



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

20 CRIMINAL APPEAL NO.530 OF 2020

Raosaheb Rama Nikam,
Age : 42 years, Occupation: Labour,
Residing at : Hanuman Nagar, Pachora,
Taluka Pachora, District Jalgaon.

... Appellant
(Ori. Accused)

Versus

The State of Maharashtra,
Through Police Station Pachora,
Taluka Pachora, District Jalgaon.

... Respondent
(Complainant)

...

Mr. Vikram R. Dhorde, Advocate for Appellant.
Mr. N. S. Tekale, APP for Respondent-State.

...

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

RESERVED ON : 8th SEPTEMBER 2025

PRONOUNCED ON : 30th SEPTEMBER 2025

JUDGMENT (Per Mehroz K. Pathan, J.) :-

1. The present appeal is filed by the Appellant challenging the judgment and order dated 7th January 2020 passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.82 of 2017, thereby convicting the Applicant/Original Accused under Section 302 of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.50,000/- and in default of payment of fine to suffer simple imprisonment for a term of 3½ years.

2. The prosecution case in a nut shell is as under:-

- (i). That Dipak Rama Nikam (deceased herein) is the real brother of Accused-Raosaheb Rama Nikam and that they were residing in one building at Hanuman Nagar, Pachora, wherein injured deceased-Dipak, Accused-Raosaheb and the other two brothers were residing. That since many days, Accused-Raosaheb used to quarrel with the deceased-Dipak on account that he has an evil eye on Raosaheb's wife and suspected illicit relations between them. There were frequent quarrels between them. On 17th April 2017 at 7:30 p.m., when the deceased and his son-Nikhil were present in their house. The Accused-Raosaheb put up a quarrel with the deceased, on account of water to be used in the bathroom. The Accused got angry upon the language used by the deceased and went in the house and brought a knife and assaulted on the stomach of the deceased 3 to 4 times. The informant tried to caught hold of the said knife and shouted for help. The brothers of the deceased; namely, Ganesh and Pravin along with their mother-Gayabai, neighbours-Saidabai, Hasinabi, rushed to the spot, tried to intervene and rescued the informant-Dipak and settled the said quarrel. However, it was a severe assault of knife inflicted by the Accused-Raosaheb. The intestine of the informant was protruding out of his stomach. The deceased was brought to the Rural Hospital Pachora initially by his brothers for medical treatment through auto-rickshaw. However, he was thereafter shifted to Apex Hospital, Jalgaon for further treatment.
- (ii). The deceased-Dipak has recorded his statement with the police personnel present in the hospital and as such after his death which has occurred on 19th April 2017 while taking treatment,

the said statement is treated as dying declaration and the offence came to be registered on the basis of said dying declaration.

- (iii). The investigating officer Shri. Avinash Asaram Andhale had recorded the dying declaration of deceased-Dipak and prepared the inquest panchnama of the dead body of deceased in presence of panchas and also prepared the spot panchnama and sent a letter to conduct the post-mortem. The investigating officer has also obtained seizure panchnama of the clothes which was worn by the Accused on the date of alleged incident and arrested the Accused on the same day. The memorandum panchnama of the Accused was also recorded and the weapon allegedly used in the commission of the offence was also seized at the instance of the Accused.
- (iv). After obtaining the injury certificate from the Apex Hospital, Jalgaon, where the deceased was lately treated and obtaining provisional post-mortem report, the investigating officer informed the concerned Court to add Section 302 of IPC and charge-sheet was lastly filed by another investigating officer-Shri. Navalnath Laxman Tambe-PW17. Learned trial court has framed the charges against the accused on 13th June 2018 to which the accused has not pleaded guilty and claimed to be tried. The charge was framed as against the Appellant-Accused that on 17th April 2017 at about 19:30 hours, the Accused assaulted the deceased-complainant-Dipak Rama Nikam and committed his murder.
- (v). The prosecution has examined total 17 witnesses to prove the guilt of the Accused-Raosaheb. Various documents have also been exhibited and relied upon by the prosecution to bring home the guilt of the Accused.

(vi). The statement of accused was also recorded under Section 313 of Cr.P.C., wherein the defence of the accused is of total denial and false implication.

3. The learned Trial Court has convicted the Appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life. The Trial Court further directed the Appellant to deposit a fine of Rs.50,000/-, which amount was to be paid to the wife of the deceased, namely, Sangita Dipak Nikam, in terms of Section 357 of the Cr.P.C., after the decision of the appeal, if any. The Appellant has, therefore, preferred the present appeal challenging the judgment and order dated 7th January 2020 passed by the learned Additional Sessions Judge, Jalgaon.

