

Omprakash Vs. The State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Feb-17-2016

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

Appeal No. : Criminal Appeal No. 301 of 2013

Appellant : Omprakash

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Mr. R. M. Daga

Judgement :

V.M. Deshpande, J.

1. The learned Additional Sessions Judge, Nagpur in Sessions Trial No. 99 of 2012 on 7th March 2013 recorded a finding of guilt against the appellant in respect of offence punishable under Section 302 of the Indian Penal Code for committing murder of Rameshwar @ Ramu and consequently, he ordered sufference of life imprisonment by the appellant and also to pay a fine of Rs. 1000/by him and in default, to suffer simple imprisonment for three months.

The appellant is before this Court and has questioned the correctness and legality of the said judgment.

A. THE PROSECUTION CASE :

2. During the course of trial, the prosecution has unfolded its case which is narrated hereunder :

Deepak Walvi (PW 12) on 11.11.2011 was duty officer at Police Station, Dhantoli, Nagpur. On the said day at about 06.45 pm, one person holding axe in his hand which was smeared with blood, came to Police Station. Deepak Walvi made enquiries with him. He disclosed his name as Omprakash Gayaram Nirmalkar (appellant). He was taken into custody by Deepak Walvi and handed over his custody to WPC Manjusha who was discharging guard duty. Deepak Walvi directed Head Constable Ayyub to take necessary station diary entry and accordingly, the same was taken as per the dictation of Deepak Walvi.

Thereafter Deepak Walvi (PW 12) rushed to the spot of incident. There, he made enquiries. On the spot of incident, Chandrika Mohan Nishad (PW 1) narrated the incident to Police Officer Walvi. Accordingly, Deepak Walvi reduced into writing the oral report given by Smt Chandrika. Oral report is available on record at exhibit 19.

3. Thereafter Deepak Walvi on deputing police personnel to guard the spot of incident came back to the Police Station along with Smt Chandrika and recorded crime vide Crime No. 329/11. He also obtained thumb impression of the complainant Chandrika on the printed First Information Report. The said printed FIR is available on record at exhibit 56.

Oral report of Chandrika (PW 1) was reduced into writing by PW 12 Deepak Walvi, as aforesaid, on the spot itself i.e. Danteshwari Zopadpatti . The First Information Report shows that when the firstinformant Chandrika at about 06.30 pm was proceeding to dispensary and when she reached to the house of one Chaitram Sahu, that time she noticed appellant Omprakash was giving axe blows on the neck of deceased Ramu. That time, she tried to intervene, but in vain. She was abused by appellant. First-informant raised alarm for help. The appellant continued with his assault. After hearing the alarm from Chandrika when people from locality gathered there, appellant fled away from the spot along with the weapon. Assembled persons from the gathering took Ramu to the Orange City Hospital. She specifically stated in her report that she has witnessed the actual assault at the hands of the appellant.

4. Deepak Walvi again visited the spot along with panchas. From the spot, he collected soil both simple and blood mixed. He also collected blood stains from the wall near the spot of incident. He also prepared rough sketch map of the spot of incident. The panchanama of the scene of the spot was also recorded in presence of panchas. The spot panchanama is at exhibit 32 whereas rough sketch map of the spot is available at exhibit 33. He also called photographer who snapped photos. Subsequently, he returned to the Police Station and seized the axe and also the clothes from the person of the appellant. The said panchanama is at exhibit 27.

5. The appellant was sent for his medical examination under requisition (exhibit 57).

The inquest was done on the dead body in presence of panchas vide inquest panchanama (exhibit 61). Dead body was sent for postmortem. Dr Jaideo Borkar (PW 9) conducted autopsy over dead body. The postmortem report which is duly proved by him is at exhibit 44. Deepak Walvi also seized clothes of deceased under seizure panchanama (exhibit 28). Under seizure panchanama (exhibit 30), he collected hair, blood samples and nails of the deceased.

6. Part of the investigation of the crime was also conducted by Rajendra Mayne (PW 13) who took search of the house of the accused. Nothing incriminating was found there. The house search panchanama is at exhibit 73.

Rajendra Mayne (PW 13) also seized the clothes of witnesses Rajesh Verma (PW 4), Rajesh Basena and Mahesh Chandrawanshi under seizure memo (exhibit 24).

