



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

CRIMINAL APPEAL NO.933 OF 2018

Baliram Tukaram Bhosale,
Age : 41 years, occu : Convict No. 9731,
Through Superintendent of Central Prison,
Nashik Road, Nashik .. Appellant

Versus

The State of Maharashtra .. Respondent

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Advocate for the Appellant : Shri Mukul Kulkarni (*Appointed*)

APP for the Respondent/State : Mrs. U. S. Bhosle

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

Dated : January 05, 2024

JUDGEMENT (Per Neeraj P. Dhote, J.) :-

1. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment and order dated 17.12.2013 passed by the learned Additional Sessions Judge, Latur in Sessions Case No. 70 of 2012 convicting the Appellant for the offences punishable under Sections 302 and 506 of the Indian Penal Code (hereinafter, in short 'I.P.C.') and sentencing him to undergo Imprisonment for Life and to pay fine of Rs.1,000/-, in default to pay the fine to undergo further Rigorous Imprisonment for six (6) months and to undergo Rigorous Imprisonment for two

(2) years, respectively, arising out of Crime No.32/2012 registered with Bhada Police Station, Dist. Latur.

2. The prosecution's case as revealed from the Police Report is as under :

2.1 The informant (PW No.1) Vitthal Tukaram Bhosale is the resident of Gulkhedawadi, Tal. Ausa, Dist. Latur and resides with his wife, two daughters and one son. His parents and two brothers resides separately with their respective families near his house. The Appellant is his younger brother. He is of quarrelsome nature and used to threat them and their father (Tukaram) with dire consequences. The Appellant used to carry Sickle, which is used to cut the sugarcane.

2.2. In the morning of 18.04.2012 when the informant came home from the agricultural field at around 07:00 a.m., his father was removing warm water for bathing and his mother was standing near his father. The Appellant came out of his house with the Sickle in his hand and gave blow on the neck of his father, due to which his father fell down facing towards the sky and again the Appellant gave blow with the said weapon on his chest. After the assault, the Appellant threatened them and went back to his house and closed the door

from inside. The informant and his brother went near to their father and found him dead.

3. The incident was reported to the police and the Crime came to be registered against the Appellant. During the investigation the Investigating Officer conducted the Inquest, prepared the Spot Panchanama, sent the body for Post-Mortem, recorded the statement of witnesses, seized the Muddemal Articles and referred them for chemical analysis, seized the weapon used in the crime at the instance of the Appellant and after completion of Investigation submitted the Charge-Sheet. The learned Trial Court framed the Charge against the Appellant for the offences punishable under Sections 302 and 506 of the I.P.C. at Exh.8, to which the Appellant pleaded not guilty and claimed to be tried. In order to prove the Charge, the prosecution examined in all Nine (09) witnesses and brought on record certain documents. After the prosecution closed it's evidence, the Statement of the Appellant came to be recorded by the learned Trial Court under Section 313 (1)(b) of the Cr.P.C. The Appellant denied the Prosecutions case. Thereafter, by the impugned judgment and order, the Appellant came to be convicted, as referred in the paragraph no.1 above.

4. Heard the learned advocate for the Appellant and the learned APP for the State. Perused the evidence on record.

4A. It is submitted by the learned advocate for the Appellant that the witnesses are the interested witnesses and no independent witness is examined by the prosecution. He further submitted that recovery of weapon is not satisfactorily proved by the prosecution. He further submitted that the learned Trial Court has erred in recording the conviction and sentence and the Appeal may be allowed.

4B. Per contra, it is submitted by the learned APP that the prosecution has proved the incident through the testimony of the eye witnesses. He further submitted that considering the spot of incident there can be no independent witness. He submitted that the learned Trial Court has rightly appreciated the evidence available on record and convicted the Appellant.

5. Following is the admitted position:-

- (i) The Appellant is the son of deceased Tukaram
- (ii) The Appellant, deceased and the Appellant's two brothers i.e. Dhanraj and Vitthal (PW No.1) reside on one and the same plot in different premises.

