

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

Criminal Revision Application No. 169 of 2003

Kesarsingh s/o. Thansing Maher,
Age : 40 years,
Occupation : Agriculture,
R/o. Village Talyachiwadi,
Taluka : Khultabad,
District : Aurangabad.

.. Revision Applicant
(Original complainant)

versus

1. The State of Maharashtra,
Through P.I.,
Khultabad Police Station,
Taluka & District : Aurangabad.
2. Thansing s/o. Suratram Maher,
Age : 62 years,
Occupation : Agriculture,
R/o. Talyachiwadi,
Taluka : Khultabad,
District : Aurangabad.
3. Sanjay s/o. Thansing Maher,
Age : 27 years,
Occupation : Agriculture,
R/o. As above.
4. Sahebsing s/o. Thansing Maher,
Age : 30 years,
Occupation : Agriculture,
R/o. As above.
5. Tarabai w/o. Sahebsing Maher,
Age : 27 years,
Occupation : Agriculture,
R/o. As above.

6. Tulsabai w/o. Sanjay Maher,
Age : 25 years,
Occupation : Household,
R/o. As above.

.. Respondents
(Nos.2 to 6 - Original
accused nos.1 to 5)

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Mr. R.S. Deshmukh, Advocate, for the revision applicant.

*Mr. S.G. Nandedkar, Additional Public Prosecutor, for
respondent no.1 - State.*

Mr. P.F. Patni, Advocate, for respondent nos.2 to 6.

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 24TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. R.S. Deshmukh for the revision applicant, learned APP Mr. S.G. Nandedkar for respondent no.1 - State, and Adv. Mr. P.F. Patni for respondent nos.2 to 6.

2. The applicant herein is the original complainant in Sessions Case No. 239/2001. The respondent nos.2 to 6 herein / original accused were tried for the offence punishable under Section 302, read with Section 34, of the Indian Penal Code. The learned IIIrd Ad hoc Additional Sessions Judge, Aurangabad, vide judgment and order dated 21st January 2003, has been pleased to acquit all the accused of all charges levelled against them. Being aggrieved by the judgment and order of acquittal, the

original complainant has filed the present Revision Application.

3. It is the case of the prosecution, that on 12th June 2001, the Police Patil of Talyachiwadi [Taluka : Khultabad, District : Aurangabad] had submitted a report to Khultabad Police Station, contending therein that on 11th June 2001, at about 5.00 p.m., Kasturabai w/o. Kesarsing Maher had fallen into the well and has died. On the basis of the report of the Police Patil, A.D. No. 30/2001 was registered, under Section 174 of the Code of Criminal Procedure, 1973. Initial investigation was carried out in the Accidental Death enquiry. That, on 12th June 2001, husband of the deceased had lodged a report at the Police Station, alleging therein that he was informed by his son, that the present respondent nos.2 to 6 had initially assaulted the deceased and thereafter she was thrown into the well. He was further informed by his son, that one Mansing had rushed to the spot. He had drawn Kasturabai from the well. On the basis of this report, Crime No. 98/2001 was registered at Khultabad Police Station, against the accused for the offence punishable under Section 302, read with Section 34, of the Indian Penal Code. After completion of investigation, charge sheet was filed and the case was committed to the Court of Sessions, and registered as Sessions Case No. 239/2001.

4. The prosecution examined as many as 7 witnesses to bring home the guilt of the accused. After appreciating the evidence adduced by the prosecution in its proper perspective, the learned IIIrd Ad hoc Additional Sessions Judge, Aurangabad, vide judgment and order dated 21st January 2003, has been pleased to acquit the accused of all the charges. Hence, the present Revision Application.

5. Perused the evidence adduced by the prosecution. The star witness of the prosecution was the son of the deceased and the complainant PW 4 Chattarsing s/o. Kesarsing Maher. PW 4 Chattarsing has deposed before the court, that there was a dispute between his father and the accused about the partition of their agricultural land. His parents were not residing together. That, on the day of the incident, his paternal aunt Tarabai had raised a quarrel with his mother. The verbal altercation became violent. Thereafter, Tarabai had assaulted Kasturabai with kicks and fist blows. Tulsabai had assaulted his mother by kicks and fist blows. He has further deposed that his mother had fallen down. She was repeatedly assaulted by the accused persons. He has further stated that Thansing held her hands and Sanjay held her legs. They took her to the well and threw her into the well. That, he raised hue and cry and upon hearing his cries, Mansing, Karbhari, Kamalbai, and Nehalsing came to the spot. They enquired with him about the incident. He had narrated the incident. Mansing brought a rope and some one had drawn the victim from the well. In the cross examination, the witness has specifically admitted that the well is in the portion allotted to Sanjay. The witness had made improvement in his statement by saying that the land belonged to his grandfather. That, at the time of incident, his father was living separately whereas his grandfather, Sanjay and Sahebsing were having mess jointly. They were cultivating their shares separately and not jointly. As far as assault on Kasturabai is concerned, at the hands of Tarabai, it is a material omission which is elicited in the cross examination. He has stated that he was at a distance of 10 feet from his mother when she was being assaulted. It prima facie appears that the witness had not attempted to rescue his