7. PW 12 Deepak Walvi under requisition letter (exhibit 45) sent weapon of crime i.e. axe to medical officer for query. Dr Jaidev Borkar (PW 9) received requisition (exhibit 45) along with weapon. He then examined the same and gave his opinion (exhibit 46) that the injuries as noticed by him on the dead body was which are mentioned in postmortem report (exhibit 44) are possible by the weapon AXE sent to him. Seized articles were sent to chemical analyser for chemical analysis. After completion of the entire investigation, the Investigating Officer Deepak Walvi was of the opinion that sufficient evidence is available against the appellant and,

therefore, he submitted final report to the Court of Law.

8. The case was registered as Sessions Trial No. 99 of 2012. Under exhibit 6 on 18.4.2012, the learned Additional Sessions Judge framed charge against the appellant for the offence punishable under Section 302 of the Indian Penal Code for committing murder of Ramu and also framed the charge for the offence punishable under Section 506 of the Indian Penal Code. The appellant abjured his guilt and claimed for his trial.

9. In order to bring home the guilt of the appellant, the prosecution has examined thirteen witnesses and also relied upon various documents duly proved in the course of trial.

The learned Judge after appreciating the prosecution case found that the prosecution has successfully brought the guilt of the appellant to home and accordingly, passed the impugned judgment of conviction and order of sentence.

10. Heard learned counsel for the appellant Mr R. M. Daga and Mr Rajesh Nayak, learned Additional Public Prosecutor for respondent-State. With their able assistance, we have gone through record and proceedings.

B. CRITICAL ANALYSIS OF PROSECUTION CASE :

11. As per the prosecution, PW-1 Chandrika Mohan Nishad ; PW-2 Sashi Ramavatar Madavi; PW-3 Sunil Ramkumar Sahu and PW-4 Rajesh Ganesh Verma were the eye witnesses.

PW-5 Sushil Babbu Kanojiya and PW-6 Chaitram Sahu were examined by the prosecution as panch witnesses.

PW-7 Arvind Chavan, a head constable was examined by the prosecution in respect of the confession which, according to the prosecution, the appellant has made.

PW-8 Ganesh Bnambdekar is a photographer. Prosecution has also examined two doctors. They are PW-9 Dr Jaideo Borkar and PW-10 Dr Sushil Chandankhede. The prosecution has also examined one Rajesh Belsare (PW-11) to corroborate

the factum of presence of appellant in the Police Station. PW-12 Deepak Walvi is the Investigating Officer and who has filed charge-sheet in the court whereas PW 13 is Rajendra Mayne, a police officer who has conducted part of the investigation.

I. NATURE OF THE DEATH OF RAMU :

12. According to prosecution, Rameshwar @ Ramu met with homicidal death. In order to prove such claim, the prosecution has examined two doctors.

Dr Sushil Chandankhede (PW 10) was attached to Orange City Hospital as C. M. O. on 11.11.2011. On the said day, Rameshwar Khandare (deceased) was brought before him for examination. Dr Chandankhede examined him. He found him to be dead. Accordingly, he prepared MLC papers and information was sent to Dhantoli Police Station. He also prepared death report (exhibit 49). He also issued report of examination (exhibit 50) to point out that the patient was brought dead to the hospital. The MLC intimation slip sent by Dr Chandankhede to Police Station, Dhantoli, Nagpur is at exhibit 51.

As Rameshwar @ Ramu was brought dead to the Orange City Hospital, Dr Chandankhede did not give detailed report of injuries on the person of the deceased. He sent dead body to the Government Medical College.

13. Dr Jaideo Borkar (PW 9) was attached to the Government Medical College as a Lecturer in the Department of Forensic Medicine. He conducted autopsy over the dead body of Rameshwar on 12.11.2011. During post mortem examination, Dr Borkar noticed following external injuries over the dead body :-

(1) chop wound 7 cm x 3 cm x muscle deep margins contuse horizontal, present on left side of neck, 4 cm below chin on right side @ 4 cm below on left side, just below the angle of mandible.

(2) chop wound 6 cm x 2 cm x muscle deep, margins contuse, horizontal 2 cm below injury No. 1.

(3) cut throat injury on interior aspect of neck midline 10 cm x 8.5 cm x cavity deep 0.7 cmn below injury No. 2, it is 7.5 cm below left angle of mandible and just above

2nd rib of manubrium sternum with cutting of muscle, vessels, thyroid cartilage, trachea, esophagus and spine from c4 to c7 cervical vertebra.

(4) chop wound 3.5 cm x 1 cm x muscle deep present on posterior aspect of neck 9 cm below occipital protuberance oblique in shape.

(5) incise wound 1 x 3 cm x 0.5 cm x muscle deep, oblique, 2.5 cm below injury No. 4.

(6) incise wound 0.7 cm x 0.3 cm x muscle deep, oblique, 0.5 cm medial to injury No. 5.

(7) abrasion 2 cm x 1 cm oblique reddish present on back side just above left scapular region.

Dr Jaideo Borkar noticed that all the injuries were antemortem and fresh and are caused by heavy sharp cutting weapon. According to Dr Borkar, the cause of death was cut throat . He prepared and proved the postmortem notes and the said report is at exhibit 44.

14. In view of the injuries noticed by the panch witnesses and the Investigating Officer while conducting inquest panchanama (exhibit 61); and in view of the evidence of Dr Jaideo Borkar and looking to the injuries as found by Dr Borkar which are mentioned in the postmortem report, there cannot be any hesitation in any one's mind that the prosecution is successful in proving its case about the nature of the death of Rameshwar that he died homicidal death.

II. AUTHOR OF THE INJURIES OVER THE DEAD BODY OF RAMESHWAR @ RAMU :

15. According to prosecution, it is the appellant is the author and responsible for causing fatal injuries to Rameshwar.

16. In order to substantiate its claim, the prosecution has examined four witnesses.

A detailed and microscopic analysis of the evidence shows that the prosecution case rallies behind the version of PW 1 Chandrika Nishad and PW 2 Sashi Madavi. Both these eye witnesses are uneducated ladies and are labours and are residing at Danteshwari Zopadpatti itself.

17. PW 1 Chandrika is the firstinformant. Her oral report (exhibit 19) is duly proved by her. Her evidence shows that on the day and time of the occurrence when she was proceeding to a doctor from her house, she noticed actual assault on deceased Ramu by the appellant by means of axe which he was holding in his hand. Her evidence is absolutely free from any blemish. The only improvement which the defence was able to bring on record is in respect of the number of blows given by the appellant. Except this, this prosecution witness has stood firm by the side of prosecution and her evidence has remained unshaken.

18. Another witness is Sashi Madavi (PW 2). On 11.11.2011 at about 06.30 pm she was returning to her house from her work. That time she noticed the actual assault at the hands of appellant by means of axe on deceased Ramu. She states in her evidence about the presence of Chandrika (PW1). This prosecution witness corroborates Chandrika in respect of her failed attempt not to assault on deceased. There is a corroboration from Sashi Madavi (PW 2) to the version of PW 1 Chandrika that she raised alarm and thereafter people from locality gathered there and who took injured Ramu to the Orange City Hospital. The defence was unable to establish anything on record to disbelieve the version of PW 2 Sashi Madavi.

19. Mr R. M. Daga, learned counsel for the appellant has strenuously urged before us that these two prosecution witnesses are not the eye witnesses.

According to learned counsel, Chandrika (PW 1) has not stated about the presence of PW 2 Sashi either in the First Information Report or in her evidence.

20. Though exhibit 19, the oral report does not find place in respect of the name of PW 2 Sashi Madavi as pointed out by learned counsel for the appellant, that by itself is not sufficient to jump to the conclusion that Sashi (PW 2) is not an eye witness. In our considered opinion, the submission of learned counsel in that

behalf lacks merit.

The First Information Report is not an encyclopaedia of the prosecution case nor it is an end of the prosecution case. Rather, it is starting point of the prosecution case. It just sets criminal law in motion. A police officer is empowered to investigate into a matter when commission of a cognizable offence is brought to his notice. Therefore, it is sufficient that a document for treating it as a first information report, discloses commission of a cognizable offence.

Exhibit 19, the oral report meets this requirement. Therefore, merely because the names of eye witnesses such as PW 2 Sashi Madavi are not disclosed, the prosecution cannot be doubted by citing Sashi Madavi as eye witness, when during the course of investigation, it was noticed that this witness has also seen the incident in question.

21. Further, Chandrika, a rustic lady, was witnessing a ghastly incident. When she was witnessing the occurrence that time actual assault was in progress. Therefore, it is quite possible that Chandrika may not have paid much attention in respect of presence of Sashi Madavi.

