



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.123 OF 2019

Dadarao alias Gajanan s/o. Dalsing Dadhare,
Age : 29 years, occ. Nil,
r/o. Village Sawargaon,
Tq.Kannad, Dist. Aurangabad

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.Rajendrraa S. Deshmukkh, Senior Advocate h/f. Mr.Vishal A. Chavan
and Mr.Devang R. Deshmukh, Advocates for appellant

Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : FEBRUARY 16, 2024**

JUDGMENT (PER R.G.AVACHAT, J.) :-

The challenge in this appeal is to the judgment and order passed by learned Addl. Sessions Judge-3, Jalna, in Sessions Case No.26 of 2015 on 05.12.2018. Vide the impugned judgment and order, the appellant was convicted for the offences punishable under Sections 302, 323 and 506 of Indian Penal Code and therefore, sentenced to suffer life imprisonment and to pay fine, with the default stipulation. He is, therefore, in appeal.

2. The facts, giving rise, to the present appeal are as follows:-

Rajendra (deceased) was husband of PW 1 – Kadubai. Kadubai was the only child of her parents, PW 2 – Kisan and PW 3 – Chababai. Her parents would reside at village Tadegaon, Tq. Bhokardan, Dist. Jalna. Since PW 1 – Kadubai was the only child of PW 1 and PW 2, her husband – Rajendra (deceased) would reside at the place PW 1 and PW 2 as “घरजावई”. The appellant is cousin of PW 1 – Kadubai. Kadubai’s father (PW 2-Kisan) owned 11 acres of land in gut no.27. Some of the land therein was sold by him. He transferred 4 acres of land in the name of his daughter, PW 1 – Kadubai and 1 acre in the name of the son-in-law (deceased – Rajendra). PW 2 – Kisan had four brothers. The appellant is a son of one of the brothers namely, Dalsing. He would reside at Sawargaon, Tq. Kannad, Dist. Aurangabad, a place far away from the place of residence of the deceased. On 24.11.2014, by 08.00 in the morning, the appellant came to the house of his uncle (PW 2). He questioned the deceased “शेवटचे सांग माझे नावे शेती करून तू तुझ्या गावी जातो किंवा नाही?”. According to the prosecution, it was the claim of the appellant that he would inherit the land of his uncle (PW 2). The appellant did not like the deceased to have been cultivating the land of his father-in-

law. A quarrel ensued between the appellant and the deceased. The appellant fetched an axe from the room of his uncle and gave its three blows on the head and back of the deceased from behind and fled away. The incident took place in the presence of PW 1 – Kadubai (widow of deceased). On hearing noise, her parents (PW 2 and PW 3) also came out of their room to witness the appellant assaulting their son-in-law. PW 1 informed her sister-in-law on phone. She came along with her husband. In the meanwhile, Police-Patil of village had already made a report to the concerned police station. A station-diary entry to that effect was made. The police official (PW 12 - Dhadave) had rushed to the crime scene. He drawn the crime-scene panchnama (Exh.18) and inquest panchnama (Exh.19) as well. The Investing Officer seized the axe from the scene of the offence.

3. PW 1 – Kadubai lodged the First Information Report (Exh.12) by 01:30 p.m. The appellant was arrested in the evening. Clothes on his person were taken charge of. Upon completion of the investigation, he was proceeded against by filing charge sheet. The case was assigned to the Court of Addl. Sessions Judge-3, Jalna, for trial in accordance with law. The trial court framed charge (Exh.08). The appellant pleaded not guilty. His defence is of false implication on account of dispute between himself and his uncle (PW 2).

4. The prosecution examined twelve witnesses and produced in evidence certain documents to establish the charge. On appreciation of evidence in the case, the trial court convicted the appellant.

