



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

CRIMINAL APPEAL NO. 684/2019

Bramha @ Bramhanand Kisan Shinde,
Aged about 25 years, Occ. Labourer,
R/o. Khorad, Tah. Kalamb, Dist. Yavatmal,
Presently in District Prison, Yavatmal.

...APPELLANT

VERSUS

The State of Maharashtra,
through the Officer in Charge,
Police Station, Kalamb,
Dist. Yavatmal.

RESPONDENT

Ms. Sonali B. Khobragade, Advocate for appellant.
Mrs. Mayuri Deshmukh, APP for respondent/State.

CORAM : NITIN B. SURYAWANSHI AND
M. W. CHANDWANI, JJ

JUDGMENT RESERVED ON : 22.01.2025
JUDGMENT PRONOUNCED ON : 12.03.2025

JUDGMENT : (PER: NITIN B. SURYAWANSHI ,J.)

Heard.

2. Appellant is convicted under Sections 302 and 201 of the
Indian Penal Code, 1860 ("IPC") and Sections 4/25 of the Indian

Arms Act, 1959 by learned Additional Sessions Judge, Yavatmal in Sessions Trial Case No. 48/2016 and is sentenced to suffer imprisonment for life and to pay a fine of Rs. 5000/- By this appeal, he challenges his conviction.

3. Prosecution story in short is that, Gopal was watchman in the field of Uddhav Bakale, which is adjacent to the field of Gangadin Gadai. On 05.03.2016 around 04.00 p.m., Gangadin Gadai heard voice as 'Gangadin'. Initially, he ignored it, but later on, he again heard the same voice, hence he went towards the voice and he saw Gopal in injured condition, under an orange tree in his field. Blood was oozing from his injuries, hence Gangadin got frightened and rushed to his younger brother Vitthal who was present in the adjacent field. Upon hearing shout of Gangadin, Vitthal came to him and Gangadin disclosed him that somebody has injured Gopal by sharp edged weapon and he is lying in the pool of blood under the orange tree. Thereafter, labours in the field and Sachin son of Gangadin came on the spot. Vitthal with Labour Fakru went to village to give information to people. Sachin went to inform Dadarao Tekam, son-in-law of Gopal, who was grazing cattle in the field of Bhaurao Sonawane. On receiving information, Dadarao Tekam proceeded

towards the spot, on the 'Dhura' of Gangadin's field, he saw Rangubai in dead condition having bleeding injuries on her stomach and chest. At some distance, under an orange tree, Gopal was lying in injured condition having bleeding injuries over his stomach and near eye. Dadarao Tekam asked Gopal as to who assaulted him. Gopal told him that when he and Rangubai were coming to the field, suddenly, the accused came there with a spear and assaulted him by the spear. When Rangubai came to save him, accused also gave blows of spear on her chest and stomach, she therefore died on the spot. When Gopal was coming to give information to Gangadin, due to giddiness, he fell under the orange tree. Thereafter, Gopal was taken to the Government Hospital, Kalamb. Dadarao Tekam went to the Police Station and lodged report against accused, which was registered at Crime No. 94/2016 with Kalamb Police Station under Sections 302 and 307 of the IPC. During treatment, Gopal expired on 16.03.2016. On completion of investigation, charge-sheet was filed and charge was framed against the accused under Sections 302, 307, 201 of the IPC and Sections 4/25 of the Arms Act. The accused pleaded not guilty.

4. In support of its case, prosecution examined 17 witnesses. Accused has taken defence of total denial and false implication. The Trial Court convicted accused as above, hence the appeal.

5. Heard learned Advocate for the appellant, learned APP for respondent/State. Perused the records.

6. Learned Advocate for the appellant assailed conviction by submitting that the Trial Court has erred in relying on oral dying declaration of deceased Gopal. Though Gopal was alive for 11 days after incident, his dying declaration was not recorded in these 11 days. There are inconsistencies in the evidence of prosecution witnesses in respect of oral dying declaration. She submits that there is no corroboration to the oral dying declaration, therefore the same is unreliable. PW-1 Dadarao Tekam, PW-9 Gangadin Gadai and PW-13 Mangesh Pundlikrao Junghare are unworthy of credit and their evidence is liable to be disbelieved. According to her, prosecution has failed to prove its case beyond reasonable doubt and hence, the appellant is entitled for acquittal.