22. To discredit Chandrika, it is heavily relied upon by learned counsel for the appellant that Chandrika in her cross-examination has stated that she informed the police that some unknown person had murdered Ramu. Learned counsel, therefore, submitted that this Court should not accept Chandrika as an eye witness. However, we find ourselves not in agreement in that behalf with the learned counsel for appellant.

For evaluating the evidence of prosecution witness, the Court is required to read the evidence of such witness as a whole and not in piecemeal.

It is to be noted that Chandrika (PW 1) has reported the matter to police immediately. Her oral report (exhibit 19) was reduced into writing on the spot itself. The said report clearly shows the over-tact of assault by means of axe by the appellant.

Immediate reporting of the incident rules out the possibility of false implication. Further, we noticed that the evidence of Chandrika has remained unshaken on material aspects. Rather, nothing is brought on record to show that this prosecution witness has not seen the actual assault at the hands of the appellant by means of axe.

At this stage, it would be useful to refer to the evidence of Rajesh Belsare (PW 11). This prosecution witness is independent witness. He was required to visit Police Station, Dhantoli on 11.11.2011 for lodging a report in respect of a matter totally unconnected with the incident in question. He was in Police Station in between 6 to 7 pm. That time one person with axe smeared with blood came to Police Station.

The evidence of Rajesh corroborates the evidence of PW 12 Walvi, the Investigating Officer that on the said date a person with blood smeared axe came to the Police Station and upon enquiry made by him, he disclosed his name as Omprakash Gayaram Nirmalkar.

In that view of the matter, we are not ready to attach much importance to such stray statement as noticed in the cross-examination of this rustic uneducated lady who belongs to labour class.

23. The evidence of this witness is also attacked on the ground that she has admitted that her thumb impression on exhibit 19 was obtained in the Police Station. This submission is hardly having any bearing to discard evidence of PW 1 Chandrika. There is no challenge in her cross-examination that on the spot itself her report was recorded and was reduced into writing. Even exhibit 19 shows appearance of Danteshwari Zopadpatti on the top of the said document.

24. In so far as Sashi Madavi (PW 2) is concerned, the submission of learned counsel for the appellant that name of Sashi Madavi did not find place in the first information report is already dealt with by us in preceding paragraphs.

25. Sashi Madavi's evidence is criticised on her conduct. According to learned counsel for the appellant though this prosecution witness has seen the actual

assault, her statement was not recorded on the day of incident itself particularly when the police were available on the spot itself and he, therefore, submitted that evidence of Sashi is necessarily to be kept aside.

From the record, it is clear that her police statement was recorded on the next day of the incident. During her cross-examination, it is brought on record that there was police bandobast on the spot for whole night. According to us, that shows that the tampers must be running high in the locality due to the incident of cruel murder.

Sashi Madavi, a middleage lady engaged in labour work must be reeling under impact of fear due to horrible incident which she had witnessed. The fact that there was police bandobast, must have restrained her to step outside her house. Even otherwise, there is no inordinate delay in recording of her police statement.

26. Another submission made by learned counsel for the appellant to discredit this witness is on the ground that prior to giving evidence, police had revealed to her the date of the incident. In that behalf, learned counsel for the appellant has placed reliance on judgment of this Court in the case of Suresh Purushottam Ashtankar v. State of Maharashtra and anr reported in 2015 ALL MR (Cri) 4243.

With the assistance of learned counsel for the appellant, we have gone through the said reported decision. The said decision is hardly useful to the appellant as in the said case, before entering into the witness box, entire previous statement was read over to the witness and the police officer was sitting in the court hall (emphasis supplied by us).

In the case at hand, it is nowhere suggested to this witness that her memory in respect of entire incident was stealthily refreshed.

27. Another attack from the appellant's side regarding the character of these two ladies as eye witnesses is based by learned counsel for the appellant in view of presence of Gajanan, the brother of deceased Raju in the Court hall.

No material is brought on record to show that this Gajanan wields influence in the locality and/or these two prosecution witnesses for any reason are under his

thumbs.

Presence of Gajanan in the court hall is natural. The court proceedings are open to all. Further, his own brother had lost life. Therefore, in absence of anything to show that his presence in the Court hall as polluted the minds of these prosecution witnesses, the evidence of these two eye witnesses cannot be thrown in dustbin.

28. Similarly, evidence of Sashi Madavi cannot be discarded as submitted by learned counsel for the appellant on the count that in her police statement there is omission that she did not notice any injury on the neck of the deceased.

In her examination-in-chief it is not stated by her that she noticed any injury on neck of Ramu. On the contrary, her unchallenged version in her examination-in-chief is as under :

I say that in front of the house of Chaitram, accused was assaulting deceased Ramu by means of axe.

29. To sum up regarding these two eye witnesses, it is to be noted that these two ladies are residents of the same locality where the incident had occurred. Both the deceased and appellant are also residents of the locality where at these two prosecution witnesses reside.

At the time of incident, Chandrika (PW 1) stepped out of her house and was proceeding to go to the doctor whereas PW 2 Sashi was in the process of reaching to her house from her workplace. Therefore, their presence in the locality at the time of incident is most natural.

Further, there is no reason for these two prosecution witnesses for having any malice against the appellant. There is no reason for them to implicate appellant falsely in the incident. On careful scrutiny of their evidence, we notice that these witnesses are far from tutoring. We found that their evidence is trustworthy and can safely be relied upon.

30. The other two witnesses i.e. PW 3 Sunil Sahu and PW 4 Rajesh Verma were also examined as eye witnesses. These two witnesses were also examined in that

behalf. The learned trial Court, in our view, has rightly discarded the evidence of these two witnesses as eye witnesses. However, in our view, the learned trial Court has correctly placed reliance on the testimony of these witnesses regarding the fact as to what had happened prior to the actual incident and the fact that these two witnesses reached immediately to the spot after the incident.

31. According to Sunil Sahu (PW 3), both the accused and deceased were his friends since childhood. His evidence discloses that there is a ground beside the locality. On the day of incident at 05.30 pm, he, Rajesh Basena, Mahesh Chandrawanshi, Rajesh Verma (PW 4) and appellant were playing cards in the ground. That time, deceased Rameshwar came there. Play of cards was stopped that time. At that time, there was dung on the foot of Rameshwar and the said foot was touched to the foot of accused. According to Sunil Sahu (PW 3), on that count there was exchange of abuses in between deceased and the appellant. Said was intervened by Sunil and others who were playing cards. Thereafter accused proceeded towards his house. Rameshwar (deceased) also left for his house. That time, they heard the shouts of Chandrika (PW 1) and, therefore, all of them had rushed to the spot. They noticed that deceased Rameshwar was lying in the lane 15 feet away from the house of accused. As per the version of PW 4 Rajesh Verma, that time appellant tried to assault on him by means of axe. The said aspect is duly corroborated by PW 3 Sunil Sahu. As per the version of these two prosecution witnesses, they removed deceased to Orange City Hospital and during that time, the clothes of Rajesh Verma (PW 4) and Mahesh Chandrawanshi got stained with the blood of the deceased.

32. From the evidence of these two witnesses, it is clear that the actual assault was having prelude of exchange of abuses and quarrel in between the appellant and the deceased on account of touching of foot of the deceased stained with dung to the foot of appellant. These witnesses were required to intervene in that quarrel. It has come on record that in order to reach to his house, the deceased had to cross the house of appellant.

Evidence of PW 1 Chandrika shows that she raised alarm and challenged for help which is corroborated by PW 2 Sashi Madavi. Evidence of PW 3 Sunil Sahu and

PW 4 Rajesh Verma also corroborates the fact that Chandrika (PW 1) was shouting for help owing to which attention of these two witnesses was attracted and they immediately reached to the spot to notice that deceased was lying on the ground and the appellant was holding axe and at that time, he tried to give blow on Rajesh Verma (PW 4).

33. It is submitted on behalf of learned counsel for the appellant that evidence of prosecution witnesses no. 3 and 4 shows that the hand of the accused was caught hold by these two witnesses. However, these witnesses failed to bring the appellant to the Police Station. In our view, the submission deserves no consideration.

Though these two witnesses caught hold of the hand of the appellant, the same was in the sequence when the appellant tried to give axe blow to PW 4 Rajesh Verma. Further, these two witnesses stated from witness box that they noticed Ramu lying on the ground in an injured condition and, therefore, the appellant was left in order to give help to the injured. The reaction on the part of these two witnesses to extend help to Ramu who was injured at that time, was most natural. It is established on record that these persons carried deceased in injured condition to the Orange City hospital. However, unfortunately, he was declared brought dead at the hospital. Further, the presence of Rajesh Verma on the spot is proved by the C. A. Report which shows that the clothes of Rajesh Verma were stained with blood having blood group A which belonged to the deceased. Therefore, there is not only inter se corroboration in the evidence of PW 3 Sunil and PW 4 Rajesh, but independently also their presence on the spot is established.

