

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL APPEAL NO. 30 OF 2015.**

State of Goa,
Through Ponda Police
Station, Ponda Goa.

.... Appellant.

Vs.

Sagar Naik(Major),
S/o Gurudas Naik,
r/o. H. No.89, Wadiwada,
Kundaim, Ponda, Goa.

.... Respondent.

**Coram:-C. V. BHADANG &
PRITHVIRAJ K. CHAVAN,JJ.**

Date :-27th July, 2017.

Shri S. R. Rivankar, Public Prosecutor for the petitioner.

Shri C. Padgaonkar, Advocate for the respondent.

JUDGMENT (Per C. V. BHADANG, J)

By this appeal, the appellant is challenging the acquittal of the respondent from the offence punishable under Section 302 of IPC.

2. Brief facts necessary for the disposal of the appeal may be stated thus:-

It is the case of the prosecution that on 19.6.2012 at around 22.30 hours in house no.89 Wadiwada, Kundai, the respondent (accused) assaulted his brother Ratnakar Naik, with fist blows on his face, nose and eyes, as a result of which, Ratnakar died.

On the basis of a complaint lodged by Meera Naik, (PW4), widow of the deceased an offence came to be registered with Ponda Police Station. During the course of investigation, the Investigating Officer recorded the statement of the witnesses, the dead body was sent for post mortem examination after drawing an inquest panchanama. The Investigating officer drew, spot panchanama the scene of occurrence and after completion of the investigation a chargesheet came to be filed against the respondent for the offence punishable under Section 302 IPC which was eventually committed to the Court of Sessions.

3. The learned Sessions Judge framed charge against the respondent for the offence punishable under Section 302 IPC, to which the respondent pleaded not guilty and claimed to be tried. The defence of the respondent is of total denial and false implication.

4. At the trial, the prosecution examined in all 12 witnesses and produced the record of investigation. The respondent neither entered into witness box nor examined any defence witnesses.

5. The learned Sessions Judge framed the following points:-

- 1. Whether prosecution proves that on 19.06.2012 at around 22.30 hrs. in House No.89, Wadiwada, Kundaim, accused did commit murder of his brother Ratnakar Naik?*
- 2. Whether prosecution proves that on the above*

said date, time and place the accused insulted deceased Ratnakar by abusing him in filthy words with intention to provoke breach of peace?

3. Whether prosecution proves that the accused used criminal force against PW4 i.e. the Complainant?"

6. The learned Sessions Judge answered all the points in the negative and acquitted the respondent.

7. We have heard Shri Rivankar, the learned Public Prosecutor for the petitioner and Shri Padgaonkar, the learned Advocate for the respondent.

8. With the assistance of the learned Counsel for the parties we have gone through the evidence, as also the impugned judgment.

9. It is submitted by Shri Rivankar, the learned Public Prosecutor, that there is eye witness account of the incident on record. It is submitted that Meera Naik PW4 being the widow of the deceased is a natural witness and notwithstanding some improvements and contradictions in the evidence, evidence of PW4 is acceptable. The learned Public Prosecutor has submitted that as per the medical evidence Ratnakar died on account of Asphyxia as a result of aspiration of blood originating from injury no.12 and gastric contents into the respiratory passage in the person with conclusive

head injury. It is submitted that as per the opinion of the Medical Officer conducting autopsy on the dead body injury nos.1 to 4 have been found to be sufficient in the ordinary course of nature to cause death. It is submitted that PW4 Meera Naik has stated about the assault by the respondent on the deceased. The learned Public Prosecutor submitted that the learned Sessions Judge was in error in refusing to accept the evidence of PW4. The learned Public Prosecutor was at pains to point out that the evidence of PW4 finds corroboration in material particulars, from the medical evidence, which indicates that an assault on the face of the deceased. He, therefore, submits that the view taken by the learned Sessions Judge is not correct and is an impossible view, requiring interference.

10. On the contrary, it is submitted by Shri Padgaonkar, the learned Counsel for the respondent that out of three witnesses, who have been examined as eye witnesses two have failed to support the prosecution. It is submitted that Prabhakar Naik, PW5 and Dulavati alias Leelavati Naik, PW6 have not supported the prosecution case and thus prosecution mainly relies upon the evidence of PW4 Meera Naik. The learned Counsel has strenuously urged that evidence of Meera Naik PW4 does not inspire confidence on account of the fact that there are contradictions and omissions/improvements in so far as material particulars of incident are concerned. It is next submitted that as per the evidence on record there was no electricity supply and as such there was pitch dark and there was no occasion for PW4

to have witnessed the assault by the respondent on the deceased. The learned Counsel has taken us through the evidence of PW4 in order to submit that PW4 has given different versions before the Court and in the complaint. The learned Counsel points out that PW4 claims that there was some quarrel between Prabhakar Naik PW5 and the respondent and deceased had gone to intervene while that is not the case set up in the complaint. It is submitted that evidence of Meera Naik, PW4 has rightly been held to be not reliable. The learned Counsel has further pointed out that the medical officer conducting the autopsy has found from the contents of stomach of the deceased, that the deceased was under the influence of liquor. It is submitted that thus injuries found on the person of the deceased are likely to be caused if a person under the influence of liquor has multiple falls, within a short span of time. It is submitted that the view taken by the learned Sessions Judge, is a possible view, which does not require interference.

