

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

CRIMINAL APPEAL NO.567 OF 2012

Baburao S/o. Daulat Suryawanshi .. APPELLANT
Age-48 years, Occu-Agri,
R/o. Ghonsi, Tq. Jalkot,
Dist. Latur

VERSUS

The State of Maharashtra .. RESPONDENT
Through Police Station Officer,
Police Station, Jalkot,
Tq. Jalkot, Dist. Latur

Mr.S.S.Thombre, Advocate for the appellant
Mr.D.R.Kale, APP for the respondent/ State

WITH

CRIMINAL APPEAL NO.568 OF 2012

The State of Maharashtra .. APPELLANT
P.S. Jalkot, Tq. Jalkot, (Ori. Complainant)
Dist. Latur

VERSUS

1. Shantabai W/o. Babu Suryawanshi .. RESPONDENT
Age-40 years, Occu- Labour, (Ori. Accused
Nos. 2 to 5)
2. Malani W/o. Daulat Suryawanshi,
Age-80 years, Occu- Household,

Respondent Nos. 1 & 2
R/o. Ghonsi, Tq. Jalkot,
Dist. Latur

3. Vachhalabai W/o. Dropad Mane,
Age-55 years, Occu- Household,
R/o. Wadgaon, Tq. Chakur,
Dist. Latur
4. Padmakar S/o. Babu Suryawanshi,
Age-21 years, Occu- Agri,
R/o. Ghonsi, Tq. Jalkot,
Dist. Latur

Mr.D.R.Kale, APP for the Appellant/ State
Mr.S.S.Thombre, Advocate for the respondents

CORAM : **A.V.NIRGUDE &**
V.L. ACHLIYA, JJ.
RESERVED ON : **06.06.2016**
PRONOUNCED ON : **14.07.2016**

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

1. Both these appeals arose from judgment and order dated 04.05.2012 passed by the the learned Sessions Judge, Udgir disposing of the Sessions case No.13/2010. There were four Accused in this Sessions case. They were charged for the offences punishable under Sections 302, 147, 148, 504 & 447 r/w 149 and 34 of the Indian Penal

Code. The learned Sessions Judge acquitted Accused Nos.2 to 4 but convicted Accused No.1 Baburao Daulat Suryawanshi for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs.5000/- with a default clause. He also convicted him for the offence punishable under Section 447 of the Indian Penal Code and sentenced him to suffer three months rigorous imprisonment with fine of Rs.500/- with a default clause.

2. Being aggrieved by the conviction and sentence, Accused No.1 Baburao Daulat Suryawanshi filed Criminal Appeal No. 567 of 2015. On the other hand the State of Maharashtra filed Criminal Appeal No.568 of 2012 challenging the acquittal of Accused Nos.2 to 4.

Both these appeals can be disposed of by this common judgment.

3. As indicated above, the Accused were charged for the offence of committing criminal trespass, rioting and murder of one Ashok using deadly weapons.

4. The incident took place on 27.06.2009 at about 10.30 a.m. It was alleged by the prosecution that on that day complainant Chayabai, deceased Ashok, his mother Manyabai, Brother Devidas and Shakuntalabai went to a disputed agriculture land for cultivation. While they were preparing the land for cultivation, Accused came there and attacked on them. Accused No.1 stabbed Ashok to death. Other Accused pelted stones and assaulted the witnesses.