III. AVAILABILITY OF SCIENTIFIC EVIDENCE :

34. Mr R. S. Nayak, learned Additional Public Prosecutor for respondent-State, to support the impugned judgment, has relied upon the Chemical Analyser's report. According to prosecution, on the day of incident, the appellant himself reached to the Police Station with axe. That time, he was holding axe smeared with the blood. Deepak Walvi (PW 12) testifies that after holding enquiry, his name was disclosed by accused; he took him in custody and handed over custody of appellant to WPC Manjusha. The prosecution has filed extract of duty chart of Police Station,

Dhantoli. The said is at exhibit 76. It shows that WPC Manjusha was on guard duty at Police Lockup at that time.

35. The axe is seized from the appellant. Said axe and blood stained clothes of the appellant are seized under seizure panchanama (exhibit 27). The said panchanama is duly proved by prosecution witness Sushil Kanojiya (PW 5). According to the learned counsel for appellant sana entry No. 14 (exhibit 66) shows that the weapon is not seized. He, therefore, submitted that the weapon axe is planted by the Investigating Officer.

If we scrutinize the record minutely, then it is clear that such submission of learned counsel for the appellant is hollow one.

The evidence of PW 12 Deepak Walvi, the Investigating Officer points out that when the appellant came to the Police Station with bloodstained axe, he handed appellant's custody to police personnel Manjusha and thereafter as per his dictate, station sana entry was taken in the Station Diary. His evidence further discloses that thereafter he rushed to the spot of occurrence and he came to the Police Station after recording the oral report of Chandrika. His evidence further shows that after reaching to the Police Station, he registered the crime vide Crime No. 329/2011.

Sana Entry No. 14 is recorded at 20.00 hours. It shows that after returning from the spot, Deepak Walvi registered the crime on the basis of oral report of Chandrika, an eye witness. Exhibit 27, the seizure panchanama in respect of clothes as well as the weapon shows that it began at 22.15 hours and was completed at 23.10 hours. Thus, the process of seizure of weapon started at 22.15 hours. If that be so, no doubt can be raised over the record of Police Station regarding sana entry No. 14 which was taken at 20.00 hours to the effect that at that particular point of time, there was no seizure of the axe.

36. Exhibit 27, the seizure panchanama recites about the sealing of the articles which were seized from the appellant i.e. weapon and also his clothes.

Evidence of PW 9 Dr Jaideo Borkar shows that he received requisition from Investigating Officer (exhibit 45) along with weapon. His evidence shows that the said weapon was axe and it was in a sealed condition. Dr Borkar's evidence shows that he broke open the seal, examined the weapon. On examination he noticed that the axe was heavy and was having sharp cutting weapon, having metallic blade of 16 cm length and breadth if 6 cm towards sharp edge. He gave his opinion (exhibit 46) that the injuries no. 1 to 6 as mentioned in column no. 17 of postmortem report (exhibit 44) can be caused by said axe. His evidence shows that after examination of the weapon, he again sealed the weapon and sent it to the Investigating Officer.

37. Exhibit 65 is the requisition dated 23.11.2011 bearing OW No. 4583/11 from Investigating Officer Deepak Walvi to the Deputy Director of Regional Forensic and Sciences Laboratory, Dhantoli, Nagpur. The said document shows that the axe was sent in a sealed condition.

38. C. A. Report (exhibit 16) shows that blood group of deceased Rameshwar was determined as A .

C. A. Report in respect of axe is dated 28.8.2012. The said C. A. Report is not part and parcel of paper book. However, on minute examination of record and proceeding, we notice that the said C. A. Report is available at record page 9 of file B . The said C. A. Report is addressed to Police SubInspector, Police Station, Dhantoli, Nagpur. It is signed by one P. V. More, Assistant Chemical Analyser, Regional Forensic Sciences Laboratory, Nagpur. The said report is having reference of Letter No. 4583 dated 23.11.2011 which is available on record at exhibit 65. The said Chemical Analyser's Report shows that the weapon was received in a sealed condition. The said report shows that a blade of the axe was stained with human blood and its blood group was A .

