



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

CRIMINAL APPEAL NO.995 OF 2019

Dnyanoba s/o. Yashwant Ankade,
Age : 33 years, Occ. Convict No.C-11442,
Through Superintendent of Central Prison,
Nashik Road, Nashik

..Appellant

Vs.

The State of Maharashtra

..Respondent

Ms.Nima R. Suryawanshi, Advocate for appellant
Mr.A.D.Wange, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : JULY 22, 2024**

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

The challenge in this appeal is to the judgment and order of conviction and consequential sentence dated 07.11.2017, passed by learned Addl. Sessions Judge, Kandhar, Dist. Nanded, in Sessions Case No.44 of 2014. Vide the impugned order, the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- with default stipulation.

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

The appellant and Prabhakar (deceased) were real brothers. Seventeen Gunthas land was standing in the name of their mother. All the three would reside separately from each other. On 04.09.2014 by 07.30 p.m., quarrel ensued between the appellant and his wife on one hand and Prabhakar (deceased) on the other, at Shivaji Chowk, Daithana, Tq.Kandhar. The appellant assaulted on the ribs of Prabhakar 2-3 knife blows. PW 1 - Meerabai, widow of deceased Prabhakar, had rushed to the crime scene on hearing quarrel between the two. Her daughter, Bhagyashri (PW 6), had also accompanied her. Meerabai and others rushed Prabhakar to the Primary Health Centre, Kandhar. Unfortunately, Prabhakar passed away. She, therefore, lodged the First Information Report (FIR) (Exh.16) with Kandhar Police Station, alleging the appellant and his wife to have killed Prabhakar in furtherance of their common intention.

3. Inquest and post-mortem examination on the mortal remains of deceased Prabhakar were held. The crime scene panchnama (Exh.37.) was drawn. The appellant was arrested. His wife - Ranjana (since acquitted) too was arrested. The clothes on

the person of the appellant and that of the deceased at the material time were seized. The appellant made disclosure statement pursuant to which, knife came to be seized under panchnama (Exh.33). Statements of the persons acquainted with the facts and circumstances of the case were recorded. All the seized articles were sent to the Forensic Science Laboratory, Aurangabad, for analysis and report. On completion of the investigation, charge sheet was filed against the appellant and his wife.

4. The case was assigned to learned Addl. Sessions Judge, Kandhar (trial court) for trial in accordance with law. The trial court framed Charge (Exh.10). The appellant and his wife Ranjana pleaded not guilty. Their defence was of false implication. To bring home the Charge, the prosecution examined eight witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case, acquitted Ranjana. The appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced, as stated above.

5. Learned counsel appointed to represent the appellant would submit that PW 1 - Meerabai was widow of deceased Prabhakar. She was interested witness. The incident took place at a

public place. No independent witness was examined. There is great variance between the evidence of PW 1 - Meerabai and her daughter, PW 6 - Bhagyashri. Ranjana, wife of the appellant, was acquitted on the same evidence. PW 1 - Meerabai admitted that Ranjana had delivered a child just 10 days before the alleged incident. Same rules out Ranjana's presence at the crime scene. The mother of appellant and deceased too was not examined. Panch witness to the seizure of clothes and the alleged disclosure statement was from Kandhar. The distance between Daithana and Kandhar was not less than 45 kms. The parental house of PW 1 - Meerabai was at Kandhar. As such, PW 7 (panch witness) therefore, was very much interested in the outcome of the case. No services of local person were availed. Learned counsel took us through the impugned judgment and particularly, paragraph nos.13 to 15 thereof, to indicate that the evidence of PW 6 - Bhagyashri was not relied on. The trial court found the evidence of PW 1 - Meerabai and PW 6 - Bhagyashri to be little corroborative with each other. Learned counsel also brought to our notice the admission given by PW 1 - Meerabai that when she rushed to the crime-scene, she saw her husband lying on concrete slab of roadside gutter. According to learned counsel, there was no eye-witness to the incident. She would further submit that the trial court, based on such evidence,

ought to have acquitted the appellant as well, since on the same evidence, his wife (Ranjana) was acquitted. She, therefore, urged for allowing of the appeal.

