

Akash Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Feb-23-2016

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

Appeal No. : Criminal Appeal Nos. 307 of 2013 & 322 of 2013

Appellant : Akash

Respondent : State of Maharashtra

Judgement :

V.M. Deshpande, J.

1. Criminal appeal No.307/13 is filed by original accused No.1 Akash Jagdish Kakanya. Criminal Appeal No.322/13 is filed by original accused Sidharth Shankar Janbandhu. The appellants will be referred in the present judgment by their original position.

2. The accused persons are before this Court in view of their conviction for the offence punishable under Section 302 read with Section 34 of Indian Penal Code by the Additional Sessions Judge-12, Nagpur, in S.T. No.417/12. By the said judgment, after recording a finding of guilt against the accused persons, the learned Judge of the Court below sentenced each of them to suffer rigorous imprisonment for life and to pay a fine of Rs.2000/-, in default of payment of fine to suffer simple imprisonment for three months.

Though both the accused are acquitted of the offences punishable under Sections 323 and 506(ii) read with Section 34 of Indian Penal Code, State has chosen not to prefer any appeal.

3. Prosecution case, as unfolded during the course of trial, is narrated herein as under :

(a) On 13.6.2012, at about 3 O' clock in the morning, when Ramesh (P.W.6) reached to police station Jaripatka, Nagpur, that time Gajanan Mehtare (P.W.9) was discharging his duties as Police Officer. His duty hours were from 21-00 hours of 12.6.2012 to 9-00 hours of 13.6.2012. On reaching the police station, Ramesh (P.W.6) informed the police that some persons are assaulting his son Rahul Wankhede. Accordingly, Sana entry was taken by Gajanan Mehtare in the station diary. Sana entry is at Sr.No.13 in station diary and it is duly proved at Ex.83.

(b) Thereafter Gajanan (P.W.9) along with police party proceeded to the spot of occurrence. The place of occurrence was in front of house of Ramesh at Dhammajyoti Nagar. Police party noticed that dead body of Rahul was lying in a pool of blood and was having numerous injuries.

(c) Gajanan Mehtare (P.W.9) then prepared panchanama of scene of occurrence in presence of two panch witnesses (Ex.29). He called I-car and informed the higher authorities. He also seized simple as well blood mixed soil, blood stained quilt, blood stained bed-sheet, pillow and also broken pieces of bangles. The seizure is duly mentioned in the spot panchanama itself. After preparing the inquest panchanama, he sent the dead body to mortuary under requisition addressed to Medical officer, IGMC, Nagpur, vide Ex.20.

(d) Gajanan Mehtare then brought Ramesh and Pramila, parents of deceased, to the police station. There, Ramesh lodged his oral report (Ex.40). It recites that about 3-4 years ago, cousin father-in-law of accused persons was murdered and in that incident his son Rahul was arrested and was in jail. He further stated that Rahul was sleeping in the court-yard. At about 2-30 O' clock he heard the voice "Maro Maro" and, therefore, he and his wife came out of the house to notice that the accused persons were assaulting Rahul by means of axe and rod. On the

basis of oral report, a crime was registered vide Crime No.195/12 for the offences punishable under Sections 302, 323 and 506 (II) read with Section 34 of Indian Penal Code. Printed F.I.R. is at Ex.41.

(e) Investigating Officer also sent Pramila (P.W.7) for her medical examination under requisition (Ex.23). Thereafter he handed over further investigation to Umesh Besarkar (P.W.10). This witness recorded the statements of Pramila Wankhede and Surekha Meshram. On 13.6.2012 he arrested accused No.1 Akash. On 14.6.2012 he arrested accused No.2 Siddharth.

While in custody, accused No.1 gave a disclosure statement on 15.6.2012 and agreed to show the place where the axe and clothes are concealed. Accordingly, his statement (Ex.31) was recorded. Consequent to the same, an axe and clothes were recovered. Seizure panchanama is at Ex.32.

(f) Likewise, Umesh Besarkar (P.W.10) recorded disclosure statement of accused No.2 on 17.6.2012 who also agreed to show the place where he has concealed the rod and the clothes. The disclosure statement is at Ex.33, whereas Ex.34 is the recovery panchanama by which the iron rod and clothes were seized.

(g) Umesh Besarkar also seized blood stained clothes of Pramila under seizure memo (Ex.43). Needless to mention that the accused persons were also sent for their medical examination and also for obtaining blood samples on 22.6.2012. Except rod and axe, P.W.10 Besarkar sent all the articles to chemical analyser for examination.

