

(2017) 09 BOM CK 0032
In the Bombay High Court
Case No : 234 of 2001

Suresh Mahadev Wankhede

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 162\(2\)](#) - Power to examine the accused - Statements to police not to be signed-use of statements in evidence
[Indian Pe](#)

Citation : (2017) 09 BOM CK 0032

Hon'ble Judges : T.V. Nalawade, S.M. Gavhane

Bench : DIVISON BENCH

Advocate : A.N. Ansari, R.V. Dasalkar

Final Decision : Dismissed

Judgement

1. The appeal is filed against the judgment and order of Sessions Case No.219 of 2000 which was pending in the Court of the learned Additional Sessions Judge, Jalgaon. The appellant is convicted for offences punishable under sections 302 and 309 of the Indian Penal Code and punishment of imprisonment for life is given to him. Both the sides are heard.

2. In short, the facts leading to the institution of the present proceeding can be stated as follows. The deceased Usha was wife of the appellant. The incident took place in village Maskawadsim, Tahsil Raver, District Jalgaon and it is the native place of the present appellant, accused. The deceased was given in marriage to him about 15 to 16 years prior to the date of the incident and they have issues from this marriage. The appellant, his mother, the deceased and the issues of the appellant were living in Nashik as he was serving there. The appellant used to visit the native place occasionally as his relatives from parents' side are living there and he has also property there.

3. Rupchand Wankhede is the uncle of the accused. The deceased and the

accused were invited by the family of Rupchand for puja which was arranged in Navratri, a Hindu festival. The appellant and the deceased reached the residential place of Rupchand on 5-10-2000 at about 12.30 noon. They stayed there, they had meal there and they slept in the house of Rupchand in the night between 5 October and 6 October 2000.

4. The incident in question took place at about 7.00 a.m. on 6-10-2000. Shobha is the elder daughter-inlaw of Rupchand. On that day, puja of God Munjoba which was installed under the peepal tree in the back yard of the house was to be performed and offerings were to be made to God. A coconut was to be broken as offering in front of Munjoba and so the appellant, the deceased and Shobha went there. One sickle was taken there for breaking and removing of shell of coconut from the edible portion.

5. After breaking of the coconut, the deceased Usha and Shobha were sitting on a cot which was kept near the trunk of the peepal tree. The appellant was removing the shell from edible part of the coconut by using sickle. As offering, he took some part of the coconut to place it at the place of God Munjoba. He had held the sickle and that when was turning back, he cut the neck of Usha by using the sickle. He used the sickle in a way which is used for cutting stump of banana tree.

6. The incident took place in front of God Munjoba. Usha sustained bleeding injury due to blow of sickle over the neck. She somehow pressed her neck by using the hands, ran towards the house of Rupchand, she entered the house but she collapsed inside of the house immediately after entering the house. Inside of the house, there was Shantabai, wife of Rupchand.

7. Shobha raised hue and cry after seeing the incident. She saw that the accused was trying to inflict injuries over his abdomen by using the sickle. Shobha called for help. Then the sickle was removed from the hand of the accused by snatching it and he was taken inside of the house. After entering the house the accused picked up trishul, a nail having three heads from the place meant for God in the house and he started using it to inflict injury over his abdomen. He also hit his head against the wall by saying that he had done the act like assault ("VERNACULAR MATTER OMITTED"). Trishul was also taken away from him by snatching it.

8. Initially Rupchand was not at home and he was called by informing him about the incident. He reached the spot. Rupchand saw Usha lying in unconscious condition on the floor due to cut of her throat and he learnt about the incident from Shobha and Shantabai. Rupchand went to Police Patil, Prakash Rane at about 7.30 a.m. He orally informed the incident to the Police Patil. Police Patil visited the residential place of Rupchand. He saw the injured Usha and he saw the weapons and he saw the accused also who was still saying that he had assaulted Usha. As the appellant was also injured the Police Patil shifted the appellant and the deceased Usha in a conveyance to the municipal dispensary of

village Savada. Police station is situated by the side of the dispensary. The doctor declared that Usha was dead. Police Patil gave report and on the basis of this report crime at CR No.66/2000 came to be registered in Savada Police Station. Prior to leaving village Maskawad the Police Patil had closed and locked the residential place of Rupchand to see that nobody disturbs the things.