6. P.W. No.1 - Vitthal Tukaram Bhosle i.e informant, PW

No.5 - Draupadi Vithal Bhosale, PW No.6 - Shalubai Balasaheb Sirsale and PW No.8 - Babruwan Dasa Yadav are examined as the eye witnesses to the incident.

7. PW No.6 - Shalubai in her cross-examination deposed that she went on the spot ten minutes after hearing the shouts and she had only seen Tukaram lying dead. Thus, her testimony in respect of witnessing the actual incident is required to be seen with doubt.

8. The testimony of PW No.8 - Babruwan show that police had not recorded his statement and only had taken his signature. There is no cross-examination of the Investigating Officer to elicit the reason for not recording the statement of PW No.8 - Babruwan. It is true that merely on the basis that the statement of the witness was not recorded by the police, his testimony cannot be thrown out on that ground; however, such testimony is to be considered with great caution.

9. The testimony of PW No.5 - Draupadi Vithal Bhosale show that she was the granddaughter of deceased Tukaram. The Appellant is her paternal uncle. At the time of the incident, her

family, family of the paternal uncle's and deceased Tukaram were residing in separate houses on one plot. On 18.04.2012 at around 07:00 a.m. she was cleaning utensils in the courtyard of their house and when deceased Tukaram was taking out hot water from the Vessel which was near her and the wife of deceased Tukaram was standing behind Tukaram, the Appellant came from his house and gave a blow of Sickle on the neck of deceased Tukaram, due to which Tukaram fell on the ground facing sky and thereafter the Appellant gave blow of Sickle on the chest of Tukaram. She raised alarm and thereafter her father - PW No.1 and her uncle Dhanraj came there. The Appellant threatened them to kill when they came near him. The neighbours also gathered. The Appellant along with his wife went inside his house and closed the door from inside. Tukaram succumbed to the injuries. Prior to the incident, the Appellant was not talking much and used to roam with the Sickle.

10. PW No.5 - Draupadi though cross-examined, nothing has come on record to disbelieve her. On the contrary, it is seen that she was standing at the distance of 4-5 feet from the place, where the incident took place. The spot of incident being the plot where she was residing, her presence is natural. The incident occurred at around 07:00 a.m. which goes to show that there was sufficient light

to clearly witness the incident. Nothing has come in her evidence to show that she had any reason to depose falsely against the Appellant. Her testimony inspires confidence and clearly establishes that the Appellant gave blows on the person of Tukaram with the Sickle. Her testimony is thus accepted.

11. PW No.1 - Vitthal Tukaram Bhosale is the son of deceased and father of PW No.5 - Draupadi and brother of the Appellant. In his evidence, he deposed of witnessing the whole incident. However, his testimony show that at the time of the incident i.e. at 07:00 a.m. he was in his house, his wife had gone to take bath and his daughter - PW No.5 Draupadi was cleaning the utensils and Draupadi shouted and they all rushed to the spot. It can only be gathered from the testimony of PW No.1 - Vitthal that he reached the spot due to alarm raised by PW No.5 - Draupadi and seen his father lying in an injured condition and the Appellant was having Sickle in his hand and by giving threat, the Appellant went inside his room and closed the door from inside. This gets fortified from the testimony of PW No.5 - Draupadi that after giving two blows i.e one on the neck and another on the chest of deceased, she raised alarm and thereafter PW No.1 - Vitthal and her uncle Dhanraj came there. From the cross-examination of PW No.1 – Vitthal, it is seen that

immediately before the incident he had returned from the agricultural field. The presence of PW No.1 – Vitthal on the spot after hearing the alarm raised by PW No.5 – Draupadi is quite natural as their residence was on the same plot where the incident had taken place. He reported the incident to the police and the FIR at Exh.16 came to be recorded. Nothing has come in his cross-examination to show that the FIR do not corroborate his testimony. The cross-examination has not affected his testimony.

