

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...

CRIMINAL APPEAL NO. 659/2002
with
CRIMINAL REVISION NO. 269/2002

CRIMINAL APPEAL NO. 659/2002

The State of Maharashtra
Through : Police Station, Renapur
Tq. Renapur, Dist.Latur.

...APPELLANT
(Ori.Complainant)

v e r s u s

Surekha Umakant Kasale
Aged 28 years,occu: household
R/o Renapur,
At present Kava Naka, Latur.

...RESPONDENT
(Ori. Accused)

.....
Mr. B.L. Dhas, Additional Public Prosecutor for appellant/State
Mr K.B.Jadhav, Adv. (appointed) for accused.
.....

with

CRIMINAL REVISION PETITION NO. 269 /2002

Umakant s/o Sopanrao Kasale
Aged : 35 years, occu: service
R/o Renapur, Tq. Renapur Dist.Latur.

..PETITIONER

V E R S U S

- 1) Surekha Umakant Kasale
Aged 30 years, occu: household
R/o Renapur,
Now staying at Kava Naka, Latur . ..ORI. ACCUSED
- 2) The State of Maharashtra
(copy to be served on Public
prosecutor, High Court
of judicature of Bombay
bench at Aurangabad)
Through the Police Station officer
Dist. Latur. ...RESPONDENT

.....
Mr.S.S. Choudhari, Adv. for petitioner
Mr K.B.Jadhav, Adv. (appointed) for ori. accused.
Mr. B.L. Dhas, Additional Public Prosecutor for Respondent/State
.....

CORAM: T.V. NALAWADE &
INDIRA K JAIN, JJ.

DATE OF RESERVING: 06.05.2015

DATE OF PRONOUNCEMENT: 23/06/2015

JUDGMENT: (Per INDIRA K.JAIN, J.)

The State of Maharashtra has preferred Criminal Appeal No.659/2002 against the judgment and order dated 31.07.2002 passed by the learned 2nd Additional Sessions Judge, Latur in Sessions Case No.25/2001. By the said judgment and order, the learned Additional Sessions judge acquitted the respondent for the offences punishable under Sections 302 and 309 of the Indian Penal Code (I.P.C.).

2. The complainant being aggrieved by the impugned

judgment and order preferred Criminal Revision No. 269/2002. For the sake of convenience, respondent is referred in her original status as an “accused” as referred in the Sessions case.

3. The prosecution case, briefly stated, is as under :

Accused-Surekha Umakant Kasale, was the wife of complainant-Umakant Kasale. Deceased-Parvatibai was the mother of complainant and mother-in-law of accused. The couple had one male and one female child. They were residing at Latur from 1995 till June, 2000.

4. According to prosecution, accused used to pick up quarrels with her husband on the ground to transfer the entire property in her name and she should be given salary of complainant. Due to frequent quarrels, complainant started residing at Renapur where Parvatibai was residing and he used to commute from Renapur to Latur. He was serving as a Pharmacist in Civil Hospital, Latur.

5. Incident occurred on 21.12.2000 in the noon. It is alleged that accused approached the complainant and picked up

quarrel with him. Thereafter, she proceeded to Renapur and raised quarrel with her mother-in-law Parvatibai. She assaulted Parvatibai with an iron instrument on her head, back and hand, causing multiple injuries. The neighbourers and others assembled there. Parvatibai was shifted to Government Hospital, Renapur and then referred to Government Hospital at Latur.

6. One Bharat Mamadage who saw the incident disclosed it to complainant-Umakant. He was informed that after assaulting Parvatibai, accused attempted to commit suicide with the help of scarf. On receiving information, Umakant lodged report to Police Station Renapur. Crime No.142/2000 came to be registered initially under Sections 324 and 309 of the I.P.C. On the death of Parvatibai on 27.12.2000 offence under Section 302 I.P.C. came to be added. It appears that after the death of Parvatibai, *post-mortem* was performed.

7. During investigation, PW 10 Head Constable Annasaheb Suryawanshi, visited the place of occurrence and recorded spot *Panchnama* (Exh40) in the presence of *Panch* witnesses. An iron instrument known as "*pahar*" allegedly

stained with blood, bangles, earth mixed with blood and scarf came to be seized from the place of incident. Head Constable Suryawanshi recorded statements of witnesses.

8. On 27.12.2000 PW 10 Head Constable Suryawanshi handed over further investigation to PW 11 SDPO Pravin Patil. Accused was interrogated. At her instance, wooden plank (*Lakdi Dhalpi*) came to be recovered under Section 27 of the Indian Evidence Act. The seized articles were sent to Chemical Analyser at Aurangabad. C.A. report and *post-mortem notes* were collected. On completion of investigation, charge-sheet was filed before the learned Judicial Magistrate, First Class, Latur who, in turn, committed the case for trial to the Court of Sessions.

9. Charge came to be framed against respondent/accused, vide Exh.15. She pleaded not guilty to the charge and claimed to be tried. The *factum* of relationship *inter se* between the parties is not in dispute. However, regarding commission of offence, her defence was of total denial. According to accused, her relations with complainant were not cordial. He had filed divorce proceedings against her and to take revenge she was

falsely implicated.

10. On going through the evidence adduced in the case, the learned Additional Sessions Judge acquitted the accused of the offences as referred herein-before. Hence, this Appeal by the State and Revision by the complainant.

11. We have heard the learned Advocates for the parties. After giving anxious consideration to the facts and circumstances of the case, submissions advanced on behalf of the parties, evidence on record and the judgment delivered by the learned Additional Sessions Judge, for the below-mentioned reasons, we are of the opinion that there is no merit in the Appeal and the Revision.

12. At the outset, it may be mentioned here that edifice of the prosecution case rests on the twofold evidence: (i) ocular version of PW 5 Bharat Mamadage, PW 6 Meera Khandate and PW 7 Syed Meer Ali and; (ii) recovery of incriminating article at the instance of accused.

13. In order to appreciate the evidence in proper perspective, it would be necessary for us to scrutinize the evidence of three eye witnesses referred above. Admittedly, PW 4 complainant Umakant was not present at the time of incident. He lodged First Information Report on the basis of information received from PW 5 Bharat Mamadage. FIR is proved at Exh. 42.

14. It appears from the evidence of PW 5 Bharat Mamadage that complainant Umakant and accused Surekha were acquainted to him. On 21.12.2000, he was proceeding towards Bazar from his house. He noticed accused Surekha getting down from a rickshaw and entering the house of complainant Umakant. She had a scarf on her head and was alone. PW 5 stated that after some time, he heard the cry "*Mala Vachawa, Mala Vachawa, Pala, Pala*". On hearing cries he proceeded to house of Umakant. According to PW 5 Bharat, when he reached the house of complainant, he saw Syed Meer Ali, Sakhubai, Savitabai and many other people present there. As the door was locked, they peeped through window. He stated that accused was assaulting Parvatibai with a wooden part

known as *Dhalpi*. As they saw accused assaulting Parvatibai, PW 5 Bharat, Santosh Mamadage and Kisan Singde, pushed and opened the door. They saw Parvatibai lying in a pool of blood. She had multiple injuries on head and hand. Her bangles were broken. Devidas Kasale made Parvatibai to sit and Savitabai applied local bandage to her head.

In his further evidence, PW 5 Bharat stated that after people gathered, Surekha went to the first floor. They followed her but she closed the door from inside. They opened the door by kicks. On entering the door, they saw Surekha attempting to hang herself with the help of scarf on the wooden log known as "*Lakadi Adu*". They caught and brought her to the ground floor. Surekha had also sustained injuries. So Parvatibai and Surekha, were shifted to Government Hospital, Renapur. On the advice of Medical Officer at Renapur, Parvatibai was shifted to Civil Hospital, Latur.

In the cross-examination of PW 5 Bharat he admitted that he was not visiting house of Umakant. He was an agriculturist. It was harvesting season. He was going to the field daily between

10.00 and 11.00 a.m. He stated that on 21.12.2000 as it was Thursday and *Ekadashi*, he was fasting and going to purchase some articles. He was not the next door neighbour of complainant. The house of PW 5-Bharat was situated at the extreme end in the lane in which the house of complainant was situated. From the facts brought in the cross-examination, it is apparent that PW 5 Bharat was a chance witness.

15. If the evidence of PW 6 Meera Khandate and PW 7 Syed Meer Ali is looked into, it can be seen that it is stereotype and almost identical to the evidence of PW 5 Bharat. Major contradictions and vital omissions elicited in their cross-examination came to be proved through Investigating Officer. PW 6 Meera Khandate did not disclose before police that scarf was on the head of Surekha and after hearing cries, '*Mala Vachawa Mala Vachawa*' she rushed to the house of complainant. She did not state that Devidas made Parvatibai to sit and she followed Surekha when she went to the first floor. These material omissions created doubt about the reliability of evidence of PW 6 Meera Khandate.

16. In respect to PW 7-Syed Meer Ali 'A' and 'B' (Exhs 65 and 66) brought in his cross-examination clearly show that he made material improvements in the course of evidence and his testimony is doubtful.

17. Another drawback in the case of prosecution is that the statements of PW 5 Bharat, PW 6-Meerabai and PW 7- Syed Meer Ali were recorded after an inordinate delay of eight days. As delay in recording statements of eye witnesses was not explained, trial Court held that it would not be safe to rely upon their testimonies.

Considering the facts elicited in piercing cross-examination of PW 5-Bharat, PW 6-Meerabai and PW 7-Syed Meer Ali, we find no reason to take a different view than taken by the learned trial Judge.

18. So far as recovery of wooden plank/ (*Lakdi Dhalpi*) is concerned, prosecution relied upon evidence of PW 2 Rajkumar Dalvi. His evidence shows that on 29.12.2000 he was called in Police Station, Renapur. That time, Surekha and Ravikant

Motegaonkar were present. Ravikant Motegaonkar was another *Panch* on memorandum and discovery *panchnama*.

According to PW 2 Rajkumar, Surekha voluntarily made statement in their presence that she would produce part of wooden window known as *Dhalpi*. Thereafter, both the *panch* witnesses, police personnel and accused Surekha proceeded in a police jeep to the house of accused. Accused asked the jeep to be stopped near her house and led them to a house which was locked. She got opened the house through third person. Then all entered the house. Accused took out part of window i.e *Dhalpi* from one storeroom known as '*Kangi*'. It was seized in the presence of *Panch* witnesses. Memorandum of accused (Exh. 36) and discovery *panchnama* (Exh. 37) came to be proved by PW 2 Rajkumar.

It is evident from the cross-examination of *Panch*-Rajkumar that key of the lock of house was with the step brother of complainant, who was the next door neighbour. The lock was opened by son of step brother of complainant. It means accused

had no dominion over the house from where the alleged recovery was made. There is no iota of evidence to show that accused was in possession of the keys of house and was residing there. In view of these circumstances it would be risky to place reliance on such recovery particularly when her relations with her husband/complainant were not cordial.

If evidence on discovery under Section 27 goes away, we see no reason to consider C.A. report (Exh.63) as it would not be enough to connect the accused with the commission of alleged act of assault.

19. It is also significant to note that immediately after FIR was lodged Head Constable Suryawanshi visited the spot and on drawing spot *panchnama* (Exh. 40) recorded statements of four witnesses. Those witnesses were not examined. Devidas and Savitabai, who played an important role in giving first aid to injured Parvatibai were kept away from the witness box for the reasons best known to the prosecution. The evidence of other important witnesses who could throw light on the truth i.e. tempo driver who shifted injured Parvatibai and accused Surekha

to the hospital and Medical Officer who attended Parvatibai and Surekha in the hospital at Renapur was withheld by prosecution for no reason. Non-examination of the said material witnesses without any justification, in our view, is fatal to the prosecution case.

20. It is also strange to note that Medical Officer, Government Hospital, Renapur did not inform police about admission of injured-Parvatibai in the hospital though it was a medico-legal case. F.I.R. was lodged after 24 hours despite availability of police on the spot and in the hospital in which complainant was serving. So far as other evidence like spot *panchnama* etc. is concerned, it is not helpful to the prosecution. In view of these material infirmities it cannot be said that charge against the accused is legally proved.

21. On the scope of Section 378 of the Code of Criminal Procedure Mr.K.B.Jadhav, learned counsel for the respondent vehemently submitted that, in any case, order passed by the trial Court cannot be said to be perverse and merely because there is possibility of another view, it would not be appropriate to interfere

with the order of acquittal. In support of his contention, the learned counsel placed reliance on the following authorities :

- 1) Chandrappa & others vs. State of Karnataka {2007 (4) SCC 415}
- 2) Tansukh Zapadia & anr. vs. State of Gujarat {2013 CJ (Guj) 1152}
- 3) Basappa vs. State of Karnataka {2014 CJ (SC) 183 :

In the above authorities, the Hon'ble Supreme Court has reiterated well-settled proposition of law. Needless to state that paramount consideration of the Court in an appeal against acquittal should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is not less than conviction of an innocent.

22. Under Section 378 of the Code of Criminal Procedure , finding of facts recorded by the trial Court cannot be disturbed even if it is found that view taken by the trial Court was not proper. It is now settled that if two views are possible on the evidence adduced in the case, in that situation, view which is favourable to the accused needs to be adopted.

23. In the present case, it does not appear to us that the

view taken by the trial Court is not based upon legal and admissible evidence. On the contrary, we found that the evidence of eye witnesses and recovery under Section 27 of the Evidence Act is doubtful. Once we reach the conclusion that the prosecution evidence is doubtful, there remains no merit in the case of prosecution. The view taken by the learned Additional Sessions Judge is reasonable and possible view. No perversity is noticed. Hence, we are not inclined to interfere in the judgment and order of acquittal.

24. In the result, the Appeal and Revision, both stand dismissed.

We quantify the legal fees to be paid to Mr.K.B. Jadhav, Advocate (appointed) for the accused, at Rs. 5,000/-(five thousand).

JUDGE

JUDGE

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