



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

CRIMINAL APPEAL NO.438 OF 2019

Santosh Ashroba Sonwane,
Age : 36 years, Occu : Service,
R/o. Dhande Galli, Beed

.. Appellant

Versus

The State of Maharashtra

.. Respondent

.....

Shri. Nilesh S. Ghanekar, Advocate for the Appellant
Smt. U. S. Bhosle, APP for the Respondent / State

.....

CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

RESERVED ON : 14.02.2024
PRONOUNCED ON : 23.02.2024

JUDGMENT : [Per NEERAJ P. DHOTE, J.]

1. This Appeal is under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the Judgment and order dated 04.01.2019 passed by the learned Sessions Judge, Parbhani in Session Case No.85 of 2016 convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'I.P.C.') and sentencing him to suffer Rigorous Imprisonment for Life and to pay fine of Rs.10,000/-, in default to suffer Rigorous Imprisonment for two (02) years.

2. The Prosecution's case as revealed from the Police Report is

as under:

2.1. The Informant - Priyanka Santosh Sonwane was married to the Appellant in the year 2005. She was having two sons out of the wedlock. However, there was divorce between the Appellant and the Informant in the year 2014 and since then, the Informant was residing with her mother at Rahulnagar, Parbhani. The Appellant was residing at Beed.

2.2. On 03.04.2016 when the Informant and her mother (PW No.4 - Pushpa Nivrutti Bhise) were talking on the first floor of their house at around 08:00 p.m., she heard the voice calling her down. From the first floor she saw that it was the Appellant in an inebriated state and he was shaking the iron channel gate of their house and using abusive words against her. The Appellant asked her to come down and said that he would finish her. The Informant refused to come down. She made a phone call to her maternal uncle Sunil Gyanoji Bharade (deceased) and informed him that the Appellant had come there and misbehaving. In five (5) to ten (10) minutes, her maternal uncle reached their house and tried to give understanding to the Appellant. The Appellant removed the knife and gave the blows on Sunil Gyanoji Bharade. Due to the injuries, Sunil Gyanoji Bharade fell down. The Informant raised alarm. The Appellant fled. The neighbours gathered

and they carried the injured to the Spandan Hospital for the treatment. The injured was not in a position to give statement. The Informant approached the Police Station and lodged the Report in the night and Crime bearing No.139/16 came to be registered against the Appellant.

2.3. The Police prepared the Spot Panchanama, recorded the statement of the witnesses, the dead body of the injured, who succumbed to the injuries on 04.04.2016 at about 08:20 p.m., was sent for Post-mortem, the Appellant came to be arrested on 05.04.2016, the Knife came to be seized at the instance of the Appellant, the Articles seized during the course of investigation, were referred for Chemical Analysis and on completion of the investigation, the Appellant came to be Charge-sheeted.

3. The learned Trial Court framed the Charge against the Appellant vide Exh.17 for the offence punishable under Sections 302, 504, 506 of the I.P.C., to which the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all twelve (12) witnesses and brought on record the relevant documents. After the Prosecution closed its evidence, the statement of the Accused / Appellant came to be recorded under Section 313 (1)(b) of the Cr.P.C. The Appellant denied the Prosecution's case and evidence. Thereafter, the impugned Judgment came to be passed acquitting the Appellant of

the offence punishable under Sections 504 and 506 I.P.C. and convicting, as referred above.

4. Heard Shri. Nilesh S. Ghanekar, learned Advocate for the Appellant and Smt. U. S. Bhosle, APP for the State. Scrutinized the evidence on record.

5. It is submitted by the learned Advocate for the Appellant that the evidence on record is not cogent and creates reasonable doubt about the involvement of the Appellant. It is submitted that though the Prosecution's evidence show that after the assault the deceased suffered bleeding injuries and he fell down, however no blood was found on the spot of incident. Further, it is submitted that the evidence of eye witnesses show that it was not possible for them to witness the incident from the gallery of the first floor of the house, where the Informant was residing. It is submitted that the discovery of the weapon was from the open space. It is submitted that the learned Trial Court has committed an error in convicting the Appellant and the Appeal deserves to be allowed. The learned Advocate for the Appellant has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Ashok Suresh Laxman Babar & Ors, [2021] 3 MhLJ (Cri) 585**, wherein the identity of the Accused was not established and the corroborative piece of evidence was discarded.