9. Ramdas Patil, P.S.I., who was attached to Savada Police Station took over the investigation. He went to the municipal dispensary and he prepared inquest in the presence of panch witness. He referred the dead body for post mortem to the same dispensary. He went to the village of Rupchand and there he prepared spot panchanama in the presence of witnesses. He took over the articles like aforesaid two weapons, earth mixed with blood from the spot of incident. There were pieces of bangles and they were also taken over.

10. The investigating Officer, Ramdas Patil recorded statements of witnesses like Shobha, Shantabai and others on 6-10-2000 itself. He referred the accused for medical examination as injuries were found on his person. There was blood on the clothes of the accused. The clothes of the deceased were taken over. The clothes of the accused, the clothes of the deceased, the aforesaid earth mixed with blood, the blood samples of the deceased and the accused were sent to C.A. office. After completion of the investigation charge-sheet came to be filed for the aforesaid offences against the appellant. The appellant took defence of total denial. In the statement given under section 313 of the Criminal Procedure Code he contended that at the relevant time he was sleeping in the house of Rupchand. He contended that the deceased was suffering from attacks of fits. He denied that he had sustained injuries in the incident.

11. Charge was framed for the aforesaid offences. The prosecution examined in all 10 witnesses including Shobha, Shantabai and Police Patil. The trial Court has believed the direct evidence and also the circumstantial evidence mentioned above. Human blood was found on the clothes, shirt and pant of the appellant. Human blood was detected in the earth which was taken over from the spot of incident. The doctor was examined to prove the circumstance that the accused had inflicted injuries on his person, had caused injuries to himself. The trial Court has based the conviction on the basis of direct evidence and the circumstantial evidence.

12. As the accused has denied everything in the statement given under section 313 of the Criminal Procedure Code, it is desirable to consider and discuss the evidence given by the prosecution to prove the homicidal death. There is evidence like evidence on post mortem examination with opinion of the doctor and the evidence of inquest panchanama of the dead body of Usha. The post mortem report at Exhibit 31 is proved in the evidence of Dr. Pradeep Patil (PW 9). He conducted post mortem on 6-10-2000 between 11.30 a.m. and 12.30 p.m. He found following injury on the dead body :

"Incised wound from mid line of throat to the lower part of right ear pinna,

curved shape parallel to the edges of lower jaw, 8" in length 2.1/2" in width and about 1" to 1.1/2" deep, oval shape, clean cut edges, bleeding present. The injury was ante mortem."

The doctor has given opinion on the cause of death as "shock due to haemorrhage due to deep incised wound at the neck." The doctor has given evidence that this injury is sufficient to cause death (in ordinary course of nature).

13. Dr. Patil (PW 9) was shown the weapon sickle. The doctor gave opinion that the injury found on the dead body can be caused by such weapon. On the basis of the circumstance that there was still bleeding the doctor has given opinion that the injury on the neck was caused within six hours before the post mortem examination. In the cross examination it was suggested to the doctor that such injury can be self inflicted but this suggestion is denied. The post mortem report is consistent with his oral evidence.

14. In the cross-examination of Dr. Patil (PW 9) following evidence is brought on record :

"I agree with the proposition that both laceration and incised wound may lead to fatal or non fatal complication because of air embolism especially in wounds of neck when opened jugular veins above the right atrium allow - access of air into the vesicular system. I have not mentioned in Col. No.13 colour of eyes, I have not taken the photographs of the wound."

15. Inquest panchanama (Exhibit 17) is proved in the evidence of Ganesh (PW 1). The evidence is given on the length, width and depth of the wounds and there is such description in the inquest panchanama at Exhibit 17. The document is consistent with the oral evidence of Ganesh (PW 1).

