



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 732/2023

Umesh s/o Ganeshrao Kale,
Age 25 yrs., Occ. Nil,
R/o. Kawadgavan, Tah. Tiwasa,
Dist. Amravati.

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Arvi,
Dist. Wardha.
2. Tejas s/o Laxmanrao Mendhe,
Age 23 yrs., Occ. Student,
R/o. Kawadgavan, Tah. Tiwasa,
Dist. Amravati.

Amendment as per
order dated
30.01.2024

RESPONDENTS

Mr. Amol Mohan Jaltare, Advocate for appellant.
Mr. A. A. Madiwale, Addl. Public Prosecutor for respondent No.1.
Mr. Anirudh Ananthakrishnan, Advocate (appointed) for respondent
No.2.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI JJ.

JUDGMENT RESERVED ON : 03.10.2024
JUDGMENT PRONOUNCED ON : 12.11.2024

JUDGMENT : (PER: VINAY JOSHI, J.)

Heard.

2. This appeal arises out of judgment and order dated 01.08.2023 rendered by the Additional Sessions Judge, Wardha in Special (Atro.) Case No. 36/2019, whereby appellant/accused was convicted for the offence punishable under Sections 302 and 447 of the Indian Penal Code ("IPC") read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ("SC and ST Act"). The appellant was sentenced to undergo imprisonment for life and to pay fine of Rs. 50,000/- with default clause for the offence punishable under Section 302 of the IPC read with Section 3(2)(v) of the SC and ST Act whilst he was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 1,000/- for the offence punishable under Section 447 of the IPC. Both sentence were directed to run concurrently.

3. The appellant Umesh along with his father Ganesh and cousin brother Rishikesh were prosecuted for the offences punishable under Section 302, 120-B, 324, 504, 449 read with Section 34 of the IPC, Section 4 read with 25 of the Arms Act, and Section 3(2)(v) of

the SC and ST Act. During pendency of trial, accused No.2 Ganesh died, hence case stands abated to his extent. The Trial Court has acquitted co-accused Rishikesh on account of inadequacy of evidence. The appellant was acquitted from rest of the charges. The State has neither challenged the acquittal of appellant Umesh from rest of the charges nor challenged the acquittal of co-accused Rishikesh from all the charges.

4. The prosecution case in nutshell is that, few months preceding to the incident dated 16.02.2019 son of deceased Bebitai namely Suraj has enticed sister of appellant namely Pooja and their whereabouts were unknown. Appellant Umesh is real brother of enticed girl Pooja whilst co-accused Ganesh was his father and acquitted accused Rishikesh was cosine brother of Umesh. Since son of deceased Bebitai enticed sister of appellant Umesh, their relations were strained.

5. On the day of occurrence, all accused initially in search of the family of deceased Bebitai went to the house of sister of Bebitai and inquired about whereabouts of Bebitai and her family. Son of Bebitai's sister namely Viki told to the accused that he was unaware

about the address of Bebitai. Thereafter, Viki telephonically informed Bebitai and her son Tejas that the accused are in their search. Perceiving the quarrel which may erupt, Tejas has called his cousin Karan Wankhede, friend Sachin Borkar and Vilas Sayam to his house.

6. Around 05.30 p.m. Umesh and others arrived at the informant's house, on which deceased Bebitai prepared Tea. Umesh has inquired with Bebitai about their son Suraj and his sister Pooja. Bebitai showed ignorance, on which accused Umesh said that she being mother of Suraj, she must be aware. At the relevant time, co-accused Ganesh (deceased) was standing in front of the house and started to abuse loudly. Deceased Bebitai asked Ganesh for not to hurl abuses. Accused Umesh came out of the house, took his father Ganesh little aside, pacified him and returned. While they were in courtyard, accused Umesh asked Sachin as to why he was standing in between, as he wanted to talk with Bebitai. Suddenly Umesh took out the knife from his trouser and stabbed at the left side of the abdomen of Bebitai. Sachin Borkar tried to snatch the knife which fell down. As there was hue and cry, Umesh and Rishikesh fled by ridding on

motorcycle. Ganesh was about to run, however he was caught by the villagers.

7. Bebitai sustained bleeding injury at her abdomen, hence she was shifted to Primary Health Center at Arvi. The Medical Officer referred her to the Government Hospital, Amravati, however the Doctor of Government Hospital, Amravati declared her dead. In the late hours, Tejas went to the concerned Police Station and lodged report regarding the occurrence. On the basis of said report regarding commission of cognizable offence, the Police have registered crime No. 134/2019. Panchanama of the scene of offence was drawn. Autopsy was conducted on the dead body. The accused were made to arrest. During the course of investigation, the statement of several witnesses have been recorded. At the instance of accused Umesh, blood stained knife and clothes have been seized. After completion of investigation, final report has been filed. The Trial Court has framed charge against all three accused. However, during pendency, father Ganesh died. After evaluating oral and documentary evidence, the Trial Court convicted Umesh for the aforesaid offences whilst acquitted co-accused Rushikesh.