6. It is submitted by the learned APP that the Prosecution has examined the eye witnesses to the incident and brought on record the corroborative evidence to prove the Charge. She submitted that the Prosecution has proved the Charge against the Appellant and the Appeal needs to be dismissed.

7. The evidence of PW No.8 - Dr. Prabhakar Balasaheb Tekale show that he was running Multispeciality hospital by name 'Spandan'. On 03.04.2016 the patient by name Sunil Gyanoji Bharade, maternal uncle of PW No.3 Priyanka, was admitted in his hospital for injuries. He was admitted by Sadashiv Dumne at about 08:20 p.m. and he was in a critical condition. His evidence show that on local examination he found the following injuries:

“Stab wound below ambiliens area of size 4 x 4 x 6 cm deep incised wound with irregular margins with active bleeding with intestinal loop's protruding from wound gap.

Incised stab wound on right arm and through post side of humerus at mid arm with interior wound of size 3 x 2 x 2 cm and exit wound of 2 x 2 x 2 cm.

Incised wound on left forearm along medial border of size 4 x 2 x 1 cm.”

His evidence show that the injuries were grievous and caused by sharp weapon. According to him, injuries were sufficient to cause death in ordinary course of nature even if timely treatment was given. His cross-examination show that the admission of the said patient, injuries and treatment is not seriously disputed. Further, his evidence show that

the said patient died in his hospital during treatment on 04.04.2016 at about 08:20 p.m. and he informed the Mondha police and handed over the dead body for Post-mortem examination.

8. The evidence of PW No.6 - Nagsen Manikrao Bharade show that he acted as a panch for the inquest of body of deceased Sunil for panchanama (Exh.51). Merely because he was related to the deceased, his evidence cannot be discarded.

9. The evidence of PW No.9 – Dr. Amol Rustumrao Bhalerao show that he conducted the Post-mortem of deceased Sunil on 04.04.2016 at the Civil Hospital, Parbhani, where he was working as the Medical Officer. His evidence show that he found the following injuries on the body of the deceased:

- “1) Stab wound near umbilicus 8 x 2 x 12 cm in depth
- 2) Stab wound left abdomen 2 x 2 x 5 cm in depth
- 3) C. L. W. right arm 2 x 2 cm”

The evidence of PW No.9 – Dr. Amol show that the cause of death was ‘**hemorrhagic shock due to stab injury**’. Post-mortem Report at Exh.63 is brought on record in the evidence of this witness which corroborate his testimony. This evidence as seen from his cross-examination is not seriously challenged. This shows that the death of Sunil was the result of the injuries suffered by him. This aspect is not seriously disputed.

10. The Prosecution's case primarily rests on testimony of PW No.3 – Priyanka Santosh Sonwane (Informant) and PW No.4 – Pushpa Nivrutti Bhise (mother of the Informant).

11. In her evidence, PW No.3 – Priyanka deposed that the Appellant was her husband and there was divorce between them in the year 2014 and since then she was residing at her mother's house at Rahulnagar, Parbhani. On 03.04.2016 at 08:00 p.m. when she was chatting with her mother (PW No.4 – Pushpa) on the first floor of their house she heard the noise of the iron gate of their house and also heard the voice that some person was calling her on the ground floor. From the first floor, she saw that the Appellant was calling her and uttering abusive words and threatening her to kill. She refused to go down. She told her mother about the same and informed her maternal uncle Sunil Gyanoji Bharade (deceased) over the mobile and her maternal uncle Sunil reached within five (5) to ten (10) minutes on the two wheeler in front of their house. Maternal uncle Sunil gave understanding to the Appellant and told that Priyanka (PW No.3) will not come and asked the Appellant to leave. At that time the Appellant inflicted blows by knife on the stomach and right arm of her maternal uncle Sunil. Blood started oozing from his injuries and he fell down. She raised alarm and the Appellant fled. The neighbours gathered. She and her mother (PW No.4) came down on ground floor. Sadanand