12. The evidence of PW No.8 – Babruwan, the one whose Statement was not recorded by the police, show that he was the neighbour of deceased Tukaram. He deposed that on the day of incident at around 07:00 a.m. when he was in his house, he heard the shouts of PW No.5 – Draupadi and he went to the house of the deceased and saw PW No.1 – Vitthal and Dhanraj (brother of Vitthal) standing in the courtyard of their house and saw the Appellant with the Sickle. Though in his evidence this witness deposed that Tukaram was lying in the courtyard facing upward and after he reached the Appellant gave blow of Sickle on the chest of the Tukaram, this part of his testimony is required to be seen with doubt for the reason that PW No.1 – Vitthal and his brother reached the spot only after hearing the alarm / shouts of PW No.5 – Draupadi by

which time the Appellant had given the blows on the neck and chest of deceased. Thus, the testimony of PW No.8 – Babruwan is accepted only to the extent that after hearing the shouts from PW No.5 – Draupadi he reached on the spot and he found Tukaram lying dead and the accused was present with the Sickie and he went inside his house and locked the door from inside. Being the neighbour, his presence is also natural.

13. From the above discussion, it is clear that the prosecution proved through the evidence of PW No.5 - Draupadi that the Appellant assaulted deceased Tukaram by use of Sickie and PW No.1 - Vitthal and PW No.8 – Babruwan had seen the Appellant with the Sickie and deceased Tukaram lying on the ground, immediately after the assault. The presence of all these witnesses on the spot of incident is natural. There is immediate reporting of the incident to the police. There is nothing to show that they had any intention or motive to depose falsely against the Appellant. The spot of incident being the private plot where the witnesses, deceased and the Appellant were residing, there is no possibility of the presence of any outsider so as to be an independent witness for the actual incident.

14. The testimony of PW No.4 – Bibhishan Tukaram Yadav show that he was the panch for the Inquest and Spot Panchanama which are at Exh.24 and 25, respectively. His testimony show that deceased Tukaram was lying dead at the Spot and his neck was slit and there was injury on his chest. The testimony of PW No.9 – Shaikh Usman Chand, the Investigating Officer corroborate the evidence of this panch witness in respect of preparing the inquest and the spot panchanamas. Both the said documents corroborate the testimony of this panch witness and the PW No.9 – Investigating Officer.

15. There is medical evidence of PW No.7 – Dr. Satish Shivajirao Bawane, which show that he was the Medical Officer at the Primary Health Center and on 18.04.2012 he conducted the post-mortem on deceased Tukaram and found the following injuries:

“1) Cut injury over chest just over sternum. It was lying obliquely. It was caused due to sharp object. The size of injury was 10 cm x 4 cm.

2) Cut injury over neck right side. It was extending below chin up to base of neck. The size of injury was 13 cm (length) x 6 cm (width) x 4 cm (deep). It was lacerated injury. Half portion of the neck was cut by the injury.”

Both the injuries were ante-mortem and the probable cause of death was *‘cardio respiratory arrest due to hemorrhage due to cut injury over the neck and chest’*. He deposed that both the injuries were

sufficient in the ordinary course of nature to cause death. In his testimony, it has come that the injury no.2 was possible by sharp object like Article - 'A' Sickle. The Post-mortem Report at Exh.32 is brought on record and perusal of the same show that it corroborates the testimony of this witness. His cross-examination show that the injuries were caused within 24 hours of sending the body to him. His evidence show that the post-mortem was conducted on the same day when the incident had taken place. In his cross-examination, it has come that the injury on the neck of the deceased can be caused, if one falls on the tin sheet. This possibility is completely ruled out by the trustworthy testimony of the actual eye witness i.e. PW No.5 – Draupadi. Through the testimony of PW No.7 – Dr. Satish, it is established by the prosecution that deceased Tukaram died due to the injuries on his neck and chest.

16. The testimony of PW No.4 - Bibhishan also show that the police had seized blood stained clothes of the Appellant under the panchanama at Exh.26. It finds corroboration from the evidence of PW No.9 – Shaikh Chand, Investigating Officer. The panchanama at Exh. 26 corroborate the testimony of these witnesses regarding seizure of blood stained clothes of the Appellant. The evidence of PW No.9 – Shaikh Chand, Investigating Officer show that he arrested

the Appellant.

17. Through the evidence of PW No.2 – Madhukar, the prosecution had brought on record the seizure of Article 'A' Sickle at the instance of Appellant under the Memorandum Panchanama under Section 27 of the Indian Evidence Act. His testimony show that while the Appellant was in the police station, he gave the statement to show the place where the Sickle was hidden and memorandum at Exh.18 came to be prepared and the Appellant led them to his house and removed the said Article from beneath the water pot which was seized under the Panchanama at Exh.19. The evidence of PW No.9 – Shaikh Chand, Investigating Officer corroborate the evidence of this panch witness.

18. The provisions of Section 27 of the Indian Evidence Act are in respect of the discovery at the instance of person in custody. From the evidence of PW No.5 – Draupadi (eye witness) and the other witnesses who had reached the spot immediately after the incident it is established that after the incident the Appellant went inside his house and closed the door from inside. This show that the said witnesses were aware that the Appellant had entered his own house with the Sickle. Therefore, it is debatable whether the seizure

of the Article - 'A' Sickle would be the discovery as contemplated under Section 27 of the Indian Evidence Act. However, from the evidence of PW No.2 - Madhukar, Panch Witness and PW No.9 - Shaikh Chand, Investigating Officer, it is established that the Article - 'A' was seized during the course of investigation.

19. The evidence of PW No.3 - Nilkanth Vishnu Talekar show that in his presence the police had seized *Dhoti* of deceased Tukaram which was stained with blood under the Panchanama at Exh.21. Nothing has come in his cross-examination to disbelieve him. His evidence is corroborated by the evidence of PW No.9 - Shaikh Chand, Investigating Officer. The Panchanama (Exh.21) corroborates the testimony of this witness regarding seizure of the blood stained clothes of deceased.

20. The testimony of PW No.9, Shaikh Chand, Investigating Officer show that the muddemal was sent for examination to the Chemical Analyzer on 03.06.2012. The report from the Chemical Analyzer is brought on record at Exh.45. Perusal of the said report show that the soil collected from the spot, clothes of deceased, clothes of accused and blade of Article 'A' Sickle were stained with blood. The report further show that the clothes of deceased and pant

of accused were having the same blood group i.e. 'B', though the blood group on the soil, on the shirt of the Appellant and on the Sickle were inconclusive. From this report it becomes clear that the Articles of crime were stained with blood.

21. From the above discussion, we have no hesitation to hold that the prosecution has established by credible evidence that, the Appellant assaulted deceased Tukaram by using Sickle which resulted into the death of Tukaram. The injuries caused by the Appellant proved fatal. The Article 'A' - Sickle was used by the Appellant while committing the offence. The prosecution has fully established that the death of Tukaram was Homicidal and caused by the Appellant. The essential ingredients for the offence of Murder punishable under Section 302 of the I.P.C. are fully established against the Appellant. Through the evidence of the witnesses, it is also established that the Appellant had threatened the witnesses of dire consequences when they gathered at the scene of offence after deceased Tukaram was assaulted and therefore, the offence under Section 506 of the I.P.C. is also established. As the evidence available on record has proved the Charge against the Appellant, no interference is called for in the impugned Judgement and Order by which the Appellant is convicted and sentenced. Thus, the appeal is liable to be dismissed and hence

the following order:

ORDER

- (i) The Appeal is dismissed.
- (ii) The Record and Proceedings be sent back to the Trial Court.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP