

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.950 OF 2009**

|                             |   |                |
|-----------------------------|---|----------------|
| Jayram Kashya Pawar,        | ] |                |
| Age : 56 Years,             | ] |                |
| R/at Naikpada, Shigaon,     | ] |                |
| Post Bhoisar, Tal. Palghar, | ] |                |
| District Thane              | ] | .... Appellant |

***Versus***

|                                |   |                 |
|--------------------------------|---|-----------------|
| State of Maharashtra,          | ] |                 |
| Through Boisar Police Station, | ] |                 |
| Tal. Palghar, Dist. Thane      | ] | .... Respondent |

Mr. Aniket Vagal for the Appellant.

Mrs. Sangeeta D. Shinde, A.P.P., for the Respondent-State.

**CORAM : P.V.HARDAS &**  
**DR. SHALINI PHANSALKAR-JOSHI, J.J.**

**DATE : 1<sup>ST</sup> APRIL, 2015.**

**ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :**

1. This Appeal takes an exception to the Judgment of 2<sup>nd</sup> Additional Sessions Judge, Palghar in Sessions Case No.23 of 2008, dated 1<sup>st</sup> September, 2008, thereby convicting the Appellant for the offence punishable under Section 302 of the IPC and sentencing him to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to undergo further imprisonment for three months. By the said Judgment, the

Appellant is also convicted for the offences punishable under Sections 324 and 211 of the IPC and sentenced to suffer R.I. for three months and to pay fine of Rs.500/-, in default to suffer further imprisonment for one month, on the first count, and R.I. for three years and to pay fine of Rs.500/-, in default to suffer further imprisonment for one month, on second count, with a direction that all the substantive sentences of imprisonment shall run concurrently.

2. Facts, as are necessary, for deciding this Appeal can briefly be stated thus :-

On 21<sup>st</sup> December, 2007, in the morning at about 6:30 am, while PW-9 PSI Devendra Pawar was on duty at Boisar Police Station, Accused Jayram came to the Police Station and lodged complaint (Exhibit-30), *inter alia*, alleging that his son-in-law Sunil, along with his friend Dinesh Tandel, has, on 19<sup>th</sup> December, 2007, in his absence, came to his house and assaulted his wives; deceased Lata and PW-4 Manda. Due to the said assault, his wife Lata succumbed to the injuries at about 8 pm on 20<sup>th</sup> December, 2008, whereas, his second wife PW-4 Manda was lying in injured condition at house.

3. On this complaint (Exhibit-30), PW-9 PSI Pawar registered C.R. No.163 of 2007 and, along with Accused Jayram, went to his house.

There he found PW-4 Manda lying in injured condition. He referred her for medical treatment to the hospital at Dahanu, where PW-5 Dr. Rupali Bharambe examined her and found blunt trauma over her head, back and knees and abrasion over both the knees. Her Injury Certificate is at Exhibit-17.

4. PW-9 PSI Pawar then conducted the Inquest Panchanama (Exhibit-8) on the dead body of Lata in the presence of the Panch PW-1 Bhushan Bandivadekar. He referred her dead body for postmortem examination to Primary Health Center at Tarapur. There, PW-3 Dr. Umesh Ahire conducted the autopsy and issued Postmortem Notes (Exhibit-13).

5. PW-9 PSI Pawar then drew the Scene of Offence Panchanama (Exhibit-20) in the presence of the Panch PW-6 Harinarayan Shukla. From the spot, he collected various articles, like, the carpet, chadar and three sarees.

6. On the same day, PW-9 PSI Pawar called Sunil and Dinesh for enquiries and on enquiry with them, he noticed some contradictions. Therefore, he made further enquiry with injured PW-4 Manda. From her statement, it was transpired that Accused himself has assaulted deceased Lata and injured Manda and made false allegations against Sunil and Dinesh. PW-9 PSI Pawar, therefore, arrested Accused vide Panchanama

(Exhibit-10) in the presence of the Panch PW-2 Anant Tatuskar. At the time of arrest, the clothes on his person were also seized under Panchanama. During custodial interrogation, Accused expressed his willingness to show the place, where he has concealed the weapon of assault, the stick. The Memorandum Panchanama of his statement was made vide Exhibit-22A in the presence of the Panch PW-7 Ravindra Jadhav. Then Accused guided the Police and Panch to the bushes near his house. From there, he produced the stick, which came to be seized under Panchanama (Exhibit-22B).

