

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 735 OF 2014

1. Shamrao so Kautikram Mukade,
Age ; 23 years, occu. Labour,
R/o Santuk (Pimpri), Tq. and
District Hingoli
2. Sitaram s/o narayan Mukade,
Age : 75 years, Occu. Labour,
R/o Santuk (Pimpri), Tq. and
District Hingoli

APPELLANTS

VERSUS

The State of Maharashtra,
through Police Station,
Hingoli (Rural), Taluka
and District Hingoli

RESPONDENT

Mr. R.M. Giri, Advocate for the appellants
Mr. S.R. Palnitkar, A.P.P. for the respondent/State

[CORAM : M.T. JOSHI, J.]

DATE OF JUDGEMENT RESERVED : 10th JUNE, 2015
DATE OF JUDGEMENT PRONOUNCED : 15th JUNE, 2015

JUDGEMENT :

1. Aggrieved by the recording of conviction by the learned Additional Sessions Judge, Hingoli, vide his judgement and order dated 27th November, 2014, passed in

Sessions Trial No. 21/2012, for the offences punishable under section 304 Part-I and 201 read with section 34 of the I.P. Code as regards appellant No.1 and for the offence punishable under section 201 read with section 34 of the I.P. Code as regards the appellant No.2, the present appeal is preferred. The appellant No. 1 was sentenced to suffer rigorous imprisonment for seven years and to pay fine amount of Rs. 500/- in default to suffer simple imprisonment for two months for the offence punishable under section 304 Part-I of the I.P. Code. He as well as appellant No. 2 were directed to suffer rigorous imprisonment for three years and to pay fine amount of Rs. 500/- each, in default to suffer simple imprisonment for two months for the offence punishable under section 201 read with section 34 of the I.P. Code. Both of them were acquitted of the offence punishable under section 302 of the I.P. Code. Another co-accused – Shantabai w/o Kautikram Mukade was acquitted of all the offences i.e. under sections 302 and 201 read with section 34 of the I.P. Code.

2. The prosecution case, in short, is as under :-

. That deceased Kautikram Sitaram Mukade, r/o Santuk-Pimpri, Taluka and District Hingoli was the father of appellant No. 1 and son of appellant No. 2. He was residing jointly with the present appellants and the acquitted accused No. 3 at their house at village Santuk-Pimpri. He was, however, addicted to liquor and under the influence of liquor, always used to beat his wife i.e. co-accused and the appellant No. 2 i.e. his father. As the illtreatment had become unbearable, in the night of 17th October, 2011, at about 2.30 a.m., while the deceased was sleeping in the courtyard of the house, appellant No. 1 gave one blow of a big stone over the head of the deceased. The deceased died instantaneously. In order to dispose of the deadbody of the deceased, the appellants put the deadbody in an empty gunny bag. Thereafter they covered the same by a bedsheet and the same was tied by a rope. Thereafter, they secured a motorcycle of the cousin of appellant No. 1 i.e. defence witness Vaijanath Mukade and both the appellants took the deadbody at about 3.00 a.m. While the deadbody was being carried in between the appellants on the motorcycle, they were accosted by PW7 PSI Dnyanoba Puri, who was on patrolling duty with his staff

in the night. The appellants, however, ran away by the motorcycle alongwith the deadbody. Therefore, PW7 PSI Puri, by the police jeep chased the motorcycle on Aundha to Nanded road. They were ultimately caught near Shirad Shahapur. At the same time, two persons, on another motorcycle, namely, Sunil Khandagale and Raosaheb Kale were also seen going by the road. In presence of those independent witnesses, the bundle was opened in which the deadbody was found. Both the appellants were apprehended at the spot. Upon getting the information from the appellants themselves of the incident, the deadbody was sent for medical examination and PW7 Puri filed his own complaint with his Police Station at Exhibit-53.

3. Besides carrying usual investigation of preparation of inquest panchanama, seizure of the clothes of the deceased as well as the present appellants, the panchanama of the spot where the present appellants were apprehended was recorded. The motorcycle was seized. The actual incident, however, was occurred within the jurisdiction of Hingoli Rural Police Station. Therefore, the crime was registered

there and further investigation was carried by PW12 P.I. Sangram Sangle. He prepared the panchanama of the spot of incident i.e. the courtyard of the house of the appellants. The blood stained soil was seized. A stone stained with blood was seized from the spot. The stone was triangular in shape and was near about 26 kilograms. The statements of the witnesses regarding the motive and the statement of one relative of the deceased and the appellant, namely, Chandrabhagabai Mukade, who claims to be eye witness, and some other witnesses were also recorded. The post-mortem note was collected and ultimately, the chargesheet came to be filed.

