

Vasant Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Mar-02-2016

Judge : B.P. Dharmadhikari & V.M. Deshpande

Appeal No. : Criminal Appeal No. 348 of 2014

Appellant : Vasant

Respondent : State of Maharashtra

Judgement :

Oral Judgment: (V.M. Deshpande, J.)

1. The present appeal is directed against judgment and order of conviction dated 17.1.2013 in Sessions Trial No.199 of 2012 passed by learned Sessions Judge-12, Nagpur. By the impugned judgment, appellant Vasant Bhalavi is convicted for the offence punishable under Section 302 of the Indian Penal Code and is directed to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- and, in default of payment of fine, to suffer simple imprisonment for three months. The appellant is also convicted for the offence punishable under Section 324 of the Indian Penal Code and on that count it is directed that he shall suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- and, in default of payment fine, he shall suffer simple imprisonment for two months.

2. The prosecution case, in brief, is as under :

From the night hours of 1.2.2012 to 10:00 hours of 2.2.2012, at police station Sonegaon, Shri Vishwas Subhash Jadhav (PW 9), Police Sub Inspector, was a night officer. A telephonic message was received in the police station from Shyamsingh Inwati (PW 1) that dead body of a woman is lying in the tin shed of Yathartha Apartment. Accordingly, station diary entry was taken about the said message. Then Police Sub Inspector Shri Jadhav along with police staff reached to the spot. It was a tin shed of 12 x 12. The dead body of a lady was lying on the ground in the said shed. Police Sub Inspector Shri Jadhav noticed injury on her throat. He noticed an axe behind the television. The said axe was smeared with blood. He also noticed that the dead body was lying on a quilt and plastic sheet. He called punch witnesses for drawing spot panchnama. Accordingly, in their presence, spot panchnama was drawn. He also seized the axe and the quilt. Also, he seized simple soil and blood mixed soil. He also noticed blood stained pair of chappal. It was also seized. All the seized articles were properly sealed by him and a detailed panchnama, in that behalf, is drawn as spot/seizure panchnama. The said is at Exh.20 on record.

3. Police Sub Inspector Shri Jadhav gathered the identity of the lady as Khemwati. The deceased is the wife of the appellant. He also noticed the presence of Khushal (PW 2), the son of the appellant, who was also injured. He sent the dead body for postmortem. Thereafter, he came to the police station along with Shyamsingh Inwati (PW 1) and recorded his oral report. The oral report is at Exh.9. On the basis of said report, a crime was registered against the appellant for the offence punishable under Section 302 of the Indian Penal Code vide Crime No.16 of 2012.

Police Sub Inspector Shri Jadhav also referred Shyamsingh Inwati (PW 1) and Khushal (PW 2) for their medical examination under requisition Exh.30. The inquest panchnama was drawn at mortuary. The said is at Exh.17. He, thereafter, handed over the investigation to senior police inspector Shri Arun Rautwar (PW 10).

4. After being entrusted with the investigation of Crime No.16 of 2012, senior police inspector Arun Rautwar (PW 10) arrested the appellant under arrest memo

Exh.36. He noticed blood stained clothes on his person and also found that the chappal, which he was wearing, was also having blood stains. Those were seized under seizure panchnama Exh.61. He also seized clothes of the deceased vide seizure memo Exh.41. He also collected injury certificate of Khushal (PW 2), the injured and, thereafter, he added an offence punishable under Section 324 of the Indian Penal Code, also. He also received postmortem report Exh.63. The weapon was also sent to the medical officer for examination under Exh.54. The requisition and the query report were received by him and the same are at Exh.55. The seized articles were sent to the chemical analyzer under requisition Exh.72. After completion of other investigation, final report was filed in the Court of law against the appellant.

5. Learned Additional Sessions Judge-12, Nagpur framed charge below Exh.4 in Sessions Trial No.199 of 2012 against the appellant for committing murder of his wife Khemwati and also causing injuries to his son Khushal (PW 2) by means of an axe. Thus, the charge was framed against the appellant for the offences punishable under Sections 302 and 324 of the Indian Penal Code. The appellant denied the charge and claimed for his trial. To bring home the guilt against the appellant, the prosecution examined in all eleven witnesses and also relied upon various documents which were duly proved during the course of the trial. After appreciation of the prosecution case and the evidence, by the impugned judgment, the appellant was convicted. Hence this appeal.