Dumane and Anil Ahire (PW No.1) admitted the injured to the Spandan Hospital at Parbhani for treatment. The injured was admitted in the I.C.U. Ward. She along with her mother (PW No.4) went to Nawa Mondha Police Station, Parbhani and informed about the incident. Police wanted to record statement of the injured, however since he was not in a position to give statement, the Informant's Report was taken and offence was registered. The Report at Exh.23 is brought on record.

11.1. The evidence of PW No.3 – Priyanka further show that after the divorce, the Appellant used to frequently call her and her mother and ask her to come back for cohabitation. Her mother (PW No.4) and deceased maternal uncle were searching the groom for her second marriage. The Appellant came to know about the same and started threatening them and told them that he will not allow her to marry second time. The Informant did not concede the demand of the Appellant as he had performed second marriage. In her further testimony, she deposed that on 04.04.2016 her maternal uncle succumbed to the injuries.

11.2. In cross-examination of PW No.3 - Priyanka the description of the location of their house is brought on record. It has come in her cross-examination that their house which was facing east side and there were residential premises. There were three rooms on the ground floor

and three rooms on the first floor and there was gallery on the first floor. The length and width of the gallery was 10 to 15 feet. Width of gallery and projection of staircase were same in width. The staircase was towards eastern side. The staircase and the gallery were having iron net. The net of gallery and staircase was upto terrace. **In the cross-examination she deposed that one is unable to see the gate by bowing from the gallery.** Her evidence also show that there was no blood on the spot of incident. From this clear evidence of PW No.3 – Priyanka that one was unable to see the gate by bowing from the gallery, her testimony that she witnessed the actual incident is required to be seen with doubt.

12. The evidence of PW No.4 – Pushpa Nivrutti Bhise show that she was the mother of PW No.3 – Priyanka (Informant) and they were residing together after the divorce between the Appellant and PW No.3 - Priyanka. In her evidence she deposed that on 03.04.2016 at 08:00 p.m. when she was chatting with PW No.3 – Priyanka on the first floor of their house, they heard the sound of iron gate of their house and some one was calling PW No.3 – Priyanka to come on ground floor and so PW No.3 - Priyanka went to the gallery to see as to who was calling her and she told her that it was the Appellant who was calling her on the ground floor. PW No.3 – Priyanka called Sunil (deceased) and in five (5) to ten (10) minutes Sunil came and gave understanding to the

Appellant. The Appellant did not listen and assaulted Sunil by knife on stomach and right arm, due to which blood started oozing from injuries and Sunil fell down. She further deposed that the incident was witnessed by her and PW No.3 – Priyanka, they both came down on the ground floor and raised alarm. Their neighbours Sadanand Dumané and Anil Ahire (PW No.1) gathered and injured was taken to the hospital. She deposed of lodging the Report to the police by PW No.3 – Priyanka.

12.1. Further, it has come in the evidence of PW No.4 – Pushpa that after the divorce the Appellant was harassing the Informant (PW No.3 – Priyanka) and calling her for cohabitation and since they refused the demand of the Appellant he was in anger and therefore, he had come to their house and committed the said act. She further deposed that her brother Sunil succumbed to the injuries on 04.04.2016 at 08:00 p.m.

12.2. According to PW No.4 – Pushpa the alleged incident took place in front of their gate on ground floor and at that time she was on the first floor. Though she claims to have witnessed the incident, in the light of the evidence of PW No.3 - Priyanka that like her, her mother (PW No.4 – Pushpa) had also come in the gallery and it was not possible to see the gate from the gallery by bowing, the testimony of

PW No.4 - Pushpa that she witnessed the actual incident is also required to be seen with doubt.

