



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1207 OF 2019

Gangaram Lachiram Rathod
Age: 33 years, Occu.: Agri.,
R/o Kasarpeth Tanda, Tq. Bhokar,
Dist. Nanded

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Bhokar
Tq. Bhokar, Dist. Nanded

..RESPONDENT

....
Mr. U.L. Telgaonkar, Advocate for appellant (appointed through Legal Aid)
Mr. S.J. Salgare, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 14th NOVEMBER, 2024**

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 28th March, 2018 passed by Additional Sessions Judge, Bhokar in Sessions Case No. 1 of 2017. Vide the impugned judgment and order, the appellant has been convicted for the offence punishable under Sections 302 and 504 of the Indian Penal Code ('I.P.C.') and thereby sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- with default stipulation and to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- with default stipulation, respectively.

2. The long and short of the prosecution case before the trial Court was that there was Gram Panchayat election of Deothana Block in the month of May/June 2016. Durgabai, wife of deceased – Pralhad, was elected by defeating one Najabai Ganpat Rathod. The panel of deceased – Pralhad won with majority. His wife – Durgabai became Deputy Sarpanch. The appellant was grugged thereby. He would quarrel with the deceased and his wife for one or the other reason. According to the appellant, the deceased was rulling on the strength of his wife, being Deputy Sarpanch of the village.

3. It so happened that deceased – Pralhad was seated on a chair near Gram Panchayat office. Construction of opla under a tree near Jagdamba temple in the village was in progress. The appellant suddenly appeared there armed with an axe. He told Pralhad, “*तू माझ्या भावजयीला व दोन ओदवारांना निवडणुकीत पराभूत करून स्वतःच्या बायकोला उपसरपंच करून शहाणपणाने खुर्चीवर बसून गावात कामे करतोस काय. थांब तूझा काटाच काढतो*”. The appellant then assaulted on the head of Pralhad with the axe. Since it was 03:30 p.m., the incident was witnessed by the villagers and the relations as well. The appellant ran away. Pralhad was shifted to Yashoda Hospital at Nanded. For better treatment he was referred to a hospital in Hyderabad. Unfortunately he succumbed.

4. Based on the report lodged by PW 1 – Kamalsing, brother of the deceased, crime was registered against the appellant initially for the offence

punishable under Sections 307 and 504 of the I.P.C. On demise of Pralhad, Section 302 came to be invoked. During investigation, a crime scene panchanama (Exh.28) was drawn. The appellant was arrested. An axe was seized. Clothes on the person of both, the appellant and the deceased, were seized. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the charge-sheet was filed against the appellant.

5. The trial Court framed the charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication on account of village politics.

6. To bring home the charge, the prosecution examined seven witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court passed the order impugned herein.

7. Learned counsel for the appellant would submit that the witnesses on behalf of the prosecution were all interested and even related to the deceased. The deceased fell on a spade and thereby suffered injury. He was, therefore, shifted to a hospital at Hyderabad. The medical officer, who treated him in the hospital at Hyderabad, was not examined so as to make out an offence under Section 302 of the I.P.C. The investigation is tainted one. C.A. reports do not support the prosecution case. He, therefore, urged for allowing the appeal.

8. Learned A.P.P. would, on the other hand, submit that the incident took place in a broad daylight at a public place. The appellant was seen assaulting the deceased with an axe. Relations of the deceased could not be said as interested witnesses. They would not spare the real culprit and implicate an innocent one. According to learned A.P.P., the assault was with such a force that it caused fracture of skull. The intention to kill is, therefore, writ large. The postmortem report (Exh.40) indicates it to be a case of homicidal death. He placed reliance on paragraph nos. 35 to 38 and 47, 48 and 53 of the judgment of Division Bench of this Court in case of ***Rashid Ahmed Abdul Bashir Shaikh Vs. State of Maharashtra, 2022 (1) ABR (Cri) 234*** to ultimately urge for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record and the order impugned herein. Let us now advert thereto and appreciate the same.

10. PW 1 – Kamalsing is the brother of deceased – Pralhad. He lodged the F.I.R. (Exh.22). His evidence disclosed that there was Gram Panchayat election wherein Durgabai, wife of the deceased, got elected. The panel set up in the election by the deceased, got majority. Durgabai became Deputy Sarpanch. Wife of brother of the appellant was defeated in the election. The appellant, therefore, entertained animus. It is further in his evidence that by 03:30 p.m. on 11th June, 2016, Pralhad was seated in a chair near Gram Panchayat office. Construction of opla under a tree near

Jagdamba temple in the village was underway. The appellant came there armed with an axe. He said Pralhad, “तू माझ्या भावजयीला व दोन उमेदवारांना निवडणूकीत पराभूत करून स्वतःच्या बायकोला उपसरपंच करून शहाणपणाने खुर्चीवर बसून गावात कामे करतोस काय. थांब तूझा काटाच काढतो.” and assaulted on his head with the axe. The appellant thereafter ran away. Pralhad was initially shifted to Yashoda Hospital at Nanded and then taken to a hospital at Hyderabad for better treatment. He lodged the F.I.R. (Exh.22) within twelve hours of the incident.

11. Close reading of his cross-examination would indicate that except denial nothing positive has been put to suggest the appellant's defence. Based on his evidence it could safely be concluded that there was Gram Panchayat election. Wife of the deceased was elected and became Deputy Sarpanch. The panel of the deceased won majority. The wife of brother of the appellant had lost the election. He had, therefore, an axe to grind against the deceased.

12. On the same lines is the evidence of PW 2 – Devidas. The cross-examination of Devidas is also in the nature of denial of what has been stated in his examination-in-chief.

13. Then there is evidence of PW 5 – Pandit, another eye witness. Perusal of his evidence indicates that the same is in concurrence with the evidence of PW 1 and 2. He saw the appellant inflicted on the head of the

deceased two blows with an axe. It was he, who had shifted the injured first to Government Hospital at Bhokar and then to Yashoda Hospital, Nanded.

His cross-examination indicates the same is in the nature of denial of his evidence in examination-in-chief.

14. PW 3 – Sanjay is a witness to the crime scene panchanama (Exh.28). PW 4 - Sachin is a witness to the memorandum statement made by the appellant pursuant to which the axe was seized. The memorandum panchanama is at Exhibit 33, while seizure panchanama is at Exhibit 34.

15. PW 6 – Dr. Sanjay conducted autopsy on the mortal remains of the deceased. He noticed following injuries on his person :-

1. *Sutured and stapled chop wound over occipital region of head. Margins indurated, separated with some adhesion at margin, horizontally placed, 16 cm x 1 cm. x bone deep age of injury 1 week to 10 days.*
2. *Stapled chop wound below injury no.1 over neck. Margins idurated, separated with adhesion at margin, horizontally placed 6 cm. x 1 cm. x bone age of injury – 1 week to 10 days.*

The postmortem examination report (Exh.40) issued by him indicates the cause of death was 'septicemia due to head injury'.

16. Admittedly, the deceased breath his last eight days after the incident. He was in the hospital at Hyderabad for about a week. The medical officer, who treated him in the said hospital, was not examined. The death certificate (Exh.52) issued by the Max Cure Hospital, Hyderabad gives

the cause of death as “B/L pneumonitis with hypoxemia”. This cause of death necessarily defers with the cause of death given by PW 6, as such, it can be said that the prosecution has failed to prove beyond reasonable doubt that the deceased met with homicidal death.

17. The fact, however remains that evidence of PW 1, 2 and 5 goes a long way to indicate the appellant to have assaulted on the head of the deceased with an axe. The nature of injuries suffered, the body part on which the assault was made and the weapon used therefor, lead us to indicate that it was a bid on the life of the deceased. In view of there being two inconsistent certificates indicating the cause of death, conviction of the appellant for the offence punishable under Section 302 of the I.P.C. needs to be set aside replacing it with the offence punishable under Section 307 of the I.P.C.

18. In the result, appeal partly succeeds. Hence, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code vide judgment and order dated 28th March, 2018 passed by Additional Sessions Judge, Bhokar in Sessions Case No. 1 of 2017, is hereby set aside.
- (III) The appellant stands convicted for the offence punishable under Section 307 of the Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.500/- (Rupees Five

Hundred), in default to undergo rigorous imprisonment for one month.

- (IV) Sentence of the appellant for the offence punishable under Section 504 of the Indian Penal Code is reduced to six months and fine to Rs. 500/- (Rupees Five Hundred), in default to undergo rigorous imprisonment for one month.
- (V) Both the sentences to run concurrently.
- (VI) Fine amount paid by the appellant, if any, be adjusted accordingly and excess amount, if any, be refunded to him.
- (VII) Fees of Mr. U.L. Telgaonke, learned counsel appointed to represent the appellant through Legal Aid, is quantified to Rs.10,000/- (Rupees Ten Thousand) to be paid by Legal Services Sub-Committee, High Court, Aurangabad.

SSD
(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)