



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

CRIMINAL APPEAL NO.288/2021

Dharmraj s/o Kantilal Gahagaye,
aged 46 years, Occ. Labourer,
r/o Hiwra, Tq. Dist. Gondia.

.....APPELLANT

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

State of Maharashtra through
its Police Station Officer, Gangazari,
Tq. Dist. Gondia.

...RESPONDENT

Mr. A. D. Tote, Advocate Appointed for appellant.
Mr. S. S. Doifode, A.P.P. for respondent.

CORAM:- ANIL L. PANSARE AND RAJ. D. WAKOKE, JJ.

DATE :- 24.12.2025

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

The appellant is aggrieved by the judgment and order dated 04.02.2016 passed by Sessions Judge, Gondia in Sessions Trial No.44/2014, thereby convicting him for an offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC") and sentencing him to suffer imprisonment for life and also to pay a fine of Rs.1000/-.

2. Briefly stated, the facts are that on 04.12.2013 at about 11:00 p.m. at village Hiwra, appellant committed murder of Tarachand Pancham Gahagaye by means of axe. Motive behind murder was quarrel/dispute between father of appellant and deceased on account of agricultural land. As such, appellant is nephew of deceased. However, the land dispute resulted into unfortunate incident.

3. Law was set in motion by PW3 – the son of deceased. The investigation culminated into filing charge-sheet. Appellant pleaded not guilty. Prosecution examined seven witnesses. Trial Court, after considering attending circumstances, held appellant guilty of offence. The said finding is challenged by way of present appeal.

4. We have heard Mr. A. D. Tote, learned appointed counsel for the appellant and Mr. S. S. Doifode, 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 appellant is responsible for the homicidal death of his uncle namely, Tarachand Gahagaye.

5. Counsel for appellant has not disputed that Tarachand suffered homicidal death. Entire argument is focused on the identity of the appellant. We have accordingly, with the assistance of both the sides, gone through the evidence.

6. PW1 is pancha witness to seizure of clothes of appellant and deceased. Blood sample of appellant was also taken in his presence. Panchanamas were proved through this witness.

7. PW2 is witness to spot panchanama. He deposed that on 05.12.2013. He was called by police to act as pancha. He along with

police visited the house of Suresh Gahagaye. He saw deceased was lying on the bed and had sustained injuries on head. Panchanama of spot was accordingly prepared so also inquest panchanama of dead body. One axe was lying at the spot, which was seized in his presence.

8. PW3 is informant/son of deceased. He deposed that appellant is his cousin. There was dispute between two families. Appellant was addicted to liquor. Therefore, PW3's father i.e. deceased used to give him understanding. On 04.12.2013 at about 11:00 p.m., PW3 and his father went to sleep after taking meal. PW3 was sleeping by the side of his father on separate bed. He heard noise of beating. He woke up to see appellant beating his father by axe. He rushed towards father and obstructed the appellant. Despite such obstruction, he gave one blow to his father. He also threatened PW3 by showing axe. Accordingly, the witness called his nephew Ajay. Thereafter, his wife, mother, sister rushed to the spot. Appellant ran away leaving axe at the spot. PW3 switched on electric bulb and saw bleeding injury on the face of his father. He called neighbours. His father expired at the spot. In the cross-examination, he deposed that though there was quarrel between two families, they were in talking terms. There occurred partition between ancestors of two families. Appellant's house is adjacent to the house of PW3 with one partition wall in between. There is no electric meter in the house of appellant. This statement will only suggest absence of electricity in house of appellant and not in the

house of deceased. PW3 denied that there is no electric meter in his house also. He then deposed that at the time of incident, lights were off. Witness then deposed that he did not inform the police that when he obstructed the appellant, he gave one blow. He also did not state before police that he called nephew and thereafter other family members reached the spot. He has also not stated to police that the appellant ran away after seeing family members. The defence, however, failed to afford opportunity to this witness to explain the same. No benefit, therefore, can be derived by the defence on this count. It is then brought on record that the witness has correctly mentioned in the report that appellant ran away by taking advantage of darkness and thereafter he switched on the electric bulb.

9. Counsel for appellant submits that the witness has admitted that it was dark at the relevant time and it was difficult to identify the assailant.