7. On the other hand, learned APP submits that oral dying declaration of Gopal is proved by PW-1 Dadarao Tekam, PW-9

Gangadin Gadai, PW-13 Mangesh Junghare and their evidence is corroborating each other. She submits that blood of Rangubai's blood group 'A' was found on the weapon i.e. spear and bamboo stick which supports case of prosecution. She supported the impugned judgment and order of conviction by relying on decision of the Supreme Court in case of *Prakash and another Vs. State of Madhya Pradesh, (1992) 4 SCC 225*.

8. Heard learned Advocate for the appellant and learned APP for respondent/State at length. Perused the record.

9. Prosecution has proved postmortem report (Exh.84) of Rangubai by examining PW-10 Medical Officer Dr. Narsing Rathod. He has stated that he found following injuries on Rangubai's body:-

“(i) Incise wound of size 6 x 3 cm. over left breast, oblique in nature.

(ii) Incise wound of size 6 x 2 cm. below left breast, oblique in nature, 6 cm. below injury No.1.

(iii) Incise wound of size 6 x 3 cm. located over left eye lateral upper part oblique in nature.”

According to him, the cause of death is due to injury to heart and liver.

10. PW-12 Medical Officer Dr. Vijay Kanake examined injured Gopal on 05.03.2016 at 08.45 p.m., who was brought by his relative. On examination, he found that central nervous system wise, he was conscious and oriented. He found following injuries on his body:-

- “(i) Incised wound over right lumber region of size 4 x 2 x 10 cm. laterally.
- (ii) Incised wound over epigasteric region of size 8 x 6 cm.
- (iii) Incised wound of size 2 x 1 x 3 cm. in right lumber region just below second wound.
- (iv) C.L.W. of size 1 x 1 x 1 cm. over right lumber region just below incised wound injury no. 3.
- (v) Incised wound of size 3 x 2 x 6 cm. in left flank lateral.
- (vi) Incised wound over right arm above elbow joint of size 2.5 x 2 x 4 cm.
- (vii) Left eyelid tear along-with exposer of eye ball with mussel attached to it.
- (viii) Incised wound over back in right flank of size 4 x 2 x 1 cm.”

He operated Gopal for stab injury over abdomen on 06.03.2016 at 12.50 a.m. During operation, he found internal injuries i.e. perforation of size 4 x 2 cm. over anterior wall of duodenum in its first

part. There was complete trans section of common bile duct 2 cm. below cystic duct. There was retro peritoneum heamatoma. There was contusion over posterior wall of stomach. There was trans section of right sided para spinal muscles. There was laceration of size 4 x 1 cm. with active bleeding present over right lobe of liver. There was heamo peritoneum approximately 300 to 400 cc present. These internal injuries were found during operation. He deposed that patient died during treatment on 16.03.2016. Due to the injuries sustained by patient Gopal, death might be caused. On a query being made by Investigating Officer, he opined that the injuries caused to Gopal were possible by weapon Ballam (head of spear).

In cross, he has admitted that he called Psychiatric opinion during treatment, and opinion was given that patient was alcoholic since last 12 months. He admitted that during his treatment, Police did not come to record statement of injured ('Gopal'). He also admitted that relatives of injured were with him.

11. PW-8 Medical Officer Dr. Sharad Vasantrao Kuchewar performed autopsy of Gopal and issued postmortem report (Exh. 76). The cause of death mentioned is, "septicaemic shock in operated case of multiple stab injuries over abdomen."

From the above evidence, it is clear that prosecution has proved homicidal death of Rangubai and Gopal.

12. Prosecution case is based on oral dying declaration which is proved by PW-1 Dadarao Tekam, PW-9 Gangadin Gadai, PW-13 Mangesh Junghare. While convicting the appellant, Trial Court has relied on their evidence.

13. PW-1 Dadarao Tekam has deposed that Gopal Surpam and Rangubai Surpam were his parent-in-laws. They were residing at Khorad. Accused resides nearby the house of his parent-in-laws. Gopal and Rangubai were guarding the orange orchard of the field of Uddhao Bakale. The incident took place in the last year at the time of 'Mahashivratri' festival at about 04.00 to 04.30 p.m. That time, he was grazing cattle in the field of Sonawane. Sachin Gadai (PW-11) came and told him that your parent-in-laws are assaulted, therefore you have to come. He then went to the field of Gangadin Gadai (PW-9). On the way, he saw his mother-in-law lying dead. She was having injuries on her stomach and chest. His father-in-law was sitting under the orange tree in the field of Gadai, having injuries on his stomach and eye. He asked his father-in-law who assaulted him. He

told that son of Shinde namely Bramha assaulted him by Ballam. So, he was going to tell Gadai, that time Gangadin Gadai, Vitthal Gadai, Golu Junghare and Shachin Gadai were present there. Name of Golu is Mangesh (PW-13), he made shooting of his father-in-law's talk in mobile. Thereafter, his son-in-law Panjab Gadekar and others took his father-in-law to the Hospital. He stayed near the dead-body of mother-in-law. Then Police came there and he showed the spot of incident to them. Thereafter, Police sent the dead body of Rangubai to the Hospital at Kalamb. He also went along with them. Then he went to lodge report (Exh.43) at Police Station.

