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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 241 OF 2016
IN
CRIMINAL APPEAL NO. 145 OF 2016

1. Vijay Jagannath Khairnar
2. Suresh Jagannath Khairnar

.. Applicants
(Org. Accd.Nos.1 and 2)

Vs.

State of Maharashtra

.. Respondent

Mr. Ashok Mundargi, Sr. Advocate a/w Mr. Manoj Mohite i/by Mr. A. R. Kapadnis for applicants.
Mr. K. V. Saste, APP for State.

CORAM: NARESH H. PATIL &
P. D. NAIK, JJ.

JUNE 13, 2016.

P.C.

1. The applicants - original accused nos.1 and 2 were convicted for offence punishable under Sections 302 and 447 read with Section 34 of Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.10,000/- each, in default to suffer RI for three months and SI for two months and to pay a fine of Rs.500/- each, in default to suffer SI for 15 days, by judgment and order dated 19/1/2016 delivered by the Ad-hoc Additional Sessions Judge-1, Malegaon, Dist. Nashik in Sessions Case No. 112 of 2014.

2. The prosecution case is that deceased Samadhan and the accused persons were having agricultural lands situated adjacent to each other. According to the sole eye witness i.e. PW 1 – Taibai Nimba Shewale, mother of the deceased, they were residing in their field house situated in revenue jurisdiction of Nagaon village. Her husband Nimba Shewale, Samadhan Shewale, Poonam Shewale, Gorakh Shewale and Ganesh Shewale are residing together. Deceased Samadhan was doing agricultural work. On 13/6/2013, when deceased Samadhan was ploughing the field, Vijay Khairnar and Suresh Khairnar, applicants herein, started abusing and beating deceased Samadhan. She further deposed before the court that Suresh – Original Accused No.2 caught hold Samadhan from front side and Viju @ Vijay – Original Accused No.1 stabbed with the weapon on the back of Samadhan. Eye witness Taibai reached the spot along with bottle of water to be provided to deceased Samadhan. On raising hue and cry by Taibai, the accused ran away. The incident took place between 6 to 6.30 p.m. Another son of Taibai brought auto-rickshaw and the deceased was taken to Girna Hospital. Doctor declared Samadhan dead. The police reached hospital. Incident was narrated to the police. Statement of Taibai was recorded, which was treated as FIR (Exh. 27).

Applicant/Original Accused No.1 – Vijay was arrested on the same day. It is informed during the course of hearing that applicant – Original Accused no.2 - Suresh was arrested on the next day.

3. Learned Senior Counsel appearing for the applicants submitted that this is a case based on appreciation of evidence of a single eye witness, who is highly interested one, being mother of the deceased. The motive, according to the prosecution, was some land dispute. Learned Counsel referred to the evidence of the eye witness, medical evidence, post-mortem report, injury certificate and observations of the trial court. Learned Counsel also relied upon the station diary entry, which mentioned that one person was assaulted and stabbed. It is submitted that role attributed by the eye witness to both the applicants was entirely different. No blood stains were found on the clothes of accused no.2 – Suresh. The water bottle, which was brought by PW 1 – Taibai, to be provided to deceased, was not seized. Accused were readily available in the village. They did not abscond. Learned Senior Counsel submitted that applicants be released on bail by imposing suitable conditions.

4. Learned APP submits that the trial court has scanned the entire

evidence and reached appropriate conclusion. The evidence of sole eye witness is reliable and convincing. Evidence of Taibai cannot be discarded only on the ground that she is highly interested witness, being mother of the deceased. In case the evidence is trustworthy, the conviction could be based on the evidence of single eye witness. Learned APP prayed for rejection of the application for bail.

5. We have perused the evidence of the prosecution witnesses and the judgment of the trial court. The agricultural lands of the accused and the deceased were adjacent to each other. It seems that there was some dispute in respect of the agricultural land. According to the medical evidence, the deceased suffered three injuries, which are described in para 2 of the evidence of PW 7 – Dr. Kishor Dange, who was attached to Civil Hospital, Malegaon as a Medical Officer. Said witness conducted post-mortem on the dead body of deceased Samadhan. Injuries suffered by deceased are mentioned as under :-

- (1) Stab wound with ragged margins left infra scapular region causing injury to the left kidney, spleen and liver, it was of size 2.5 x 2 x 1.5 cm.
- (2) Elliptical wound in epigastrium, 1.5 x 1 c.m.

- (3) Elliptical wound right upper eye, 1.5 cm x 1 cm. sharp margins.

6. In cross-examination, the Medical Officer deposed that due to injury no.1, death must have occurred within five minutes. According to him, injury no.2 was on the front side above the stomach and below the ribs. Injury nos.2 and 3 were superficial and, therefore, depth of those injuries was not mentioned in the P.M. Report, according to the Medical Officer. The Medical Officer further opined that there must be a blow from front side so far as injury No.2 is concerned.

7. It has come in the evidence of eye witness PW 1 – Taibai that when she reached the spot, the accused were abusing and beating deceased. According to her, applicant/accused no.2 – Suresh had caught hold deceased Samadhan from front side. This statement will have to be considered in the light of the opinion of the Medical Officer that injury No.2 was inflicted from front side above the stomach. According to the eye witness the applicant/accused no.2 – Suresh did not assault the deceased. Assault was made by accused no.1 – Vijay, who stabbed the deceased. Some of the witnesses have turned hostile. The prosecution has not examined any other material witness for throwing light on the incident.

8. Considering the evidence on record in its entirety, we are of the view that applicant-accused no.2 – Suresh Jagannath Khairnar can be released on bail by imposing certain conditions. No case is made out to release applicant – accused no.1 – Vijay Jagannath Khairnar on bail.

ORDER

- (a) Prayer of Applicant No.1/ Original Accused No.1 – Vijay Jagannath Khairnar for releasing him on bail is rejected.
- (b) The substantive sentences, as directed by the trial court, against the Applicant No.2 / Original Accused No.2 – Suresh Jagannath Khairnar shall stand suspended.
- (c) Applicant No.2 / Original Accused No.2 – Suresh Jagannath Khairnar is directed to be released on bail in the sum of Rs.25,000/- with one surety in the like amount.

- (d) Applicant No.2 / Original Accused No.2 - Suresh Jagannath Khairnar shall not try to contact family members of the complainant.
- (e) Applicant No.2 / Original Accused No.2 - Suresh Jagannath Khairnar shall attend the Malegaon Taluka Police Station, Malegaon, District – Nashik once in a month until further orders.
- (f) Application is disposed of accordingly.

(P. D. NAIK, J.)

(NARESH H. PATIL,J.)