5. Heard learned counsel for the parties.

6. Learned senior counsel for the appellant would submit that there is delay of over six hours in lodging of the FIR. The delay has not been explained. The appellant was residing at some other town. The travel-time between the appellant's village and the place of the incident was about eight hours. The case is based on the evidence of sole eye-witness, who was inimical with the appellant. PW 2 and PW 3 came out of their room when the incident had already happened. They are, therefore, not eye-witnesses to the incident. The Police-Patil had already reported the incident. He was not examined nor the report lodged by him is forthcoming. The Investigating Officer did not collect finger-prints on the axe-handle. Admittedly, villagers and neighbours had gathered at the crime scene. None of them has been examined. Even if the case of the prosecution is taken as it is, the incident was preceded by scuffle. The appellant had not come to the place armed with any weapon. As such, he did not have any intention to eliminate the deceased. The

axe was shown to the Medical Officer. Same indicates that it was not seized and sealed. There is, thus, no evidence to indicate that the axe seized during the investigation, was the weapon used for assault. Had PW 1 - Kadubai really present at the crime-scene, she would have intervened to save her husband. She even did not serve water when her husband suffered injuries. Same suggests that she was not present at the crime-scene. There is no evidence to indicate, as to from which place, the appellant was taken into custody. He was shown to have been arrested at the police station. According to learned senior counsel, the appellant was not in the village of his uncle. He, ultimately, urged for allowing the appeal since the prosecution, according to him, failed to bring home the charge beyond reasonable doubt.

7. Learned Addl. Public Prosecutor would, on the other hand, submit that it is an open and shut case. PW 1 to PW 3 are the eye-witnesses to the incident. The motive was writ-large. He took us through the evidence on record and ultimately, submitted that no interference with the impugned order, is warranted.

8. Considered the submissions advanced. Perused the evidence on record.

9. PW 2 – Kisan is uncle of the appellant. Kisan had four brothers. The evidence of PW 2 – Kisan indicates that he owned 11 acres of land. It was his self-acquired property. PW 1 – Kadubai being the only child, on marriage, was staying with his husband (deceased Rajendra) at PW 2 - Kisan's place. Some of the land in gut no.27 was sold by Kisan. He transferred four acres of land in the name of Kadubai and 1 acre land in the name of deceased – Rajendra 4-5 years back before the fateful day.

10. True, the appellant was residing at Sawargaon. The distance between the village Tadeगाon and the village at which the appellant was residing, was of 8 hours' road journey. It may, therefore, *prima facie*, appear that when did the appellant come to the village Tadeगाon, since the incident took place at 08.00 in the morning. It is also true that no independent witness from the village has been examined. It has reason too. The incident took place on the field of PW 1-Kadubai. The villagers gathered post incident. The Police-Patil had reported the incident on phone. True, he was not examined. The station-diary entry made pursuant to the report lodged by him, is also not forthcoming. It is also true that the FIR was lodged six hours after the incident.

11. Close reading of the evidence on record would, undoubtedly, indicate that the appellant had been to village Tadegaon two days before the incident. The suggestions given to PW 1 in cross-examination by defence lawyer go a long way to infer accordingly. The following material is brought on record by the defence during cross-examination of PW 1 – Kadubai:-

“It is true that on 22.11.2014, accused had come to the house of my parents. It is true that house of my father is in field and I along with my husband was residing in village Tadegaon. It is true that on 22.11.2014 accused halted at night time in the house of my parents. It is true that on 22.11.2014 accused met me. It is true that on 22.11.2014 myself, my husband and my parents met to accused. It is true that I invited to accused for taking lunch in my house on 23.11.2014. It is true that on 23.11.2014 at noon time, accused came to my house for lunch. My husband and myself offered expected hospitality to the accused. It is true that my cousin Dinkar Lalchand Dadare is residing in my village. It is true that after taking lunch accused had been to house of my cousin brother Dinkar Lalchand Dadare.

12. Admittedly, the cousin of the appellant would reside in the village Tadegaon. On the preceding night, admittedly, the appellant stayed at his cousin's residence at village Tadegaon. Same suggests that he was very much present in the village on the given day, to visit the house of PW 1 by 08.00 in the morning.

The next suggestion given to PW 1 in the cross-examination proved to be a cliffhanger. She stated as follows:-

“10. It is not true that when scuffling among my husband and accused was going on, myself, accused and deceased only were present there.”

13. PW 1 – Kadubai is an illiterate rustic lady. Admittedly, she was residing along with her husband and her parents in a hut-cum-room at the agricultural land of her father. The father had already transferred four acres land in her name and one acre in the name of the deceased about four years before the date of incident. The appellant is cousin of PW 1. It appears that the appellant did not like his cousin sister and her husband staying as “घरजावई” at the house of his uncle.