10. We are not impressed with the argument. Appellant is PW3's cousin. Thus, a glimpse of appellant is sufficient to identify him. That apart, the manner in which the incident is described, PW3 had sufficient time to see the appellant. He even obstructed appellant from inflicting injury. Most importantly, in the cross-examination it is brought on record that PW3 has correctly mentioned in the report that the appellant ran away by taking advantage of darkness. Thus, presence

of appellant is admitted in the cross-examination. It is also admitted that the appellant ran away. It is different matter that he took advantage of darkness and ran away. That by itself will not lead to the conclusion that there was darkness in the house also or that the darkness was such that persons were completely invisible. In absence of the status of darkness, the appellant cannot argue that individuals were invisible. In a given case, when a person is a relative or closely associated, his presence can be felt by his voice as well as by general appearance. This is not a case where an unknown person has been identified. Thus, mild light or glimpse coupled with voice and other means is sufficient for identifying a person. What is important is clarity in identifying appellant. Evidence of PW3 appears to us to be of authoritative identification. There is absolutely no hesitance or vagueness in the identification of appellant. The argument, therefore, that it was dark and PW3 could not have identified the appellant is without any substance and is accordingly rejected.

11. PW4 is wife of PW3. She deposed in tune with PW3 as regards allegation of his addiction to liquor and disputes, etc. On incident, she stated that she along with her mother in law and sister in law was sleeping in the room by the side of the spot of incident. Deceased was sleeping on a cot in Chhapri. Her husband was sleeping by his side at some distance. She heard voice of her husband saying that appellant gave blow of axe to his father. She, along with her sister

in law and mother in law woke up and reached at the door. They saw appellant having axe in his hand. Appellant, seeing them, threw the axe and ran away. She saw injury on the head of her father in law. He expired at the spot.

12. In the cross-examination she denied that when she woke up and came to room, appellant was not present. She further denied that when she woke up, her husband switched on electric light. The other suggestions were also denied by her. Thus, there is nothing in the cross-examination on the point of identification of appellant. Her testimony would establish appellant's presence at the spot with axe in his hand. He threw axe and ran away. Thus, the testimony of PW3 finds corroboration by PW4.

13. PW5 is daughter of deceased. She had seen injuries on the head, below left eye of the deceased. In the cross-examination, except for suggestion, nothing is brought on record. In other words, identification of appellant at the spot with axe in his hand is further certified by this witness.

14. Thus, the evidence of PW3 is further cemented by testimony of PW5. Accordingly, involvement of appellant in the crime is well established through the evidence of these three witnesses.

15. PW6 is the one who has registered FIR and investigated the crime. PW7 is the doctor who has conducted post mortem. His evidence will support theory of homicidal death of deceased. In cross-examination, it is brought on record that the cause of death was due to injury below left eye to left ear. Injuries were ante mortem. Further, the Forensic Sciences Laboratory's report Exh.-46 shows that clothes of accused which were stained with blood had a blood group of 'B' which is the blood group of deceased.

16. Put all together, PW3 has narrated the entire incident. He has identified appellant to be the one who has assaulted his father. The appellant threatened him by showing axe when he tried to save his father. His presence at the spot is further substantiated by PW4 and PW5. They had seen appellant with axe in his hand. Appellant, seeing them, dropped the axe and ran away. The appellant has substantiated the theory of his running away from the spot by bringing on record in cross-examination that it is correctly mentioned in the report that appellant ran away by taking advantage of darkness. Thus, the appellant himself has proved his presence at the spot. It is not his suggestion that assailant has ran away taking advantage of darkness. What is suggested is that the appellant ran away. That being so, evidence of three witnesses viz. PW3, 4 and 5, gets support through defence as well. That apart, the axe was seized from the spot, blood stains on the axe were of human, blood stains on clothes of appellant

were of blood group 'B', which is the blood group of deceased. The appellant has not tendered any justification for the same. Cumulative effect of the above evidence is that the appellant is responsible for homicidal death of the deceased. The Trial Court has considered all attending circumstances. Its finding is consistent with the evidence. No interference is, therefore, required in the impugned judgment.

17. There is, thus, no merit in the appeal. The appeal is accordingly dismissed.

Professional fees of appointed counsel Mr. A. D. Tote, be quantified and paid as per the Rules.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)

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