mother and the contention, that he had tried to rescue his mother, is elicited in the form of a material omission. He has stated that the body of his mother had become blackish due to beating.

6. Perused the post mortem notes. Column No.17 thereof indicates that there was a slight oedema present on left cheek. Age of the said injury was about 24 hours before death. The learned Counsel for respondent nos.2 to 6 submits that this is sufficient to indicate that Kasturabai was not assaulted soon before her death. There was no evidence of any other injuries on external examination or palpation. It is pertinent to note, that Column No.20 would show that the right lung was voluminous, water logged, on cut section evidence of blood stained frothy fluid pit on pressure. The cause of death is '*Cardiorespiratory arrest secondary to drowning*'. The time of death is shown as approximately within six hours from last meal. One cannot be oblivious of the fact, that the incident initially was reported to the Police Patil. Accidental Death enquiry was initiated. In the Accidental Death enquiry, neither the son of the deceased i.e. PW 4 Chattarsing, nor his father had informed the Police that it was a case of homicidal death and not accidental death. It appears prima facie, that PW 4 Chattarsing had not witnessed the incident.

7. The learned Counsel for the applicant submits that, no doubt, the incident must not have been occurred out of premeditation, as far as assault on victim is concerned. That, there is direct evidence and the learned Additional Sessions Judge ought to have placed implicit reliance upon the solitary testimony of PW 4 Chattarsing which appears of a sterling nature and that the learned Additional Sessions Judge could not

have brushed aside the evidence of PW 4 Chattarsing. As against this, the learned Counsel for respondent nos.2 to 6 submits that the conduct of PW 4 Chattarsing does not inspire confidence of the court, in the sense, that it was incumbent upon PW 4 Chattarsing to report to his father immediately, that the present respondent nos.2 to 6 had thrown his mother into the well. It is further submitted that the independent witnesses who were staying nearby and who had rushed to the spot soon after hearing cries of PW 4 Chattarsing, had not stated that they had seen respondent nos.2 to 6 at the scene of offence soon before the incident. They had not witnessed the incident. According to the learned Counsel for respondent nos.2 to 6, the independent witnesses had heard the hue and cry of PW 4 Chattarsing but had not heard of any altercation between deceased Kasturabai and the accused persons soon before the incident. It is submitted that the prosecution has not been able to stand on its own merits. That, there was no material to convict the accused for the offence punishable under Section 302, read with Section 34 of the Indian Penal Code, as the evidence of PW 4 Chattarsing appears to be omnibus in nature. The fact, that there was voluminous water logged in the lungs and chest of the deceased would be sufficient to indicate that the victim had been under water for a considerable period of time and that soon after she was drawn out from the well, there was no attempt by the witnesses to see that she could survive. The time of death is not established by the prosecution and, therefore, according to the learned Counsel for respondent nos.2 to 6, after a lapse of 12 years, it would not be appropriate to even consider the prayer for remanding the matter to the Sessions Court for a fresh trial. It is true, that in a revision application, the conviction cannot be converted into acquittal. It is further submitted by the learned Counsel for respondent

nos.2 to 6, that the sword of Damocles was hanging upon present respondent nos.2 to 6 for more than one decade and, therefore, the revision application should not be considered for the purpose of remanding the matter for fresh trial.

8. Considering the evidence adduced by the prosecution and the submissions advanced across the Bar, this court is of the opinion that the judgment and order passed by the learned Additional Sessions Judge does not call for any interference. Whenever there are two views possible, it would always be in the interest of justice, to adopt the view which is in favour of the accused. Moreover, by efflux of time, the acquittal cannot be challenged and cannot be considered for the purpose of conviction in a revision application.

9. Hence, the Revision Application being sans merits, stands dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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