14. The evidence of PW 1 – Kadubai indicates that at the given time, her husband (deceased) and herself were engaged in harvesting cotton. Her parents were in the room. The appellant came to their place. He questioned her husband "शेवटचे सांग माझे नावे शेती करून तू तुझ्या गावी जातो किंवा नाही?". A quarrel ensued between the appellant and the deceased. A scuffle was also there between the two. The appellant fetched an axe from the *Sapri* (room) and gave

its 4-5 blows on head and back from behind. True, PW 1 - Kadubai did not intervene to save her husband nor did she serve water to him. The photographs indicate that it was a brutal murder. PW 1 being illiterate lady, might have confused how to react. It is in her evidence that she, first, informed her sister-in-law on phone. Her sister-in-law took two hours to come there along with her husband. Thereafter, she accompanied them to lodge report to the police station. Nothing has been brought in the cross-examination of PW 1 so as to lead us to disbelieve her evidence. On the contrary, presence of the appellant at the scene of offence at the material time has been brought on record through the suggestion put to PW 1 in the cross-examination.

15. The father and the mother of PW 1 namely, PW 2 - Kisan and PW 3 - Chababai were in the room. The incident took place in the front-yard of the room. PW 2 - Kisan testified that on hearing noise, he came out of the room to see the appellant assaulted his son-in-law. The distance between the scene of offence and the room was of 4-5 ft. The assault was preceded by some quarrel. It was, therefore, but natural for PW 2 - Kisan to come out of the room on hearing the noise. Close reading of his cross-examination does not lead us to infer that he came at the scene of crime post incident.

16. PW 3 – Chababai, wife of PW 2, was 65 years of age. She too testified to have seen the appellant assaulting her son-in-law. Her cross-examination indicates that she was not keeping well. She was unable to walk. Her evidence indicates that on having seen the incident, she became numb. There is nothing to indicate that she was altogether unable even to move a step forward. It is reiterated that the distance between the scene of offence and the room of PW 2 and PW 3, was of 4-5 ft. We have no reason to disbelieve her claim that she came out of the room and saw the appellant assaulting her son-in-law.

17. PW 1 to PW 3 are the eye-witnesses to the incident. There is nothing to indicate them to have an axe-to-grind against the appellant, sparing the real culprit. The appellant had already been to the very village two days before. He stayed preceding overnight at the house of his cousin in the very village. True, the FIR was lodged after 4-5 hours of the incident. The reason therefor is writ-large. The parents-in-law of the deceased were aged-old. PW 1 widow of the deceased was alone. It is only on arrival of his sister-in-law and her husband, she had been to the police station to lodge the report. Since the Police-Patil of the village had telephonically reported, the police arrived at the scene of offence. The scene of

offence panchnama (Exh.18) was drawn by PW 12 – Dhadave. PW 8 – Sachin Patil recorded the FIR lodged by PW 1. The Doctor PW 10 – Dr.Anil Gaikwad conducted post mortem examination. He noticed following three injuries on the person of the deceased:-

(1) Incised wound over left occipital region vertically oblique, size of injury was 5 cm x 3 cm x 3 cm.

(2) Incised wound over occipital region of the scalp, size of injury was 7 x 3 x 5 cm. Horizontally oblique in direction involving fracture of occipital bone. Evidence of destroyed brain matter was noticed and evidence of intracranial hemorrhage was noticed.

(3) Incised wound over posterior part of occipital region in mid portion in horizontal direction. Size of injury was 5 x 3 x 5 cm. margins were sharp and averted involving the fracture of occipital bone with destroyed brain matter and intracranial hemorrhage.

18. The post mortem report (Exh.44) indicates that the deceased died of *“hemorrhagic shock due to intra and extra cranial hemorrhage which leads due to homicidal multiple grievous incised injury on occipital region of scalp”*.

19. In the facts and circumstances of the case, we do not find that non-examination of any of the villagers or failure of the Investigating Officer to obtain the finger-prints on the axe-handle is fatal to the prosecution. It is reiterated that PW 1 to PW 3 are eye-witnesses to the incident. They testified in one voice to have seen

the appellant assaulted the deceased by axe. The deceased suffered aforesaid three injuries. Nothing has been submitted to bring the case of the appellant under any exception to Section 300 of Indian Penal Code.

20. On appreciation of the evidence on record, we find no reason to interfere with the order impugned in this appeal. The appeal, thus, fails. The same, therefore, stands dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

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