11. We have carefully considered the rival circumstances and the submissions made. Although, the prosecution has examined three witnesses, claiming that they had witnessed the incident, namely Meera Naik, PW4, Prabhakar Naik, PW5 and Leelavati Naik, PW6, Prabhakar Naik who happens to be the brother of the respondent and the deceased while Leelavati who is their mother, have turned hostile and have failed to support the prosecution. Thus, the prosecution case solely rests on the evidence of PW4

Meera Naik, who is the complainant. In the complaint (Exh.29) she claimed that on 19.6.2012 at about 22.30 hours the deceased (her husband) came home after having "a little drink" and before entering into their house/room he put latch on the main door of the house from outside in which respondent alongwith Prabhakar Naik, PW5 and Leelavati Naik, PW6 were residing. She immediately unlatched the door and took the deceased in the house. In the meantime, the respondent called the deceased asking him to unlatch the door and when she said that she had already unlatched the door. The complainant further states that she informed the deceased not to go out, as according to her, the respondent was also drunk and he may create problem. However the deceased did not listen and went to the main door of the house. She further claims that the moment the deceased reached the main door, the respondent pulled him inside the house, abused him and then assaulted him with fist blows on face, nose and eyes. She tried to intervene but the respondent pushed her. On hearing the commotion Prabhakar Naik, came there however, the respondent also pushed him and kept on assaulting the deceased till he was dead. She claimed that the respondent dragged the deceased outside the house and kept him in the varanda. In the evidence before the Court, PW4 has given entirely different version. She claims that on the date of the incident at about 9.30pm it was the respondent who came under the influence of liquor and started abusing the deceased and also Prabhakar. She claims that Leelavati Naik ran away by the rear door as the respondent went to assault

her. Thereafter, Prabhakar started having a talk with the deceased, Prabhakar called the deceased saying that the respondent is trying to assault him (Prabhakar). She claims that at this point of time after hearing call of Prabhaka, the deceased went to the portion occupied by Prabhakar. She claims that respondent caught hold of her husband by leaving Prabhakar and assaulted the deceased with fist blows. It can thus, be seen that there is certain amount of discrepancies in the case of PW4 as stated in the complaint, and the one given before the trial Court. That apart, the evidence of PW4 shows that she was cross examined at length in relation to the complaint and her police statement and there are several contradictions and omissions which are brought on record. The learned Sessions Judge had adverted to the evidence of PW4 at length from para 14 onwards and has come to the conclusion and, in our view, rightly so, that the evidence creates reasonable doubt as to manner in which incident has alleged to have happened. We find that on our reading the evidence of PW4, no implicit reliance can be placed on her evidence. It may be mentioned that PW4 being the widow of the deceased can be said to be an interested witness. Although there is no rule of law or one of practice that evidence of a related/interested witness cannot be relied upon, it is well settled that Court has to exercise greater circumspection while placing reliance on such a witness. In appropriate case the Court may look for corroboration to satisfy its judicial conscience.

12. On careful reading of the evidence of PW4, we find that the evidence cannot be accepted and no reliance could have been placed on the same. There is one more aspect which PW4 has stated in her evidence which is relevant that the lights went off when the respondent was assaulting Prabhakar. This aspect has been considered by the learned Sessions Judge in paragraph 27 of the impugned judgment and the learned Sessions Judge has rightly found that there was nothing on record that there was any other source of light so that PW4 had an occasion to have witnessed the assault on the deceased. At one stage, PW4 has claimed that the respondent tried to assault her, therefore, she ran away in the next room and in another breath she claimed to have witnessed the assault on her husband. Thus, although the evidence is indicative of the fact that there was some quarrel between the respondent and Prabhakar, it is not clear as to whether it was the respondent who assaulted the deceased resulting into his death.

13. In our considered view, the evidence of PW4 Meera Naik falls short to bring home the guilt of the respondent beyond reasonable doubt and thus the learned Sessions Judge was justified in extending benefit of doubt to the respondent. The law regarding the nature and scope of the interference available in an appeal against acquittal is no longer *res integra*. It is subject matter of several decisions of the Supreme Court as also various High Courts. The Honb'ble Apex Court in the case of **Chandrappa & Ors vs State**

of Karnataka, reported in **(2007) 4 SCC 415** has *inter alia* held that where two views are equally possible and the trial Court has preferred one, it is not open for this Court to substitute its view on the ground that it is more plausible. Unless and until it is found that the view taken by the learned Sessions Judge, is perverse and/or is an impossible view, no case for interference is made out. In our considered view, the acquittal of the respondent does not call for interference within the parameters available in an appeal against acquittal. Appeal is without any merits and is accordingly dismissed. Bail bonds of the appellant stands cancelled.

PRITHVIRAJ K. CHAVAN,J.

C. V. BHADANG,J.

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