

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

CRIMINAL APPEAL NO. 258 OF 2014

Yashwant Gopal Bhambarkar	]
Convict No. C/6082, Aged 65 years,	]
Presently lodged at Kolhapur Central	]
Prison, Kalamba, Kolhapur-416007	]
Residing at Dawoor Nagar,	]
Katkariwadi, Uran, Tal. Uran,	]
Dist. Raigad	]..Appellant
	[Ori.Accused]

Vs.

The State of Maharashtra	]
At the instance of	]
Gopal Yashwant Bhambarkar	]
Dawoor Nagar, Katkariwadi,	]
Uran, Tal. Uran, Uran Police Station	]
CR No. I/42 of 2012	].. Respondent

....

Mrs. Nasreen S.K. Ayubi Advocate appointed for the Appellant
Mr. H.J. Dedia A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.**

DATED : NOVEMBER 20, 2015

ORAL JUDGMENT: [PER ACTING CHIEF JUSTICE]

1 This appeal is preferred by the appellant-original
accused against the judgment and order dated 10.10.2013

passed by the learned Sessions Judge, Raigad-Alibag in Sessions Case No. 152 of 2012. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs. 1000/- i/d R.I. for two months.

2 The prosecution case, briefly stated, is as under:

(i) The appellant was the husband of deceased Draupadibai. The appellant and Draupadibai had four sons i.e. Govinda, Govind, PW 2 Gopal and P.W. 3 Shankar. At the time of the incident, Govinda and Govind were in jail. The appellant and the deceased were both addicted to liquor.

(ii) On 15.4.2012 there was marriage of niece of the appellant at village Sarade. In the marriage the appellant and the deceased were dancing after consuming liquor. Thereafter the appellant and the deceased returned home. So also, PW 2 Gopal returned home at village Dawoor Nagar, however, PW 3 Shankar stayed back in the marriage ceremony. Gopal was residing separately from the appellant and the deceased.

(iii) It is the prosecution case that after the appellant and his wife returned home, a quarrel took place between them. The appellant assaulted his wife Draupadibai with a wooden log. Thereafter, the appellant started shouting and trying to wake up his wife. On hearing the shouts of the appellant, PW 2 Gopal rushed to the house of his parents. He saw his mother sleeping on the lap of his father. Thereafter he went to the police station and lodged F.I.R. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions for trial.

3 Charge came to be framed against the appellant under section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appeal deserves to be allowed.

5 In order to prove its case, the prosecution examined nine witnesses. PW 2 Gopal and PW 3 Shankar are the sons of the appellant and the deceased. PW 4 Manjula was the neighbour of the appellant and the deceased. None of these three witnesses have supported the prosecution case, hence, their evidence is of no use to the prosecution case.

6 Thereafter reliance is placed on the evidence of panch witness PW 1 Naresh to show that when the appellant was arrested, clothes on his person were stained with blood. The evidence of panch witness is also relied upon to support the circumstance of recovery of weapon i.e. wooden stump at the instance of the appellant. No reliance can be placed on the

evidence of this panch witness because he has admitted that the signatures of panchas were simply obtained on the panchnamas in the police station. The first panchnama in which PW 1 Naresh was the panch witness, was drawn on 16.4.2012. This is the spot panchnama (Exh. 9). The second panchnama (Exh. 10) to which this panch is a witness, is the arrest panchnama of the appellant during which the blood stained clothes which were on the person of the appellant, came to be seized. The third panchnama in which PW 1 Naresh has acted as a panch witness, is Exh. 11 which is the the Memorandum and Panchnama relating to recovery of wooden stump at the instance of the appellant. This panchnama is drawn on 18.4.2012. According to the prosecution, this stump was blood stained. It is noticed that though a number of panchnamas were drawn on different dates, same panch witness has been used by the Investigating Agency. This coupled with the admission given by the panch witness, persuade us not to rely on the evidence of this panch witness. We may also state that as far as C.A. reports are concerned, they also do not support the prosecution case.

7 On going through the evidence on record, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt, hence, the following order is passed:

ORDER

(i) The judgment and order dated 10.10.2013 in Sessions Case No. 152 of 2012 passed by the learned Sessions Judge, Raigad-Alibag is set aside. Appellant-Yashwant Gopal Bhambarkar is acquitted of the offence under Section 302 of IPC;

(ii) Fine amount if any, paid by the appellant be refunded;

(iii) The appellant be set at liberty forthwith, if not required in any other case;

(iv) We quantify legal fees to be paid to Advocate Mrs. Nasreen S.K. Ayubi by the High Court Legal Services Committee at Rs. 5000/-.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]