(h) After post mortem report (Ex.55) was received, P.W.10 Umesh sent the rod and axe in a sealed condition along with the copy of post mortem report to the medical officer for his opinion under requisition Ex.56. He received the query report which is at Ex.57. He also received back the rod and axe in a sealed condition. These two articles were sent to chemical analyser for examination under requisition (Ex.81). After completion of usual investigation, the Investigating Officer was of the opinion that sufficient evidence is collected for sending the accused persons for trial and accordingly he presented the charge-sheet before the Court of law.

4. The learned Magistrate, in whose Court the charge-sheet was presented, found that the offence was exclusively triable by the Court of Sessions and, therefore, he committed the case to the Court of Sessions by passing necessary order of committal and, as such, the case reached to the Court of Sessions which was registered as Sessions Case No.417/12.

5. The learned trial Judge framed charge against the accused persons for committing murder of Rahul Wankhede. They were also charged for the offences punishable under Sections 323 and 506 (II) read with Section 34 of Indian Penal Code for causing hurt to Ramesh and Pramilabai and also for intimidating them. Charge was read over and explained to the accused persons, which they denied and claimed for trial. In order to bring home guilt, prosecution has examined in all 10 witnesses and also relied upon proved documents.

After a full-dress trial, the learned Judge of the trial Court upon appreciation of evidence and material available on record found that the prosecution has failed to prove the charge under Sections 323 and 506(II) read with Section 34 of Indian Penal Code but held the charge under Section 302 of Indian Penal Code proved against both the accused persons and, therefore, he convicted and sentenced them as stated in the foregoing paragraphs of this judgment.

6. We have heard Advocate Shri R.B. Gaikwad and Shri R.M. Daga, learned counsel appearing for the accused persons appellant and Shri Maldhure, learned Additional Public Prosecutor for the respondent/State in extenso. With their able assistance we have gone through the record and proceedings of the Sessions case and also the notes of evidence.

7. First of all the Court is obliged to determine the nature of death of deceased Rahul. Inquest panchanama is at Ex.35. Dead body of Rahul was brought for post mortem on 13.6.2012 at Indira Gandhi Govt. Medical College, Nagpur. That time Dr. Pravin Tayade (P.W.8), Assistant Professor, was on duty. He conducted autopsy on the dead body of Rahul and found following external injuries -

(1) Chopped wound present over right side of mandibular region of size 5 x 2 cm. X bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both

angles acute.

(2) Chopped wound present over right zygomatic region of size 5 x 1 cm x bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both angles acute.

(3) Chopped wound present over right ear pinna upper 1/3rd of size 2 x 1 cm x cartilage deep, through and through, horizontally placed, margin sharp cut, both angles acute.

(4) Chopped wound present over right ear pinna middle 1/3rd of size 2 x 1 cm x cartilage deep, through and through, obliquely placed, margin sharp cut, both angles acute.

(5) Chopped wound present over right temporal region of size 5 x 1.5 cm x bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both angles acute.

(6) Chopped wound present over occipital region upper 1/3rd on right side of size 7 x 1 cm x bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both angles acute.

(7) Chopped wound present over occipital region upper 1/3rd on right side of size 8 x 2 cm x bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both angles acute.

(8) Chopped wound present over occipital region upper 1/3rd on right side of size 13 x 2 cm x bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both angles acute, its upper end intermingled with lower end of injury No.(7).

(9) Chopped wound present over right side of chin of size 1.5 x 1.5 cm x bone deep, underlying bone fracture, obliquely placed, margin sharp cut, both angles acute.

(10) Chopped wound present over lip right side of size 1.5 x 0.5 cm, through and through, obliquely placed, margin sharp cut, both angles acute.

(11) Lacerated wound present over right side of maxillary region of size 4 x 0.5 cm. X muscle deep, obliquely placed, margin sharp cut, both angles acute.

(12) Chopped wound present over base of nose 2 cm below glabella of size 1.5 x 0.3 cm x bone deep, underlying bone fracture, transversely placed, margin sharp cut, both angles acute.

(13) contused abrasion over left side of forehead of size 7 x 6 cm reddish, directed transversely.

(14) contused abrasion over left zygomatic region of size 7 x 6 cm, reddish, directed transversely.

(15) Stab wound present over right shoulder on posterior aspect of size 2.5 x 1 cm. X muscle deep, obliquely placed margin sharp cut, both angles acute.

(16) Stab wound present over 3 cm below right scapular region 1.5 cm lateral to spine of size 1.5 x 0.5 cm. X muscle deep, obliquely placed, margin sharp cut, both angles acute.

(17) Stab wound present over right lumbar region 1.5 cm lateral to spine, 6 cm below scapula of size 2.5 x 1 cm x muscle deep, obliquely placed, margin sharp cut, both angles acute.

(18) Stab wound present over right lumbar region 9 cm lateral to spine, 11 cm below scapula of size 3 x 1 cm x cavity deep horizontally placed, margin sharp cut, both angles acute.

