



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

CRIMINAL APPEAL NO.457 OF 2019

Vinod s/o Bhimrao Wathore,
Age 23 years, Occu. Labour,
R/o Shegaon (Khodke),
Tq. Sengaon, District Hingoli

... APPELLANT

VERSUS

The State of Maharashtra
Through : Police Officer
Goregaon Police Station,
Tq. Sengaon, District Hingoli
(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. N.S. Ghanekar, Advocate holding for
Mr. S.N. Patil, Advocate for appellant
Mrs. U.S. Bhosle, A.P.P. for respondent
.....

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

DATE : 19th MARCH, 2024

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

The challenge in this appeal is to the judgment of conviction and order of sentence, dated 26/3/2019, passed by learned Additional Sessions Judge, Hingoli in Sessions Trial No.20/2016. Vide impugned judgment, the appellant has been

convicted for committing murder of his nephew and sentenced to suffer imprisonment for life and to pay fine of Rs.5000/- with default stipulation. He is, therefore, in this appeal before us.

2. Facts giving rise to the present appeal are as follows:-

The First Information Report (F.I.R.) was lodged by Nirmalabai (P.W.6), mother of Pramod (deceased) on 24/12/2015. It is her case that, her husband Deepak and the appellant (her brother-in-law) are real brothers. Both of them were addicted to alcohol. There used to be frequent quarrel between both of them. P.W.6 Nirmalabai, her husband Deepak, co-wife, the appellant, his sister and her son Aditya would reside together at village Shegaon (Khodke), Taluka Sengaon, District Hingoli.

3. The informant along with her husband, co-wife and some other family members had been away from their residence for agricultural work. Her husband and co-wife returned home early for cooking. Dnyaneshwar (P.W.3), one of the villager, was on his way to village Risod on his motorbike. It was 3.30 p.m. of 23/12/2015. He saw the appellant beating up

his nephews namely Pramod (deceased) and Aditya (son of appellant's sister). He, therefore, requested the appellant not to beat them up. Dnyaneshwar returned from Risod by 7.30 p.m. He saw a crowd gathered at the house of the appellant. He learnt the appellant to have committed murder of Pramod. He, therefore, related the same to the informant. The informant, in turn, lodged the F.I.R.

4. A crime vide C.R. No.136/2015 came to be registered for offence punishable under Section 302 of the Indian Penal Code. The scene of offence panchanama was drawn. Pramod was lying dead on a cot in his house. He had suffered multiple injuries. Autopsy was conducted. His mortal remains was subjected to post mortem examination. The appellant was arrested. Clothes on his person were seized. Pursuant to the disclosure statement made by the appellant, a knife came to be seized. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing a charge sheet before the learned Judicial Magistrate, First Class, Sengaon. The learned Judicial Magistrate, First Class, Sengaon committed the case to the Court of Sessions at Hingoli. The case, in turn, came to be sent

to the Court of Sessions at Hingoli (Trial Court) for trial in accordance with law.

5. The Trial Court framed the charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication.

6. To establish the charge, the prosecution examined 11 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced as stated above.

7. Heard. Learned counsel for the appellant would submit that, there is no shred of material to indicate the appellant to have committed murder of his nephew Pramod. P.W.3 Dnyaneshwar was on inimical terms with the appellant. P.W.3 Dnyaneshwar has been convicted for offence of rape. The appellant was one of the witnesses in the said case. Even we accept evidence of P.W.3 Dnyaneshwar as it is, he claims to have seen the appellant beat up Pramod and Aditya. Panch witnesses to the disclosure statement, pursuant to which knife came to be seized, did not stand by the prosecution. The

investigating officer simply stated to have recovered the knife at the instance of the appellant. Even Aditya (P.W.7), who was allegedly beaten up by the appellant, testified that, Pramod (deceased) fell from staircase and succumbed to the injuries suffered thereby. Learned counsel, therefore, urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, submit that, evidence of P.W.3 Dnyaneshwar is that of an independent witness. He saw the appellant beat up Pramod (deceased). The appellant was alcoholic. There used to be quarrel between him and the father of the deceased. Neither at the house of the appellant nor in the nearby there is a staircase to presume the deceased to have fallen therefrom. The evidence of Medical Officer suggests the deceased to have suffered multiple injuries. The scene of offence panchanama indicate a blood stained brickbat was recovered. As such, it is the appellant and none else who has committed murder of Pramod. The learned A.P.P. reiterated the reasons given by the Trial Court in support of the impugned judgment and order. She ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused

the evidence on record and the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

10. It was a family of more than 6 adult persons residing together. The family comprised of appellant and his brother Deepak. Deepak has two wives. The informant Nirmalabai is one of the wives of Deepak. Pramod was son of Deepak and Nirmalabai. The parents of the appellant and Deepak and their sister Kalpana with her son Aditya were residing together.

11. The F.I.R. (Exh.25) was lodged by the mother of the deceased. It is in her evidence that, on the given day, i.e. on 23/12/2015, she along with her family members had been to the field for agricultural operations. Her husband Deepak and her co-wife Ganga returned home somewhat early. She returned home by 6.00 p.m. On the previous day, there was a quarrel between appellant and Deepak. Both of them were addicted to alcohol. It is in her evidence that, P.W.3 Dnyaneshwar had related her to have seen the appellant beating up Pramod and Aditya while he was on his way to village Risod on his motorbike by 3.30 p.m. While the informant returned home from the field, she had seen her son Pramod (deceased) to have suffered multiple injuries. According to her, she was

informed by P.W.3 Dnyaneshwar to have seen the appellant beating up Pramod.

12. Close reading of evidence of P.W.3 Dnyaneshwar indicates that he did not have talk with Nirmalabai on the given day. He was duly confronted with the police statement, which is silent to record that he had related Nirmalabai to have had seen the appellant beating up her son Pramod. As such, the F.I.R. has been lodged based on hear-say. Nirmalabai's substantive evidence is also inadmissible, being hear-say.

13. True, P.W.11 Dr. Naresh conducted post mortem examination on mortal remains of Pramod on 24/12/2015. The post mortem report is at Exh.59. He noticed following injuries on the person of Pramod.

- i) An incised wound over left temporal region of the size 5 x 1.5 x 0.5 cm. and its edges were sharp.
- ii) An incised wound on left side of face just below the left eye and it was horizontal and was of the size 5 x 2 x 1 cm. it had sharp margins.
- iii) an incised would of the size 2 x 2 x 0.4 cm. just lateral to nose on left side having sharp margins.

- iv) an incised wound of the size 1 x 1 x 0.5 cm. just lateral to lateral canthus of left eye it was horizontal and was having sharp edges.
- v) There was bleeding through left and right ears.
- vi) Contusion 10 x 8 cm. on left temporal region.
- vii) Contusion 2 x 0.3 cm. over forehead glabella region downward and medially running.
- viii) Contusion over left side cheek region of the size 10 x 10 cm.
- ix) Contusion over face right side 3 x 3 cm.

In his opinion, the deceased died of intracerebral haemorrhage and death occurred within or around 24 hours.

14. The question is, whether the appellant is the author of committing murder of Pramod. P.W.1 Tulshiram is a witness to the scene of offence panchanama (Exh.12). He did not stand by the prosecution. The scene of offence panchanama has been proved by the evidence of investigating officer Mohan (P.W.10). The same indicates to be the house of the appellant occupied by his parents, his other brothers, their wives and children. The deceased Pramod was seen lying on the cot.

15. P.W.2 Rajesh is another panch witness to the seizure of brick and quilt from the house of the appellant. The panchanamas in that regard are at Exh.16. This witness too did not stand by the prosecution. Even we accept their evidence as it is, what can be said to have been proved is that, Pramod was seen lying injured at his residence and there was a brick below the bed. A blanket, stained with blood was seized from the house.