4. We have heard Mr. Dhorde, learned Advocate for the Appellant and Mr. Tekale, learned APP appearing for Respondent-State.

5. Mr. Dhorde assailed the judgment of conviction by learned Sessions Court, mostly on the point that the testimony of PW1 (wife of the deceased), PW3-Anita, PW14-Nikhil (son of the deceased) and PW5-(neighbour of the deceased) are not clinching and sufficient enough to prove the guilt of the Accused. The extension of the arguments of Mr. Dhorde, learned Advocate for the Appellant is that PW14-Nikhil (son of the deceased) was not even taken to the police station for recording his statement and his 161 Cr.P.C. statement was

not recorded by the police authorities during the investigation, even though he was very much available. It is argued that PW14/Nikhil (son of the deceased) had been introduced by the prosecution only to provide the missing link in the prosecution story and could not have been relied upon.

6. Another limb of argument of the Appellant is that, there is a variance in the testimony of the child witness and there is no corroboration of the story of the prosecution by other witnesses, who have spoken about the different manner of the commission of the crime.

7. Mr. Dhorde has further argued that the statement of the deceased-Dipak, which was later on treated as dying declaration recorded by the investigating officer does not conform to the law laid down by the Hon'ble Apex Court in the matter of accepting the dying declaration. The said dying declaration is therefore doubtful and therefore was rightly disbelieved by learned Trial Court and, therefore, there is no reason, why the said dying declaration should be believed. He further argued that there is no eye witness to the said incident. The reliance of the learned Sessions Court upon testimony of PW14 and PW3 is erroneous as inasmuch as they cannot be said to be eye witnesses. The extension of his argument is that, PW14 is nothing but a planted witness to complete the missing link of the prosecution story. The

mother of PW14 and other relatives did not request the investigating officer to record the statement of PW14 during investigation or thereafter, and the PW14 was directly made to appear in the Court for his deposition. This conduct on part of the prosecution and the prosecution witnesses is therefore doubtful and the benefit shall go to the Applicant. He further argued that the possibility of tutoring PW14 cannot be ruled out. The testimony of these 2 witnesses, therefore, cannot come to the aid of the prosecution, as they neither provide direct evidence nor the circumstantial evidence which is necessary to prove the guilt of the Accused.

8. Mr. Dhorde has further argued that the spot panchnama and the memorandum statement of the Accused along with the seizure of the knife, cannot be relied upon, as PW2 is a habitual panch; moreover, the memorandum statement of the Accused was not voluntary in nature. Thus, the memorandum statement of the Accused, the seizure of the alleged knife and spot panchnama cannot be relied upon as the circumstances to prove the guilt of the Accused. Mr. Dhorde has further stated that the Doctor who has examined the deceased-Dipak about his fitness to give dying declaration has not been examined by the prosecution and in the absence of the same, the said dying declaration cannot be believed, as laid down by the Hon'ble Supreme Court in various judgments, wherein the fitness of the deceased and the state of mind is held to be crucial for admitting the dying

declaration in evidence. The dying declaration was, therefore, rightly disbelieved.

9. Mr. Dhorde has further argued that the prosecution has relied upon the testimony of PW1, PW3 and PW14, who are interested witnesses and hence it is not safe to rely upon the evidence of such interested witness to convict the Accused when there is no other cogent other material to base upon the conviction. There is no other independent witnesses, whose oral evidence is recorded by the prosecution to prove the guilt. The brothers of the deceased i.e. Pravin and Ganesh, who had lifted the deceased and brought him to Rural Hospital Pachora as well as the mother of the deceased, who allegedly disclosed the incident to the wife of the deceased i.e. PW1 was also not examined by the prosecution. The prosecution has also failed to adduce the oral evidence of the rickshaw driver, who had brought the deceased to the Rural Hospital, Pachora, for medical treatment. Therefore, merely relying upon the testimony of interested witnesses such as PW1, PW3, and PW14 to sustain the conviction of the Accused is misconceived and liable to be discarded, warranting allowance of the appeal and consequent acquittal of the Appellant. The material admissions given by the prosecution witnesses in their cross-examination, contradictions and omissions emerging out of such cross-examination also raises doubt about the prosecution case and as such, the benefit of doubt shall be given to the Appellant and the Appellant

shall be acquitted for the charge of committing murder of his real brother.