(19) Stab wound present over right lumbar region, 4 cm lateral to spine, 2 cm above sacrum of size 3 x 1 cm x muscle deep, horizontally placed, margin sharp cut, both angles acute.

8. The medical officer also noticed various internal injuries. He noticed that all the injuries were fresh and were ante mortem. Accordingly, he issued post mortem report vide Ex.55. In the opinion of autopsy surgeon, the cause of death was due to the injuries sustained. In view of evidence of Dr.Tayade and looking to the nature of injuries, as found in the post mortem report, it is clear that the unnatural

death of Rahul was homicidal. According to prosecution, the accused persons are responsible for the homicidal death of Rahul.

9. Once it is established that the death of Rahul was homicidal, next question that falls for consideration is, who are the authors of said injuries. According to prosecution, the appellants are responsible for the injuries. In order to prove its claim, prosecution has examined four persons as eye witnesses- (i) P.W.1 Surekha Meshram, (ii) P.W.2 Rita Ukey, (iii) P.W.6 Ramesh Wankhede, and (iv) P.W.7 Pramila Wankhede.

10. P.W.1 Surekha Meshram and P.W.2 Rita did not support the prosecution and they were declared hostile. Thus, the fate of the prosecution hinges on the testimony of P.W. 6 Ramesh and his wife Pramila (P.W.7).

It is the submission of learned counsel for the appellants that these two prosecution witnesses being parents of deceased Rahul were highly interested witnesses and, therefore, their testimony should not be believed. We are not inclined to accept such bold submission on the part of the accused persons. Merely because the prosecution witnesses are close relatives of deceased and they are interested witnesses, that by itself does not earn disqualification from considering their evidence at all. However, it is expected that the Court should scrutinize their evidence with due care and caution and should also see that their evidence is duly corroborated by other attending circumstances. If the evidence of such witnesses inspire confidence after its careful evaluation and is having corroboration to their testimony, their evidence can be pressed into service and can be made basis for conviction.

11. Keeping in mind the aforesaid principle, let us scrutinize the evidence of these two prosecution witnesses. The incident in question has occurred in front of their house, in the court-yard where deceased Rahul was sleeping. Looking to the fact that the incident has occurred in front of their house and having regard to the time at which the occurrence took place, presence of these two witnesses in their house is most natural. Now the question is, whether these two witnesses have really witnessed the actual assault on their son.

12. The evidence of these witnesses would show that on the date of incident in the night hours when their son was sleeping in the court-yard, they heard loud shouts of Surekhabai (P.W.1) and, therefore, they came out of the house to notice that the accused persons were assaulting their son by means of axe and rod. According to these witnesses, accused No.1 was holding axe and accused No.2 was holding iron rod. As noticed above, Surekha (P.W.1) and Rita (P.W.2) were declared hostile and they flatly denied that they raised any alarm.

13. The evidence of P.W.7 Pramila would show that accused No.2 was assaulting her son on his back side by means of an iron rod. She further deposed that the axe was fixed in the head of Rahul and accused No.1 was snatching the axe and thereafter he rushed towards her husband and extended threats to him. Thereafter, P.W.6 Ramesh ran towards the police station. It is the further evidence of Pramila that she pleaded with the accused persons not to beat her son and at that time accused No.2 assaulted her by iron rod on her hand and head and she sustained bleeding injuries on her hand and leg and contused injury on her head.

14. Ex.23 is the requisition dated 13.6.2012 sent by P.W.9 Gajanan to the Medical Officer, IGMCH, Nagpur, in respect of medical examination of P.W.7 Pramila, since according to her she had received injuries when she tried to intervene in the assault. Accordingly, the medical officer examined Pramila on 13.6.2012 at about 8-50 a.m. and issued the medical certificate (Ex.24). The medical certificate recites as under :

"No obvious signs of any fresh external injury seen at present"

Thus the claim of Pramilabai that she tried to intervene in the assault on her son and in that process she was also attacked by accused No.2 by means of a deadly weapon, like iron rod, stood falsified.

15. The claim of Pramila that she was attacked by accused persons cannot be termed as an exaggeration. It would have been most natural on the part of mother to make a full attempt to save her son if occurrence is taking place in her presence. However, when the accused persons who were so bent upon to finish Rahul, assaulted Pramila by means of a deadly weapon like iron rod, then in that

event she would definitely receive injuries. As noticed above, in the present case, Pramila did not receive any injury whatsoever in nature as per the medical certificate (Ex.24). It is to be noted that the incident has occurred at 3 O' clock in the morning of 13.6.2012 and Pramila was examined on 13.6.2012 itself at 8-50 O' clock. Had there been injuries to Pramila, those would not have gone unnoticed by the medical officer.