4. Before the learned Sessions Judge, in all thirteen witnesses were examined. The defence of the appellants, as can be revealed from the direction of the cross-examination of the witnesses and their statements recorded under section 313 of the Code of Criminal Procedure as well as deposition from the mouth of DW1 Vaijnath, can be seen as under :-

. That on 17.19.2011, the deceased had fallen down from certain place. Both the appellants were in

the field. Therefore, they were called. They asked for the motorcycle of this defence witness Vaijnath for taking the deceased, then injured at that time, to the hospital at Nanded. Both the appellants took the deceased, who was injured, by the motorcycle to the hospital at Nanded. However, on way to Nanded, they were stopped by the police. At that time, they told the police that they were carrying the deceased, who was injured, to the hospital. However, a false case came to be foisted. In fact the deadbody was not either put in a gunny bag or wrapped in any bedsheet or tied with the rope. However, only to show extraordinary brilliance, a show of chasing the motorcycle and catching of the appellants was made by the Investigating Officer.

5. The learned Sessions Judge, however, came to the conclusion that a single blow of heavy stone by appellant No. 1 over the head of the deceased has caused the death of the deceased. Therefore, by acquitting both the appellants of the offence punishable under section 302 of the I.P. Code, the conviction and sentence, as detailed supra, came to be recorded.

6. Mr. R.M. Giri, learned counsel for the appellants, submits that no eye witnesses have been examined in the present case. Though the prosecution claims that the appellants were apprehended on the road, the arrest panchanama is of the next date. The motorcycle was not seized at the spot as there is no panchanama. The witness examined on the issue of motive has turned hostile. The explanation given by the appellants regarding the carrying of the deadbody of the deceased is probable. The strong suspicion cannot take place of a proof. Hence, Mr. Giri submitted that both the appellants be acquitted.

. In the alternative, Mr. Giri submitted that the prosecution case itself would show that the deceased was a bane to the family and a single blow of a stone has caused the death of the deceased at the hands of appellant No. 1. The appellant No.2, the father of the deceased was 70 years old at the time of occurrence of the incident. The appellant No. 1 is behind the bars since the date of registration of the crime i.e. 18.10.2011. Learned counsel, therefore, submitted that the sentences awarded by the learned Sessions Judge are very harsh and the same may be reduced.

7. On the other hand, Mr. S.R. Palnitkar, learned A.P.P. submitted that it is an admitted fact that in the wee hours of 18th October, 2011, both the appellants were carrying the deceased on the motorcycle. The post-mortem note would show that it was a case of instantaneous death. In the circumstances, the explanation that they were carrying the injured to the hospital is false. Of all the witnesses, the deposition of PW9 Raosaheb Kale would reveal that the deadbody was being carried in a bag. There is no cross-examination to the said witness on this point. The very fact that the deadbody was being carried in a manure bag in the wee hours, away from the village of the appellants, is sufficient to convict the appellants for the offences, as has been done by the learned Sessions Judge. He, therefore, submitted that the appeal be dismissed.

. As regards sentence, learned A.P.P. submitted that considering nature of the injuries found on the person of the deceased, no further leniency is required to be shown as the learned Sessions Judge has taken into consideration all the relevant facts while awarding the sentence to the appellants.

8. On the basis of above material on record and the submissions advanced on behalf of both sides, following points arise for my determination :-

- (I) Whether the prosecution has proved that deceased Kautikram Mukade met with homicidal death on 17th October, 2011 ?
- (II) Whether the prosecution has proved that on 17th October, 2011 at about 2.30 a.m., the present appellant No. 1 has committed culpable homicide not amounting to murder of deceased Kautikram at village Santuk-Pimpri ?
- (III) Whether the prosecution has proved that both the appellants, in furtherance of common intention, attempted to cause disappearance of deadbody of deceased Kautikram with intention to screen them from punishment ?

My findings to all the above points No. (I) to (III) are in the affirmative. However, as regards the sentence,

interference is warranted. In the circumstances, the appeal is dismissed as regards challenge to the conviction and the appeal is partly allowed as regards the sentence, for the reasons to follow :-

R E A S O N S

9. The post-mortem note (Exhibit-40), coupled with the oral evidence of PW4 Dr. Harish Manikrao Darade, would show that there was a massive head trauma with complete head broken and complete skull fractured. Only 25% brain material was left in the skull. There were injuries to eye balls and muscles of eye balls, coupled with fracture of the base of nose as well as jaw. All layers of the brain were damaged which had exposed the base of the injuries to eye balls and the teeth and mandible were disrupted. Both the toes had a grave abrasion. According to the Medical Officer, the injuries were possible by a blow of some heavy and hard object like a big stone.