6. We have heard learned counsel Shri G.S. Lahoti for the appellant who was appointed by the High Court Legal Services Sub Committee, Nagpur to provide legal assistance to the appellant and learned Additional Public Prosecutor Shri R.S. Nayak for the respondent/State. With their able assistance, we have gone through the records and proceedings.

7. Learned counsel Shri G.S. Lahoti appointed for the appellant, submitted that there is no eyewitness account in the prosecution case regarding actual assault by the appellant on his wife. He submitted that the material prosecution witnesses have turned hostile. Therefore, according to him, the appellant is required to be set free by allowing his appeal. It is his submission that since the prosecution

witnesses are turned hostile, false implication of the appellant is not completely ruled out and, therefore, at least, he is entitled for the benefit of doubt. Per contra, learned Additional Public Prosecutor Shri R.S. Nayak for the respondent/State submitted that in view of the evidence of Khushal (PW 2), the son of the appellant who himself is an injured, it is clear that the appellant alone is the perpetrator of the crime and, therefore, prayed for dismissal of the appeal.

8. The appellant is maternal cousin of Shyamsingh (PW 1). The first information report is lodged by this prosecution witness. According to report (Exh.9), the appellant used to reside at Yatartha Apartment along with his wife, the deceased, and his son Khushal (PW 2). The appellant was a choudidar. The report discloses that there used to be frequent quarrels between couple. On 2.2.2012, at 6:00 o'clock in the morning, he heard shout of Khushal (PW 2). He noticed that appellant was giving axe blow on Khushal. Therefore, he tried to hold the said axe, but before completion of the said act, one axe stroke was given. He noticed that the deceased was lying in pool of blood and was having deep injury on her neck. It is also reported when he was in the process of snatching the axe from the appellant, he received injury on his cheek.

9. Shyamsingh (PW 1), the first informant; Lakhan Pancheshwar (PW 4); the other labourers working at the site; Shyamlal Inwati (PW5), an electrician and who was residing in the parking of the apartment whereat the incident took place, and Mamta Yadav (PW 6) who was also a labourer, a panch to the inquest panchnama, are turned hostile.

It is the submission of the learned counsel for the appellant that since these witnesses did not support the prosecution, their evidence needs to be discarded and has to be kept out of consideration while appreciating the prosecution case.

We are afraid of accepting the aforesaid submissions. It is settled principle of law that the evidence of the prosecution witness need not be rejected in toto merely because the prosecution chose to treat him as hostile and cross examined him. Merely because such witness is cross examined, or as is declared hostile, the evidence of such witness is not washed off the record altogether. The same can be accepted to the extent his version is found to be dependable on a careful

scrutiny. This principle of law is already settled in the case of *Khujji @ Surendra Tiwari ...vs... State of Madhya Pradesh*, reported at (1991) 3 SCC 627.

10. The evidence of Shyamsingh Inwati (PW 1) shows that he is closely related to the appellant. His evidence reveals that he heard shout of Khushal (PW 2). Khushal Bhalavi (PW 2) is the son of the deceased and the appellant. Though he is a child witness, record shows that learned Judge of the Court below put some preliminary questions to him and learned Judge noticed that this witness knows sanctity of oath and, therefore, the oath was administered to him. The evidence of a child witness need not be viewed with tinted glasses only because he is a child witness. While evaluating the evidence of such witness, the Court should be on guard and should seek corroboration by way of prudence. If the testimony of such child witness inspires confidence, it can safely be accepted.

11. The evidence of Shyamsingh (PW 1), Lakhan Pancheshwar (PW 4), and Shyamlal Inwati (PW 5) shows the presence of Khushal (PW 2) on the spot. All these witnesses, who were declared hostile, not only state the presence of Khushal (PW 2) but also state that he was having injuries on his head. Further, these witnesses also attribute the presence of the appellant at the place of the incident.

12. According to us, Khushal (PW 2) though a child witness, is a witness to the truth and is not a witness like other prosecution witnesses who did not support the prosecution, obviously, for the reasons that they are closed relatives of the appellant and, therefore, they attempted to save him.