10. In the alternative, Mr. Dhorde has also argued that, if this Court comes to a conclusion that the charges against the Accused have been rightly proved, in that case, the conviction may be converted to Section 304 of IPC as the incident of crime is a result of sudden quarrel, which has taken place for the reason of fixing the pipes in the common washroom and that there was no pre-meditation on the part of the Appellant and that he did not take any undue advantage by committing any further brutality.

11. As against this, Mr. Tekale, learned APP appearing for the Respondent-State has submitted that the prosecution with the help of oral testimonies of PW1-(wife of the deceased), PW3-(sister-in-law), PW5 (neighbour-Saidabai) and PW14 (son of the deceased) has proved the guilt of the Accused beyond reasonable doubt. It is argued that PW3 and PW14 are the eye witnesses of the alleged incident and that they have in their oral evidence have deposed in accordance with the case of the prosecution, which is corroborated by the dying declaration of the deceased-Dipak. It is also submitted by Mr. Tekale that though the PW1 is not an eye witness to the alleged incident. However, there are no material contradictions in the testimonies of PW1, PW3 and PW14 which also matches with the dying declaration of the deceased. PW10 and PW13 are the Doctors, who have also supported the case of

the prosecution and PW12 has expressed his opinion that the injuries caused to the deceased may be possible by the weapon i.e. knife (Article-G), which is recovered at the instance of the Accused on a memorandum under Section 27 of the Evidence Act. The testimony of PW2 is also helpful to prove the contents of panchnama of spot of incident and memorandum statement of the Accused, seizure panchnama of alleged knife and that with the aid of PW4, prosecution also proved the inquest panchnama of the dead body of the deceased. It is further strenuously argued by learned APP that PW15 (I.O.) has also proved the contents of the dying declaration and that the dying declaration is also corroborated with the testimony of PW3 and PW14. It is further submitted by learned APP that Chemical Analyzer's (CA) reports are also supporting the prosecution case, wherein the clothes of the Accused and the weapon are found with the bloodstains from the blood group of the deceased. It is further submitted that the knife was seized from the house of the Accused pursuant to a memorandum under Section 27 of the Evidence Act, which has materially aided the prosecution case. Hence, the prosecution has succeeded in bringing home the guilt of the Accused.

12. Mr. Tekale, learned APP has further submitted that even though the prosecution has failed to examine the Doctor, who had declared the deceased-Dipak to be fit for recording dying declaration. The prosecution is not under an obligation to examine the Doctor. He

submits that the truthfulness and veracity of the dying declaration can be tested by the testimony of police officer, who had recorded the statement/dying declaration and that whether he was satisfied about the fitness of the declarant at the relevant time. The said police officer, who recorded the dying declaration has expressly proved its recording, and no motive has been attributed to him in the cross-examination for falsely recording the same. Learned Trial Court has wrongly disbelieved the dying declaration. He, therefore, requested that the finding as regards the dying declaration may also be interfered by this Court.

13. He further submits that apart from the dying declaration also the prosecution had sufficiently proved the guilt of the Accused by the oral testimonies of PW1, PW3, PW5 and PW14. The PW14, who was the child witness, has specifically been questioned by learned Trial Court about the understanding of PW14, who was minor at the time of alleged incident. It is only upon satisfaction of the Trial Court which found that PW14 has given rational answers to the questions, that the evidence of PW14 was recorded.

14. Learned APP has further argued that though the investigating officer did not record the statement under Section 161 of Code of Criminal Procedure (Cr.P.C.) of PW14-Nikhil (son of deceased). The prosecution has followed the procedure and filed an application under

Section 311 of Cr.P.C. before the learned Trial Court for calling upon PW14 as a prosecution witness. Learned Trial Court after considering the pros and cons of calling upon such child-witness, who was direct eye witness, was pleased to allow the application of the prosecution under Section 311 of Cr.P.C. and, thereafter, pleased to allow the prosecution to record the evidence of PW14. It is argued by Mr. Tekale, learned APP for the Respondent-State that the Accused/Convict has failed to challenge the order of allowing the prosecution to record evidence of PW14 exercising powers under Section 311 of Cr.P.C. by learned Trial Court, therefore, cannot now pray for discarding the testimony of PW14 on the basis of any alleged doubts arising from the initial non-recording of his 161 Cr.P.C. statement. He, therefore, stated that the objection to the testimony of PW14 is, therefore, misconceived and liable to be rejected. Mr. Tekale, therefore, prays that the judgment of conviction passed by learned Lower Court is just and properly liable to be maintained. He also requested that the finding of the learned Trial Court, which disbelieved in the name of dying declaration, may also be interfered with and reversed thereby believing the veracity and truthfulness of the dying declaration shall be believed.