8. In order to establish the guilt of accused, prosecution has examined in all 15 witnesses. The entire thrust of the prosecution was on the evidence of informant P.W.1 Tejas and PW-5 Karan Wankhede who were the eye-witness. Besides that, prosecution has relied on the evidence of Panch Witnesses, Medical Officer and the Investigating Officer. The statement of accused was recorded in terms of Section 313 of the Code of Criminal Procedure. The defence of the accused was of total denial and false implication. However, the accused stated that at the relevant time, there was quarrel, in which Sanchin tried to assault Umesh by means of knife, which Umesh warded, on which knife landed at the stomach of Bebitai causing severe injury. According to the defence, in order to screen the real culprit, they have been falsely implicated.

9. The learned defence counsel has strongly criticised the prosecution case from every possible angle. It is argued that the Trial Court failed to consider the defence version which was quite probable. The injuries sustained by accused No.1 Umesh have not been explained by the prosecution. Though the accused were known to the informant, their names have not been disclosed to the Police soon-

after the occurrence. Moreover, at the time of drawing spot panchanama, it was informed that assailants were unknown. There was considerable delay in recording statements of eye-witnesses. The prosecution has not examined star witness Sachin Borkar who sustained injury in the incident. Though the Police received information within few hours, however crime was not registered.

10. It is argued that the death of Babitai was on account of reckless treatment. Medical evidence states that stab injury was not the cause of death, but due to continuous bleeding, Bebitai died. It is argued that the incident as a whole does not disclose that the accused intended to kill Bebitai. In heat of passion, the incident occurred, in which a single blow was delt and thus, it does not constitute the offence of murder. Besides that, some other flaws and variations in the process of investigation have been pointed out.

11. The learned Additional Public Prosecutor and Mr. Ananthakrishna learned appointed counsel for respondent No.2/informant supported the impugned judgment. It is argued that the PW-1 Tejas Mendhe and PW-5 Karan Wankhede have categorically stated about the incident of inflicting knife blow by

Umesh at the abdomen of Bebitai. It is argued that there was sufficient motive for accused to eliminate Bebitai. The defence version is totally improbable. Neither there was quarrel nor accused have been provoked to claim exception. Carrying of knife, choosing vital part of the body are the indicators from which it can be derived that it is a case of murder. With these contentions, both of them urged for dismissal of appeal. Both sides have relied on various precedents to which we prefer to make contextual reference.

12. Few facts of the case are not in dispute. Suraj who was son of deceased Bebitai, enticed Pooja a sister of accused Umesh. Both ran away and their whereabouts were not known. On said count, relation between two families were strained. Both families were residing in the neighbourhood at village Kawadghavan, Tah. Tiwasa, Dist. Amravati. However, after incident Bebitai and her family shifted to village Arvi. Undisputedly, on 16.02.2019, in the evening around 06.00 p.m. all accused went to the house of Bebitai at Arvi to inquire about Suraj and Pooja. Incident occurred in the open courtyard, in which Bebitai sustained stab injury at her abdomen which proved to be fatal.

13. No one has disputed the above referred facts. However, both are coming with rival version regarding the occurrence. It is the prosecution case that, at relevant time, accused No.1 Umesh stabbed at the abdomen of Bebitai, whilst it is defence version that informant's friend Sachin Borkar attempted to assault Umesh who warded blow which accidentally landed at the stomach of Bebitai.

14. The prosecution has examined in all 15 witnesses, however the prosecution rests on two eye-witnesses i.e. PW-1 Tejas Mendhe and PW-5 Karan Wankhede. Though Sachin Borkar was present at the time of occurrence, however he has not been examined. We have gone through the evidence of both eye-witnesses who have deposed in consonance with the prosecution case. They deposed the entire incident as to how trio came to the house of Bebitai, had initial talk, then all of them came out of the house. The evidence also unfolds that accused Ganesh started abusing loudly by standing on the street, on which accused No.1 Umesh took him to little aside and pacified him. Umesh came back to the courtyard, asked Sachin Borkar to go away as he desires to talk with Bebitai. Both of them stated that suddenly Umesh took out knife and delt a blow at the right side

abdomen of Bebitai. The evidence of both eye witnesses is consistent on the core issue. The defence has grilled both the witnesses to probabilize the defence version. However, both of them categorically denied the suggestions given by defence that Sachin Borkar tried to assault Umesh and accidentally Bebitai sustained injury. Besides denied suggestions there is nothing to probabilize the defence version.