10. During the cross-examination of PW3 Dr. Harish, the question was put as to whether the injuries were

possible by article No. 5 i.e. stone, seized on the spot. While in the examination-in-chief, the Medical Officer was sure that the injuries are possible due to the said article No. 5, surprisingly, in the cross-examination, he deposed that such injuries are not possible by the said stone. Not only this, while there is no mention in the post-mortem note nor there is any statement in the examination-in-chief, suddenly during the cross-examination, the Medical Officer deposed that the stomach contain and breath were alcoholic. He, however, admitted that it was necessary to mention in the post-mortem about alcoholic contents. He further deposed that he had not sent the viscera to the Chemical Analyzer because the diagnosis was clear cut.

11. All the statements of Medical Officer in cross-examination are surprising enough. It is difficult to digest as to how the Medical Officer, who deposed in examination-in-chief that the injuries are possible by article No. 5, suddenly took a somersault in the very first statement of the cross-examination to state that such injuries are not possible by article No. 5. His rest of the statements in the cross-examination, as

detailed supra, are not only improbable but surprising one.

12. No expert is needed to state that the injuries noted above are possible by a hard and blunt object. Article 5 – a stone weighing 26 kilograms is a hard and blunt object. In the circumstances, it is an enigma as to what prompted the Medical Officer to state that the injury is not possible by the said stone – article 5. All these statements are against the medical ethics and made for the reasons best known to the Medical Officer. In the circumstances, the matter needs to be referred to the superior/s of the Medical Officer about which directions would be given in the final order.

13. We have the depositions of in all twelve prosecution witnesses. All of them mostly are panch witnesses or the members of the police party, which, according to the prosecution, had intercepted the motorcycle and the Investigating Officers. Besides them, PW11 Mankarnabai, the daughter of appellant No. 2 was examined to prove the fact of motive. She, however, turned hostile to the prosecution case. Besides this,

we have also the statement of PW9 Raosaheb Kale.

14. PW9 Raosaheb Kale deposed that in the night of the incident at about 3.30 to 4.00 a.m., when he alongwith his friend was proceeding by motorcycle from Basmath to Aundha, the police stopped them near Shirad. Two other persons, including appellant No. 1 Shamrao Mukade were present there (appellant No. 2 Sitaram Mukade was not present in the court hall at the time of recording of deposition). A bundle in a gunny bag was there. The police called upon the witness (PW9 Raosaheb) and his companion to examine the bundle. In the said bundle, a body of human-being was found. It had injury to its head. One vehicle was called by the police to carry the deadbody and this witness and his companion were asked to reach the police station. Thereafter, on the next date, in their presence in the hospital, the bedsheet and rope were seized. The inquest panchanama was also prepared and they were the panch witnesses to all these facts.

. Though there was searching cross-examination to other witness i.e. complainant PW7 PSI Dnyanoba Puri, the driver of the jeep i.e. PW5 ASI Balwant Dukre and

other members of the police party examined by the prosecution to show that the deadbody was not in a gunny bag. However, no cross-examination to this independent witness i.e. PW9 Raosaheb Kale in this regard was directed.

15. In view of the admitted fact that the deceased had received bleeding injury to the head, that the dead-body was being carried on the motorcycle in a bag in the wee hours by both the appellants, there is no need to advert to the facts regarding the belated execution of arrest panchanama, belated seizure of the motorcycle or seizure of blood stained clothes of the deceased or of the present appellants.

16. The deceased was 50 years old. His entire skull was broken and only 25% of the brain material was in the skull. Even the base of the eye balls could be seen from the skull. If all these facts are taken into consideration, there is no need of any expert to conclude that the deceased had met with an instantaneous death. In that view of the matter, the explanation of the appellants that the deceased was only

injured and was, therefore, carried away from the village to the hospital at Nanded, is false.

17. In the circumstances, it is not a case of strong suspicion but failure to give plausible explanation for carrying the deadbody of the deceased in the bag away from the village in the wee hours of the night.

18. Mr. R.M. Giri, learned counsel for the appellants relied on the ratio laid down in the following authorities :-

- (i) ***Munna Kumar Upadhyaya @ Munna Upadhyaya Vs. The State of Andhara Pradesh through Public Prosecutor, Hyderabad***
(2012 ALL SCR 1831)
- (ii) ***Mohd. Jahir Puttan Khan Vs. The State of Maharashtra***
(2013 ALL MR (Cri) 4243)
- (iii) ***Lalitkumar Laxminarayan Sharma Vs. The State of Maharashtra***
(2013 ALL MR (Cri) 4011)
- (iv) ***State of Gujarat Vs. Ratansingh @ Chinubhai Anopsinh Chauhan***
(2014 ALL SCR 955)
- (v) ***Shashikant Tulsidas Kamble and another Vs. The State of Maharashtra***

(2013 ALL MR (Cri) 3531)

(vi) **Namdeo s/o Bapurao Gund Vs.
The State of Maharashtra
(2013 ALL MR (Cri) 3106)**

(vii) **Satish Hiranna Pujari Vs.
The State of Maharashtra
(2013 ALL MR (Cri) 1288)**

(viii) **The State of Maharashtra Vs.
Balkrishna Mahadeo Lad
(2014 ALL MR (Cri) 934)**

18. The reading of the ratio in all the above authorities would reveal that it underlines the well established principle regarding the case based on circumstantial evidence, including as to whether the conviction can be based on the sole aspect of last seen, etc. Each case, however, will have to be dealt on its own facts and circumstances.