15. We have considered the submissions advanced by the learned Advocate for the Appellant and the learned APP and upon examination of the record, proceedings, and the judgment of the learned Trial Court, it is found that the prosecution has succeeded in establishing the

guilt of the Accused through the testimonies of PW1, PW3, PW5, and PW14. The prosecution has further proved both direct as well as circumstantial evidence against the Accused–Raosaheb. PW1 (the wife of the deceased) deposed that on the date of the incident, she was at her parental home, when her brother-in-law, Ganesh (real brother of the Accused), informed her over the telephone about the incident. She further stated that Ganesh, along with others, had taken the deceased first to Rural Hospital, Pachora, and thereafter to Apex Hospital, Jalgaon. She also stated that her mother-in-law, Gayabai, narrated to her how the incident had taken place. PW1 further deposed about the presence of her son (Nikhil), at the time of the incident and that the Accused had stabbed the deceased. The cross-examination of PW1 does not bring out any material to discredit her testimony, although she is essentially a hearsay witness.

16. The next important witness is PW3-Anita, wife of Ganesh (brother of the deceased and the Accused). PW3 deposed that she was present in the house at the time of the incident on 17th April 2017. She further stated that PW14-Nikhil informed her that the Accused–Raosaheb had assaulted Dipak. According to her, she immediately went to the first floor along with Gayabai (mother-in-law), Jyoti, and PW5-Saidabai to ascertain what had happened. She categorically stated that she saw the Accused–Raosaheb holding a knife stained with blood, while the deceased–Dipak was lying on the floor with bloodstained

clothes. PW3 further deposed that the deceased made an oral dying declaration to her, stating that the Appellant–Raosaheb had assaulted him with a knife. She also stated that thereafter, Pravin and Ganesh brought Dipak to the ground floor and took him first to Rural Hospital, Pachora, and subsequently to Apex Hospital, Jalgaon.

Thus, the testimony of PW3-Anita, who happens to be the wife of real brother-Ganesh (brother of deceased and Accused), is clearly implicating the role of the present Appellant to be the assailant and establishes his guilt. The cross-examination of this witness has not elicited any material discrepancies that would discredit her evidence. Being a natural witness, present at the spot and residing in the same house with her husband Ganesh, her testimony carries significant probative value.

17. Another important witness relied upon by the prosecution is PW14-Nikhil, the son of the deceased-Dipak, who is a direct eyewitness to the incident of murder committed by the Accused. Before recording his testimony, the learned Sessions Court put preliminary questions to the child witness in order to ascertain whether he understood the difference between right and wrong. Upon receiving rational answers, the Court found him competent to depose and accordingly recorded his evidence on oath. A perusal of the testimony of PW14 clearly attributes the role of the Appellant-Accused in committing the murder

of the deceased. The witness deposed that the incident arose out of a quarrel regarding fixing a bathroom pipe, which triggered the assault by the Appellant-Raosaheb, who stabbed the deceased in the stomach with a knife. PW14 further stated that the Appellant assaulted the deceased 4 to 5 times on the stomach. He also deposed that upon his raising shouts, his uncles Ganesh and Pravin, along with PW3-Anita, rushed to the spot and witnessed the aftermath. The testimony of PW14 inspires confidence, as he is a natural witness residing in the same house. His cross-examination does not bring out any material contradictions or omissions sufficient to discredit his evidence.

The challenge to the testimony of the child witness-PW14 by the learned Advocate for the Appellant is primarily on the ground that the prosecution did not record his initial statement under Section 161 of the Cr.P.C. and that he was subsequently introduced as an eyewitness only to fill up the lacunae in the prosecution case.