15. Pertinent to note that Sachin Borkar was a friend of informant Tejas. Since Tejas perceived that on arrival of accused, there may be heated argument, Sachin Borkar was already called. It is difficult to accept the defence story that Tejas has screened the act of Sachin Borkar of assaulting his mother by falsely implicating Umesh. Moreover, it requires to be noted that after incident, Sachin Borkar remained on the spot till arrival of Police and also showed the place of occurrence. The said immediate subsequent conduct of Sachin Borkar itself is sufficient to discard the defence version. Otherwise, he would have been ran away out of the fear. Likewise, the accused who immediately fled from the spot also supports the prosecution case. We are satisfied that the evidence of PW-1 Tejas Mendhe and PW-5 Karan Wankhede is convincing, cogent and reliable. It has sufficiently

established that at the relevant time, accused No.1 Umesh gave a single knife blow at the abdomen of Bebitai which took her life.

16. The learned counsel for appellant relied on the decision in cases of *Lakshmi Singh and ors. Vs. State of Bihar, (1976) 4 SCC 394*, *Nand Lal and ors. Vs. State of Chhattisgarh, (2023) 10 SCC 470* to contend that non-explanation of injuries on the person of accused is fatal to the prosecution case. No doubt, it has come in the evidence of PW-6 Dr. Hemant Patil that on 17.02.2019, at the instance of Police, he has examined accused Umesh and found lacerated wound at middle and ring finger of left hand. Injury certificate (Exh.122) has been issued to that effect. The explanation has come in the evidence of informant Tejas itself. It has come in the evidence that no sooner Umesh took out knife from his trouser and gave stab to Bebitai, Sachin Borkar caught hold the knife, which fell down. Thus, it is apparent that after single stab, there was scuffle between Umesh and Sachin which would be the probable cause for Umesh to sustain injury. Absence of specific evidence in that regard, cannot be capitalized to discard the truthful and consistent version of two eye-witnesses.

17. The learned counsel for appellant by relying on the decision of the Supreme Court in case of *Narsinbhai Haribhai Prajapati etc. Vs. Chhatrasinh and ors., AIR 1977 SC 1753* would submit that if the testimony of eye-witnesses is found unacceptable then it is difficult to sustain a charge of murder. There can be no dispute about said proposition, however it is a factual aspect. Always conclusion is to be drawn on the basis of emerging facts and material. We have considered the evidence of both eye-witnesses which is fully reliable. There is no material to discredit the natural version of these eye-witnesses, whose presence is admitted.

18. The learned counsel for defence would submit that inordinate delay in lodging First Information Report loses the worth of prosecution case. It is submitted that since the injury was caused by Sachin Borkar, initially name of assailant was not disclosed which percolated into the Spot Panchanama. It is submitted that though Police Station was at short distance, the report was not lodged till next date and thus, it is fatal to the prosecution. In order to uphold said submission, reliance is placed on the decision of the Supreme Court in cases of *Bihri Nath Goswami Vs. Shiv Kumar Singh & ors., (2004) 9*

SCC 186, Ashraf Hussain Shah Vs. State of Maharashtra, 1996 CRI.L.J. 3147, Mahtab Singh & anr. Vs. State of Uttar Pradesh, (2009) 13 SCC 670 and State of Karnataka Vs. M.S. Basappa & ors., (2019) 16 SCC 242. Always inordinate delay in registration of crime is matter of suspicion as there are chances of concoction. However it depends upon the facts and circumstances of each case whether time gap between the occurrence and registration of report can be construed as an inordinate delay. The incident as a whole is to be looked upon to find whether there was unexplained inordinate delay.

19. The incident occurred on 16.02.2019 around 06.00 p.m. Bebitai was immediately taken to the Sub-District Hospital, Arvi and after primary treatment, she was taken to the Government Hospital, Amravati where she died. Informant Tejas who was son of deceased Bebitai, accompanied her throughout. After demise of Bebitai, he went to the Police Station and lodged report around 05.00 a.m. of 17.02.2019. The chain of event itself discloses that after death of Bebitai at Amravati, within few hours, informant Tejas returned to Arvi and lodged report. Obviously, the primacy for the informant was to look after his bleeding mother and thus, the said time gap cannot be

construed as an inordinate delay. It emerges from the evidence that on receipt of intimation that unknown persons have assaulted deceased Bebitai, station diary entry was taken and Police arrived at the spot around 08.00 p.m. Panchanama of the scene of offence was carried out in presence of PW-3 Rajesh Shirghare in between 08.30 p.m. to 10.00 p.m. True, panchanama bears a reference that assault was by unknown person. However it requires to be noted that on the basis of initial cryptic telephonic information, the Police have noted accordingly in Panchanama. That does not mean that assailants were unknown. Pertinent to note that accused have not disputed the occurrence at all. The parties were well known to each other and therefore, the defence cannot muster any strength from the fact that the Panchanama refers the assailants as unknown persons.