16. Learned counsel for the appellant argued that there is a possibility that she accidentally fell on the sickle as witness has given evidence that she fell from cot. This submission is not at all acceptable. Blade of the sickle cannot stand when sickle is kept on ground due to the shape of the weapon including the shape of the handle. The weapon always falls flat on the ground. In any case there is evidence of Shobha (PW 4), eye witness which is not consistent with the submission made by the learned counsel in the appeal. There is more evidence including the direct evidence about the assault made by the accused to prove that the injury was inflicted by him. Thus, even without considering the evidence of Shobha and Shantabai, the evidence of post mortem report and inquest panchanama is sufficient to prove that Usha died homicidal death.

17. Shobha (PW 4) is examined as an eye witness. She has deposed that the incident took place at 8.30 a.m. when she, the accused and the deceased were present under the peepal tree situated at backyard of the house. She has deposed that, they were there for giving offering to God Munjoba by breaking coconut. She has deposed that sickle was taken there and it was used for

removing shell of the coconut after breaking it. She has deposed that she and Usha were sitting on the cot which was under the tree and the accused was sitting by the side of the cot, towards the side of Munjoba, near the trunk of the peepal tree. She has deposed that at that time she was facing towards south, Usha was facing towards west and the accused was facing towards east. This part of the evidence is not challenged by putting any question or by bringing on record any contradictions. It can be said that the presence of Shobha on the spot when Usha sustained injury was not seriously disputed.

18. Shobha (PW 4) has deposed that the sickle was lying there and it was by the side of the accused. She has deposed that she noticed that Usha all of a sudden fell from the cot and then Usha got up and ran towards the house and entered the house. Shobha has deposed that she noticed that the accused was holding sickle and he was striking the sickle on his own abdomen (the word stomach is used by the trial Court). Shobha (PW 4) deposed that she shouted and then Shantabai (PW 3) took away the sickle from the accused by snatching it. She has deposed that the accused then took trishul which was kept near the place of God (inside of the house) and started striking trishul blow over his abdomen. Though no specific evidence is given by her that after entering the house by Usha, Shobha and accused also entered the house, the other part of the evidence shows that the remaining part of the incident took place inside of the house. Shobha (PW 4) has deposed that Shantabai took and snatched the trishul from the accused. She has deposed that persons gathered and the accused was made to sit in the courtyard of the house. Shobha (PW 4) has deposed that Rupchand then went to Police Patil to inform about the incident. Shobha (PW 4) has identified the articles like sickle and trishul which are produced in the Court as Muddemal property by the prosecution.

19. In the cross-examination of Shobha (PW 4) it is suggested to her that she had not stated before police that Shantabai (PW 3) had snatched and taken away the weapons like sickle and trishul from the accused. In the evidence of investigating officer ((PW 10) this omission is proved. This omission is not that material as in the police statement Shobha (PW 4) had stated that persons present had snatched the weapons from the accused. Such omission cannot make much difference as it is not disputed by the defence that Shobha and Shantabai were living in that house. Their presence in the house at that time was natural.

20. From the evidence of Shobha (PW 4) and the case of the prosecution it can be said that Shobha was expected to give evidence to the effect that she had seen the accused actually giving blow of sickle on the neck of the deceased. She has not given evidence specifically to that effect and her evidence is of aforesaid nature. The nature of the aforesaid evidence is not less than direct evidence. At the relevant time only the accused, the deceased and this witness were present on the spot of the offence. Attention of this witness was drawn when Usha virtually collapsed but she stood and ran towards the house. The evidence of

Shobha (PW 4) needs to be read as a whole and it shows that it is "indirectly direct evidence". The evidence indicates, gives inference that it is the accused who had given blow of sickle on the neck of the deceased.