13. The evidence of PW No.1 - Anil Harischandra Ahire show that he was the neighbour of PW No.4 - Pushpa and PW No.3 - Priyanka. On the day of incident i.e. on 03.04.2016 at 08:00 p.m. one Sadanand Dumane called him, so he came out of his house and at that point of time, he saw Sunil Bharade in an injured condition due to blow of knife. Injured Sunil was shouting for help and so, he and Sadabhau moved him to hospital. He deposed that when enquired with the injured about the assault, the injured told him that the son-in-law of PW No.4 - Pushpa assaulted him. His evidence show that the injured was brought in one Tavera Jeep of Anil Kale (PW No.2).

13.1. What is clear from the evidence of PW No.1 - Anil Ahire is that he has not seen the actual incident of assault. He nowhere speaks of presence of PW No.3 - Priyanka and PW No.4 - Pushpa on the spot of incident. It has come in the cross-examination that on the day of the incident the house of PW No.4 - Pushpa was having lock and he was not aware whether PW No.3 - Priyanka and PW No.4 - Pushpa were present in the house. In his cross-examination, he admitted that he does not personally know as to how Sunil Bharade was injured. As regards his evidence about the injured informing him that the son-in-law

(Appellant) of PW No.4 - Pushpa has assaulted him is required to be seen with doubt for the reason that PW No.3 – Priyanka and PW No.4 – Pushpa in their evidence deposed that due to critical condition the injured Sunil was not in a position to speak. Also in his cross-examination it has come on record that after the alleged incident deceased Sunil Bharade never spoke with them.

14. The evidence of PW No.3 - Priynaka and PW No.4 - Pushpa that blood was oozing from the injuries suffered by Sunil and he fell down on the ground, again creates doubt as to whether they had actually witnessed the incident for the reason that the evidence of PW No.12 - Sushilkumar Deshmukh who investigated the crime show that no blood stains were found on the spot of which the spot panchanama was drawn.

15. There is one more aspect to the matter. The evidence of PW No.8 – Dr. Prabhakar Balasaheb Tekale who treated injured Sunil Bharade, when he was admitted to the Spandan Hospital at about 08:00 p.m. show that the history was given by Sadashiv Dumane which was noted down in the case diary. The medical papers of the injured are brought on record in the evidence of this witness. His evidence show that in Exh.59 which was the part and parcel of the medical papers, **the history given was assault by unknown person.** Admittedly, the said

Sadashiv Dumane has not been examined by the Prosecution. If PW No. 1 – Anil Ahire is to be believed, he himself and Sadabhau Dumane took the injured to the hospital and admitted him in the hospital and injured disclosed the identity of the assaulter to them, there was no reason for said Sadashiv Dumane to give the history of assault by unknown person who admitted injured Sunil in the hospital. To add to this, as seen from the evidence of PW No.3 - Priyanka and PW No.4 – Pushpa, they both had gone to the said hospital where injured Sunil was taken.

16. The evidence of PW No.2 - Anil Kale is to the extent that he drove Tavera vehicle in which the injured Sunil was carried to the hospital by PW No.1 - Anil Ahire and Dumne.

17. The Prosecution examined the Security Guard of the Government Milk Dairy, where the Appellant was working, as PW No.7 – Pandit Dagadoba Phuke. His evidence show that on 03.04.2016 i.e. on the day of incident, he was working as the Security Guard in the Government Milk Dairy and his duty hours were from 04:00 p.m. to 08:00 a.m. of next day. In his evidence it has come that on 03.04.2016 between 11:00 p.m. to 12:00 a.m. he heard noise inside the cabin of the milk dairy and so he went there and saw four (4) to five (5) employees of the milk Dairy were awaken and the Appellant was in

a scared condition. He asked them to sleep, but they were not ready to sleep and therefore, he informed their Supervisor Mr. Joshi to remove all the employees outside the cabin and they were asked to sleep outside the cabin. His evidence further show that around 01:30 a.m. when he was taking round, he did not see the Appellant along with other employees.

18. The evidence of PW No.11 – Nishikant Raghunath Joshi who was the Superintendent of the Government Milk Dairy show that after completing the duty on 03.04.2016 the Appellant was not present in the premises of dairy and thereafter he never attended the duty.

