

Smt. V. R. Bhonsale, APP for Appellant/State.
Mr. Girish Agarwal for Respondents.

CORAM :- **SMT. V. K. TAHILRAMANI AND**
SMT. I. K. JAIN, JJ.
DATE :- **JANUARY 08, 2015**

JUDGMENT (PER SMT. I. K. JAIN, J.) :-

1. The Appellant/State of Maharashtra has preferred this Appeal against the Judgment and Order dated 25/09/1992 passed by the learned Additional Sessions Judge, Nasik, in Sessions Case No.167 of 1989. By the said Judgment and Order, the learned Additional Sessions Judge acquitted all the 7 accused of the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code.

2. By an Order dated 08/01/2015, the Appeal against Respondent No.2 Sunil Gorakh Bhamre stood abated as he had expired on 11/05/2014. Thus, this Appeal is being heard only in respect of acquittal of Respondent Nos.1 and 3 to 5.

3. Prosecution case briefly stated is as under :

Accused no.3 Sunita was residing at CIDCO, Ashwin Sector, Bungalow No.77 at Nasik. She lost her husband Trimbak before two years of the incident. The incident occurred on 15/06/1989. That time her son Anil, daughter Ragini, cousin accused no.2 Sunil and maternal brother accused no.4 Sanjay were living in Bungalow No.77 with Sunita.

It is the contention of prosecution that accused no.1 Balu used to visit the house of Sunita even during odd hours. Anil disliked the same and so he used to raise quarrel with his mother Sunita.

4. On 15/06/1989 at around 8.30 a.m., Anil had a quarrel with his mother in presence of accused no.2 Sunil and accused no.4 Sanjay. At about 6.30 p.m., PW 4 Sunanda, her neighbour, met PW 2 Vinayak and told him about the quarrel between Anil and his mother Sunita. Then duo came to the house of Sunita. That time, accused no.1 Balu was standing in the gallery. Anil came to the house. Accused no.1 Balu followed deceased Anil and asked PW 4 Sunanda to close the door of her room. Sunanda closed the door. After some time, she heard shouts of Anil and noise of beating. PW 2 Vinayak intervened and asked Sunita to stop beating Anil. It is alleged that Sunita asked Vinayak to leave if he is unable to tolerate and so Vinayak left the place. Then accused no.1 Balu and others assaulted Anil. Thereafter, PW 4 Sunanda, along with her children, went to adjoining bungalow and returned at 9.00 p.m. She saw the door of bungalow of accused no.3 Sunita closed and the light in the main hall off. The lights in kitchen and bedroom were on.

5. On 16/06/1989 at about 7.00 a.m., Sunanda noticed that house of Sunita was locked. She entered from the backside door in the main hall and found bloodstains on the floor. She suspected and informed Taluka Police Station, Nasik. Investigation was set into motion. During investigation, it was revealed that accused nos.1 to 5 assaulted Anil and committed his murder whereas accused nos.1 to 5

along with accused nos.6 and 7 carried the dead body from Nasik to Tandulwadi and cremated the same with intent to cause disappearance of evidence. The accused were arrested. On completion of investigation, charge-sheet came to be filed.

6. Charge came to be framed against the respondents-accused under Sections 302 read with 34 and 201 IPC. Respondents pleaded not guilty to the charge and claimed to be tried. The defence of respondents was of total denial and false implication. According to accused no.3 Sunita, after the death of her husband, her son Anil indulged in bad habits and he was always in need of money. He used to insist mother Sunita for money and if his demands were not fulfilled, he was raising quarrel.

7. On the day of incident in the morning, Anil pelted stones on the house of Sunita. At about 7.00 p.m. he went out with 3-4 boys. At around 9.00 p.m., accused no.3 Sunita came to know that Anil was lying at Pathardi Phata. She rushed to Pathardi Phata and brought Anil to the house. He insisted Sunita to take him to village Tandulwadi and so she was taking Anil to village Tandulwadi. On the way, Anil expired. Sunita reported the matter to Police Patil of village Tandulwadi and then his last rites were performed. After going through the evidence adduced in the case, the learned Judge acquitted the respondents of the offences punishable under Sections 302 and 201 read with 34 of IPC. Hence this Appeal.

8. We have heard Smt. V. R. Bhonsale, learned APP for Appellant/State and Mr. Girish Agarwal, learned Advocate for Respondent Nos.1 and 3 to 5. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Counsel for the parties, the 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.

