

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 505 OF 1996

Tukaram Aba Patil.

Age : 44 years,

Occupation – Agriculturist,

R/o. Karagani, Taluka-Atpadi,

District-Sangli.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. K.P. Shah, advocate appointed for appellant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : FEBRUARY 5, 2016

JUDGMENT:

1 None appears for the appellant. The appeal is of the year 1996. This Court had requested learned Advocate Mr. K.P. Shah to espouse the cause of the appellant. He has graciously accept to work out the matter.

2 The appellant herein is convicted for the offence punishable under Section 304 part II of the Indian Penal Code and is sentenced to suffer R.I. for a period of 3 years and also to pay fine of Rs. 200/- I.d. to suffer S.I. for a period of 2 months by 2nd Additional Sessions Judge, Sangli in Sessions Case No. 143/1992 vide Judgment and Order dated 30/7/1996. Hence, this Appeal.

3 Such of the facts necessary for the decision of this appeal are as follows :

On 25th March, 1992 one Ramchandra @ Laxman Babu Khatal was admitted in Government Dispensary at Karagani by his wife. He had sustained certain injuries. His statement was recorded by ASI of Atpadi at Karagani Out Post Police Station. He had disclosed to the police that on 24th March, 1992 he had come to village to purchase oil cake for bullocks. After purchasing oil cakes, he had consumed alcohol. He went to the house of Shevanta as she was acquainted with him. She asked him to go home as he had consumed liquor. He was in front of gram panchayat office and was sitting there for some

time. At that time, Tukaram Patil i.e. the present appellant accompanied with unknown person came to the spot. They told him that they would reach him to his house. They took him to the spot near streamlet and there they assaulted him with kick and fist blows. When he failed down, they twisted. His legs and his hands had got swollen. He had sustained abrasion all over his body and more particularly, on his shoulder and forehead. They left the spot after assaulting him. Since he could not walk, he did not go to home. He slept on the same spot throughout the night. In the morning, he requested one Shrirang Gend to call his wife. His wife came to the spot. Upon looking of his condition she brought a bullock cart and taken him to dispensary. On the basis of his statement, N.C. No. 64 of 1992 was registered against the appellant for offence punishable under Section 323 read with Section 34 of the Indian Penal Code. Laxman had succumbed to the injury on 28th March, 1992 while he was under treatment. The body was sent for post-mortem. The autopsy findings were that the probable cause of death was multiple fractures with cerebral condition. Hence, N.C. case was converted to

a cognisable case and the appellant herein was prosecuted for an offence punishable under Section 302 of the Indian Penal Code. The appellant was arrested on 1st April, 1992.

4 After completion of investigation, charge-sheet was filed. The case was committed to the court of Sessions and registered as Sessions Case No. 143 of 1992. The prosecution examined 11 witnesses to bring home the guilt of the accused.

5 P.W. 1 Shamrao Laxman Dabade happens to be the panch for spot panchanama. He has deposed before the court that the place where the deceased was lying was in the southern portion of quarry. The wall of the quarry of this southern side is about 25 to 30 ft. in length. There are 5 to 6 unused latrines. The panchanama is at Exh. 9.

6 P.W. 2 Shrirang Parasu Gend is the first person with whom the deceased had talked. He was acquainted with the deceased. He had

no knowledge about the relations between Laxman and the accused-appellant. P.W. 2 Shrirang has been declared hostile by the prosecution.

7 P.W.3 Vithal Sargar has also been declared hostile by the prosecution.

8 P.W. 4 Shevanta Shankar Madne is the person to whose house the deceased had allegedly gone after consuming alcohol. She has also not supported the prosecution.

9 P.W. 5 Ranjana Khatal happens to be the wife of deceased Laxman. She has deposed before the Court that on 25th March, 1992. Shrirang Gend informed her that her husband was lying in the quarry. She rushed to the spot. There she saw her husband lying inbetween two stones. The villagers had rushed to the spot. She noticed that her husband had sustained injuries all over bodies and his legs were fractured. According to her, the deceased had informed her as well as

Shrirang Gend that accused Tukaram and one unknown person had assaulted him on the previous night. They had taken him to hospital. He survived for two days at General Hospital, Sangli. On 3rd day he expired. It is elicited in the cross-examination that the farm house at Malan is about 300 ft. away from her farm house. There was civil dispute between Anna and the accused Tukaram. She has further admitted that Malan had also come on the spot. She has further admitted in the cross-examination that when she reached the spot, deceased Laxman was lying silently and was unconscious. It is further admitted by her that they had brought deceased Laxman by carrying him in bed-sheet. Upon reaching hospital, police had immediately come to the hospital. He was treated at Government Hospital at Karagani for one hour. The doctor at the said hospital had informed them that Laxman had sustained fractures and therefore, he was taken to General Hospital, Sangli. The police had approached her after the death of Laxman. She had disclosed to the police the statement narrated to her by her husband. She had meeting with the police on the day when she had taken her husband to the hospital.

Her statement was not recorded. At the end of recording of substantive evidence, the learned APP had requested the Court to question the witness about lodging of FIR by deceased Laxman as independently she was not asked about it in the examination-in-chief. The learned Court was of the opinion that the said exercise would be beyond the scope of re-examination and therefore, had denied the right to re-examine.

10 P.W.6 Sandeepan Saragar has deposed before the Court that deceased Laxman was given in adoption to Balu Khatal. On 24th March, 1992 he had heard commotion near the quarry. The villagers had gone to the spot and at that time, had seen Laxman lying in quarry. His both legs were fractured and upon enquiry, deceased Laxman had told the villagers that he was assaulted by Tukaram. According to the witness, he was taken to the hospital. He has stated in the cross-examination that when he reached the quarry, deceased Laxman was in speaking condition.