Further, according to Pramila, accused No.2 assaulted her son by means of an iron rod on his back also. Here, such claim is also not supported by the medical evidence.

16. Ramesh (P.W.6), father of deceased Rahul, has deposed that these two accused persons were assaulting his son and when he tried to snatch axe from accused No.1, he rushed on his person. He also stated from the witness-box that both these accused persons assaulted his wife also. He, therefore, went to police station.

17. The evidence of P.S.I. Gajanan (P.W.9) would show that when Ramesh reached police station he only informed that some persons are assaulting his son Rahul. It would be useful to reproduce relevant portion from the evidence of Gajanan (P.W.9) :

"At 3-00 hours in the night Ramesh Wankhede came by running in the police station and informed that some persons are assaulting to his son Rahul Wankhede."

The said claim of this prosecution witness is duly corroborated by the contemporaneous document- Sana entry No.13 (Ex.83) which was taken in the station diary at 3 O' clock itself. From the FIR it is clear that both appellants are residents of same area where Ramesh (P.W.6) resides.

It is surprising that a father in whose presence when known persons are assaulting his son and who went to police station running for giving an information is not giving the names of the assailants. Further, Gajanan (P.W.9) deposed that when he along with the police party was proceeding to the spot of incident, on the way in

the van, Ramesh disclosed the names of the assailants of his son. Curious to note that Ramesh is totally silent in his evidence that during the journey from police station to the spot of occurrence, he informed the names of the assailants. Further Ex.61 is the entry No.16 taken at 5-15 a.m. by which intimation of assault was given to the superiors by P.S.I. Mehatre. Even the said entry is totally silent about the names of the assailants. P.W.9 Mehtare in his cross-examination has stated thus :

"Entry about the information of name of both assailants which was given by informant in the way was not taken at anywhere."

It is to be noted here that the parents of the deceased have informed the Court through their evidence that their deceased son was an accused in murder case of cousin father-in-law of present accused persons and he was in jail for more 1-1/2 years and according to these witnesses he was acquitted from the said case.

18. It would be useful to reproduce herein below part of cross-examination of Ramesh -

"It is true that when police had been to the spot, we told them that two unknown persons assaulted to my son."

This particular evidence as brought on record in the cross-examination assumes importance in view of the specific evidence of P.W.9 Gajanan and Sana entry No.13 that Ramesh informed the police that unknown persons are assaulting his son.

19. The post mortem report would show that the injuries No.15 to 19, as noticed by the autopsy surgeon, were stab injuries.

Pramila (P.W.7) has stated in her evidence that she had not seen anybody while assaulting her son by means of a knife or a gupti. Under requisition (Ex.56), the investigating officer Besarkar (P.W.10) sent axe and iron rod to Dr. Tayade, who conducted the post mortem, and sought his opinion. Dr. Tayade also stated that he received only two weapons. It would be useful to reproduce herein below the portion from the cross-examination of Dr. Pravin Tayade -

"18. The size of blade of axe Art.17 is not consistent with the stab injuries at Sr. Nos.15 to 19 of Column No.17 of postmortem report. After examining all injuries mentioned in Column No.17, I opined that three objects were used in causing those injuries."

20. Having regard to the above evidence of Dr. Tayade and also considering the fact that the mother of deceased stated that she had not seen any of these two persons assaulting Rahul by means of knife or gupti, in our considered view, prosecution has utterly failed to give any explanation as to how the stab injuries are appearing on the body of Rahul.

21. Motive is a double edged weapon. It is quite possible in the present case that since Rahul was languishing in jail for more than 1-1/2 years and ultimately he was acquitted by the Court of law, false implication of present accused persons is not to be ruled out completely.

22. The quality of evidence of Pramila and Ramesh show that on vital aspect there is no corroboration to their claim. Further, at the first opportunity, the names of the assailants were not disclosed to the police and their names were firstly disclosed at the time of lodging of first information report, which was taken at about 5-45 a.m. of 13.6.2012. Incident in question has taken place at 3 O' clock. Though in the normal circumstances, the delay appears to be not much, however looking to the evidence as discussed in the preceding paragraphs, the unexplained delay is fatal to the prosecution case.

23. In view of the aforesaid discussion, we are of the view that the prosecution has failed to bring home guilt to the accused persons. The appeal deserves to be allowed. Hence, following order.

ORDER

(i) Criminal appeal No.307/13 and 322/13 are allowed.

(ii) Judgment and order dated 06.04.2013 passed by Additional Sessions Judge-12, Nagpur, in S.T. No.417/12 is hereby quashed.

(iii) Both the accused/appellants are acquitted of the offence punishable under Section 302 read with Section 34 of Indian Penal Code. They be set at liberty, if not required in any other crime.

(iv) Fine amount, if paid, be refunded to them.

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