18.1. There is nothing in the evidence of PW No.7 - Pandit that the Appellant left the milk dairy and again came back. Considering the time of incident i.e. 08:00 p.m., the duty hours of PW No.7 - Pandit i.e. from 04:00 p.m. to 08:00 a.m. and considering the evidence of PW No.7 – Pandit and PW No.12 – Sushilkumar, reasonable inference which flows that on the day of incident the Appellant had attended his duty.

19. The evidence of PW No.12 - Sushilkumar Deshmukh show that he deputed the Special Squad in search of accused and the Appellant was taken into custody from his residence at Beed. There is panchanama showing that the Appellant was arrested on 05.04.2016.

The evidence of the Investigating Officer and the evidence of PW No.5 - Somnath Mallikarjun Khake (Panch) show that the weapon i.e. Knife was seized at the instance of the Appellant pursuant to the discovery under Section 27 of the Indian Evidence Act and the said discovery is on 07.04.2016 in between 14:00 to 17:43 hours i.e. after two days from his arrest. It is also clear from their evidence that the said weapon was discovered and seized from the bottom of the neem tree in the M.I.D.C. area. It is thus clear from this evidence on record that the said weapon was discovered and seized from the open space. Further, the evidence of PW No.12 – Sushilkumar show that though the accused was arrested on 05.04.2016, his clothes were seized on 07.04.2016 i.e. after two days.

19.1. It has come in the evidence of PW No.12 – Sushilkumar that the Knife and clothes of the Appellant were seized on 07.04.2016 and he referred the said Articles for Chemical Analysis on 11.04.2016, which show that for four days the said Articles were lying with the investigating machinery. The evidence of PW No.12 – Sushilkumar nowhere show that the said articles were kept in a sealed condition after their seizure so as to eliminate the chances of tampering.

20. The further evidence in the nature of Chemical Analysis Report (99/2) which show the blood stains of deceased on the clothes and weapon by itself would not be sufficient to fasten the guilt of the

Appellant in the crime in view of shaky substantive evidence of the Prosecution.

21. The other piece of evidence is that of PW No.10 – Dr. Rupesh Subhashrao Dhamgunde which show that he was the Medical Officer at Civil Hospital, Parbhani and on 05.04.2016 he examined the Appellant and found the following injuries on his person:

- “1) Abrasion 3 x 0.1 cm right iliac region
- 2) abrasion 2 x 0.1 cm right forearm
- 3) abrasion 3 x 0.1 cm left arm
- 4) abrasion 4 x 0.1 cm right arm extended surface”

According to PW No.10 – Dr. Rupesh, the said injuries were simple in nature and caused by hard and pointed object within 48 to 72 hours. In cross-examination, he admits that healing process of the injury is to be observed to ascertain the age of the injury and he has not mentioned the said observation in the M.L.C. certificate. The said injuries will not be sufficient to point out the involvement of the Appellant in the crime when the substantive evidence regarding his involvement in the crime is not firmly established.

22. The above discussed evidence do not conclusively prove that the injuries which resulted in the death of Sunil Gyanoji Bharade, who was the maternal uncle and brother of PW No. 4 – Pushpa and PW No.3 - Priyanka, respectively, were caused only and only by the Appellant. Substantive evidence of the eye witnesses brought on record

by the Prosecution is not cogent and concrete. Considering the nature of evidence on record as discussed above, it is not possible to maintain the conviction of the Appellant as recorded by the learned Trial Court. The Appeal succeeds. Hence, the following order.

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The Judgment and order dated 04.01.2019 passed by the learned Sessions Judge, Parbhani in Sessions Case No.85 of 2016 convicting and sentencing the Appellant namely Santosh Ashroba Sonwane is hereby quashed and set aside.
- (iii) The Appellant namely Santosh Ashroba Sonwane is acquitted of the offence punishable under Section 302 of the I.P.C.
- (iv) The Appellant be released forthwith, if not required in any other crime.
- (v) Muddemal be dealt with in accordance with law.
- (vi) Record & Proceedings be sent back to the Trial Court.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP