which were hidden and which were recovered on the basis of the disclosure made by the accused. The learned Special Judge treated the failure of the accused to offer any explanation for the detection of blood on the articles recovered, as a relevant circumstance. The learned Special Judge further noted that bloodstains of AB group were also detected on the clothes of accused Balya Sakharkar.

PW 5 - Narendra Kadgemesram, who did not support the prosecution, was cross-examined by the learned prosecutor. The learned Special Judge reasoned that although declared hostile, the evidence of PW 5 cannot be

brushed under the carpet in entirety. To the extent PW 5 told the learned Special Judge that PW 11-Annapurna Shelke came to his house weeping and he showed her the house of Police Patil, the evidence was held as of corroborative value to the case of the prosecution.

7. We have heard the learned counsel Mr. Saurabh Singha for the appellant, and the learned APP Mr. M.K. Pathan for the State. We have scrutinized the material on record, and have given due consideration to the reasons recorded by the learned Special Judge, and having done so, we find no reason, even after re-appreciating the evidence on record, to interfere with the judgment impugned.

8. It is not even argued on behalf of the accused that the death was not homicidal. Even *de hors* the absence of challenge to the finding recorded that the death was homicidal, we have considered the evidence on record, not only of the eye-witness PW 11 - Annapurna Shelke, but also

of the doctor, who conducted the autopsy. We have no hesitation in holding that the death of Shankar Shelke was homicidal.

9. The next question which arises for determination is whether the accused is the author of the crime. The most important witness is PW 11 - Annapurna, who is the wife of the deceased and an eye-witness. We note from the tenor of the cross-examination that an attempt was made to question the marital relationship. However, in our considered view, whether PW 11 - Annapurna was the legally wedded wife or in live in relationship is clearly irrelevant. PW 11 has told the learned Special Judge that on the day of the incident, the accused came to her house, picked up a quarrel with her husband and threatened him with dire consequences should he not leave the job and the village. She deposed that the threat was given in the presence of the employer Dinesh Thakre. PW 1 is Dinesh Thakre, who has told the learned Special Judge that on 29.5.2014, the accused came to his agricultural field while in an intoxicated state, picked up an

altercation with Shankar Shelke and threatened him of dire consequences. Nothing is brought on record in the cross-examination of PW 1 Dinesh Thakre to create doubt about the altercation and the threats issued by the accused to deceased Shankar. On this aspect, the versions of PW 1 and PW 11 are consistent, and the grievance of the accused against Shankar Shelke whom they perceived to be the reason for loss of employment is held, and rightly so, by the learned Special Judge as providing motive for the crime.

10. PW 11 - Annapurna has then told the learned Special Judge that after meals, she and her husband Shankar went to sleep on the terrace of the bungalow, she heard sound and noise and woke up only to see the accused assaulting her husband on the head with iron pipe and wooden stick. The appellant Sunil Kosare was holding one iron pipe and co-accused Balya Sakharkar was armed with wooden stick, is her version. PW 11 then told the learned Special Judge that when she confronted the accused, the appellant – accused caught hold of her Salwar, brought her down on the floor

and pressed her chest. She freed herself from their clutches and ran towards the village crying. The accused gave chase and she hid below the Jujube tree. The accused could not locate her and returned. She then went to the house of one lady and narrated the incident. The lady took her to the house of Police Patil of village Titur to whom she narrated the incident. Police Patil then called her employer telephonically, who arrived at the spot in his jeep and took her husband to Government Hospital. During the course of treatment, her husband succumbed to injuries suffered. She told the learned Special Judge that her statement was recorded under Section 164 of the Code. She further told the learned Special Judge that she saw the accused in the light of torch provided by the employer. She identified the wooden log which was used as weapon of offence. She further identified the clothes which her husband was wearing when he was assaulted. She further identified certain articles which belonged to her and the deceased which were seized by the police from the spot.

Some attempt was made in the cross-examination

to question her marital status. We have already observed that the marital status of the witness is of little relevance. PW 11 – Annapurna was cross-examined on the aspect of she knowing the identity of the accused. While it is elicited that she did not have any transaction as such with the accused, it has come in the cross-examination that when she came to the village Titur along with her mother and took up the work of cutting or harvesting sugarcane, she came to know the names of the accused, who along with others were also engaged in work. PW 11 admits that on the date of the incident, it was dark. An attempt is made in the cross-examination to demonstrate that there are certain improvements and the witness has not stated certain facts and events pertaining to the incident in her police statements. It is elicited from PW 3 – Laxman Dhengade, who is the first Investigating Officer that PW 11 - Annapurna did not tell him that in order to escape from the clutches of the accused, she went to one lady. We do not find that the omission of PW 11 to narrate the said fact to the first Investigating Officer, in immediate proximity of the incident, is of much relevance. On the contrary, it is