13. Khushal (PW 2) gives account to the effect that prior to the incident he along with his deceased mother and the appellant went to Lohara and stayed there for two days and, thereafter, they went to Mohgaon, a place of sister of his father. Thereafter, they returned on Thursday, at about 7:00 pm to Manish Nagar, Nagpur. This version of Khushal (PW 2) is found due corroboration in the evidence of Shyamlal (PW 5). This witness was also residing at Manish Nagar, Nagpur with the appellant. As per the evidence of Khushal (PW 2), at 6:00 o'clock in the morning, his father, the appellant, has made assault by means of an axe due to which he suffered injuries. What we notice while scrutinizing the evidence of

Khushal (PW 2), his evidence is free from all exaggerations and he has not stated before the Court what he has not seen. It is to be noted that this witness has stated that he has not seen his father assaulting his mother but it is stated by him from the witness box that his mother was lying injured having injury on her neck.

14. After noticing injury on the body of Khushal (PW 2) and Shyamsingh Inwati (PW 1), the investigating officer sent these injured to the Medical College, Nagpur with a requisition Exh.30 to examine them. Exh.45 is the injury certificate in respect of witness Khushal (PW 2). This document is duly admitted by the defence during the trial. Exh.45 depicts that Khushal (PW 2) was examined by Dr. L.A. Shemla on 2.2.2012 at 2:10 pm and that time he noticed a lacerated wound of size 3 cm x 0.5 cm over the right parietal region of Khushal (PW 2). According to the injury certificate, the injury was fresh and can be caused by hard and sharp object. Thus, the version of child witness Khushal (PW-2) that he was assaulted by his father by means of axe is duly corroborated by contemporaneous medical record which shows the existence of injury attributable to the axe. Further, the medical papers, regarding prosecution witness Shyamsingh Inwati (PW 1) is available at Exh.32, show that Shyamsingh was having injury on his right cheek and also having abrasion as stated by him in his oral report Exh.9. In view of the existence of the injury on the head of Khushal (PW 2), it is beyond any reasonable doubt that the prosecution has proved its case for the offence punishable under Section 324 of the Indian Penal Code against the appellant.

15. Though nobody has stated about the assault by the appellant over his wife by means of axe, in our view, the prosecution is successful to bring home the guilt of the appellant on the basis of the circumstantial evidence appearing in the prosecution case. Those circumstances can be catalogued as under :

- (i) place of the incident;
- (ii) presence of the appellant on the spot;
- (iii) injury found on the neck of the deceased as stated by Khushal (PW 2);
- (iv) seizure of blood smeared axe from the spot;

(v) seizure of blood stained clothes and chappal from the appellant;

(vi) chemical analyzer's report.

16. Insofar as place of the incident in question, Exh.20, the spot panchnama, shows that it is a place whereat the appellant used to reside along with deceased and Khushal (PW 2). Thus, the place of the incident is the residence of the appellant himself. The appellant used to reside with his wife and son Khushal (PW 2), is firmly established through the evidence of prosecution witnesses Shyamsingh (PW 1) and Vipin Bhagat (PW 3), the builder on whose site the appellant was working as watchman. This independent witness proves the residence of the appellant at the place of occurrence along with his wife and injured witness Khushal (PW 2). Also, Shyamlal Inwati (PW 5) corroborates the version about the residence. In view of the consistent evidence, it is clear that the appellant was residing along with his wife, the deceased; and his son Khushal (PW 2), the injured, at the place of occurrence.

17. The another circumstance is in respect of the presence of the appellant on the spot. The time of the occurrence is in the early morning hours of the day. Khushal (PW 2) states that on the previous day, he along with his parents returned to Manish Nagar, Nagpur. This aspect is also corroborated by Shyamlal (PW 5) that on 1.2.2012, at 7:00 o'clock in the night, the appellant along with his family members returned from the village and had their supper. All the prosecution witnesses in very clear words attribute the presence of the appellant on the spot at the time of occurrence. Therefore, his presence on the spot cannot be doubted at all. Further, it is not the defence of the appellant even during the course of the trial or before this Court that at the relevant time he was away from his residence on account of his job. On the contrary, it is established that he was a choukidar of the site where temporary shed for the residence is erected.

