

Ganesh Vs. the State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Mar-12-2013

Judge : R.C. Chavan & Prasanna B. Varale

Appeal No. : Criminal Appeal No. 621 of 2005

Appellant : Ganesh

Respondent : The State of Maharashtra

Judgement :

Oral Judgment:(P.B. Varale, J.)

By the present appeal, the appellant (hereinafter referred to as accused), is challenging the judgment and order passed by the learned 1st Adhoc Additional Sessions Judge, Yavatmal. The appellant-accused has been convicted of the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and to pay fine of Rs.500/-, in default to undergo rigorous imprisonment for one month.

2] Heard Ms. Shiwang Murthy, learned counsel (appointed) for the appellant and Mr. T.A. Mirza, learned Additional Public Prosecutor for the respondent/State.

3] The prosecution case can be summarized as follows :

The report was lodged by complainant Pramod Shalikrao Dhote (P.W.1) at Police Station, Babhulgaon on 12.09.2003. It is stated in the report that the complainant is residing with his family members namely his mother, father and brother. It is further stated that as his family owns some animal husbandry/cattle namely she-buffallows, she-goats and cultivates agricultural land for their livelihood, for the purposes of managing the agricultural affairs and looking after the animals, services of one Ganesh Gajbhiye were engaged. Said Ganesh Gajbhiye was allowed to reside in the house itself. It is further stated that on one occasion Ganesh misbehaved with the mother of complainant namely Smt. Arunabai and he used to follow her. As all the family members were angry because of the ill-behaviour of Ganesh, they asked him to discontinue from work 23 days prior to the incident. It is further stated that on 11.09.2003, in the late hours of the night i.e. at about 2.45 hours, brother of the complainant Pramod, namely Pravin heard some sound i.e. opening of front door of the house. As Pravin gave a call, Pramod got up and found that Ganesh was standing before his brother armed with an axe. Thereafter, Ganesh gave blow of axe on the head of his brother Pravin asking him how did he dare to remove him from the work. Because of the blow, Pravin fell down and Pramod immediately rushed to save his brother. Ganesh raised the axe in an attempt to assault Pramod, but Pramod was successful in avoiding the blow of axe. By that time, Shalikrao i.e. father of Pramod and Pravin got up. Shalikrao and Pramod tried to catch hold of Ganesh, but Ganesh fled away from the spot. On hearing the hue and cry, the neighbours gathered there. With the help of the neighbours namely Dadarao Dhote, Umesh Dhote, Subhash Dhote and Haridas Dhote, Pravin was shifted to the Government Hospital, Yavatmal. The Medical Officer, attached to the Government Hospital, declared Pravin to be dead. On receiving the report, the police station authorities namely H.C. Sukhnandan Isule (PW8), registered Crime No. 78/2003 on the basis of the report and reduced it into printed FIR (Exh.20). The investigating agency was set in motion. P.I. Bhikaji Dawale (PW10) in the process of investigation, took various steps such as recording the statement of witnesses, collecting the material, drawing the panchanamas, receiving the reports such post mortem report, Chemical Analysers report, seizure of articles and weapon used in the commission of crime and effecting the arrest of accused. On conclusion of the investigation, charge-sheet

was filed before the learned Judicial Magistrate, First Class, Babhulgaon for the offence punishable under Sections 302, 307 and 452 of Indian Penal Code. The offences under Section 302 and 307 of IPC being exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Yavatmal. The accused pleaded not guilty and claimed to be tried. The prosecution, in support of its case, has examined in all 10 witnesses. The defence of the accused was of total denial. After considering the prosecution evidence in the light of the defence taken, the learned trial Judge convicted and sentenced the appellant as aforementioned. Aggrieved thereby the appellant has preferred this appeal.

4] Ms. Murthy, learned counsel appointed for the accused submitted that the learned Adhoc Sessions Judge, Yavatmal has failed to appreciate the evidence in its proper perspective and arrived at an erroneous conclusion. Learned counsel further submitted that though there were independent witnesses available, the prosecution failed to bring before the Court the independent witnesses. She further submitted that the learned Sessions Judge has erred in placing reliance on the witnesses. She submitted that the witnesses namely P.W.1 Pramod Dhote and P.W.2 Shalikram Dhote, who are the brother and father, respectively, of deceased Pravin, are the interested witnesses and therefore, their testimony ought not to have been relied upon. Learned counsel for the accused further submitted that as the family members of complainant Pramod were having suspicion over the alleged ill-behaviour of the accused, the accused is falsely involved in the said crime. Learned counsel, therefore, prays for allowing the appeal.

5] Per contra, Mr. Mirza, learned Additional Public Prosecutor for the State supports the judgment and order passed by the learned Additional Sessions Judge, Yavatmal, impugned in the present appeal.