9. The learned APP submitted that evidence of PW 4 Sunanda who was the next door neighbour, has not been properly appreciated by the trial Court. She pointed out that prior to the date of incident, there was quarrel between deceased Anil and his mother accused no.3 Sunita. She submitted that possibility of murder of Anil cannot be ruled out as relations between accused no.1 Balkrishna and accused no.3 Sunita were not liked by him. According to learned APP, incriminating bloodstained articles were seized from the spot. F.I.R. was immediately lodged and there is sufficient evidence to bring home the guilt of the accused.

10. It is seen from the evidence of PW 4 Sunanda that whenever dispute between Anil and his mother was arising, she was called by accused no.3 Sunita. PW 4 Sunanda was a tenant in the house of accused no.3 Sunita. Her evidence shows that accused no.1 Balu used to visit the house of accused no.3 Sunita whenever he desired and it was not liked by Anil. She stated that on 15/06/1989 at about 7.30 a.m.,

Sunita, Anil, accused no.2 Sunil (since deceased) and accused no.4 Sanjay were present in the house of Sunita. At around 8.30 a.m., Anil started quarrel with his mother. He pelted stones on the house and fled away. Thereafter Sunanda saw PW 2 Vinayak, accused no.1 Balu and deceased Anil going inside the house of accused no.3. She heard noise of beating and shouting. She asked Sunita to stop beating Anil but Sunita asked her to go to her house. So she left the house of Sunita. It has also come in the evidence of Sunanda that on the next day morning she saw bloodstains lying on the floor of the house of accused no.3 Sunita. No one was at the house. Two persons came and told her that Anil met with an accident and shifted to Tandulwadi. Having suspected, she informed the police. If the cross-examination of this witness is minutely looked into, it is apparent that she made major improvements regarding the manner and occurrence of incident in her evidence as material facts were not stated by her in her statement recorded during investigation.

11. Initially Sunanda stated that she did not learn that Anil used to raise quarrel with accused no.3 Sunita on money. In the next breath, she admitted the quarrel between Anil and accused no.3 Sunita on money. Then she stated that she was not getting the reasons behind quarrel between the deceased and accused no.3. She could not get the exact words of quarrel between Anil and his mother. According to Sunanda, accused no.3 used to complain her that Anil was beating her for money. It appears that before 15 days of the incident, Anil assaulted Sunita with an iron rod as she refused to give money to him. This fact is

proved by PW 2 Vinayak and defence witness DW 1 Dr. Lalita Joshi. PW 4 Sunanda was the next door neighbour but she was not aware that before 15 days of incident, Sunita was admitted to the hospital due to assault by Anil. It also appears from the evidence of Sunanda that she saw Anil running on Bombay-Agra road and sitting in a taxi going towards Nasik. She did not state this fact to Special Judicial Magistrate who recorded her statement. She could not state how many persons were in the hall of the house of accused no.3 Sunita at the time of incident. She then changed her version and said that there were 4-5 persons. Regarding the role attributed to accused no.2 Sunil and accused no.4 Sanjay, this witness made material improvement. She stated that accused no.2 Sunil and accused no.4 Sanjay were loudly saying that Anil used to trouble them and they were beating him. She heard the noise of fist blows and slaps and therefore she thought that they were beating Anil. She did not narrate the incident as stated in her evidence to the Special Judicial Magistrate at the time of recording her statement. So far as evidence of Sunanda in respect to next day morning visit to the house of Sunita is concerned, she admitted that her daughter informed her and she did not go to the house of accused no.3. The entire testimony of Sunanda has been shaken in the piercing cross-examination. The trial Court, on appreciation of her evidence, found that she is not a reliable witness.

12. The most important aspect in the present case is regarding specific role attributed to each of the accused. The evidence of prosecution witnesses on this aspect is contradictory. In addition, there

was unexplained delay in lodging F.I.R. It is interesting to note that on 18/06/1989 PSI Jagtap visited the scene of occurrence and recorded spot panchanama Ex.23. No offence was registered on that day. The offence was registered on 19/06/1989 on the basis of report Ex.70, lodged by PSI Jagtap. Recovery of incriminating article i.e. iron rod from the kitchen of house of accused no.3 on 21/06/1989 under panchanama Ex.55 becomes doubtful as on 18/06/1989 when PSI Jagtap recorded the spot panchanama, he could not notice iron rod in the kitchen of the house of accused no.3.

13. Under these circumstances, where eye witnesses have no regards for the truth, F.I.R. is belated, dead body was not found, recovery of incriminating article is doubtful and no specific role is attributed to each of the accused, view taken by the learned Additional Sessions Judge is found to be reasonable and possible view. Hence we are not inclined to interfere in the Judgment and Order of acquittal.

14. In the light of of the above, Appeal against Respondent Nos.1, 3, 4 and 5 is dismissed.

(SMT. I. K. JAIN, J.)

(SMT. V. K. TAHILRAMANI, J)