19. Considering all the above evidence on record, in my view, the prosecution has proved beyond reasonable doubt that both the appellants have committed the offences for which they are convicted by the learned Sessions Judge.

20. As regards sentence, however, the prosecution

case itself would show that the deceased was a bane to the family. He always used to beat the family members, including his father i.e. appellant No. 2 under the influence of liquor. Ultimately while his son appellant No. 1 was compelled to inflict a single blow of a stone on the head of the deceased, his father appellant No. 2 was required to help him in attempting to cause the disappearance of the deadbody. If all these facts are taken into consideration, the appellant No. 1 Shamrao who was only 21 years old at the time of occurrence in a fit of rage, had caused the death of the deceased i.e. his own father in order to save his grandfather i.e. appellant No. 2 who was 70 years old person from beating by the deceased under the influence of liquor. The appellant No. 1 is behind the bars since 18th October, 2011 i.e. since the date of his arrest. Taking into consideration these facts, instead of sentencing him to suffer seven years rigorous imprisonment, the period of imprisonment already undergone by him, which is of more than three years and eight months, in my view, would be sufficient punishment for him.

21. The appellant No. 2, the father of the deceased, was 70 years old at the time of incident. The facts already appreciated would also call for leniency in his case for the offence punishable under section 201 read with section 34 of the I.P. Code. Taking into consideration overall facts, in my view, simple imprisonment for three months with fine as directed by the learned Sessions Judge, would be sufficient punishment for him.

22. In the result, the following order :-

(I) The appeal is hereby dismissed as regards the conviction of the appellants for the offence punishable under section 304 Part-I of the I.P. Code and section 201 read with section 34 of the I.P. Code as regards appellant No. 1 Shamrao and the conviction for the offence punishable under section 201 read with section 34 of the I.P. Code as regards appellant No. 2 Sitaram.

(II) The appeal is, however, hereby partly allowed as regards the sentence.

(III) The order of the learned Sessions Judge awarding sentence of rigorous imprisonment for seven years and three years, respectively for the offences punishable under section 304 Part-I of the I.P. Code and section 201 read with section 34 of the I.P. Code, as regards appellant No. 1 Shamrao and appellant No.2 Sitaram, respectively, is hereby set aside.

(IV) Instead, it is directed that appellant No. 1 Shamrao shall suffer the sentence of imprisonment for the period of imprisonment already undergone by him and also to pay fine of Rs. 500/-, in default to suffer simple imprisonment for a period of one month, for the offence punishable under section 304 Part-I of the I.P. Code.

. Appellant No. 1 Shamrao shall suffer simple imprisonment for a period of three months and to pay fine of Rs. 500/- in default to suffer simple imprisonment for one month, which imprisonment he has already undergone, for the offence punishable under section 201 read with section 34 of the I.P. Code.

. Both the sentences shall run concurrently.

(V) The appellant No. 1 Shamrao be released forthwith, if not needed in any other crime, as the fine amount is already deposited by him.

(VI) Appellant No. 2 Sitaram shall suffer simple imprisonment for a period of three months for the offence punishable under section 201 read with section 34 of the I.P. Code, in default to suffer simple imprisonment for a period of one month. The necessary set off be given to the appellant No. 2 for the period for which he was in custody.

(VII) The learned Sessions Judge to take steps for securing the appellant No. 2 Sitaram to serve the sentence, as directed above.

(VIII) The copy of the present order with true copy of the deposition of PW No. 4 Dr. Harish Manikrao Darade, the then Medical Officer of Rural Hospital, Aundha-Nagnath, District Hingoli and post-mortem examination report at Exhibit-40 be sent to the Director of Health Services, Maharashtra State to take appropriate departmental action against PW No. 4 Dr.

Harish Manikrao Darade in the light of observations made in paragraphs No. 9 to 12 in the judgement.

. Further, all the abovementioned copies be also sent to the present Medical Officer of Rural Hospital, Aundha-Nagnath, District Hingoli, who shall forward the same to the appointing authority, for joining in the action as directed above.

[M.T. JOSHI]
JUDGE

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