

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.66 OF 2001**

**LAXMAN CHANDAR JADHAV**

**)...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA**

**)...RESPONDENT**

Shri Yashpal Thakur, Appointed Advocate for the Appellant.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 15<sup>th</sup> DECEMBER 2015.**

**JUDGMENT :**

1           The appellant was prosecuted on the allegation of having committed an offence punishable under Section 302 of the Indian Penal Code (IPC). The learned Sessions Judge, Nashik, after holding a trial, found him guilty only of an offence punishable under Section 323 of the IPC. He, therefore, acquitted

the appellant of an offence punishable under Section 302 of the IPC and convicted him only of an offence punishable under Section 323 of the IPC. The learned Sessions Judge imposed a sentence of Rigorous Imprisonment for a period of 6 months and a fine of Rs.100/- on the appellant. Being aggrieved by his conviction and the sentence imposed upon him, the appellant has approached this court by filing the present appeal.

2           The State of Maharashtra has not filed any appeal or any other proceedings before any court challenging the order of acquittal of the appellant with respect to the offence punishable under Section 302 of the IPC, and his conviction only in respect of a lesser offence.

3           The prosecution case, as can be gathered from the police report and accompanying documents, and as was put forth before the trial court, be stated thus :

One Lahanu Govind Mahale (deceased) was residing in the neighbourhood of the appellant. On 1<sup>st</sup> November 1998 at

about 7.00 p.m., Lahanu after having consumed liquor was talking incoherently. That, at that time, the appellant, to tease and ridicule the said Lahanu, said that, 'as he (Lahanu) had no child, it would only they (the appellant and others) who would dig a pit for him after his death.' Lahanu, indeed had no child, though he had two wives. He was, therefore, hurt by this remark and angrily went towards the house of the appellant situated just near the house of Lahanu. The appellant, who was taking a bath in his house, came out and gave a dig to Lahanu by the right elbow (कोपरखळी मारली). This blow fell on the chest of Lahanu, who, on receiving the same, fell on the ground. Lahanu, however, got up, walked towards his house situate just by the side, and sat on the parapet. Taibai and Laxmibai - the two wives of Lahanu, had seen the incident. The appellant's mother and father took Taibai and Laxmibai to the Police Patil, who said that he was not well, and that, he would look into the matter in the morning. Taibai came back to her house and saw that her husband Lahanu had already passed away. With the help of Laxmibai, Taibai lifted Lahanu's body and brought in the veranda. On the next day

morning, Taibai (PW2) went to the Police station and lodged a report. This was recorded by Sampat Jadhav (PW7) who was the Station House Officer at Harsul Police Station. By treating the said report as First Information Report (FIR) (Exhibit 15), a case in respect of an offence punishable under Section 302 of the IPC was registered. PW7 Sampat Jadhav handed over the investigation to Ramesh Jadhav, Police Head Constable (PW6). Ramesh Jadhav went to the house of Taibai. He saw the dead body of Lahanu which was pointed out by Taibai. Inquest panchnama (Exhibit 12) was drawn. Spot panchnama (Exhibit 13) was also drawn. The dead body was sent for postmortem examination.

4           PW6 Police Head Constable Ramesh Jadhav recorded the statement of the second wife of Lahanu and five other persons. The appellant was brought to the police station and arrested at 21.30 hours. On the next day, i.e., 3<sup>rd</sup> November 1998, Ramesh Jadhav recorded the statements of some more persons. On 7<sup>th</sup> November 1998, report in respect of the postmortem examination on the dead body was received.

5           On completion of investigation, a charge-sheet came to be filed against the appellant, who, as aforesaid, was prosecuted in respect of an offence punishable under Section 302 of the IPC, but was convicted only of an offence punishable under Section 323 of the IPC.

6           The prosecution examined seven witnesses during the trial. The first witness Laxman Mahale is a panch in respect of the Inquest panchnama (Exhibit 12) and the Spot panchnama (Exhibit 13). The second witness, as aforesaid, is Taibai, the First Informant. The third witness Kashinath Borse and the fourth witness Bhimabai Medhe are the neighbours of the deceased Lahanu and the appellant. The fifth witness is Dr.Pramod Bagul, who had performed postmortem examination on the dead body of Lahanu. The sixth witness Ramesh Jadhav and the seventh witness Sampat Jadhav, as aforesaid, are the Investigating Officers.

7           Mr.K.M.Avhad Advocate, had filed his vakalatnama on behalf of the appellant. He, however, did not remain present before the court when the appeal came up for final hearing. The office of this court was directed to give intimation to him, asking him to remain present before the court, but inspite of such an intimation having been given to him, he still did not remain present before the court. Under these circumstances, to avoid further delay in disposal of the appeal, Shri Yashpal Thakur Advocate was appointed as *amicus curiae* to assist the court in disposal of the appeal.

8           I have heard the learned *amicus curiae*. I have heard Mr.V.B.KondeDeshmukh, the learned APP for the State. With their assistance, I have gone through the entire record of the trial court, and more particularly, the entire evidence adduced during the trial, as also the impugned judgment.