6] With the help of the learned counsel for the respective parties, we have gone through the evidence on record. It is not in dispute that the prosecution case primarily rests on the direct evidence i.e. the account of eyewitnesses. Now coming to the merits of the appeal, the appellant/accused stands convicted for the offence under Section 302 of I.P.C. and is acquitted for the offence under Section 307 of I.P.C. As it is the case of the prosecution that Pravin died homicidal death,

we shall deal with the evidence brought by the prosecution in support of its case of homicidal death.

7] The prosecution has examined Dr. Mohan Pawar (P.W.7) to prove the post mortem report. A requisition letter, requesting the Head of Department of Forensic Medicine, Vasant Rao Naik Government Medical College, Yavatmal, to conduct post mortem on the dead body, is placed on record at Exh.46 along with the queries raised by the police authorities. P.W.7 Dr. Mohan Pawar deposed about the injuries sustained by the victim. Dr. Pawar in his testimony deposed about the external injuries mentioned in Column No. 17 of the post mortem report, which are as under:

1. Incised wound over left parietal region 3 cm from midline of Y shape, measuring upto 3 x 2 cm and bone deep, margins clear cut, blood oozing. Another incised wound 3 cm lateral to prior wound measuring upto 4 x 2 cm and bone deep, blood oozing, Recent injury within 6 to 12 hours by sharp and heavy object.
2. Contused abrasion over left shoulder, superiorly 2 x 2 cm, reddish black, recent within 6 to 12 hours.
3. Contused abrasion below left mastoid, horizontally situated (behind the ear) of 4 x 1 cm, reddish black, recent within 6 to 12 hours.

Both 2nd and 3rd injuries are possible with hard and blunt surface/ object.

Then he deposed about the injuries observed by him on internal examination, which are as under :

1. Huge under-scalp haematoma seen over both parietal bone region, reddish dark coloured measuring about 80 gm, approximately.
2. Depressed-communited fracture of left parietal bone near vertex, fracture of left parietal bone near left coronal suture, measures upto 5 cm. (Fissure fracture).

P.W.7 Dr. Pawar further deposed that the cause of death was due to head injury and injury no.1 in column no.17 was sufficient in ordinary course to cause death. He further deposed that injury no.1 in column no.17 corresponds to injuries in

column no. 19. He further deposed that the weapon i.e. axe can cause injuries mentioned in column no.17 and associated internal injuries mentioned in column no.19. Though, in the cross-examination, an attempt was made to raise doubt about the injuries and thereby suggesting that the injuries could not have been caused by the weapon axe, Dr. Pawar stood firm on the nature of injury no.1 in column no.17 being incised wound. The inquest report (Exh.27) refers to the injuries on the person of deceased. It is stated in the report that there is 3 cms long bleeding injury in the hair at the centre of the head from the left side. At a distance of 2 cms from the said injury, there is one more bleeding injury measuring 3 cms. From the medical evidence i.e. Post Mortem report proved by Dr. Pawar (PW7) and the nature of the injuries suffered by deceased Pravin, we have no hesitation to say that deceased Pravin died homicidal death.

8] Now coming to the complicity of the accused in the commission of crime, the direct evidence in the form of eyewitnesses is available. P.W.1 Pramod Dhote is the star witness of the prosecution. P.W.1 Pramod in his testimony gives a detailed version in respect of engaging services of the accused for the agricultural and other ancillary work of looking after the cattle. P.W.1 Pramod also gives the details of the incident. He deposed that on the fateful day i.e. on 11.09.2003 at 2.30 a.m., the accused entered in the house, who was armed with the axe and gave a blow on the head of his brother Pravin. He deposed that the accused initially made an attempt to assault him, but he was successful in avoiding that assault. The accused then gave a blow to Pravin resulting into oozing of blood from his head. P.W.1 Pramod further deposed that he tried to catch hold of the accused, but the accused ran away from there. P.W.1 Pramod further states that at that time tube light of his house was on. He thereafter gives the description of the clothes worn by the accused. It is further deposed by P.W.1 Pramod that though an attempt was made to provide medical assistance to Pravin by shifting him to the Government Hospital at Yavatmal by arranging an auto-rikshaw, on reaching the hospital at Yavatmal, doctor informed that Pravin has succumbed to the assault. Pramod (PW1) thereafter lodged the report with the police authorities.

9] The another witness examined by the prosecution is P.W.2 Shalikrao Dhote, the father of deceased Pravin, who is also an eyewitness to the incident. He was

present in the house at the time of the incident. P.W.2 Shalikrao also gave the version on the backdrop of engaging services of accused, his living in the house and then assault by the accused on the victim. The version of P.W.2 Shalikrao is corroborative to the version of P.W.1 Pramod.

10] Both P.W.1 Pramod and P.W.2 Shalikrao were subjected to searching cross-examination, but nothing substantial could be elicited from their cross-examination.