7. PW-9 PSI Pawar then sent all these seized muddemal articles to Chemical Analyzer vide his requisition letter (Exhibit-31). C.A. Reports are produced vide Exhibits "23" to "26". As a part of further investigation, he recorded the statements of some witnesses and got the statement of PW-4 Manda recorded under Section 164(5) of Cr.P.C. Further to completion of investigation, he filed Charge-Sheet in the Court against the Accused.

8. On the case being committed to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-4. The Accused denied the guilt and claimed trial.

9. In support of its case, Prosecution examined in all 9 witnesses and on appreciation of their evidence, Trial Court held the guilt of the Accused

to be proved on all the charges levelled against him. Trial Court, accordingly, convicted and sentenced him, as aforesaid. This Judgment of the Trial Court is being challenged in the instant Appeal by learned Counsel for the Appellant Mr. Aniket Vagal, whereas, supported by learned A.P.P. for the Respondent-State Mrs. Sangeeta Shinde. In our considered opinion, in order to effectively deal with the submissions advanced by them, it would be useful to refer to the evidence on record.

10. To prove the homicidal death of deceased Lata, Prosecution has examined PW-3 Dr. Umesh Ahire, who has conducted the postmortem. On external examination, he found abrasion over her left eyebrow, left angle of mouth and over right knee. Further he found the fracture present on 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> rib on right side. Right lung was found injured due to the rib fracture. According to him, all these injuries were antemortem and the cause of death was *"hypovolumic shock due to internal haemorrhage caused by lung injury"*. His Postmortem Notes are at Exhibit-13. There is nothing in his cross-examination to challenge the cause of death, which is proved to be homicidal in nature.

11. To prove the injuries sustained by PW-4 Manda, Prosecution has led the evidence of PW-5 Dr. Rupali Bharambe, who has, on examination of PW-4 Manda, found blunt trauma over her head, back and knees. She

also noticed abrasion over her both knees admeasuring 2 cm x 2 cm. The Injury Certificate of PW-4 Manda is produced at Exhibit-17.

12. This case presents peculiar facts. The initial complaint (Exhibit-30), on which the offence is registered by PW-9 PSI Pawar, is lodged by the Accused himself making allegation of assault on deceased Lata and PW-4 Manda at the hands of his son-in-law Sunil and Sunil's friend Dinesh. According to him, the said assault took place in his absence. When he returned to the house, he came to know about it from PW-4 Manda. As per the complaint (Exhibit-30), the assault had taken place on 19<sup>th</sup> December, 2007, whereas, the complaint was lodged on 21<sup>st</sup> December, 2007 by the Accused. The reason for the delay is that Lata succumbed to injuries on the night of 20<sup>th</sup> December, 2007. On that night, he could not come to the Police Station, keeping injured PW-4 Manda in the house alone. Therefore, he came to the Police Station on the next day.

13. The evidence of PW-4 Manda, however, discloses that it was Accused himself, who has assaulted her and Lata on the ground that he was suspecting illicit relations between Lata and Sunil. On the day of incident, when Accused returned from the Bazar and asked who had come, Lata told him that Sunil and Dinesh had come. Therefore, he got annoyed and assaulted both; deceased Lata and her with the stick.

14. Thus, there are two contrary versions of the same incident coming on record from the Prosecution evidence itself. Except for PW-4 Manda, there is no other eye witness to the incident. Hence, Prosecution case rests on the solitary testimony of PW-4 Manda. As she is injured in the same incident, her presence at the time of incident can be held to be proved. However, the real question for consideration is *whether her solitary testimony is of such a sterling worth that implicit reliance can be placed thereon?* The answer to this question is, however, in negative. In the first place, she has not disclosed about this incident immediately to the Police. The explanation offered that in the same incident she has sustained the injuries, cannot be accepted as satisfactory because the injuries which are proved are not found to be so serious or grievous as to confine her to the bed.

15. It becomes rather difficult to accept that for two days Lata and PW-4 Manda remained in the house without making any complaint to the Police. Further, the evidence of PW-8 Lalita Chavara, the daughter of deceased Lata, goes to reveal that as PW-4 Manda was not allowing her and her husband to reside in the same house, she has left house of the Accused along with her husband and went to reside at Virar. She has further deposed that there used to be quarrels between her mother-Lata and PW-4 Manda. When PW-4 Manda left the house, Accused Jayram had got

married with Lata. When PW-4 Manda came back after 2 – 3 months and noticed that Lata had married with Accused, she got annoyed and she started abusing Lata as to why she got married with her husband. Thus, her evidence is more than sufficient to prove that the relations between Lata and PW-4 Manda were not at all cordial, but they were very strained, especially, because of removal of PW-8 Lalita from the house of the Accused with her husband. Hence, no implicit reliance on the evidence of PW-4 Manda can be placed in this background.

16. Moreover, though PW-8 Lalita has deposed that from PW-4 Manda, she came to know that Accused had murdered her mother-Lata, in her cross-examination it is elicited that she has not stated this fact in her statement recorded by the Police. Therefore, it being in the nature of improvement, her evidence on this point cannot be relied upon.

17. As regards the time of death also, the Postmortem Report (Exhibit-13) goes to prove that when PW-3 Dr. Umesh Ahire conducted the postmortem on 21<sup>st</sup> December, 2007 in between 4 pm to 5 pm, rigor mortis was well marked and postmortem lividity was present, thereby indicating that death might have taken place on 20<sup>th</sup> December, 2007 by evening. Therefore, the case of the Prosecution that due to the assault, that took place on 19<sup>th</sup> December, 2007, Lata had succumbed to the

injuries, becomes suspicious. Conversely, it supports the probability of Lata succumbing to the injuries on 20<sup>th</sup> December, 2007 at about 8 pm., as recited in the complaint (Exhibit-30) by the Accused. The version of the incident, as put up by the Accused, thus, appears to be more probable than the version given by the Prosecution.

18. Though Prosecution has also relied upon the recovery of the stick at the instance of the Accused, the said recovery evidence being merely of a corroborating nature and without the supporting link, like, the blood stains found thereon matching with the blood group of the deceased and further in the absence of the evidence proving that the stick was wax sealed and remained in the same condition till it was examined by the Chemical Analyzer, the recovery evidence is also not of any help to the Prosecution to prove the guilt of the Accused. On the same grounds, the recovery evidence of the blood stained clothes of the Accused is required to be disbelieved, especially, considering the fact that the alleged incident had taken place on 19<sup>th</sup> December, 2007 and the clothes were seized on 21<sup>st</sup> December, 2007. It does not appeal to reason that for two days, Accused will remain in the same blood stained clothes. It also does not appeal to reason that wearing the said blood stained clothes, Accused will go to the Police Station to lodge the complaint.

19. Thus, if the entire evidence brought on record by the Prosecution is appreciated in its proper perspective, it fails to prove the guilt of the Accused beyond reasonable doubt. When the evidence adduced by the Prosecution makes two versions of the incident equally probable, the benefit of doubt goes to the Accused. In our considered opinion, therefore, the impugned Judgment of the Trial Court convicting and sentencing the Appellant has to be quashed and set aside.

20. Consequently, Criminal Appeal is allowed and the conviction and sentence of the Appellant is quashed and set aside and the Appellant is acquitted of the offences with which he was charged and convicted. Fine, if paid by the Appellant, be refunded to him. Since the Appellant is in Jail, he be released forthwith, if not required in any other case.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**

**[P.V.HARDAS, J.]**