11 In fact, the wife of the deceased was the first person to reach the quarry after she was informed by Shrirang Gend. She has categorically stated that her husband was lying unconscious and therefore, there is no question of there being any oral dying declaration.

12 P.W. 7 Adgonda Patil is the circle officer who had drawn the map of the scene of offence.

13 P.W. 8 Dr. Maruti Shinde was working as medical officer of Primary Health Center, Karagani. He had examined Laxman on 25th March, 1992. He has deposed before the court that there was no alcoholic smell. His speech was normal. The patient was unable to walk due to injuries. He has specifically stated that there were multiple abrasions to left knee joint, no fresh bleeding, fracture of femur at lower end with dislocation of left knee joint. There were multiple abrasions on the person of the deceased. He had given preliminary treatment and referred him to Civil Hospital, Sangli. He

has admitted in the cross-examination that he had not issued any separate certificate regarding consciousness of the patient. He has also admitted that as the patient was suffering from pain, he had administered with a dose of Analgin (tranquilizer) and a anti-tetanus dose. He has admitted that the drug Analgin is sedative in a very small portion. From this evidence, an inference can be drawn that the dying declaration which is at Exh. 30 was recorded when the patient was in a state of sedation. The medical certificates are at Exh. 26.

14 P.W. 9 Rajaram Mane was attached to Karagani Outpost within the jurisdiction of Atpadi Police Station. He has deposed before the Court that on 25th March, 1992 the compounder from Primary Health Center had informed that there was MLC case and the name of the patient is Laxman Babu Khatal. He had given medical reference letter which is at Exh. 28. He had recorded the statement of Laxman. That Laxman had disclosed to him that on 24th March, 1992, present appellant alongwith an unidentified person had assaulted him with fists and kick blows. The witness has proved the contents of Exh. 30

which is the dying declaration of the deceased. According to him, the statement disclosed a non-cognisable offence and hence, he registered N.C. No. 64 of 1992. He has admitted in the cross-examination that he did not feel it necessary to obtain endorsement of the medical officer upon Exh. 30. Many persons had gathered at Primary Health Center at that time.

15 P.W. 10 Khanderao Vidhate was PSI attached to Atpadi Police Station. He was the investigating officer of Crime No. 64 of 1992. He had recorded statements of witnesses in the course of investigation. He has admitted in the cross-examination that ASI Mane did not hand over any documents to him except case papers in the noncognisable case.

16 P.W. 11 Dr. Gousmohiddin Hisamuddin Mulla was the medical officer who performed autopsy on the dead body of deceased Laxman. He has deposed before the Court that the cause of death was multiple fracture couple with cerebral and cerebellar contusions. According to

him, the patient was conscious at the time of admission. He has admitted in the cross-examination that history of unconsciousness was taken regarding the patient. He has further tried to clarify that the patient was conscious only at the time of admission. He has further stated that it is not necessary that the treatments given to the patient were for regaining consciousness. Except injury Nos. 1 and 5, all injuries are minor injuries.

17 Upon considering the nature of evidence adduced by the prosecution, it appears that the prosecution has failed to prove that the deceased was in a position to give such an elaborate statement at the time of admission, especially when the medical case papers would show that he was unconscious at the time of admission in the hospital. Similarly, the wife of the deceased has also deposed before the Court that when she reached the spot near quarry, her husband was lying in between two stones and that he was unconscious. The dying declaration shows that the wife had come alongwith bullock cart and he was taken in bullock-cart. However, the wife has

deposed before the court that he was carried in bed-sheet to the hospital. The person who had recorded dying declaration i.e. ASI Mane has specifically stated before the Court that he did not find it necessary to obtain medical certificate from the doctor in respect of consciousness or the mental status of the patient whose statement was to be recorded. The written dying declaration is the only piece of evidence which has been relied upon by the learned Sessions Court. However, taking into consideration the substantive evidence of both the doctors that he was unconscious throughout except at the time of admission, the Court cannot be oblivious of the fact that the patient was given sedation in the Primary Health Center before he was taken to General Hospital. Multiple fractures must have impaired his mental capacity as there is evidence that he was suffering from pain. The only stage when the patient was conscious was in the morning when he spoke to Shrirang Gend. But at that time, he had not disclosed to Shrirang Gend that he was assaulted by the present appellant and unknown person.

18 It appears from the evidence that there was some civil disputes between the brother of the appellant and one Anna in whose favour the sister-in-law of the appellant had executed a sale deed. The accused has stated in his examination-in-chief under Section 313 of the Code of Criminal Procedure, 1973 that by taking undue advantage of accidental death of deceased Laxman, he has been falsely implicated. The spot panchanama would clearly indicate that the deceased was lying in between the stones near the quarry and there is every possibility that under the influence of alcohol, he had fallen in the quarry and had sustained injuries while he was attempting to stand up and walk down to his house.

19 Taking into consideration the nature of the evidence and the submissions advanced across the bar by the advocate appointed for the appellant, the appellant deserves benefit of doubt. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the appeal deserves to be allowed.

20 Hence, following order is passed.

ORDER

- (i) The Appeal is allowed.
- (ii) The Judgment and Order dated 30/7/1996 passed by 2nd Additional Sessions Judge, Sangli in Sessions Case No. 143 of 1992 convicting the Appellant is hereby quashed and set aside.
- (iii) The Appellant is acquitted of all the charges in this present case.
- (iv) Fine amount if paid be returned to the appellant.
- (v) Bail bond stands cancelled.

21 The Appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)