

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

CRIMINAL APPEAL NO.329 OF 2001

Ashok s/o. Rama Yeshode,
Age : 28 years, Occ. Labour,
r/o. Hatkarwadi,
Tq. Pathri,
Dist. Parbhani ..Appellant

Vs.

The State of Maharashtra ..Respondent

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Mr.Rahul Mote, Advocate for appellant

Ms.R.P.Gaur, APP for respondent

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CORAM : SANGITRAO S. PATIL, J.

DATE : AUGUST 03, 2017

ORAL JUDGMENT :

By this appeal, the original accused no.1 has challenged his conviction and sentence for the offence punishable under Section 304, Part II of the Indian Penal Code ("the I.P.C.", for short) recorded on 24.07.2001 by the learned Additional Sessions Judge, Parbhani.

2. The appellant and other 26 accused persons were prosecuted for the offences punishable under Sections 302 and 324 read with Section 149 and also under Sections 147 and 148 of the I.P.C. After considering the evidence on record, the learned trial Judge convicted the appellant only for the offence under Section 304-II of the I.P.C. and acquitted all the accused, including the appellant, of the offences under Sections 302, 324, 147 and 148 of the I.P.C. The judgment and order of acquittal have not been challenged and as such, have attained finality.

3. The case of the prosecution, in short, is that there had been a quarrel between the son of the informant namely, Shankar Ramchandra Jadhav, r/o. Hatkarwadi with the appellant on 12.07.1996 at about 8:00 a.m. On 15.07.1996 at about 8.00 a.m., the informant went to the house of one Namdeo Rakhmaji Bhandare along with his sons-in-

law namely, Chandu Kondiba Gaikwad and the deceased Narsing Ramchandra Gaikwad. They sat under the shed that was in front of the house of Namdeo Bhandare. No sooner they sat there than the appellant and other accused persons came there and started pelting stones against them. The first stone was thrown by the appellant towards the informant, which he evaded by moving himself aside, however, that stone hit on the left side of head of the deceased Narsing. The deceased Narsing shouted and fell on the cot. He died instantaneously. Thereafter, stones were thrown on the person of the informant also. He sustained bleeding injuries on his head. Another son-in-law of the informant concealed himself inside the house of Namdeo Bhandare. He also sustained injuries on his back, right knee and both of the arms. The informant was taken to Primary Health Centre at Rampuri for treatment. His FIR was recorded in Police Station, Manwat on 16.07.1996

at 1.00 a.m. On the basis of that report, Crime No.91 of 1996 came to be registered for the offences punishable under Sections 302, 337, 324 read with Section 149 and also under Sections 147 and 148 of the I.P.C. The inquest on the body of the deceased Narsing was prepared. His dead body was referred to the Medical Officer, Primary Health Center, Rampuri, for post mortem. Spot panchnama was prepared. Statements of the witnesses were recorded. The clothes of the deceased were seized under a panchnama. The blood samples of the deceased were collected by the Medical Officer. The seized articles were sent to the Chemical Analyzer for analysis and report. The Medical Officer noticed four external injuries on the head of the deceased Narsing. He opined that Narsing died due to multiple fractures of skull bones extensive intra-cranial hemorrhage leading to shock and death. After completion of the investigation, the appellant and other 26 accused

persons came to be charge-sheeted for the above mentioned offences.

4. The learned trial Judge framed charge against all the accused persons for the above-mentioned offences and explained the contents thereof to them in vernacular. They pleaded not guilty and claimed to be tried. Their defence is of total denial and false implication.

5. The prosecution examined the informant at Exh.49 and his wife Nilawati (PW 3) (Exh.55) to prove the occurrence of the incident. The prosecution further examined the Medical Officer Dr.Joshi (PW 1)(Exh.47), who conducted post-mortem examination of the deceased Narsing, and the Investigating Officer API Sangale (PW 4) (Exh.56).

6. Dr.Joshi (PW 1) states that he conducted post-mortem of the body of the deceased Narsing on 16.07.1996 and found the following four external injuries :-

i) Lacerated wound on left temporal region transverse $1\frac{1}{2}$ " x $\frac{1}{2}$ " blood clots over the wound.

ii) Contusion on the left frontal region $\frac{1}{2}$ " x $\frac{1}{2}$ " transverse.

iii) Lacerated wound on the left occipital region $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " transverse blood clots over the wound seen.

iv) Lacerated wound on right occipital region $\frac{1}{2}$ " x $1/8$ " transverse."

Dr.Joshi states that above-mentioned injuries were ante-mortem. He found the following internal injuries :-

i) On head multiple fracture on the left temporal bone of the skull. This

fracture corresponds with external injury No.1 on the head.

ii) Brain

1) Extra-dural hemorrhage;

2) Rupture of middle meningeal artery;

3) Diplopic veins

4) Portion of dura matter is torn off;

5) Blood clots seen all over the brain matter and also in the base of the brain about 10 CC. Clotted blood seen in the brain cavity. Right side of heart full of blood, left side empty.