18. The learned Trial Court has also considered this aspect and noted that the prosecution had filed an application under Section 311 of the Cr.P.C. for recording the testimony of PW14, as his statement under Section 161 of the Cr.P.C. had not been recorded. The provisions of Section 311 of the Cr.P.C. confer wide discretion upon the Trial Court to summon or recall any witness at any stage of an inquiry, trial, or other proceeding, if the evidence of such witness appears to be

essential for the just decision of the case. The Trial Court, therefore, rightly exercised its discretion in allowing the prosecution's application under Section 311 and permitting the recording of the evidence of PW14-Nikhil, who happens to be the only direct eyewitness to the incident. The testimony of PW14-Nikhil is found to be trustworthy and reliable, and the defence has failed to elicit any material contradictions in his cross-examination so as to discredit his evidence.

19. Another witness relied upon by the prosecution is PW5-Saidabi, who only partially supported the prosecution case and was consequently declared hostile. Nevertheless, her testimony cannot be discarded in its entirety, as PW5-Saidabi, being a resident of the same lane, has deposed about the occurrence of the incident. To that extent, her evidence lends support to and corroborates the testimonies of the other prosecution witnesses.

20. Though, the law does not require the compulsory examination of the Doctor on the fitness to believe the dying declaration. However, in view of the Constitution Bench Judgment of Hon'ble Apex Court in the case of ***Laxman Vs. State of Maharashtra***, reported in 2002 (6) SCC 710, it is the duty of the Court to decide the declarant was in a fit state of mind to make declaration, but where the evidence of the Magistrate who recorded the Dying Declaration, was available, mere absence of Doctor's certification as to the fitness of the

declarant's state of mind held would not *ipso facto* render the dying declaration unacceptable. The Hon'ble Supreme Court has further held that the evidentiary value of such a declaration would depend on the facts and circumstances of each case. Thus, in view of aforesaid Constitution Bench Judgment in the case of ***Laxman Vs. State of Maharashtra (supra)***, the dying declaration ought to have been relied upon by learned Trial Court to be authenticated. Mere absence of the examination of the Doctor certifying fitness on the said dying declaration would not *ipso facto*, render the dying declaration unacceptable, particularly when the Investigation Officer-PW-15/Rohidas Bhor has stated about reading over statement to the deceased.

21. The overall evidence collected by the prosecution, including the discoveries, panchnamas and the CA report, inspires confidence. The alleged weapon, i.e., the knife, the clothes of the deceased, pieces of 'Laddi' and other muddemal articles were found to bear bloodstains matching the blood group of the deceased-Dipak, which constitutes another incriminating circumstance in favour of the prosecution. The knife was seized at the instance of the Accused from his house in the presence of panchas. The CA report corroborates the prosecution case and lends support to the testimony of the eye-witnesses, who have clearly deposed about the role of the present Appellant as the perpetrator of the crime. The prosecution has established that the Accused was present at the spot at the relevant time, and that owing to

a quarrel between the Accused-Raosaheb and the deceased-Dipak over the issue of bathroom and toilet pipe, the Appellant assaulted the deceased with a knife, thereby causing serious injuries. The death of the deceased occurred on the third day of the incident, is a direct consequence of the said assault. During this period, the dying declaration of the deceased-Dipak was recorded by the Investigating Officer, which has been substantially proved by the prosecution. The non-examination of the Accused's brothers, namely Pravin and Ganesh, by itself, does not cast any doubt on the testimony of the four natural witnesses, who are residents of the same house and whose evidence inspires confidence.

22. We, therefore, hold that the prosecution had succeeded to bring home the guilt of the Accused and proved that the Accused has committed the murder of the deceased-Dipak by assaulting with the knife intentionally causing the death of deceased-Dipak. We do not find any error in the judgment of conviction passed by learned Sessions Judge, except for the finding on the dying declaration. The judgment convicting the Appellant under Section 302 of IPC is hereby upheld with no orders as to costs.

23. Insofar as the submission of learned Advocate for the Appellant, as regards conversion of the offence from Section 302 to Section 304 of IPC, it would be seen that Appellant has committed the

murder of his real brother Dipak in front of his child by stabbing him repeatedly with the knife. The Appellant cannot be said to have acted in anger or on sudden provocation, particularly, when there are allegations that the Appellant went inside, brought out a knife and then stabbed the deceased repeatedly. The case is not of a single injury. The post-mortem shows five stab injuries caused upon by the Appellant on the person of the deceased.

24. This is, therefore, not a fit case to convert the offence from Section 302 to Section 304 of IPC. The Criminal Appeal is, therefore, devoid of substance in merit and hereby dismissed with no order as to costs.

(MEHROZ K. PATHAN, J.)

(SANDIPKUMAR C. MORE, J.)