In order to prove the case, the prosecution examined in all eleven witnesses, out of which prosecution witness Nos. 1, 2, 4 and 7 are eye witnesses. The prosecution case reflected through the deposition mainly of P.W.Nos. 1, 2 and 4 which can be narrated as under:-

5. Witnesses encore asserted that deceased Ashok was cultivating the piece of land admeasuring 2 Acre where the incident took place. It was their case that the land was purchased long back from Accused No.1 - Baburao Daulat Suryawanshi. They admitted that Accused No.1 Baburao Daulat Suryawanshi wanted the land back. The dispute went to Tantomukti Samiti(Dispute Resolution committee) of the village and a compromise was arrived at. It was agreed between the parties that deceased Ashok would give back the land to Accused No.1 Baburao Daulat Suryawanshi, if certain amount was paid to him. Accused No.1 agreed to pay this amount. Despite this on 27.06.2009 at about 10.30 a.m. Deceased Ashok and witness Nos. 1, 2, 4 and others went to the land for the purpose of cultivation. Victim Ashok was about to start sowing operation with the help of a pair of bullocks. At that time, all Accused came and started abusing to Ashok and others. They asked as to why they had started tilling the land. Accused No.1-Baburao Daulat Suryawanshi pelted a stone towards the pair of bullocks. Ashok then walked

towards Accused No.1 Baburao asking him as to why he was throwing stones. Accused No.1 thereupon took out a knife and stabbed Ashok in the stomach on the left side. Ashok's mother Manyabai P.W.No.4 rushed and tried to help Ashok but Manyabai was also assaulted with knife. Other witnesses rushed to help Ashok and Manyabai but they were also assaulted with kicks and fits. Ashok died on the spot. In the meantime, other people came to the spot. Accused left the spot utilizing the motor cycle.

6. P.W. No.7 Datta is also an eye witness. He said that on the day of incident he was present in his land which was adjoining to the land where the incident took place. After hearing the noise he rushed to the spot and saw that Accused No.1 was assaulting -with knife- Ashok. He said that after the incident, Accused No.1 Baburao and his son Padmakar left the spot utilizing a motorcycle.

7. Accused No.1 did not deny his presence on the spot but took up a bold defence that he acted in self-

defence. He even recorded his own deposition as defence witness No.1. He admitted that the land in question was sold to Ashok in the year 2002. According to him, it was agreed between the parties that upon the repayment of the amount, the land would be re-conveyed. He, however, asserted that despite of such transaction the land was in his possession. He further admitted that in the year 2006 a meeting was held and it was decided that he owed Rs.1,23,500/- to Ashok. He, however, did not say that he paid the amount and got the land re-conveyed. Despite this agreement of 2006, he made no progress in getting the land redeemed. In such background, he said that the incident took place on 27.06.2009 at about 10.30 a.m. He learnt that Ashok's wife Chayabai i.e. witness No.1 and others had gone to the land in question to take possession and to start the cultivation. He started to come towards the land. On the way, he met one Panchal who was riding his motorcycle. He took a lift on his motorcycle up to the land in question. At about 11.00 a.m. he reached the land. He saw that P.W.No.1 Chayabai

and five others had started sowing operation in the land. He requested them not to cultivate the land and not to take law in their hands. Verbal exchange took place. All of them surrounded him. Ashok rushed towards him with a knife but he held a blade of knife in his hand and sustained injury to his fingers and palm of left hand. Scuffle took place between him and Ashok. Ashok sustained injury during such struggle.

8. As said above, the learned Sessions Judge after recording evidence, accepted the prosecution case and rejected the defence. He convicted Accused No.1 Baburao Suryawanshi for committing murder.

9. We heard the submissions at bar. The following points arose for our consideration.

- (1) who was in possession of the land in question?
- (2) Whether the defence version is probable?

10. In order to show as to who was in possession of the land, the parties did not bring the revenue record before the Court. However, it is an admitted fact that the land in question was apparently sold to Ashok. It was not a mortgage-deed. The theory of the mortgage was oral. The contents of the agreement of 2006, however, confirmed that the transaction was in the nature of mortgage and that Accused No.1 was under obligation to redeem the land by paying certain amount to Ashok and P.W.No.1-Chayabai. The document of 2006 through which a compromise was recorded, did not mention as to who was cultivating the land. In view of this, if the land was sold out, it must be presumed that the purchaser would be in possession. He was entitled to use the land for the purpose of agriculture. Incident in question occurred mainly because P.W.No.1-Chayabai, her husband Ashok and other family members ventured and went for ploughing and sowing the land in question. This provoked Accused No.1 and his family members. They went to the spot for stopping this activities of prosecution witnesses. It can be said that

till that day deceased Ashok, P.W.No.1 Chayabai and others had not entered the land in question. For the first time they exercised their right to the land. They for the first time entered in the land and were about to start its cultivation. Assuming that this assumption is truthful, it cannot be said that by entering the land on that day, they trespassed it. They exercised their right to enter the land as owners. On the other hand, Accused No.1 did not show anything on record that he was in settled possession of the land. Except bare words there is nothing on record to show that the accused was cultivating the land in question prior to the incident. We are, therefore, of the view that the defence could not prove even on probability that the land was in possession of Accused No.1 on the day of incident. It can at the most be said that Accused No.1 and his family members got provoked only because Chayabai and her husband Ashok took a bold step of entering the land in question. Even assuming that on the day of incident they had entered the land for cultivation purpose for the first time, they

were quite within their rights to do so. In other words Accused No.1 and his family members had no reason to stop such activity.

11. There are two versions of the incident; one coming from the prosecution witness. Admittedly, Accused No.1 did not want Chayabai, Ashok and others enter in the land for cultivation purpose. Admittedly, he came there to stop them. So, the prosecution story should be believed that Accused No.1 started violence by pelting stones. This was an certainly act of provocation and Ashok could have been tempted to rush to Accused No.1 aggressively. But, it cannot be believed that Ashok was armed with a knife. It does not appear probably. Ashok had gone for cultivation, he had with him agriculture implements including a pair of bullocks. He could not have possessed arms. Other prosecution witnesses were admittedly not armed with sticks etc. It does not appear that they were expecting violence from their adversaries. On the other hand, it was more probably that Accused No.1

was armed with a knife. We, therefore, accept the prosecution case and reject the defence conversion even on probability.

12. Third question is, whether this was a case of murder? The learned counsel for the appellant tried to argue that in the facts and circumstances of the case at the most Accused No.1 can be convicted for the offence punishable under Section 304, Part-I or Part-II of the Indian Penal Code thereby indicating that the allegations made against Accused No.1 would be that of culpable homicide not amounting to murder. On perusal of Section 299 and 300 of the Indian Penal Code it becomes clear that all culpable homicides are murders unless excepted by provisions of Section 300 of the Indian Penal Code. There are five exceptions where culpable homicide would not amount to murder. In order to prove that the culpable homicide is not murder, the defence is required to show at-least by probability that the case would fall within one of the exceptions. The learned counsel for the

appellant tried to argue that Exception-4 would be attracted to the facts of the case. Exception-4 reads as under:-

"Section 300 of the Indian Penal Code.

Exception-4:- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

13. By no stretch of imagination the case could be brought within the ambit of Exception-4. Element of lack of premeditation is absent. We have held that Accused No.1 came to the spot with a knife. It was not a sudden fight but initiated by an overt act on the part of Accused No.1. There was no sudden quarrel here. Had Accused No.1 and his family members not come to the spot, there could not have been an incident. So, no ingredients of Exception-4 are attracted to the facts of this case.

14. In due consideration of entire evidence we are of the view that the reasons and findings recorded by learned Additional Sessions Judge are quite consistent

with the evidence on record. There is absolutely no perversity in the reasons and findings recorded by trial Court. No case is made out in appeal to interfere the judgment and order passed by the trial Court.

15. Criminal Appeal No.567 of 2012 filed by Accused No.1-Baburao Daulat Suryawanshi should, therefore, fail. The State appeal should also fail. The learned Judge of the trial court considered the evidence and found futile to convict the other Accused. They were not armed and no particular role attributed to them. We are therefore of the view that the other Criminal Appeal No.568 of 2012 filed by the State also deserves to be dismissed.

16. Both the appeals are dismissed.

[V.L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]

(15)

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