21. Shantabai (PW 3) wife of Rupchand has given evidence that she was present inside of the house and in the morning she had seen the deceased, accused and Usha going to the back side through the back door of the house. She has deposed that they were going there to break coconut for giving offerings to Munjoba. She has deposed that after some time she saw that Usha came running inside of the house and she had kept her hands over the neck. She has deposed that sickle blow was given on the neck of Usha. She however admits that she had not seen the accused giving said blow. According to her, the incident in question took place at 7.00 a.m. She has deposed that at that time Shobha (PW 4) was seen standing at the door (back door). She has deposed that when Usha ran inside of the house accused followed Usha and he also entered the house. She has deposed that the accused started hitting himself by using trishul and sickle.

22. In the cross-examination, Shantabai (PW-3) has admitted that she did not witness the incident of assault. It was suggested to her in the cross-examination that she has not stated before police that Shobha (PW 4) was seen standing by the side of the door. This omission is proved in the evidence of the investigating officer (PW 10). The presence of Shobha was mentioned in the police statement by Shantabai and so this omission cannot be treated as contradiction in view of the provision of section 162(2) Explanation of the Code of Criminal Procedure.

23. Shobha (PW 4) and Shantabai (PW 3) have given different time of the incident like 7.00 a.m. and 8.00 a.m. respectively. This inconsistency in the timing of the two witnesses also cannot make much difference and it cannot help the accused. These two ladies are living in that house and they had invited the deceased and the accused in their house for celebration of the festival. In any case they were expected to be there as it was morning time. The evidence shows that only PW 3 and PW 4 could have witnessed the incident and they could have called others including Rupchand to the house immediately after the incident. Timings of subsequent incidents, steps are material. They show that all the things happened within a short time.

24. Evidence of PW 3 and PW 4 shows that Rupchand went to Police Patil to inform about the incident. Rupchand is not examined but the Police Patil, Prakash Rane (PW 6) is examined by the prosecution. The Police Patil has given evidence on the disclosure which was made by Rupchand. It can be said that the disclosure made by Rupchand was also on the basis of information collected by him from PW 3 and PW 4. Evidence of the Police Patil (PW 6) shows that Rupchand had come to him at 7.30 a.m. According to him, the information was given against the accused by Rupchand that he had caused injury to Usha. The Police Patil has deposed that, after learning of the incident, he entered the house of Rupchand and he saw all the things personally including the circumstance that

Usha was lying in unconscious condition due to injury sustained by her. He had noticed the weapons and the blood on the spot. The Police Patil has deposed that he then shifted the accused and Usha to municipal dispensary Savada and then he gave report. The evidence of a panch witness shows that the police station and the dispensary are adjoining to each other. The report given by the Police Patil is proved at Exhibit 25 in the evidence of the Police Patil.

25. Prakash Rane (PW 6) was Police Patil but his evidence shows that he had no interest in Rupchand or in the deceased. He had given report only on the basis of information collected by him and so there is no reason to disbelieve him. He has fairly admitted that Rupchand is in possession of the house of the accused in that village. His evidence is certainly relevant as per section 8 of the Evidence Act. Even when there is such evidence and Rupchand is not examined in the present matter, due to aforesaid circumstances, the evidence given by Police Patil is certainly relevant under section 8 of the Evidence Act. These circumstances can be used as corroborative pieces of evidence to the direct evidence. Crime was registered at 9.00 a.m. on the same day on the basis of report given by the Police Patil. The evidence on record shows that the distance between the police station and the place of incident is around 2 kilometers. The evidence of the Police Patil shows that he was required to take steps like visiting the spot, making observations of the spot, collecting information, collecting conveyance and then shifting the accused and Usha to village Savada. Thus, almost all the steps were taken immediately and this circumstance needs to be kept in mind while appreciating the evidence given by this witness and also by other witnesses.

26. The aforesaid evidence of the three witnesses shows that it is consistent with each other. There is corroboration of circumstances to the evidence of these three witnesses. The evidence on post mortem examination and the inquest panchanama, which is already quoted, shows that it is consistent with the evidence of aforesaid three witnesses. The spot panchanama (Exhibit 19) is proved in the evidence of Ganesh (PW 2). There is also evidence of investigating officer (PW 10) to prove the spot panchanama. Shobha (PW 4) showed the spot of incident and the spot of assault is situated under a peepal tree situated in the back yard portion of their house. On this spot the articles like pieces of bangles, pieces of broken coconut, Prasad and earth mixed with blood were found.

27. The evidence on spot panchanama shows that the second spot is situated inside of the house of Rupchand. At this spot weapons like trishul and sickle were lying. The trishul is described as nail having 3 heads. It was not having separate handle. There was blood on the sickle. Under the panchanama the aforesaid articles along with earth mixed with blood were taken over. These witnesses were not much cross-examined to test their veracity or to impeach their character.

28. Sanjay Bharambe (PW 7) is a panch witness on incident of seizure of clothes of the accused on 6-10- 2000. In the police station, the clothes which were on the person of the accused were taken over under the panchanama at Exhibit 27. Articles like shirt and pant of the accused are identified by Sanjay in his

evidence. He has deposed that, dressing was seen at places on the person of the accused showing that he had sustained injuries over abdomen, temple and right hand finger. This evidence remained un-shattered in the cross-examination. There is nothing suggested to this witness to create probability that he is not independent witness. The panchanama at Exhibit 27 is consistent with the oral evidence. Further in the evidence of Dr. Pradeep (PW 9) it is brought on the record that the accused was examined by him at 8.45 a.m. on the same day and he had found injuries like C.L.W., abrasions over the person of the accused like abdominal wall etc. The injury certificate is duly proved at Exhibit 32. This is again a piece of circumstantial evidence which is more clinching.

29. The evidence of Ramdas Patil (PW 10) investigating officer and the evidence of Arjun Sonwane (PW 8) police head constable shows that the aforesaid articles seized during investigation were sent to CA office with covering letter on 16-10-2000. The covering letter is duly proved at Exhibit 29. The CA reports are at Exhibits 11 to 14. The blood group of the deceased was AB. Blood was detected on the pant of the accused though result of the test of the blood group was not conclusive. Human blood was detected on the weapons like sickle and trishul. Human blood was detected on the spot. This evidence gives more corroboration to the circumstantial and direct evidence already discussed.

30. Shobha (PW 4) and Shantabai (PW 3) are close relatives of the accused. The evidence as a whole does not show that they were to get anything by falsely implicating the accused. The other witnesses are independent witnesses. Report about the incident was given immediately. Statements of the material witnesses were recorded on the same day. There was no time or room for concoction. All these pieces of evidence under section 3 of the Evidence Act are relevant. Evidence of Shobha (PW 4) needs to be treated as direct evidence. Evidence of Shantabai (PW 3) is circumstantial in nature. It further shows and leads to inference that only the accused could have given fatal blow on the neck of the deceased. The other circumstances like detecting human blood on the sickle, the clothes of the accused and earth mixed with human blood found on spot of offence are relevant in view of provisions of sections 7 and 9 of the Evidence Act. Even the FIR given by the Police Patil and his evidence are relevant under section 8 of the Evidence Act. Injuries found on the person of the accused are also relevant in the present matter and they corroborate the direct evidence in respect of offence punishable under section 309 of the IPC. Thus, there is more than sufficient evidence in the present matter to prove both the offences against the accused beyond reasonable doubt.

31. It is true that there is no positive evidence on motive in the present matter. However in the case like the present one, the circumstance that the offence was committed in front of place of God and the accused committed an act of cutting the neck of the deceased, which is a manner of giving sacrifice, cannot be ignored. A circumstance can also give motive directly or indirectly. It can be said that what was in the mind of the accused was not known to others. Even if that

circumstance is ignored, and it is accepted that there is no evidence on motive that circumstance cannot change the fate of the matter. There is direct evidence of aforesaid nature so motive cannot play important role in the present matter and the absence of motive has not created any doubt about the evidence of these two ladies.

32. In view of the reasoning given above, this Court holds that it is not possible to interfere in the decision given by the trial Court by which the accused is held guilty for offences. Minimum penalty is given by the trial Court and so there is no possibility of interference in the penalty part also. In the result, the appeal stands dismissed. The appellant to surrender to bail bonds for undergoing the sentence.