In cross, he has stated that, "it is true that Police did not record his statement". "It is true that villagers used to say that his parent-in-laws were doing black magic". He admitted that on the day of Mahashivratri, there was ritual of 'Bhagwat' in their village and villagers attended the 'Bhagwat'. He denied the suggestion that the appellant is not the author of crime.

14. PW-9 Gangadin Gadai is the first person who has seen Gopal in injured condition. He deposed that the incident took place on 05.03.2016. That day, laboures were working in his and his brother's field and his brother Vittal, son Sachin and worker Fakru

Nehare were also present. At about 03.00 to 04.00 p.m., when he went to the water tank by taking his buffalo near the house in his field, he heard shout as 'Gangadin'. He did not pay attention to that shout. After sometime again, he heard the shout as 'Gangadin'. He went towards the direction of the sound. He saw someone lying under the tree of orange in the pool of blood. He was Gopal Surpam. He got frightened by seeing Gopal in injured and bleeding condition. So, he ran towards his field and gave call to his brother. He told his brother that Gopal is lying in injured condition, then they went towards Gopal. Thereafter, his brother and Faku Nehare went to village to inform. He told his son Sachin to inform son-in-law of Gopal namely Dadarao Tekam. Sachin brought Dadarao. Dadarao asked Gopal as 'Mamaji' who assaulted you. On that, Gopal told that when he and his wife were going to the field to bring articles, his neighbour Bramhanand came across the road. Bramhanand said to him that you have played black magic on my father and then assaulted him by means of Ballam. He also told that, he also gave blow of Ballam on his stomach and eye. He further stated that when his wife Rangubai came to rescue him, Bramhanand also gave blows on her chest and stomach, due to which, she fell down and died. So, he called field owner

Gangadin and while going towards him, he felt giddiness and fell under the orange tree.

On receiving message from Vitthal, villagers came there. They told him that Rangubai was lying in dead condition on the way. Thereafter, Gopal was taken to the Hospital by calling a vehicle. His statement was recorded by Police. His statement (Exh.80) in the Court was also recorded.

In cross, omission to the effect that, *“he told his son Sachin to inform son-in-law of Gopal namely Dadarao Tekam”* is brought on record.

The fact that deceased made oral dying declaration is not stated by this witness in his statement (Exh.80) recorded under Section 164 of the Cr.P.C. In his evidence, he also does not say that Mangesh Junghare (PW-13) recorded the statement of deceased on his mobile.

15. PW-13 Mangesh Pundlikrao Junghare has recorded alleged oral dying declaration of Gopal on cell phone. He has deposed that incident took place on 05.03.2016. That day, at 04.00 p.m., he came to know that someone assaulted Gopal and Rangubai and the said incident took place on the Pandan road near the field of Gangadin

Gadai. Because of that, Rangubai was dead and Gopal was injured. When he was going towards field, Rangubai was lying in dead condition on Pandan road. She was assaulted by sharp weapon and blood was oozing from her injuries. Gopal was lying in injured condition under the orange tree in Gangadin's field. He was having injuries on eye and stomach. He took out his mobile, started video shooting and asked Gopal who assaulted you. He told him that Bramhanand Shinde assaulted him with sharp weapon Ballam. He also told that Bramhanand also assaulted Rangubai with Ballam and she is lying in dead condition on the Pandan road. Then to give call to Gangadin, he went to the field of Gangadin and due to giddiness, fell under the orange tree. Thereafter, they called vehicle of Sk. Mukhtar and sent Gopal to Kalamb Hospital.

He gave memory card in his mobile to Police which was seized under panchanama (Exh.60). He also identified memory card, in which the video shooting was recorded. He has also identified the video shooting of the said memory card which was played on the computer in the Court. He deposed that the injured person in video clip was Gopal Surpam. The voice in it was of Vittal Gadai and he was making video shooting. His statement was recorded by Police. So

also, his statement (Exh.107) was recorded before the Court at Kalamb.