Worth to mention here that for the reasons best known to the learned Judge of the Court below, the said C. A. Report is not exhibited. However, merely because the said report is not exhibited, that cannot be kept aside from the zone of consideration and in view of the provisions of Section 293 of the Code of Criminal Procedure, the same can be read in evidence.

Subsection (1) of Section 293 Cr. P. C. reads as under:

293. Reports of certain Government scientific experts. (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Subsection (4) of Section 293 Cr. P. C. reads as under:

(4) This section applies to the following Government scientific experts, namely :-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) any other Government Scientific Expert specified, by notification, by the Central Government for this purpose.

Clause (a) of subsection (4) of Section 293 Cr. P. C. applies to a document from Chemical Examiner or Assistant Chemical Examiner to the Government. C. A. Report bearing No. N(T)/11572/12 dated 28.8.2012 which shows that the weapon in question was having blood group A is signed by P. V. More, Assistant Chemical Analyser, Regional Forensic Sciences Laboratory, Nagpur. In that view of the matter, on a conjoint reading of subsection (1) and subsection (4) of Section 293 Cr. P. C. Though exhibit number is not given to Chemical Analyser's Report, it is admissible and it can be read as such.

Thus, there is a consistent evidence in the prosecution case, as discussed hereinabove, that right from the time when the weapon was seized till it reached to the Forensic Sciences laboratory, it was throughout in a sealed condition.

Further, Dr Borkar (PW 9) has identified from the witness box that Article '1' is the same axe which was sent to him for examination.

39. Exhibit 14 is the Chemical Analyser's Report in respect of various articles which were sent to the chemical analyser in a sealed condition. Full shirt, baniyan; full-pant and pair of slippers of the appellant were sent to the chemical analyser. The C. A. Report shows that these articles were stained with human blood. The said report further shows that the blood appearing on the shirt of the appellant was having blood group 'A'. Thus, the human blood was noticed on baniyan, full-pant and pair of slippers of the appellant and his full-shirt was stained with blood group A . No explanation is offered by the appellant in respect of noticing this incriminating circumstance against him.

IV. OTHER EVIDENCE :

40. To support the presence of appellant in the Police Station on that day, the prosecution has examined Rajesh Belsare (PW 11). This prosecution witness had been to Police Station, Dhantoli for lodging a report. When he was sitting in the Police Station, he testified from the witness box that one boy came to the Police Station along with axe and the said axe was smeared with the blood. The clothes of the said boy were also stained with blood.

Through the cross-examination of this Rajesh, it is brought on record that this prosecution witness had attended Police Station to lodge a report and on his report, a NC Report No. 466/11 was registered. Much importance cannot be attached to the fact that this witness is unable to state the name of the boy who came to the Police Station though, according to him, that boy disclosed his name to the Police Officer.

41. The prosecution has also examined PW 7 Arvind Chavan in respect of the confession on the part of the appellant. According to this witness who is also a

police constable, the confession was made to him in presence of PW 12 Deepak Walvi, the Investigating Officer. However, Deepak Walvi in his deposition is completely silent on that aspect. Further, evidence of PW 7 Arvind shows that it is full of improvements. Therefore, we reject the confession alleged to have been made by the appellant.

42. We have observed that PW 3 Sunil Sahu, PW 4 Rajesh Verma and others lifted deceased and took him to the hospital and during that time, the clothes of PW 4 Rajesh Verma and other persons by name Rajesh Basena and Mahesh Chandrawanshi were also stained with blood. Their clothes are seized under seizure memo (exhibit 24). exhibit 24 shows that those clothes were duly sealed at the time of its seizure. According to learned counsel for the appellant, there is delay in effecting the seizure. Nothing could turn on the same since exhibit 17, another C. A. Report in respect of clothes of these persons shows that the clothes with human blood and its blood group was A i.e. the blood group of deceased. This fortifies the claim of the prosecution not only about the fact that the deceased was taken to the hospital by these persons, but also their presence on the spot.

C. CONCLUSION :

43. Re-appreciation

of the prosecution case at the hands of this Court shows that the prosecution has successfully brought guilt of the appellant to home. The evidence on record, as discussed in the preceding paragraphs, clearly establishes that the appellant is the author of axe blows on Rameshwar @ Ramnu resulting into his death.

44. In the result, appeal fails and is dismissed.

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