11] Learned counsel appointed for the accused, by referring to the omissions in the cross-examination of P.W.1 Pramod in respect of nondisclosure of the fact that tube light in the house was on and the description of clothes worn by the accused, submitted that the omissions are material omissions and as such the ocular version of P.W.1 Pramod is not trustworthy. Learned counsel further submitted that P.W.2 Shalikrao in his cross-examination stated that the police authorities had not recorded his statement and the witness gave his account before the Court first time and as such no reliance can be placed on the evidence of P.W.2 Shalikrao. We are unable to accept the submissions of the learned counsel for the accused for more than one reason. Merely because P.W. 1 Pramod and P.W.2 Shalikrao are near relatives i.e. brother and father, respectively, of deceased Pravin, that is no reason to discard their testimony. It is the settled position of law that mere relationship is no ground to discredit the witness, if the witness stands to the scrutiny of cross-examination.

12] On appreciation of the evidence of P.W.1 Pramod, we find that P.W.1 gave a detailed version of the incident, which took place on 11.09.2003. He had deposed about the entry of the appellant/accused in the house, armed with the weapon axe and giving blow of the weapon on the head of victim Pravin. P.W.1 Pramod also stated about his attempt to catch hold of the accused on the spot and then shifting the victim to hospital at Yavatmal. Though, the learned counsel for the accused made an attempt to take benefit of the omissions of these witnesses in respect of nondisclosure of the fact that tube light was on and the clothes worn by the accused, in our opinion, these omissions are not in any way helpful to discredit the version of P.W.1 Pramod. It is sufficiently proved by the evidence of P.W.1 Pramod that accused was working with the family for agricultural work for quite

some time and was also residing with the family. In such a situation, an attempt of insufficiency of the light and thereby raising suspicion over the identity of the accused, in our opinion, is not sustainable. On considering the testimony of P.W.2 Shalikrao, we find that though the witness was subjected to cross-examination, he was not at all shaken on the major aspects of the incident such as, presence of the accused on the spot armed with weapon axe and giving blow of axe on the head of victim Pravin. The clothes worn by the accused were identified by P.W.1 Pramod and the weapon axe was identified by P.W.2 Shalikrao.

13] The other witnesses P.W.3 Sandeep Raut, P.W.4 Rajendra Kothari and P.W.5 Jaikumar Satpute are the panch witnesses and with the help of these witnesses/panchas, the prosecution has proved drawing of panchamas in respect of seizure of articles collected from the spot of incident, seizure of clothes of deceased and blood sample etc. P.W.6 Vijay Dhote is the uncle of victim Pravin, who had turned hostile and is of no help to the prosecution. P.W.8 H.C. Sukhnandan Isule, is the witness, who had received the report of P.W.1 Pramod and on the basis of report registered the crime. P.W.9 is P.C. Ganesh Gose, carrier of the samples to the Chemical Analyser. P.W.10 is P.I. Bhikaji Dawle, the Investigating Officer, who had conducted the investigation and gave us the details of the investigation. The tenor of the statement of accused under Section 313 of Cr. P.C. shows that the defence of the accused was of total denial.

14] Though, an attempt was made by the learned counsel for the accused that inspite of availability of the independent witnesses i.e. the neighbourers, who were on the spot on hearing hue and cry at the time of shifting of victim to the hospital, the prosecution failed to examine those witnesses and as such the prosecution has suppressed the material witnesses from the Court, we are unable to accept the submission of the learned counsel on the backdrop of evidence of two witnesses i.e. P.W.1 Pramod and P.W.2 Shalikrao, who are the eyewitnesses of the incident and the version of these witnesses is trustworthy and reliable. It is settled position of law that it is not the quantity of the witnesses, but the quality of the witnesses, which counts in appreciation of the evidence. Though, the C.A. report is not of much help to the prosecution, but the weapon axe recovered at the instance of the accused and seized under seizure panchanama (Exh.25), which

was hidden below the bushes, is an additional circumstance against the accused in respect of his complicity in the crime. The learned counsel for the appellant tried to submit that the prosecution has miserably failed to establish the so called motive i.e. alleged intimacy developed by the accused with the mother of victim namely Arunabai or the grudge of the family members against the accused for keeping evil eye on Arunabai and therefore, the prosecution case falls too short. We are unable to accept the submission of the learned counsel for the reason that the prosecution has established its case by the direct and clinching evidence in the form of eyewitnesses. In view of the direct evidence against the accused, insufficiency of the prosecution material in establishing motive, is no reason to throw out the prosecution case.

15] Considering the evidence on record, we are of the opinion that the prosecution has established its case against the accused. The evidence brought by the prosecution is sufficient to bring home the guilt of the accused. Hence, the appeal deserves to be dismissed.

16] In the result, the appeal is dismissed.

The conviction and sentence awarded by the 1st Adhoc Additional Sessions Judge, Yavatmal to the appellant/accused by the judgment and order dated 14.10.2005 in Sessions Trial No. 1/2004, is maintained.

We quantify the fees of learned counsel appointed for the appellant/accused at Rs.1,500/- (Rupees Fifteen hundred only).

Criminal Appeal is disposed of.

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