



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

CRIMINAL APPEAL NO.29/2020

Sonu alias Raju s/o Punwasi Shahu,
aged about 27 years, Occ. -
R/o Plot No. 435, Kapil Nagar,
Near Prajapati Flour Mill, Jaripatka,
Nagpur (P.S. Jaripatka)

.....APPELLANT

...V E R S U S...

State of Maharashtra, through
its Police Station Officer,
Police Station, Jaripatka, Nagpur.

...RESPONDENT

Mr. D. V. Mahajan, Advocate for appellant.
Mr. K. R. Lule, A.P.P. for respondent.

CORAM:- ANIL L. PANSARE AND RAJ. D. WAKOKE, JJ.
DATE OF RESERVING THE JUDGMENT :- 17.11.2025
DATE OF PRONOUNCING THE JUDGMENT :- 18.11.2025

JUDGMENT (Per: Anil L. Pansare, J.)

Appellant has taken exception to judgment and order dated 08.11.2019 passed by Sessions Court, Nagpur in Sessions Case No. 50/2018, thereby convicting the appellant/original accused No.1 for the offence punishable under Section 302 of the Indian Penal Code, 1860. He has been sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/-. As such, along with the appellant, one more accused was charge-sheeted for the said offence. However, the second accused has been acquitted by the Trial Court.

2. Briefly stated, case of the prosecution was that on 13.10.2017, at about 01:30 p.m. at Kapil Nagar Square near Jaripatka

Ring Road, Nagpur, both the accused, in furtherance of common intention, assaulted deceased Rajesh Nandeshwar, by means of sword and cement stone with an intention to cause death.

3. The First Information Report ("FIR") has been lodged by PW1 Sunita, the wife of deceased stating that there was dispute between appellant and her husband with regard to a plot, where the appellant had encroached a portion and was running Pan Thela. She came to know from police that her husband approached appellant for removal of encroachment, upon which both accused assaulted him by sword and stone. Accordingly, she lodged FIR and law was set in motion.

4. PW15 Investigating Officer collected evidence and filed charge-sheet. The prosecution examined fifteen witnesses to bring home guilt of both accused. The defence of accused was of total denial and false implication. The Trial Court found appellant guilty of crime. The second accused was, however, acquitted for lack of evidence. The State has not challenged the said verdict.

5. The appellant is aggrieved by the judgment of conviction. Hence the present appeal.

6. We have heard Mr. D. V. Mahajan, learned counsel for appellant and Mr. K. R. Lule, learned A.P.P. for respondent – State. We have gone through the impugned judgment, documents and evidence

etc. We will refer to the same to the extent necessary to decide whether the prosecution has proved that the appellant has committed murder.

7. There is no dispute that deceased suffered homicidal death and, therefore, we are not going through the evidence on the point of homicidal death. The moot question is whether the appellant has committed murder? We have, with the assistance of both the sides, gone through the evidence to find that the case of the prosecution is based on circumstantial evidence. The deceased was a property broker and had facilitated transaction of plot belonging to PW5 Satish Waghmare. The appellant was running Pan Thela on this plot. The deceased took responsibility of removal of encroachment. He pursued Nagpur Municipal Corporation to remove encroachment. Such act has allegedly created enmity between the appellant and the deceased, which is projected as motive behind murder.

8. The incident occurred on 13.10.2017 at around 01:30 p.m. The weapons of assault i.e. sword and cement stone were lying at the spot. There were 48 external injuries on the person of the deceased. He died on the spot.

9. The prosecution examined 15 witnesses. PW1 informant stated that she had not witnessed the crime. She has lodged FIR on the basis of information received by her from the police. Her evidence will be, therefore, of no assistance to the prosecution to prove appellant's involvement in the crime. PW8 is NMC Engineer. His evidence

indicates that the appellant was illegally running Pan Thela. PW14 is Medical Officer who has examined the appellant. After having arrested, he found injuries on his hand, which allegedly occurred because of holding sword. Thus, information is based on the statement made by accused before the doctor. He found four lacerations and blunt trauma. He admitted that lacerations and contusions are caused by hard and blunt object. He also admitted that the incised wounds and stab wounds are caused by sharp and pointed weapon. Most importantly, he admitted that such injuries are possible by fall, depending upon how patient falls.

10. There is no eye witness nor is there any witness who has seen appellant and deceased together at the spot or prior to the incident.

11. Despite such status, the Trial Court held that chain of circumstances is complete. This finding is based mainly on two grounds. One is, there was motive to kill the deceased and the second, fresh injuries found on the fingers of the appellant.