20. The learned Addl.P.P. relied on the decisions of *Franco D'Souza Vs. State of Goa, 2004(4) Mh.L.J., Leela Ram (dead) through Duli Chand Vs. State of Haryana & anr., (1999) 9 SCC 525* to contend that minor lapses in investigation would not affect the prosecution version. Certainly, it is matter of appreciation whether the lapses are major or inadvertent which is matter of fact. Though

initially, the Police have not recorded statement of witnesses on the spot, however there is no reason to discard the prosecution case on such lapses. The defence has criticized that prosecution has not examined star witness i.e. Sachin Borkar who equally sustain injury. In response, the learned Addl.P.P. by relying on the decision of this Court of *Shyamsundar Vithal Pawle & anr. Vs. The State of Maharashtra, 2021 ALL MR (Cri) 112*, would submit that non-examination of eye-witness is not fatal to the prosecution. We may repeat that quality matters than the quantity. The prosecution has examined two eye-witnesses to establish the guilt. Their evidence is cogent, reliable, consistent and credit worthy. In such background, non-examination of Sachin Borkar cannot be termed to be fatal to the prosecution.

21. The prosecution has duly established that accused Umesh gave single knife blow at the abdomen of Bebitai, which was proved to be fatal. Naturally the next question falls for consideration is as to what offence would be constituted on the above proved facts. The Trial Court has not delved upon said issue at all. It is directly held that since Umesh stabbed to the Bebitai taking her life, the offence of

murder has been proved. We are in disadvantageous position on this crucial point for getting assistance from Trial Court. The Trial Court ought to have spelt out as to how the facts constitutes the offence of 'murder' as defined under Section 300 of the IPC.

22. Both sides made elaborate submissions as to what offence has been constituted. The learned counsel for appellant would submit that it was not a pre-meditated attack. The dispute was already resolved between the parties. They had peaceful talk and even accused had tea in the house of deceased Bebitai. Co-accused Ganesh though started abusing, he was pacified and then while leaving, there was some altercation, in which Umes lost temper and gave stab and thus, there was no intention to kill or to cause that particularly bodily injury which took life of Bebitail. Secondly, it is argued that the injury inflicted was not sufficient in the ordinary course of nature to cause death. For this purpose, we have been taken through the evidence of PW-8 Dr. Harish Kunde who has conducted autopsy on the dead body. It has come in his evidence that he has noticed a stab wound over epigastric areas size 4 x 3.5 x 8 c.m. as mentioned in column No. 17 of the P.M. Notes. PW-6 Dr. Hemant Patil who has initially

examined Bebitai in Sub-District Hospital, Arvi noted a stab wound at abdomen wall at the junction of epigastrium and umbilical region of sized 3.5 x 1 c.m.

23. PW-8 Dr. Harish Kunde admits that he has not noticed sutures (stitches) on the stab wound. He admits that patient would have survived, if the Doctor has applied stitches. He has admitted that there was no damage to the intestine of the patient. Particularly, he admits that stab wound is not immediate cause of death but it is secondary cause. Doctor has opined that the cause of death was due to cardiac respiratory arrest with sever haemorrhagic shock with gross internal haemorrhage with stab wound. On the basis of said material, it is argued that for want of proper treatment, patient died and thus, it is not a case of homicidal death amounting to murder. The learned counsel for appellant relied on the decision of this Court in case of *Shailesh Mahadeorao Gawai Vs. the State of Maharashtra, 2018 ALL MR (Cri) 2797* to contend that absence of injury certificates and post-mortem report not showing that injuries sustained by deceased were sufficient to cause death in ordinary course may not attract the offence punishable under section 302 of the IPC.

24. Moreover, much stress is led on the aspect that it is a case of single blow in sudden altercation and thus, the case would not fall under Section 300 of the IPC. In this regard, the appellant relied on the decision in cases of *Ramesh Genu Kusalkar & ors. Vs. State of Maharashtra, 2019 ALL MR (Cri) 3887*, *Shivappa Buddappa Kolkar alias Buddappagol Vs. State of Karnataka and ors., 2005 ALL MR (Cri) 207 (S.C.)*. On the other hand, learned APP relied on the decisions in case of *Antram Vs. State of Maharashtra, 2007 ALL MR (Cri) 3547 (S.C.)* *Virsa Singh Vs. State of Punjab, SCR 1495* to contend that though it is a case of single blow, there was very much intention to cause death and it is an offence of murder. The learned counsel for respondent No.2 has also relied on the celebrated decision in case of *Virsa Singh (supra)* to contend that it is an offence of murder.