7. Joshi (PW 1) opined that the deceased Narsing died of shock due to multiple fractures of

skull bones extensive intra-cranial hemorrhage. He states that injury no.1 found on the body of the deceased Narsing was sufficient in the ordinary course to cause his death. He states that the said injury was possible by a hard and blunt object like stone that was shown to him before the Court. However, he expressed inability to state whether all the injuries found on the head of the deceased Narsing were possible by one stroke of stone or by different strokes.

8. The learned Counsel for the appellant submits that all the above-mentioned injuries, though are on the head, injury nos.1 to 3 are on the left side, while injury no.4 was on the right side. He further submits that injury nos.1 to 3 are at different places on the left side of the head. All these injuries were not possible by a single stroke of stone. Therefore, according to him, the case of the prosecution that the deceased Narsing suffered head injury because of a single

stroke of stone that was allegedly thrown by the appellant, cannot be accepted.

9. The learned APP submits that the evidence of the informant is natural and probable. The evidence is sufficient to establish the guilt of the appellant for the above-mentioned offence. It is corroborated by the Medical Officer. She submits that the learned trial Judge has rightly appreciated the evidence and rightly held the appellant guilty of the above-mentioned offence.

10. It has come in the evidence of the informant (PW 2) that at the time of the incident, the deceased Narsing, Chandu Gaikwad and himself were sitting in front side of the house of Namdeo Bhandare. He then states that all the accused persons came there and pelted stones towards them. One of the stones thrown by the appellant hit on the head of Narsing, due to which he sustained injuries and fell down. It has come in his cross-

examination that from the place where they were sitting, they were not able to see anything outside. They were sitting inside the thrashed partition (called *Kud*). He specifically states that when the deceased Narsing was hit by stone, he was in sitting condition. However, he changed his version subsequently and stated that when the stone pelting started, all of them got frightened and started running away. He admits that the deceased Narsing sustained injury, while he was running away.

11. The learned Counsel for the appellant submits that the evidence of the informant in respect of the events took place at the time of the incident, is not at all consistent. He submits that if it is accepted that the informant and the deceased Narsing were sitting at the place from where nothing was visible from outside then it cannot be accepted that they had seen as to who was pelting stone and if it is accepted that after

they noticed that the stones were being pelted, they started running and at that time, the deceased Narsing sustained injury, then also, it cannot be accepted that they had an occasion to see as to who actually threw the stone that hit on the head of the deceased Narsing. I find substance in this contention.

12. When the informant admits that after stone pelting started, all of them got frightened and started running, the version of the informant that he saw the appellant throwing the stone, which ultimately hit on the head of the deceased Narsing, cannot be believed.

13. The informant alleged that the appellant threw stone that hit on the head of the deceased Narsing. As seen from the medical evidence, there were four external injuries at four different places on the head of the deceased Narsing. Their locations themselves would be sufficient to

indicate that in all probabilities, they must have been caused by four different strokes of stone. When there were allegedly 27 accused persons involved in the alleged pelting of stones, it is difficult to connect the appellant only with injury no.1 sustained by the deceased Narsing, which, according to Mr.Joshi was sufficient in ordinary course to cause his death. It is likely that the said injury might have been caused because of the stone thrown by some other accused person and not by the appellant only. There is no positive and clinching evidence on record to show that the said injury was caused by the stone allegedly hit by the appellant only.

14. Nilawati (PW 3) was not present at the time of the incident. She states that when she came to know about the incident, she went to the spot of the incident from the agricultural land that was adjacent to the village. As such, her evidence is of no use to the prosecution to

connect the appellant with the incident in question.

15. Though the incident took place in front of the house of Namdeo Bhandare, he has not been examined by the prosecution. It is stated that the wife of of Namdeo Bhandare namely, Annapurna and one Suman were present at the time of the incident, but both of them have not been examined as witnesses. The prosecution has not assigned any reason for non-examination of these witnesses. There is no independent corroboration to the version of the informant. Moreover, the evidence of the informant that the deceased Narsing sustained head injury, causing his death, because of the stone thrown by appellant no.1, is not believable. In the circumstances, it cannot be said that the prosecution established the guilt of the appellant for above-mentioned offence beyond reasonable doubt.

16. The learned trial Judge did not appreciate the evidence on record properly and wrongly held that the prosecution established guilt of the appellant for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II of the I.P.C. The impugned judgment and order are not sustainable. The appeal is liable to be allowed.

17. In the result, I pass the following order:-

- (i) The appeal is allowed.
- (ii) The impugned judgment and order passed in Sessions Trial No.110 of 1998 are quashed and set aside.
- (iii) The appellant is acquitted of the offence punishable under Section 304 Part II of the I.P.C.
- (iv) Bail bonds of the appellant stand cancelled. He is set at liberty.

(v) Fine amount of Rs.3,000/- deposited by the appellant be refunded to him.

[SANGITRAO S. PATIL, J.]

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