12. At this stage, learned A.P.P. submits that there is an additional evidence as well. According to him, the Forensic Sciences Laboratory's report indicates that human blood was detected on the sword, stone and clothes of appellant.

13. We may note here that the blood groups of appellant and

deceased is “A”. As such, the finding of blood group on the weapon is inconclusive so far as blood stains on clothes are concerned, it appears that there were no blood stains on the clothes of the appellant. There were, however, blood stains on the clothes of second accused, which were of blood group “A”.

14. Here, counsel for appellant submits that the aforesaid evidence indicates that the appellant sustained injury and second accused received blood stains. This is possible while helping the appellant. In other words, he submits that merely because blood stains were found on the clothes of the second accused having blood group “A”, it will not be sufficient to infer involvement of appellant in the crime.

15. We find substance in the aforesaid submissions. The entire case is based on the circumstantial evidence. That being so, unless involvement of appellant is established by way of completing chain of events, the burden cannot be shifted upon accused (appellant) under Section 106 of the Indian Evidence Act, 1872. It is not known as to whether there occurred any quarrel between appellant and deceased. In the circumstance, merely because dead body was found near Pan Thela run by appellant, one cannot jump to a conclusion that the appellant has committed murder.

16. As such, the sword and stone were found at the spot. The prosecution, therefore, could have examined finger prints on the sword.

However, we are informed that handle of sword was missing, which was never recovered. Therefore, the finger prints could not be examined.

17. Thus, there is absolutely no evidence against the appellant except for fresh injuries on his fingers. The Doctor has stated that the injuries could be caused by falling down. The doctor further admits that these injuries could be caused by hard and blunt object. That being so, it will be impermissible to connect the appellant with the crime only on the basis of these injuries.

18. Importantly, the Trial Court, on the basis of the aforesaid evidence, held that there is no sufficient material against the second accused of his involvement in the crime, however, based on the same evidence the Trial Court held appellant guilty. The Trial Court has heavily relied upon the motive behind the crime and fresh injuries on the hands of the appellant.

19. In our considered view, these two incriminating circumstances are not sufficient to connect the entire chain.

20. Evidence of PW1 only indicates that deceased was to go to the plot for removal of encroachment. His dead body was found near plot and, therefore, there is evidence that he reached the spot/plot. What happened thereafter is not known to anybody. Nobody has seen the appellant on the spot on that day muchless at the relevant time.

Nobody has seen appellant and deceased together at the relevant time. Thus, major link is missing. In the circumstances, the theory of appellant fleeing away from the spot is unacceptable. Both the accused were apprehended on the next day. The basis of their arrest was suspicion. PW1 has stated that she received information from police. If that be so, the concerned police should have entered the witness box to clarify as to how did he come to know about the involvement of appellant and co-accused. The prosecution has not examined this officer.

21. So far as other evidence is concerned, PW2 and PW3 are pancha witnesses to the spot and clothes seizure panchanama. PW4 had an acquaintance with the deceased but has not seen crime. PW5 is owner of the plot. He stated that the deceased had taken responsibility to remove encroachment. PW6 is the one who was to purchase the plot with a condition to remove Pan Thela. PW9 is the one who stated that the second accused has purchased the SIM Card by using his documents. PW10 has disclosed mobile number of appellant. PW11, employee of NMC, has stated that the deceased had been to his office in connection with encroachment. PW12 is owner of the bike allegedly used by appellant for fleeing away. PW14 is police constable who has removed the body to Mayo Hospital for post mortem.

22. Thus, none of the witnesses have deposed about the role played by the appellant nor is their evidence sufficient to complete the

chain of the events to show involvement of the appellant.

23. Put all together, except for suspicion, there is nothing incriminating against the appellant. It is well settled that conviction cannot be based solely on the suspicion. The Trial Court committed error of law in appreciating the evidence. It is well settled that the graver is the crime, the stricter the degree of proof.

24. In the present case, such standard of proof is completely absent. The prosecution failed to prove involvement of the appellant in the crime. The judgment, therefore, is liable to be quashed and set aside. The sentence was suspended pending appeal. The appellant has been released on bail. Accordingly we pass the following order.

ORDER

- (i) The appeal is allowed.
- (ii) Judgment and order dated 08.11.2019 passed by Additional Sessions Judge, Nagpur in Sessions Case No. 50/2018 is quashed and set aside.
- (iii) Appellant – Sonu alias Raju s/o Punwasi Shahu is acquitted of the offence punishable under Section 302 of the Indian Penal Code, 1860.
- (iv) Bail bonds of the appellant stand cancelled.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)