6. Learned APP would, on the other hand, submit it to be an open and shut case. PW 2 – Gangaram was nephew of both appellant and deceased. His evidence indicates that quarrel ensued between the two. He identified the appellant by his voice. It was he, who rushed the appellant to the hospital in his auto-rickshaw. PW 1 – Meerabai's evidence cannot be brushed aside. The appellant made disclosure statement, pursuant to which the knife used in commission of the crime was recovered on his arrest. The blood stained clothes on his person at the material time were seized. The C.A. reports reinforce the prosecution case. He, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

8. The appellant and Prabhakar (deceased) were real brothers. Seventeen Gunthas of land was standing in the name of their mother. Quarrel was said to have ensued between the two,

preceding the incident, at Shivaji Chowk, Daithana. The evidence on record indicates that the house of the deceased was in the nearby of the crime-scene. On hearing quarrel, PW 1 - Meerabai rushed to the crime-scene.

9. It is not in dispute that Prabhakar was seen lying on the concrete slab at the roadside at Shivaji Chowk. PW 3 - Chandrakant, Medical Officer, conducted post mortem. It is in his evidence that he noticed following injuries:-

“01. Stab injury present over left lateral chest upper part of 2nd intercostal space situated .5 cm behind anterior axillary line, obliquely placed with lower angle posteriorly of size 4x2 cm. x cavity deep margins clean cut reddish with both angles acute. Stab injuries directed medially, upwards and backwards. Stab pierces through skin subcutaneous tissues, intercostal muscles, parietal pleura of left lung, pierces through upper lobe of left lung through lateral surface and coming out to superior surface, then pierces through parietal pleura of left lung apex, then subclavian vessels. Entire wound track infiltrated with blood and about 1.5 litre of liquid and clotted blood in left chest cavity.

2. Stab injury present over left chest 9th intercostal region of sub-costal margins vertical with upper angle acute of size 2.9 cm x 1.2 cm x cavity deep. Situated in mid clavicular line, margins clean cut reddish, it is directed backwards and medially. It pierces through skin-subcutaneous tissue muscles of chest wall anterior-intercostal muscle-parietal pleura of left lung, left dome of diaphragm entering into abdominal cavity-pierces through fundus of stomach and entering into stomach cavity, entire wound track is infiltrated with blood.

3. Contusion on left shoulder superiorly of size 2cm x 1 cm oblique and reddish.
 4. Contusion on right shoulder posteriorly of size .5 x .3 cm. oblique and reddish.
 5. Abrasion on right side of back lower and mid area of size 6.8 cm. x 1.2 cm. oblique and reddish.
- All these injuries are ante-mortem.

In his opinion, the deceased died of stab injury. Although it was suggested by the defence that the deceased died due to fall on the building material, like iron-rod etc., the crime-scene panchnama rules out the same. The Medical Officer (PW 3) being an independent witness has no reason to opine the deceased to have died of stab injury.

10. The question is, whether the appellant is author of the crime. PW 1 - Meerabai, widow of deceased Prabhakar, testified that there was dispute between her husband and the appellant over agricultural land. At the material time, she was present in her house. She heard noise of the quarrel between her husband and the appellant, emanating from Shivaji Chowk. She, therefore, rushed to the place along with her daughter PW 6 - Bhagyashri. She claimed to have witnessed the appellant to have given knife blow to her husband - Prabhakar. She started shouting. Persons from the nearby, gathered. She rushed her husband to the Public Health

Centre, Kandhar, for treatment. Then, she went to the police station. It was midnight. She lodged the FIR (Exh.16). During her cross-examination, she testified that it was 07.30 p.m., when the incident took place. Darkness had descended. She saw her husband lying on the portion of concrete road at the spot. On either side of the road, there were outlets for passing drainage water. She gave vital admission that when she reached along with her daughter at the crime-scene, she noticed her husband lying on the road. She, however, denied that the contents in the FIR were narrated by her brother and she simply signed below the same.

11. PW 6 - Bhagyashri was daughter of deceased - Prabhakar and PW 1 - Meerabai. She was 16 years of age at the relevant time. It is in her evidence that she had accompanied her mother to Shivaji Chowk on hearing quarrel between her father and the appellant. It is in her evidence that the appellant asked his wife (since acquitted) to hand over him a stick to assault the deceased. She, however, gave him knife. The appellant then gave 2-3 blows thereof.

12. True, there is great variance between the evidence of PW 1 - Meerabai and PW 6 - Bhagyashri. Admittedly, the wife of the

appellant had delivered a child just ten days before the incident. It was suggested to PW 1 – Meerabai that she had been to her parental house for delivery. Although she denied the same, on appreciation of the evidence in the case, the trial court acquitted the appellant's wife. Neither the State nor the legal representative of the deceased – Prabhakar preferred appeal against her acquittal.

13. During cross-examination of PW 1 – Meerabai, it was suggested to her as under:-

“..... It is not true to say that after making assault by knife on my husband accused left the knife on the spot.....”

