

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

**CRIMINAL APPEAL NO. 178 OF 2013
CRIMINAL APPEAL NO. 180 OF 2013
CRIMINAL APPEAL NO. 202 OF 2013
CRIMINAL APPEAL NO. 118 OF 2014**

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CRIMINAL APPEAL NO. 178 OF 2013

Ragini Prabhakar Sathe .. Appellant
Age. 26 years, Occ. Household,
R/o. Chorkhali, Tal. Kallam,
Dist. Osmanabad.

Versus

The State of Maharashtra .. Respondent

Mr.S.J. Salunke, Advocate for the appellant.
Mr.A.R. Borulkar, A.P.P. for respondent/State.

**WITH
CRIMINAL APPEAL NO. 180 OF 2013**

Aba @ Dagadu Narayan Salunke .. Appellant
Age. 36 years, Occ. Agri,
R/o. Rajuri at Osmanabad,
Tal. & Dist. Osmanabad.

Versus

The State of Maharashtra .. Respondent

Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde,
Advocate for the appellant.
Mr.A.R. Borulkar, A.P.P. for respondent/State.

WITH
CRIMINAL APPEAL NO. 202 OF 2013

Rajabhau @ Rameshwar s/o. Dattatray Kadam.. Appellant
Age. 40 years,
R/o. Chorkhali, Tal. Kallam,
Dist. Osmanabad.

Versus

The State of Maharashtra .. Respondent
Through Sakharbai Shankar Sathe,
Age.61 years, Occ. Household,
R/o. Chorkhali, Tal. Kallam,
Dist. Osmanabad.

Mr.V.D. Salunke, Advocate for the appellant.
Mr.A.R. Borulkar, A.P.P. for respondent/State.

WITH
CRIMINAL APPEAL NO. 118 OF 2014

1. Dattatray @ Dada Murlidhar Jadhav .. Appellants
Age. 42 years, Occ. Agri,
R/o. Mangrool, Tal. Kallam,
Dist. Osmanabad.
2. Rahul @ Tanaji Shrihari Landge,
Age. 21 years, Occ. Agri.,
R/o. Sonsangavi, Tal. Kej,
Dist. Beed.

Versus

The State of Maharashtra .. Respondent

Mr. Rupesh Jaiswal h/f. Mr. N.S. Ghanekar, Advocate for
the appellant.
Mr.A.R. Borulkar, A.P.P. for respondent/State.

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA, JJ.
DATED : 26.07.2016**

ORAL JUDGMENT : [PER : A.V. NIRGUDE, J.] :-

1. These appeals are arising from judgment and order dated 18.03.2013 passed by learned Adhoc Additional Sessions Judge-1, Osmanabad in Sessions Case No.26 of 2012. Therefore, all these appeals can be disposed of by this common judgment :-

2. These appeals challenge the judgment and order dated 18.03.2013, passed by the Adhoc Additional Sessions Judge-I, Osmanabad, in Sessions Case No.26 of 2012 convicting the appellants for the offences punishable under sections 302 read with section 149 of the Indian Penal Code. The appellants were also convicted for offences punishable under section 147 and 506 of the Indian Penal Code.

3. The prosecution alleged in short that the appellants (who would be called as accused Nos.1 to 5 in this judgment) assaulted victim Prabhakar at village Chorkhali, Tal.Kallam, Dist.Osmanabad at about 9.00 a.m. on 09.11.2011 and caused his death. The prosecution evidence *inter alia* consisted of depositions of 17 witnesses. Defence too examined two witnesses. The learned Judge of the Lower Court held that the prosecution could prove the case of murder and convicted the accused.

4. The gist of the prosecution evidence that has come on record through depositions and other documents in short can be stated as under :-

5. P.W.1-Dr.Sachin Kothavale stated that on 09.11.2011 while he was on duty in P.H.C. Yedshi, Prabhakar was brought to him by his relatives. On examination, it was found that Prabhakar was dead. The information about death was given to Police. The police

came and prepared panchanama and requested the Medical Officer for conducting post-mortem examination. They also recorded inquest. On the basis of this information, on the other hand, police initiated enquiry under section 174 of Cr.P.C. assuming that Prabhakar died unnatural death. P.W.1-Dr.Sachin further revealed that during post-mortem, he noticed one external injury on Prabhakar's body and it was 0.5 cm x 0.5 cm. abrasion on Prabhakar's chin. This witness categorically stated that there were no other external injury noticed. However, internally the medical officer found extensive injuries to the victim. He found subarachnoid hemorrhage. He found internal injuries to brain and in thorax area. He found injuries to lungs, pleura, larings, right lung, left lung, peritonium, laceration to liver etc. He prepared post-mortem report but reserved his opinion about the cause of death till C.A. Report about viscera was received. On the other hand, during the enquiry, which was initiated under section 174 of Cr.P.C., Police Officer recorded inquest panchanama. At about 2.00 p.m.

on that day, Police Officer went to the spot from where Prabhakar's body was lifted and taken to hospital. That spot was inspected and panchanama was made.

6. At about 6.30 p.m. or so, P.W.7-Sakharbai lodged her complaint to Police alleging that she had seen the accused assaulting her son Prabhakar, during the morning hours at about 9.00 a.m. Upon her complaint, offence was registered under section 302 etc of the Indian Penal Code against the accused. (It is pertinent to note that by this time the Medical Officer had not given opinion about cause of Prabhakar's death).

7. P.W.6-Sakharbai, who is complainant and P.W.8-Abhijeet, (son of Prabhakar) are eye witnesses. They stated that the incident took place on 09.11.2011 at about 09.00 a.m. in front of their farm-house. Victim-Prabhakar was sitting on a cot in front of the house. P.W.6-Sakharbai was working nearby and P.W.8-Abhijeet was grazing buffaloes in nearby field. They heard Prabhakar's

shout and saw that the accused were beating Prabhakar with kicks and fists. Prabhakar fell down on the ground. Blood came out from his mouth and ear. P.W.6-Sakharbai rushed to Prabhakar's help but accused No.1-Ragini pushed her aside. Accused No.5-Aba then threatened the witnesses saying that if they intervened they would be killed. Accused No.5-Aba then threatened while going away from the spot that if they took accused No.1-Ragini back to their house they would be killed. Due to beating Prabhakar fell unconscious. P.W.6-Sakharbai asked P.W.8-Abhijeet to make a call to his grand-father. P.W.8-Abhijeet admitted that he thereupon procured the mobile phone from a passerby and made a phone call to his grand-father -P.W.7-Shankar (the father of victim Prabhakar) who then came with an auto rickshaw. All of them then lifted Prabhakar and took him to Primary Health Center, Yedshi. This is the gist of the prosecution evidence.

8. On the other hand, the defence examined two witnesses. Both were named as prosecution witnesses.

Both were present at the relevant time near the scene of occurrence. The defence witness No.1-Dhananjay Chavan is the driver of auto-rickshaw which was used for shifting Prabhakar to hospital. He stated that at about 7.30 a.m. on that day, P.W.7-Shankar called him and engaged his auto-rickshaw and brought him to village Chorkhali. He stated that he then took his auto-rickshaw to the farmhouse of the complainant. He saw victim-Prabhakar was lying on a cot, who lifted and shifted to auto-rickshaw and taken to Yedshi.

9. Defence witness No.2-Ramesh Pawar, is the passerby, whose mobile phone was utilized for making call to P.W.7-Shankar. He admitted that while he was working in the nearby field, P.W.6-Sakharbai & P.W.8-Abhijeet approached him and told him that a person has consumed drug and so they were in need of a mobile phone to make a phone call for seeking help. He handed over his mobile phone to them.

10. Both these witnesses even according to the prosecution are relevant witnesses and therefore their deposition though did not support the prosecution case, becomes relevant for appreciating the evidence of the prosecution.

11. The only question that arises for our consideration is – whether the prosecution P.W.6-Sakharbai & P.W.8-Abhijeet are trustworthy and reliable? Both these witnesses directly implicated the accused in this case. They stated on oath that they saw all the accused assaulting victim-Prabhakar. Admittedly, it was broad day light. If they had seen the assault and the assailants, they would not make any error in describing the incident. But, there is serious doubt about their veracity.

12. We have narrated above the deposition of Medical Officer P.W.1-Dr.Sachin, the first outsider, who even had some authority, saw the victim immediately he was

brought to the hospital. This witness admitted that the relatives who had accompanied victim-Prabhakar, did not disclose to him that this was a case of assault. He did not record history of assault in the case paper. Apart from that, the so called eye witnesses would not have kept mum till 6.30 p.m. if they knew that victim-Prabhakar was assaulted at 9.00 a.m. Soon after Prabhakar's death, Police had arrived at the hospital. They started their enquiry about his unnatural death. The so called eye witnesses were present there. They ought to have disclosed what they knew about the incident to the police. The prosecution did not examine the police officer, who conducted that enquiry (under section 174 Cr.P.C.). This Police witness could have stated about the relevant events that took place during that day. He could have certainly stated that, by the time he started his enquiry (at about 2.00 p.m.) no one suspected that Prabhakar died homicidal death. The facts that are revealed in the prosecution case clearly indicated that until 6.30 p.m., there was no allegation about alleged

assault to victim-Prabhakar in the morning.

13. Eye witnesses P.W.6-Sakharbai & P.W.8-Prabhakar approached the Police, at about 6.30 p.m. with a lawyer, whose name has come on record through deposition of P.W.6-Sakharbai. We have, therefore, strong doubt about truthfulness about these witnesses.

14. We assume for the sake of argument that the prosecution has proved their case that victim-Prabhakar died of homicidal death, yet prosecution cannot prove beyond reasonable doubt the case against accused that it was they who assaulted victim-Prabhakar. On one hand the "inquest" noted that the victim had sustained injury on his chin, there was presence of blood on the head of the deceased, there was also presence of blood coming from nose and left ear and there was some injury to the neck of the victim. On the other hand, Post-Mortem did not support these observations. As said above, besides the injury on the chin, no injury was found externally on the

person of Prabhakar. Having regard to the extensive internal injury to head and thorax, it was necessary in the natural course that corresponding external injury ought to have been found on Prabhakar's body. In view of the extensive injuries to thorax area, it appears to us that Prabhakar's body was crushed under some heavy object. But if we presume that his body was crushed, he would have certainly suffered external injuries. In absence of external injuries to his head as well as trunk (thorax), we cannot come to a conclusion that victim-Prabhakar was subjected to external force, so as to cause internal injuries. We are, therefore, doubtful as to whether victim-Prabhakar died a violent death.

15. Having regard to the medical evidence, we have our strong doubt as to whether victim-Prabhakar died homicidal death. In view of these circumstances, we have no hesitation that the prosecution has failed to prove its case against the accused. Hence, the appeals deserve to be allowed. Therefore, we pass following order :-

O R D E R

- i) All the Criminal Appeals are allowed.
- ii) The judgment and order dated 18.03.2013 passed by learned Adhoc Additional Sessions Judge-1, Osmanabad in Sessions Case No. 26 of 2012 is hereby quashed and set aside.
- iii) All the appellants in the criminal appeals are acquitted of the offences with which they were charged. Fine amount, if paid by the appellants be refunded to them.
- iv) All the appellants in the appeals be set at liberty forthwith if they are not required in any other offence.

[V . L . ACHLIYA , J .]

[A . V . NIRGUDE , J .]