In cross-examination, he has stated that in the night time wield animals come in the field so guarding persons have Ballam with them. He admitted that old person in the video clip was saying that he was assaulted by son of 'Chindhya'. He admitted that in the program of Mahashivratri at noon time, accused was also present. He has given following admissions in his cross:-

- *"It is true to say that Vittal Gadai uttered that "Shindhyachaya Porane Marle.".....*
- *"It is true to say that in the video clip that old person did not tell that Rangubai is lying on the road.".....*
- *"It is true to say that in the video clip it is not stated by him that he went to call Gangadin and fall under the orange tree by giddiness. It is true to say that in the said video clip the old person did not utter the name of Bramha or Bramhanand.".....*
- *"It is true to say that on the next day of incident police obtained my signature on 2 to 3 blank papers.".....*
- *"It is true to say that the said memory card did not have my individual photos".....*
- *"It is true to say that there are many people in our village by name Chindu or Chindhya. It is true to*

say that in the adjacent villages of our village there are so many persons by surname Shinde.”.....

- *“It is true to say that Gopal and Rangubai were not resident of our village. It is true to say that after getting bail in one murder case they came to reside in our village before 4 to 5 years.”*
- *“It is true to say that oftenly quarrel used to take place between Gopal and Dadarao Tekam.”*
- *“It is true to say that in the programme of Mahashivratri at noon time accused was also present.”*
- *“It is true to say that before giving statement we all made discussion at one place. It is true to say that Gangadin Gadai and Sachin Gadai refused to give statement as per the say of Panjab Gadekar. Witness volunteers that they told that they will give statement as per the incident. It is true to say that Sachin Gadai did not give statement in the Court at Kalamb.”*

16. He denied the suggestion that he gave statement in the Court as per the say of Panjab Gadekar and Dadarao Tekam. Omission to the effect that, “I took out my mobile, started video shooting and asked Gopal Surpam who assaulted you,” “Gopal told that, “Rangubai is lying in dead condition on the Pandan road and I gave memory

card to police,” were brought on record in his cross. He admitted that his voice is not there in the memory card and he did not enquire anything to Gopal.

17. Prosecution has examined PSI Ranganath Murlidhar Jagtap (PW-14) who was attached to Police Station Kalamb. He has stated that on 05.03.2016 at about 06.30 p.m., one Vijay Padalkar R/o. Khorad made phone call to their Police Station that a boy from their village assaulted and injured Rangubai Surpam and Gopal Surpam by means of knife, due to which, Rangubai died and they were bringing Gopal to the Hospital. Said information was taken at Sana No. 22/2016 at Police Station. Then he along with his staff went to Khorad. One Dadaro Tekam of Khorad took them towards the field of Gangadin Gadai through Pandan road. On the Pandan road, near boundary of field of Sunanda, they saw Rangubai Surpam lying in dead condition, having bleeding injuries all over the body. One bamboo stick having blood stains was lying at a distance of 10 ft. from her. One pair of Chappal of Aqwalike Company having blood stains was also lying there. He conducted spot panchanama and seized the articles lying there and earth mixed with blood. He has also conducted inquest panchanama (Exh.47) of Rangubai. Thereafter, they were

taken to orange orchard of Gangadin Gadai and Dadarao showed them the place where Gopal was lying. He also seized articles from the said spot by panchanama Exh.65.

In cross, he admitted that Vijay Padalkar did not tell names of Rangubai Surpam and Gopal Surpam.

18. By examining PW-16 API Sangarakshak Bhagat, prosecution has proved arrest panchanama of accused (Exh.122). He has also proved memorandum statement of the accused (Exh.56) and recovery of the Ballam and burnt piece of clothes of accused allegedly worn by him at the time of incident by Panchanama (Exh.57). Investigation in the present crime was handed over to him on 06.03.2016 by PSI Jagtap (PW-14).

In cross, he has deposed that he does not know whether the seized Muddemal was kept combinely or what. He denied that he had not made attempt to record statement of Gopal Surpam.

19. PW-17 PI Baban Karale has recorded First Information Report (Exh.44) on the basis of oral report lodged by Dadarao Tekam (PW-1) on 05.03.2016. He registered crime No. 94/2016 and gave investigation to API Sangarakshak Bhagat (PW-16). He took

investigation with him on 10.03.2016 and recorded statements of witnesses and made correspondence with Tahsildar, Hospital and JMFC Court for recording statements of witnesses under Section 164 the Code of Criminal Procedure, 1973 ("Cr.P.C."). He has also proved on record CA report Exhs. 135, 136, 137, 138, 139. After completion of investigation, he has submitted charge-sheet.