9           The case of the prosecution is that, the death of Lahanu was caused by the appellant by giving him a dig, by the

elbow, on the chest of Lahanu. Obviously, this story needs to be accepted with caution, as ordinarily, a dig or nudge by elbow (कोपरखल्ली) would not have sufficient force to cause any serious injury or even to create a feeling of pain in the person, receiving dig or nudge. The Inquest panchnama as well as the postmortem examination clearly indicate that there were absolutely no external injuries noticed on the dead body of Lahanu – not even minor.

10            In his evidence, Dr.Pramod Bagul (PW5) stated that when he examined the dead body, he did not find any external injuries, and that, on internal examination of thorax, he found that right lung was black in colour much more on posterior aspect and was pitting on pressure. That, he found a rupture of *Alveoli* in middle lobe, irregular in size with signs of bleeding and liquefied cloth present around the wound about 4 cms in size. On examination of the left lung which was also black in colour much more on the posterior aspect, he found that it was pitting on pressure. He also found a rupture on alveoli in lower limb

irregular in size with signs of bleeding and liquefied cloth present around the wound about 2 – 3 cm in size. He, however, could not form any opinion as to the probable cause of death and sent the viscera for Chemical Analysis. In due course, the report of examination of the viscera was received, and it was normal. Later, he opined the probable cause of death as “shock due to injury to vital organs - lung”. He opined that 'by giving a dig with elbow on the chest, alveoli would be ruptured.' It is difficult to accept the correctness of this proposition. It is obvious that with elbow, one would not be able to exert sufficient pressure. If one assaults another by elbow, the force behind such assault would not be much. In fact, it would be absurd to think that anybody intending to cause hurt to another would assault him by giving a dig by an elbow (कोपरखळी). Whether rupture of alveoli is the probable cause of death is also not very clear inasmuch as initially Dr.Bagul (PW5) could not form such an opinion. Interestingly, in the cross-examination, the witness has stated that by fall, rupture of alveoli would not be possible. If that would be so, how it would be possible by a nudge or dig, is difficult to understand. It is not

easily possible to accept that by falling on chest, there would be less pressure on the relevant part of the body than by a dig by elbow received in chest. Anyway, in the further cross-examination, this witness admitted that if a person would fall from a height of 5 feet on chest, then rupture of alveoli would be possible. This further shows that great force, according to this witness, is required to cause the rupture of alveoli. If that is so, it would not be possible to have rupture of alveoli by a dig which would not be able to generate so much force or pressure. I leave the matter at that, as there is no sufficient cross-examination of this witness on this aspect. What, however, needs to be observed is that undoubtedly – by a fall – say from a height of about 5 feet – such a rupture can be caused.

11           Before proceeding further and concluding whether the death of the appellant is likely to have been caused due to he being hit on his chest by the elbow, it may be examined whether that the deceased was assaulted by the appellant by elbow, had been satisfactorily established.

12            In this regard, there is evidence only of Taibai (PW2). Her evidence shows that she was sitting with her husband Lahanu at about 7.00 p.m on the given day and that, at that time, the father of the appellant – Chander Jadhav – came there. According to her, Chander Jadhav then said that he (Lahanu) had no child, and therefore, it was he (Chander) who would bury him in a ditch after his death. That, her husband then had come out of the house near parapet. The appellant was taking bath near his house. He came where Lahanu was standing. The appellant then gave a dig with his elbow on the chest of Lahanu. Lahanu fell down, but then got up and sat resting against a parapet.

13            Taibai claims to have asked the appellant as to why he had beaten her husband. She also speaks about the appellant's mother and father taking her to the police patil and the police patil, stating, that he would look into the matter in the morning. She then speaks about going to the police station on the next day and lodging the First Information Report.

14           The evidence of Taibai cannot be termed as reliable. It is evident that she has tried to hide what actually happened between Chander – father of the appellant – and her husband. She has narrated the incident in such a manner so that the reason behind the appellant giving a dig by elbow on the chest of Lahanu, is not revealed. Going by her version, it would appear that while Lahanu was out of his house and near parapet, the appellant who was taking bath in his house, abruptly came there and gave a blow with his elbow on the chest of her husband. *Her evidence shows that initiative in taking the matter to the police patil was taken not by her, but by the appellant's mother and father.* If nothing had happened, and the appellant had abruptly beaten Lahanu (although only by an elbow instead hitting or beating him in a normal manner) then what was the occasion for the appellant's mother and father to feel aggrieved, is difficult to understand. In the cross-examination of Taibai, it is revealed that for coming down from the parapet, a stone has been placed so as to make use of it as a step for climbing down. The cross-examination also