18. The evidence of Khushal (PW 2) discloses that though he has not seen the assault on his mother, he noticed that his mother was lying in an injured condition having injury on her neck. Shyamsingh (PW1), the first informant, also stated about noticing of the injury on the neck of the deceased when he removed the bed-sheet. Even, in the first information report Exh.9 has reference that he has

noticed injury on the neck of the deceased. The postmortem report is at Exh.63. The said document is admitted during course of the trial. The autopsy surgeon noticed following external injuries over the dead body.

1) Chop wound 5.3 cm x 2.6 cm x muscle deep, horizontal, margin contused with cutting of mussels, vessels present on 2 cm below angle of mandible.

2) Chop wound 4.6 cm x 1.7 cm x bone deep, horizontal with cutting of right side of thyroid cartilage, trachea oesophagus with cutting of C5 and C6 cervical vertebra, margins contused, present on 2 cm medial to injury no.1 and 3 cm below ramus mandible.

3) Chop wound 4 cm x 1 cm x muscle deep, horizontal margins contused present on right side of neck 3 cm below injury no.2 falling towards medial aspect.

4) Contusion 6 cm x 1 cm, horizontal reddish present on right side of neck 2 cm below injury no.1.

The doctor in the postmortem report has stated that the cause of death is "*cut throat injury*". Thus, the version of the prosecution witnesses that they noticed injury on neck of the deceased is substantiated by the medical evidence.

19. Exh.20 is spot panchnama. While drawing spot panchnama, the investigating officer noticed various blood stained articles including blood smeared axe, which were duly seized and sealed by the investigating officer.

20. PW8 is Dr. Jaideo Laxman Borkar, who has conducted the postmortem. He received a letter in respect of examination of the weapon. He received the same in sealed condition. According to the evidence of Dr. Borkar, on opening, he found an axe, which according to him, is hard heavy weapon with one sharp cutting edge (slightly blunt). According to his evidence, the said is a dangerous weapon. He noticed, blade of the axe is made of iron having length 11.5 cm, sharp edge length 4 cm, breadth 3 cm. According to the doctor, the injury mentioned in column No.17 of the postmortem report and the internal damage, which he noticed as mentioned in column Nos.20, 21, and 22 in the postmortem report, are possible by the said weapon. Accordingly, he gave his report Exh.55. After examination of the weapon,

he again resealed and was handed to the investigating officer.

21. Police Inspector Shri Arun Rautwar (PW 10) caused arrest of the appellant. His arrest memo is at Exh.36. He was arrested on 2.2.2012. At the time of arrest, the investigating officer noticed that the clothes, on the person of the appellant, were having blood stains. Similarly, he noticed the chappal of the appellant were also having blood stains. Therefore, his clothes and chappal were seized under seizure panchnama Exh.61. Thus, at the time of arrest, the appellant was wearing the clothes having blood stains is duly proved.

22. The seized articles were duly sent to the chemical analyzer on 13.12.2012 by the investigating officer under requisition Exh.72. Exh.73 is invoice challan showing the acknowledgment from the office of the Regional Judicial Forensic Science Laboratory, State of Maharashtra, Dhantoli, Nagpur of receiving the articles in a sealed condition. The chemical analyzer's report is at Exh.91. The Blood Group of deceased Khemwati was determined as "O" as per Exh.92. The chemical analyzer's report Exh.91 shows that the axe, full shirt of the appellant, and the chappal which he was wearing, were seen with human blood. Similarly, the axe was also smeared with human blood. Though the blood group on these articles is not determined, that by itself is not sufficient to discard the said scientific evidence especially when no explanation was offered by the appellant when that incriminating circumstance was put to him when he was examined under Section 313 of the Code of Criminal Procedure. Further, the appellant himself has admitted in his 313 statement that he used to reside with the deceased and his son and came to Manish Nagar, Nagpur from Mohgaon on Thursday itself.

23. The aforesaid circumstances, as appearing in the prosecution case, clearly complete the chain of the evidence and it is so completed, that it shows not only finger of guilt towards the appellant but it also excludes innocence of the appellant.

24. Resultantly, the appeal must fail and the same is dismissed.

25. The fees, payable to learned counsel Shri G.S. Lahoti appointed for the appellant, are quantified at Rs.5,000/-. However, learned counsel Shri G.S. Lahoti requested to this Court that the High Court Legal Services Sub Committee,

Nagpur would pay the same amount of Rs.5,000/- to the High Court Bar Association at Nagpur.

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