In the cross, he has admitted that one unknown call about the incident was received by Police Station. Clothes of Gopal were not seized. He has also stated that, "it is not true to say that I have not made attempt to record the statement of Gopal."

20. On careful scrutiny of the evidence of PW-1 Dadarao Tekam, PW-9 Gangadin Gadai and PW-13 Mangesh Pundlikrao Junghare, it is clear that there are material inconsistencies in their evidence in respect of the oral dying declaration of Gopal. PW-1 Dadarao Tekam has deposed that on his asking, Gopal told that son of Shinde namely Bramha assaulted him and Rangubai by Ballam. That time, Gangadin Gadai, Vitthal Gadai, Golu Junghare and Sachin Gadai were present.

21. PW-9 Gangadin Gadai has deposed that Dadarao asked Gopal as Mamaji who assaulted you. On that Gopal told that, when

he and his wife were going to the field to bring articles, his neighbour Bramhanand came across the road. Bramhanand told him that, you have played black magic on my father and then assaulted him by means of Ballam. He also told that he gave blow of Ballam on his stomach and eye. When his wife Rangubai came to rescue him, Bramhanand also gave blow of Ballam on her chest, due to which she fell down and died.

22. Admission given by PW-13 Mangesh Junghare in his cross-examination that old person in the video was saying that he was assaulted by son of 'Chindya', Vitthal Gadai uttered that "Shindhyachaya Porane Marle", and most important admission that old man did not utter name of 'Bramha' or 'Bramhanand' and Police obtained his signature on 2 to 3 blank paper gives fatal blow to the prosecution case.

He has also admitted that in the programme of 'Mahashivratri' at noon time, accused was also present. His further admission that before giving statement in the Court, they all made discussion at one place and Gangadin Gadai and Sachin Gadai refused to give statement as per the say of Panjab Gadekar, further casts doubt on the prosecution case and it appears that prosecution

witnesses have conspired to implicate the accused in the present crime. There is no certificate under Section 65B of the Indian Evidence Act, 1872 to the oral dying declaration recorded by Mangesh Junghare (PW-13). Omissions in his evidence are proved on record. In view of admission of PW-13 Mangesh Junghare that in the oral dying declaration Gopal has not stated name of Bramhanand, and Vitthal uttered the words “Shindhychaya Porane Marle”, it is not possible to accept the testimony of PW-1 Dadarao Tekam and PW-9 Gangadin Gadai that Gopal disclosed that son of Shinde namely Bramha assaulted him and his wife by Ballam. In view of the above discrepancies, evidence of these witnesses about oral dying declaration cannot be relied upon.

It is clear from the evidence brought on record by the prosecution that Gopal was admitted in Hospital on the day of incident i.e. on 05.03.2016. He was operated 06.03.2016 at 12.50 a.m. and during treatment, he expired on 16.03.2016. So, Gopal was alive for 11 days after the incident. It is pertinent to note that for the reasons best known to the prosecution, his dying declaration was not recorded during these 11 days Both the Investigating Officers (PW-14 and PW-16) have simply denied the suggestion given by defence by

stating that, “it is not true to say that I have not made attempt to record the statement of Gopal.” This casts serious doubt on the prosecution case.

23. It is settled legal position that oral dying declaration is a weak type of evidence and corroboration is required to sustain conviction on the basis of oral dying declaration.

24. Recovery of alleged weapon i.e. Ballam used in the crime is admittedly from the open space. Therefore, merely because blood stains of ‘A’ Group which is of Rangubai which were found on the Ballam, that by itself is not sufficient to connect the appellant with the alleged crime. Fact remains that no blood was detected on the pant of the appellant.

25. In view of aforesaid reasons. We hold that the prosecution has utterly failed to prove its case against the appellant, beyond reasonable doubt. The appellant is therefore entitled for benefit of doubt.

26. In the result, appeal is allowed. Impugned judgment and order of conviction passed by learned Additional Sessions Judge,

Yavatmal in Sessions Trial Case No. 48/2016, on 28.08.2018 is hereby quashed and set aside.

27. Appellant – Bramha @ Bramhanand Kisan Shinde is acquitted from all the charges. He be released forthwith, if not not required in any other case.

28. The appellant to execute bail bond in terms of Section 437A of the Cr.P.C.

(M. W. CHANDWANI, J.)

(NITIN B. SURYAWANSHI, J.)

Gohane