reveals that Lahanu was a paralytic since about two years. According to Taibai, Lahanu had stopped drinking after suffering an attack of paralysis, but her version in the First Information Report is contrary to this. Her version in the First Information Report is that Lahanu had started drinking liquor after he had suffered a paralytic attack. This contradictory version (marked as portion "A") in the FIR has been duly proved by the evidence of Sampat Jadhav (PW 7). Taibai's denial that this has been falsely recorded by the police, cannot be accepted. In the cross-examination, Taibai further admitted that there was a dispute between the father of the appellant, and one Gangubai Borse and her husband. It was suggested to her that at the instance of the said Borse, she had lodged a false report, which suggestion was however, denied by her. In the cross-examination, she admitted that when Chander - father of the appellant - had said that Lahanu had no child, Lahanu was enraged. She, however, denied that Lahanu, therefore, went to the house of Chander to beat the appellant. Though this is denied, the denial cannot be accepted

as true. Taibai tried to suggest that appellant was taking bath outside his house when the exchange of words between Lahanu and Chander was taking place, but her version in the FIR in that regard is contrary to this. In the FIR, it has been mentioned that the appellant was taking bath inside his house. This contradictory version in the First Information Report (portion marked “B”) has been duly proved by the evidence of Sampat Jadhav (PW7). In fact, that Taibai is not a reliable witness was observed by the learned Sessions Judge himself. The learned Sessions Judge held that while narrating the genesis of the occurrence. Taibai had suppressed some facts, which support the innocence of the accused. However, inspite of this, and inspite of noticing the inconsistencies between her version given in evidence and her version in the First Information Report, the learned Sessions Judge held that inspite of these infirmities, there was “nothing on record to disbelieve her statement that the accused gave a blow with his elbow on the chest of her husband.” This conclusion arrived at by the learned Judge, is not sound.

15           Except Taibai, there was no other witness to the occurrence. The other witnesses i.e. PW No.1 – Laxman Mane, PW 3 – Kashinath Borse, PW 4 – Bhimabai had not witnessed the incident and the alleged assault. The evidence of Kashinath (PW 3) only shows that he had heard exchange of words between the deceased Lahanu and Chander. Bhimabai (PW4) was declared as hostile and questions in the nature of cross-examination were permitted to be put to her. However, nothing which would advance the prosecution version could be elicited from her even pursuant to such questioning and she categorically denied having seen the appellant giving a dig by elbow to deceased Lahanu. When the criminal act attributed to the appellant, was sought to be established by the testimony of a solitary witness it was absolutely necessary for the court to arrive at a satisfaction that such solitary witness is '*wholly reliable*.' For basing a conviction on the testimony of a solitary witness – without any corroboration – the Court must be satisfied that such witness is '*wholly reliable*.' In the instant case, there were a number of infirmities and contradictions in the version of Taibai and these infirmities were

noticed and recorded by the learned Sessions Judge himself. Apart from these infirmities and contradictory versions, what cannot be overlooked is that the version of assaulting another by giving him a blow by the elbow, itself is an abnormal happening. Why would the person not give a straight and normal blow, if he wanted to hit another and would instead only give a nudge or dig by elbow, was not considered by the learned Sessions Judge. Somebody intending to cause physical hurt to a person, giving such person only a nudge, is quite unheard of. Thus, this improbability coupled with the other infirmities in the evidence of Taibai, and the absence of any corroboration whatsoever to her claim, should have led the learned Sessions Judge to doubt the assertion of Taibai to the effect that the appellant had hit her husband by the elbow.

16           The appellant had filed a written statement (Exhibit-25) in his defence. In this, the appellant has given his version of the incident. According to him, the deceased was in the habit of talking nonsense after consuming liquor. That the father of the

appellant said to him that he (the deceased) did not have any issues and that, therefore, in the event of his death, they (the appellant's father and appellant etc.) would perform his last rites. That the deceased got angered because of this remark and was angrily climbing down the parapet. However, while climbing down, he fell and died.

17           In the light of the infirmities in the prosecution case, the suppression of facts by Taibai, the basic improbability in the version of the prosecution, the greater likelihood of the rupture of *Alveoli* having been caused by a fall, as suggested by the accused, than that by receiving a nudge or dig (कोपरखळी); and the fact that the First Information Report was lodged by Taibai much after the death of Lahanu, make it hazardous to hold that, that the appellant had hit the deceased by his elbow. It may, further be observed that as per the prosecution case, the other wife of the deceased had also seen the incident of assault, but she was not examined as a witness and the case was allowed to rest only on Taibai's evidence.

18           In my opinion, that the appellant had assaulted the deceased, had not been satisfactorily established. Further, that the death of the deceased was caused due to a blow given by the elbow (कोपरखळी) was also not satisfactorily established.

19           This was a case where the appellant deserved to be acquitted.

20           The Appeal is allowed.

The impugned judgment of conviction and the sentence imposed upon the appellant is set aside.

The Appellant is acquitted. His bail bonds are discharged.

Fine, if paid, be refunded to him.

21           The professional fees payable to learned amicus curiae Mr.Yashpal Thakur, Advocate, are quantified at Rs.3,000/-.

**(ABHAY M. THIPSAY, J.)**

**CERTIFICATE**

**Certified to be true and correct copy of the original  
signed Judgment /Order.**