The aforesaid suggestion goes a long way to infer that the defence Advocate admitted the appellant to have assaulted the deceased and then left the knife at the crime-scene itself. Such suggestion has to be presumed to have given on instructions by the appellant.

14. The evidence of PW 1 – Meerabai appears to be dicey since, in her examination-in-chief, she claimed to have witnessed the incident; while, in the cross-examination, she admitted to have reached the crime-scene and saw her husband lying on the road.

PW 2 – Gangaram was, admittedly, nephew of both appellant and deceased. It is in his evidence that his grocery shop was at Shivaji Chowk. There was dispute between the appellant and the deceased. He heard quarrel between both of them and therefore, rushed to the crime-scene. He saw that the deceased to have blood stains on his person. The deceased was lying on the ground. He, therefore, rushed him to P.H.C., Kandhar, in his auto-rickshaw. In his cross-examination, nothing useful for the defence could be elicited. He being nephew of both appellant and deceased, his evidence assumes greater importance, although no independent witness was examined. He identified the assailant (appellant) based on his voice.

15. PW 5 – Namdeo is witness to the inquest panchnama (Exh.36) and spot panchnama (Exh.37). He did not stand by the prosecution. PW 4 – Vidyadhar, police constable, had carried the seized articles, to the F.S.L., Aurangabad, on 10.09.2014.

16. PW 7 - Jagannath was witness to the various panchnamas. The first panchnama (Exh.31) drawn on 05.09.2014, pertains to seizure of the blood stained clothes of the appellant. It is in his evidence that on the next day, i.e. on 06.09.2014 by 10.00 a.m., the appellant made disclosure statement in his presence. The

appellant stated that the weapon used by him in commission of the crime was concealed at one place and he would take out the same. The disclosure statement was recorded vide (Exh.32). He then took the police and the panchas to a place at *Guttewadi Pati* and then, to one field. He removed soil and took out a big knife. It was seized under panchnama (Exh.33). This witness is also panch to the seizure of the blood stained clothes on the person of the deceased. Panchnama to that effect is at Exh.34.

In his cross-examination, he testified to have been resident of Kandhar. PW 1 – Meerabai's parental house is at Kandhar. Learned counsel for the appellant would, therefore, submit that he was very much interested witness. Admittedly, the police station was at Kandhar. It was, therefore, but natural for the Investigating Officer to avail services of a person who was resident of Kandhar. There is nothing further to indicate PW 7 – Jagannath to have any interest in the outcome of the prosecution.

17. PW 8 – Angad did investigation of the crime. His evidence indicates that he drew crime-scene panchnama (Exh.37) and inquest panchnama (Exh.36) as well. He seized the clothes of both appellant and deceased. His evidence further indicates that pursuant to the disclosure statement made by the appellant, the

knife was seized. He sent the seized articles to the F.S.L., Aurangabad, through police constable. The C.A. reports (Exh.38 to 41) indicate the blood group of the deceased was "AB". Same was noticed on the seized dagger (knife). The clothes on the person of the appellant too were stained with blood. The CA reports reinforce the prosecution case.

18. Appreciation of the aforesaid evidence indicates that the quarrel between the appellant and his brother (deceased Prabhakar) took place at Shivaji Chowk on 04.09.2014 by 07.30 p.m. It was suggested on behalf of the appellant that after having given knife blow by him, the knife was left at the crime-scene itself. PW 2 - Gangaram, nephew of both appellant and the deceased, had his grocery shop at Shivaji Chowk. He heard quarrel between the appellant and deceased. He identified the appellant by his voice. He, therefore, rushed to the crime-scene. He rushed Prabhakar to the P.H.C., Kandhar, in his auto-rickshaw. The post mortem report indicates that there were 2-3 stab injuries. The same indicates that the appellant had intended to eliminate his brother (Prabhakar). Non-filing of appeal against acquittal of wife of the appellant is insignificant in the facts and circumstances of the case, since we do not propose to conclude PW 1 - Meerabai and her daughter PW 6 -

Bhagyashri to have witnessed the incident. PW 1 – Meerabai rushed the crime-scene on hearing noise and then, she accompanied her husband to the P.H.C., Kandhar. The FIR was lodged within hours of the incident.

19. We found the trial court to have not committed any error in convicting the appellant. We too find the evidence on record proved the appellant to have committed murder of his brother Prabhakar. We, therefore, do not see any reason to interfere with the order of conviction and consequential sentence.

20. In the result, the appeal fails. The same is dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP