



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

CRIMINAL APPEAL NO.1149 OF 2019

Ganesh s/o Laxman Puri,
Age 37 years, Occu. Agril.,
R/o Kasari, Tq. Ashti,
District Beed

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Inspector,
Ashti Police Station
Tq. Ashti, District Beed
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. Dhananjay M. Shinde, Advocate for appellant (appointed)
Mrs. Uma S. Bhosle, A.P.P. for respondent – State
.....

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

Date of reserving judgment : 10th April, 2024

Date of pronouncing judgment : 29th April, 2024

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

1. The challenge in this appeal is to a judgment and order of conviction, dated 23/9/2019, passed by the learned Additional Sessions Judge, Beed in Sessions Case,

No.77/2018. Vide impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and pay a fine of Rs.1000/- with default stipulation. The appellant's wife was also prosecuted along with him for offence punishable under Section 302 read with Section 34 of the Indian Penal Code. She has been acquitted. Neither the State nor the victim has preferred appeal against acquittal.

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

The F.I.R. (Exh.46) was lodged by father-in-law of Shivaji (deceased). It has been averred in the F.I.R. that, Sunita, widow of the deceased was one of the daughters of the informant (P.W.1 Buwasaheb). Sunita had married Shivaji (deceased). On 9/5/2018, P.W.1 Buwasaheb (informant) was in his field at Kasari. He learnt from his brother Sopan that, his (P.W.1's) son-in-law Shivaji has been murdered. He, therefore, rushed to the field of his son-in-law Shivaji (deceased). He noticed Shivaji to have suffered bleeding injuries. His body was covered. Sunita (P.W.2), daughter of P.W.1 Buwasaheb

informed him that Shivaji had purchased a *Jersi* cow from the appellant for Rs.57,000/-. Rs.2000/- were remained to be paid. The appellant had, therefore, been to their residence to make a demand of remaining amount. There had been some quarrel. The appellant had, therefore, threatened to kill Shivaji. Sunita (P.W.2) had seen the appellant and his wife passing from in front of her house on motorbike and proceeding towards her field. She had, therefore, suspected something amiss. She followed the appellant in a four-wheeler of her neighbour Nitin Shinde. When she reached her field, she saw the appellant assaulting Shivaji with a sharp weapon. Astik (P.W.4), servant of Shivaji was present in the field. Sunita (P.W.2) intervened to rescue her husband. The appellant pushed her and left on motorbike. The appellant's wife (since acquitted) fled towards other side. Based on the F.I.R. (Exh.46), a crime vide C.R. No.148/2018 was registered. A scene of offence panchanama (Exh.51) was drawn. Inquest (Exh.69) was conducted. Mortal remains of the deceased were subjected to autopsy. Post mortem report is at Exh.75. The appellant and his wife were arrested. 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.

3. The case was committed to the Court of Sessions (Trial Court). The Trial Court framed the charge (Exh.12) against both the accused for offence under Section 302 read with Section 34 of the Indian Penal Code.

4. The prosecution examined 11 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court convicted the appellant as stated above. The appellant's wife was acquitted.

5. Heard learned counsel appointed to represent the appellant. He would submit that, the witnesses examined on behalf of the prosecution were all interested. Nitin Shinde, in whose four-wheeler the widow of the deceased reached her field, has not been examined. Learned counsel also brought to our notice that there were agricultural fields of some other persons adjoining the field in which the incident took place. The incident allegedly took place by 2.00 p.m. The owners and their farm-labourers were engaged in agricultural operations in their respective fields. According to learned counsel, agricultural operations last until dusk. None of the neighbouring land holders has been examined. The F.I.R. is based on hear-say.

It was the defence of the appellant before the Trial Court that, widow of the deceased had illicit relationship with Astik, their servant. The deceased was a hurdle in their relationship. He was, therefore, done to death by none other than his widow. It is also brought to our notice that there were two groups in the village. In the Village Panchayat elections, Atmaram was defeated. Santosh became Sarpanch of the village. The appellant and the deceased belong to the rival groups. The deceased was done to death out of village politics. The learned counsel would further submit that, there was delay of 4 hours in lodging of the F.I.R. He would further submit that, even a hour's delay, in the facts and circumstances of the case, may prove fatal to the prosecution. It is not known as to how the wife of the appellant was allowed to leave the crime scene. The transaction of sale of a cow was complete. Almost entire amount had been received by the appellant. The appellant did not have a motive to do away with Shivaji. Our attention was also sought to be adverted to the statement of certain witnesses recorded under Section 164 of the Criminal Procedure Code (Cr.P.C.). Learned counsel for the appellant was, however, candid enough to concede that omissions/ contradictions in statement under Section 164 of Cr.P.C. have not been duly brought on record as is required to be done in terms of Section

145 of the Evidence Act. According to the learned counsel, the case is based on interested witnesses. No independent witness, though available, has been examined. There was no motive for the appellant to commit murder of Shivaji. He, therefore, ultimately urged for allowing the appeal, since the prosecution failed to establish the guilt of the appellant beyond reasonable doubt.

6. Learned A.P.P. for the State would, on the other hand, read out the evidence of the relevant witnesses examined on behalf of the prosecution and reiterated the reasons given by the Trial Court in support of the impugned judgment and order.

7. Considered the submissions advanced. Perused the evidence on record. Also gone through the judgment impugned herein. Let us appreciate the same.

8. Admittedly, Shivaji met with homicidal death. P.W.10 Dr. Krushna conducted the autopsy. He noticed the following incised wounds on the person of the deceased.

- 1) Right side angle of mouth 3 x 2 x 0.5 cm.
- 2) Right side of neck just below mandible (horizontally) about 3 x 2 x 1 cm.

- 3) Right anterior side of the chest just lateral to the sternum of size 4 x 4 x 4 cm.
- 4) right hypochondrium (abdomen) 4 x 3 x 2 cm. approximately.

According to him, all the injuries, in the ordinary course of nature, were sufficient to cause death. In his view, the cause of death was – haemorrhagic shock due to stab injury to abdomen and chest. The post mortem report is at Exh.75.

9. Learned counsel for the appellant would submit that, the doctor who conducted the post mortem examination, did not specify the time of death. The deceased had taken meal some time before the incident. The learned counsel, therefore, meant to say that, the F.I.R. was lodged afterthought and due deliberations with the relations of the deceased. The post mortem report is silent to indicate whether semi-digested food was found in the body. The rigour mortis was partly developed. Close reading of the cross-examination of the Medical Officer indicates that no question in this regard i.e. state of food particle found in the body of the deceased were put to him.

10. The F.I.R. was lodged by P.W.1 Buwasaheb, father of Sunita (widow of deceased Shivaji). His evidence indicates

that, on 9/5/2018, he was present in his field. He received a phone call of his brother Sopan by 2.00 p.m., informing the appellant to have killed his son-in-law, Shivaji. He, therefore, went to the farmhouse. His relations had already gathered there. He enquired with Sunita about the incident. She related him that, the previous day the appellant had come to the farm house (Vasti). Astik (P.W.4), who was engaged by the deceased for farm labouring on annual remuneration, was present. Appellant abused her and also threatened to kill Shivaji. She further related him that the appellant had again come to the farm house in the morning of the fateful day i.e. 9th of May. According to him, the deceased had purchased a Jarsi Cow for Rs.57,000/- from the appellant. Only Rs.2000/- were remained to be paid. The deceased, on return to his house in the village, told Sunita to have paid the appellant amount in the presence of P.W.4 Astik. It is further in his evidence that, deceased Shivaji then left his house with a tiffin by 1.00 p.m. Sunita further related him that he saw the appellant and his wife proceeding on a motorbike towards her field. Since the appellant had come there for killing Shivaji, she immediately asked her neighbour Nitin Shinde to take her to her field in his vehicle. She accordingly went there. P.W.4 Astik was present. She further related the informant (P.W.1) Buwasaheb that the

appellant stabbed her husband with sharp weapon. While she intervened, he pushed her away and fled on motorbike. The evidence of the informant further indicates that, while the post mortem examination was under way, he lodged the F.I.R. (Exh.46).

11. True, the informant is not an eye witness. He lodged the F.I.R. based on what was related to him by his daughter Sunita (widow of the deceased). It is also true that, the F.I.R. came to be lodged about 5 hours after the incident. One must understand that the informant is none other than the father-in-law of the deceased. The dead body was required to be shifted to the hospital. He must have been required to be around his daughter to console her. In the facts and circumstances of the case, we are, therefore, not of the view that the delay in lodging of the F.I.R. is fatal to the prosecution. P.W.1 Buwasaheb was put up the questions indicating the defence of the appellant. It was suggested to him that, the incident was a fallout of a village politics. He stoutly denied. He also denied that it was his daughter Sunita and her servant P.W.4 Astik to have committed murder of Shivaji. True, cross-examination of this witness indicates that while he reached the scene of offence, people had already gathered, including

neighbouring land-holders. True, none of them has been examined. The question is, whether, based on the evidence adduced by the prosecution the offence was made out.

12. P.W.2 Sunita, widow of the deceased, testified that, her husband Shivaji (deceased) owned 17 mammals (cows and she buffaloes). Those cattle were kept in a shed on a field near Narwade Vasti. She used to reside in a village along with her husband Shivaji and 3 children. The distance between her house and the field was of not more than 1 ½ km. She would also frequently visit the field for agricultural operations. Astik (P.W.4) was engaged as an agricultural labourer on annual remuneration basis.

13. It is further in her evidence that, her husband had purchased a Jarsi Cow from the appellant for Rs.57,000/-. Rs.2000/- were remained to be paid. On the previous day, Shivaji was in her field. P.W.4 Astik was also there. The appellant came to her field and questioned about whereabouts of Shivaji (deceased). While the appellant did not see Shivaji around, he started abusing Shivaji. He even talked Shivaji on a cell phone of P.W.4 Astik. It is true that CDRs have not been placed on record. It is further in her evidence that, the appellant

abused her husband and even threatened him of dire consequences. Her evidence further indicates that, while her husband returned home, she narrated him the morning incident and asked him to pay the outstanding amount. Her husband assured to pay the same.

14. It is further in her evidence that, on the fateful day i.e. on 9/5/2018, Shivaji (deceased) returned home after delivering milk at Ashti. It was about 10.30 a.m. The appellant went to farm house. Her husband paid him the remaining amount. He questioned the appellant as to why did he abuse his wife (P.W.2 Sunita) for Rs.2000/- only. Her evidence further indicates that, her husband asked the appellant that there was no longer transaction remained to be completed and he should not visit the field again. Shivaji slapped the appellant twice. Then he went away. It is further in her evidence that, her husband related all these things while he came back to him by 12.30 noon. He then went back to the field with tiffin.

15. It is further in her evidence that, at about 1.30 p.m. she saw the appellant and his wife proceeding towards her field on motorbike. The appellant shouted that he would not spare Shiva. She, therefore, requested her neighbour Nitin to take to

her field in his four-wheeler. He obliged. True, he has not been examined even by the investigating officer. Her evidence further indicates that, while she went to the field, she saw the appellant assaulting her husband with a sharp weapon. The appellant's wife had held legs of her husband. She raised shouts. P.W.4 Astik was present. He was scared. It is further in her evidence that, when she raised shouts, the appellant fled on motorbike leaving behind one Chappal (footwear). She even tried to catch-hold of the appellant. He pushed her. Her evidence further indicates that the wife of the appellant fled in different direction.

16. Here, the learned advocate was right in submitting that, in response to the shouts, neighbours must have gathered. Still none of them has been examined.

17. Evidence of P.W.2 Sunita further indicates that, she took her husband's head on her lap. Her Saree got stained with blood. Her relations arrived. Her father too came. She narrated him the entire incident.

18. While she was subjected to a searching cross-examination, she could not give registration number of the four-

wheeler in which her neighbour Nitin had driven her to her field. She denied the suggestion that she had illicit relationship with P.W.4 Astik and both of them have committed murder of Shivaji since there used to be frequent quarrels between her and her husband (deceased) over her relationship with P.W.4 Astik. She was also suggested that there was Grampanchayat election 2-3 months before the incident. A member of a rival group became the village Sarpanch. She was further suggested that, the incident was a fallout of a political dispute.

19. It needs to be mentioned here itself that, mere suggesting one's defence is a different thing and making out a defence even on preponderance of probabilities is a different. There is a wide gap between the two. Except mere suggestion, there was nothing to accept the contention of the appellant. Even in his statement under Section 313 Cr.P.C., the appellant has simple come with a case that since he is a resident of another village, he was named as an accused. No one would buy such a defence.

20. P.W.3 Rajabhau is a witness to the scene of offence panchanama (Exh.51). He is a public servant. His cross-examination indicates, nothing fruitful could be brought on

record in the defence of the appellant. On the contrary, the scene of offence panchanama reinforces the evidence of P.W.2 Sunita that one Chappal (footwear) was seized from the scene of offence. It was in her evidence that it was of the appellant, who left it behind as he fled hurriedly. True, there is no evidence to suggest that the very Chappal (footwear) was that of the appellant. The fact, however, remains that, there is nothing to shatter the evidence of P.W.2 Sunita. Referring to the scene of offence panchanama, it was submitted by the learned defence counsel that, the scene of offence was just adjacent to a road. The panchanama indicates that there were houses of neighbouring land-holders. True, none of them has been examined.

21. P.W.4 Astik was admittedly engaged by the deceased for agricultural operations on yearly remuneration basis. It is in his evidence that, on the fateful day, he was present in the field. The appellant came there and made a demand of Rs.2000/-. The deceased paid the appellant Rs.2000/- that were outstanding towards cost of a Jersi Cow. His evidence further indicates that, he then asked the appellant as to why did he abuse his wife on the previous day. The deceased had slapped the appellant twice and asked him not to

come again. The appellant then went away. His evidence further indicates that, the appellant then went to his house and returned with a tiffin by 12.30 noon. The evidence of P.W.4 Astik further indicates that, the appellant along with his wife came to the field on a motorbike. The appellant's wife held legs of the deceased and the appellant gave him blows with Gupti/ Kukri. It is further in his evidence that, while he tried to intervene, the appellant threatened him. His evidence further indicates that, P.W.2 Sunita immediately arrived to the field. She too witnessed the incident. Then she tried to catch-hold of the appellant. He pushed her and fled on the motorbike. While his wife went to a stand side. His evidence further indicates that, previous day, the appellant had been to the field. He was present. The appellant abused P.W.2 Sunita and even the appellant took his cell phone and talked to Shivaji (deceased).

22. True, P.W.4 Astik was subjected to a searching cross-examination and confronted with his police statement and the statement recorded under Section 164 Cr.P.C. Both of these statements are silent to narrate both the incidents namely the incident that took place the previous day and happenings at the scene of offence. His statement under Section 164 Cr.P.C., however, is consistent with his evidence that a man and a

woman came on a motorbike. The man stabbed his master with a sharp weapon. Although there are material omissions amounting to contradictions, he was admittedly a farm labourer engaged by the deceased on yearly remuneration basis. His presence in the field is not disputed. It was even suggested that Shivaji was murdered by him and Shivaji's wife (P.W.2 Sunita) since he was emotionally involved with her. He flatly denied the same.

23. P.W.5 Santosh is a witness to the recovery of a motorbike pursuant to the disclosure statement (Exh.59 & 60) made by the appellant. P.W.7 Ashok was a P.S.O., Ashti Police Station at the relevant time. He recorded the F.I.R. (Exh.46) as per narration of P.W.1 Buwasaheb P.W.8 Bibishan is a witness to the inquest panchanama (Exh.55). While P.W.9 Gahinath is a witness to the panchanama of the seizure of blood stained Saree from the widow of the deceased. Panchanama to that effect is at Exh.71.

24. P.W.6 Pandurang had carried the muddemal articles to Forensic Science Laboratory. While P.W.11 Sayyed Shoukat was the investigating officer.

25. While appreciating the entire evidence on record, it appears that the investigating officer did not do his job well. He did not examine Nitin Shinde who carried P.W.2 Sunita in his four-wheeler to the field. The fact, however, remains that, the evidence of P.W.2 Sunita has not been shattered in her cross-examination. She is an eye witness to the incident. Her evidence before the Court got reinforced by her two previous statements, one made to her father immediately on his arrival to the scene of offence and another one being her statement under Section 164 Cr.P.C. (Exh.49). Her evidence to some extent gets reinforced by the evidence of P.W.4 Astik, who too claimed to have had witnessed the incident. The evidence of P.W.2 Sunita indicates that, there was a cow purchased transaction between the appellant and her husband. It was for Rs.57,000/-. Rs.2000/- was remained to be paid to the appellant. He had, therefore, been to the field on the previous day. He abused her and her husband (deceased). Her evidence further indicates that the appellant had met her husband. Her husband had told her just about an hour before the incident that he paid Rs.2000/- to the appellant and even slapped him twice. The appellant had threatened him. What was stated by the deceased to P.W.2 Sunita, his wife would be relevant under Section 32(1) of the Evidence Act as the

circumstances of the transaction which resulted in his death.

26. We are conscious of the fact that the appellant is not expected to lead any defence evidence or examine himself as a witness in his defence. His defence under Section 313 of the Cr.P.C. suggests that he has simply been implicated because he is resident of some other village. His other two defences introduced during cross-examination of the prosecution witnesses to the effect that the incident is a fallout of political dispute of Grampanchayat election and illicit relationship between P.W.4 Astik and widow of the deceased, only remained as suggestion. Nothing further was brought on record to infer the same even on the preponderance of probabilities. The Trial Court has rightly observed that, P.W.2 Sunita had no reason to falsely implicate an innocent person and spare the actual culprit. The Trial Court has also observed that the appellant was arrested a month after the incident at village Daund. We are in complete agreement with the reasons given by the Trial Court in support of the impugned judgment and order. We find no reason to take a different view.

27. Before parting with the judgment, we must acknowledge able assistance given by learned Advocate Mr.

D.M. Shinde for the appellant.

28. With this, the appeal stands disposed of with the following order :

The Criminal Appeal stands dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-