25. We have to consider the entire incident as a whole. The relations between the parties have been strained. It has come in the evidence that when the accused went to the house of Bebitai, initially they asked for tea which they had. PW-1 Tejas admitted that on initial talk, Umesh said that they have forgotten the past and now asked

about whereabouts of the couple. He admits that at the time of having a tea and initial talk, there was no quarrel at all. It has come in his evidence that while father Ganesh was hurling abuses by standing on the street, Umesh took his father at some distance and pacified him. PW-1 Tejas admits that when Umesh calmed down his father Ganesh, the dispute was over. PW-5 Karan Wankhede stated in his evidence that on arrival of Umesh, they forgotten differences and all of them had a tea. He admits that when Umesh returned to the courtyard after pacifying his father, again there was oral altercation in between Umesh, Vilas Sayam and Sachin Borkar, followed by Umesh giving a single knife blow at the stomach. It requires to be noted that in the said rucksack, knife fell down, on which Umesh did not attempt to take it back, but ran away. It emerges that there was no definite intention on the part of Umesh to cause the very injury which he caused, which ultimately led to death of Bebitai.

26. Even assuming for a moment that prosecution story was correct and the accused Umesh is liable for conviction, it would not still a case of murder as there was no evidence to show that the accused had intended to cause the very injury which had caused death. The

fact of the case undoubtedly supports the defence version that the dispute was settled and while leaving, again there was altercation, in which as of sudden a single blow was dealt at the abdomen of Bebitai. Accused Umesh unmindful of consequence, inflicted a single blow in a cruel manner which unfortunately caused sever damage to the internal organ causing death, but there is absence of definite intention.

27. We are aware that single blow is not the sure criteria to convert the offence of murder into the offence of culpable homicide not amounting to murder. A single blow may, in some cases, entail conviction under Section 302 of the IPC, in some cases under Section 304 of the IPC and in some other cases may be under Section 326 of the IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. While assessing the case, all the facts and circumstances needs careful consideration. The factual situation has to be considered in each case and the events which precede, will also have a bearing on the issue, whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death.

It is the totality of the situation which will decide the nature of offence.

28. The intention to cause death can be gathered generally from a combination of a few or several facts like nature of weapon, whether blow is aimed on vital part, whether the incident occurs by chance, whether there was prior enmity, whether there was grave and sudden provocation, whether in heat of passion the incident occurred and so on. All these circumstances would help to find out about the intention on the part of the accused. Merely because a knife was used and the deceased succumbed to injury is not sure criteria. There is no hard and fast rule in case of use of sharp aged knife at the stomach, the offence would be under Section 302 of the IPC. It depends upon the facts of particular case.

29. It emerges that there were earlier visits also. On the date of occurrence, the trio went to inquire about the couple. There was a peaceful talk between them. The accused had a tea in the house of deceased Bebitai. Though co-accused was abusing, he was calmed down by Umesh, but while returning, again there was altercation in which single stab injury was caused. Considering the totality of the

facts and circumstances of the case, it does not meet the essentials to constitute the offence punishable under Section 302 of the IPC. However, the accused inflicted a single blow with weapon like knife and the injury was caused at the abdomen of the deceased, therefore it is to be presumed that causing such bodily injury was likely to cause death falling under Section 304 Part I of the IPC. We therefore, convert the conviction of the appellant Umesh to that extent.

30. The accused Umesh is in Jail since 17.02.2019 i.e. for the period of near about 5 years and 8 months. He is young who has lost his father. We are mindful of the fact that due to grave act, accused took life of a human-being. Having regard to all above facts, in our considered view, rigours imprisonment for 8 years would meet the ends of justice, which we impose by converting offence punishable under Section 302 of the IPC into offence punishable under Section 304 Part I of the IPC along with fine of Rs.10,000/-, in default to suffer further rigours imprisonment for six months. In view of above, by partly allowing the appeal, we modify the sentence to above extent only. The rest part of the operative order shall remain as it stands.

31. Appeal stands disposed of in above terms.

32. Fees of the appointed counsel for respondent No.2 be paid as per Rules.

(MRS. VRUSHALI V. JOSHI J.)

(VINAY JOSHI, J.)

Gohane