suggested by the defence counsel to the first Investigating Officer that he was told by PW 11- Annapurna that she saw the accused with the help of torch. Presumably, the attempt was to seek an explanation from the Investigating officer for not seizing the torch. The Investigating Officer has explained the omission by stating that the torch was not found on the spot. Be that as it may, it is the suggestion of the defence that PW 11 did immediately tell the first Investigating Officer that she saw the accused with the help of torch. The other omission which is brought on record is that there is no specific statement that accused Sunil Kosare caught hold of her Salwar and dragged her on the floor. We are not inclined to attach any weight to the so called omission. Apart from the fact that the purported omission does not partake the character of contradiction, as a fact, the witness did state before the police that she was dragged and her chest was pressed. Similarly, PW 11 did state in her statements recorded during investigation that the present appellant assaulted her husband with iron rod, and therefore, deposition of the first Investigating Officer that there is no

specific statement given by PW 11 that the present appellant Sunil was holding iron pipe, is of no relevance.

11. Mr. Saurabh Singha would argue that given the admission by PW 11 that the incident happened in darkness, her evidence must be discarded. In the first instance, it is the consistent version of PW 11 – Annapurna that she had a torch which was provided by her employer and that she saw the accused in the light of the torch, that PW 11 disclosed to the police at the first available opportunity that she saw the accused with the help of torch is not challenged in as much as it is the suggestion of the defence that she told the said fact to the Investigating Officer. The failure of the Investigating Officer to seize the torch, for whatever reason, does not dilute the credibility of the version. More importantly, PW 11 – Annapurna knew the accused, the incident did not get over in a matter of minutes, she witnessed the brutal assault on her husband, she was then molested and ran away to escape from the clutches of the accused and the accused gave chase. Considering the

manner in which the incident unfolded, even if we assume that there was darkness, the identification of the accused as the offenders and participants in the crime by PW 11 – Annapurna is not rendered improbable. She saw the brutal assault, she was molested, her chest was pressed, she was chased and such events must have left an indelible imprint on her mind.

12. We find the evidence of PW 11 of sterling quality. If any corroboration is required, the motive is established and the wooden log which was recovered on the basis of the disclosure statement of the appellant accused Sunil Kosare had bloodstains of the group of the deceased which circumstance is not explained by the accused. We note that the blood group of co-accused Balya Sakharkar is also AB. However, it was nonetheless the duty of the appellant accused to explain human blood on the wooden log which was recovered on the basis of his disclosure.

13. Mr. Saurabh Singha would argue that since PW 1

Dinesh and PW 2 Krushna are regular panch witnesses, their evidence must be discarded.

14. We are not inclined to seriously consider such sweeping generalization. We have not come across any material elicited in the cross-examination of the said witnesses, or any other glaring infirmity, as would impel us to doubt the disclosure and the recovery. We note that PW 2 - Krushna Shahane is the Police Patil, and we see nothing wrong the police requesting him to be the panch witness, may be in matters more than one. There cannot be a straight jacket formula to appreciate evidence, whether of panch or any other witness. The fact that the Police Patil regularly acts as panch in itself is not indicative of lack of integrity.

15. We further find that the learned Special Judge was justified in relying on part of the testimony of PW 5 – Narendra, who broadly did not support the prosecution. Corroborative value can indeed be attached to the part of

testimony which inspires confidence. To the extent PW 5 Narendra deposed that when PW 11 – Annapurna came to his house at night, she was weeping and it was he who showed her the house of Police Patil is extremely relevant as corroborative material.

16. Mr. Saurabh Singha did make an attempt to argue that the conviction deserves to be altered to one under 304 Part (I) of IPC. We disagree. It is clear that the assault was premeditated. The couple was fast asleep. The accused trespassed at night and launched brutal assault which caused death. Vital parts of the body were targeted. The injuries noticed by the doctor, and which are mentioned in column 17 of the autopsy report are injuries to the head, amongst other parts of the body, with underlying bone fracture. The severity of the assault, which was targeted at the head, and the contextual circumstances does not leave any room to invoke any of the five exceptions to Section 300 of IPC, as would attract the provisions of Section 304 Part (I). In our considered view, the appellant accused is rightly convicted

for offence punishable under Sections 302 read with Section 34 of the IPC. We further see no reason to disturb the conviction under sections 450 and 354 of the IPC.

17. The appeal is without merit, and is dismissed.

18. The fees of the learned appointed counsel be quantified and paid in accordance with Rules.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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