16. P.W.4 Nandu was said to be another witness to have had seen the appellant beat up the deceased. He, however, did not stand by the prosecution. He disowned to have seen the appellant beat up Pramod in his house. According to this witness, he did not know anything about the incident. His evidence indicates that, he saw Aditya playing alone at the flag post in the village. The evidence of P.W.4 Nandu too do not further the case of the prosecution.

17. P.W.5 Aditya was 7 years of age while he gave his evidence in relation to the incident that took place about 2 years before. It means, he was just 5 years of age at the relevant time. According to the prosecution, both, Aditya and Pramod (deceased) were playing together just outside of their

residence. P.W. Dnyaneshwar saw appellant beating up both Aditya and Pramod. Aditya, however, in his substantive evidence, did not attribute the appellant to have either assaulted him or Pramod. It is in his evidence that Pramod fell from a staircase and suffered injuries thereby. The child witness was subjected to a cross-examination by learned A.P.P. Nothing, however, could be brought on record which could help the prosecution.

18. P.W.3 Dnyaneshwar is a chance witness. He was a villager. It is in his evidence that, on the given day, he was proceeding to village Risod on his motorbike. It was 3.30 p.m. He saw appellant beating up Pramod (deceased) and Aditya, who were playing just outside their residence. It is further in his evidence that, he asked appellant not to beat them up. He then proceeded ahead. It is further in his evidence that, while he returned from village Risod, it was about 7.00 p.m., he saw a crowd at the house of the appellant. He learnt Pramod to have passed away. He claimed to have seen injuries on the person of Pramod.

19. In his cross-examination, P.W.3 Dnyaneshwar testified to have ignorance about the frequent quarrel between

appellant and Vinod (father of deceased Pramod). He admitted to have been convicted for an offence of rape. According to him, the appeal preferred by him against conviction is subjudice. He denied the appellant to be one of the witness in the said case. His evidence further indicates that, while he was at the village, police visited. They did not record his statement. It is further in his evidence that, he did not witness appellant assaulting Pramod on his lips.

20. P.W.7 Ambadas and P.W.8 Udhav were the witnesses to alleged disclosure statement made by the appellant, pursuant to which a knife came to be recovered. Both these witnesses did not stand by the prosecution.

21. P.W.9 Gajanan too did not support the prosecution. He is a witness to panchanama relating to seizure of clothes of the appellant. Then what remains is the evidence of the investigating officer Mohan (P.W.10). His evidence indicates that he recovered knife pursuant to the disclosure statement made by the appellant. The investigating officer, however, did not state in so many words what was the disclosure statement made by the appellant and from which place the knife came to be recovered/ seized. The evidence of the said witness would,

therefore, not be admissible under Section 27 of the Evidence Act. More so, when there is no C.A. report to indicate the seized knife to have borne blood of the blood group of the deceased Pramod.

22. As such, it is a case solely based on the evidence of P.W.3 Dnyaneshwar. He is a chance witness. He admittedly did not see the appellant committing murder of Pramod. Aditya, who was in the company of Pramod, did not support Dnyaneshwar's evidence. According to the prosecution, the incident took place inside the house. P.W.3 Dnyaneshwar claims to have seen the appellant beat up Pramod in the front-yard of the house. The evidence of P.W.3 Dnyaneshwar remained uncorroborated. He even did not state the appellant to have been seen armed with knife like weapon or a knife. Aditya, who was also allegedly assaulted by the appellant along with Pramod, did not support the prosecution case. We are, therefore, not inclined to rely on the evidence of P.W.3 Dnyaneshwar to sustain the conviction of the appellant for the offence of murder.

23. In the result, interference with the impugned order of conviction and consequential sentence is warranted. The

appeal, therefore, succeeds. Hence the order :

ORDER

(i) The Criminal Appeal is allowed.

(ii) The order of conviction and sentence, dated 26/3/2019, passed by learned Additional Sessions Judge, Hingoli in Sessions Trial No.20/2016 is hereby set aside. The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code. The appellant be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.

(iii) The Criminal Appeal stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-