

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6939 OF 2016

The State of Maharashtra
Through Police Inspector,
Police Station, Shevgaon,
Dist. Ahmednagar

..APPLICANT

VERSUS

Dnyandeo Laxman Zambare
Age : 36 Years, Occ. Agriculture,
R/o. Maruti Vasti, Bodhegaon,
Tq. Shevgaon, Dist. Ahmednagar

..RESPONDENT

...

A.PP for the applicant : Smt. V. S. Chaudhary

...

CRIMINAL APPLICATION NO. 91 OF 2017

IN

CRIMINAL APPEAL STAMP NO. 13 OF 2017

Santosh S/o Ramesh Tanwade,
Age : 29 Years, Occ. Agriculture,
R/o. Bodhegaon, Tal. Shevgaon,
District Ahmednagar

..APPLICANT
Orig. Complainant)

VERSUS

1. The State of Maharashtra
2. Dnyandeo S/o Laxman Zambare,
Age : 40 Years, Occ. Agriculture,
R/o. Maruti Vasti, Bodhegaon,
Tal. Shevgaon, Dist. Ahmednagar

..RESPONDENT
(Orig. Accused)

...

Advocate for the applicant : Mr. S. S. Thombare
A.PP for respondent State : Smt. V. S. Chaudhary

..

CORAM :T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE : 27-11-2018

ORDER :-

The State has filed proceeding for grant of leave to file appeal against the Judgment and order of Sessions Case No. 210 of 2011 which was pending in the Court of learned Additional Sessions Judge, Ahmednagar. Respondent Dnyandeo Zambare is acquitted by the trial Court of the offence punishable under Section 302 of the Indian Penal Code. The first informant also wants to file appeal and so Application No. 91 of 2017 is filed by first informant for grant of leave. It can be said that the proceeding could have been treated as appeal itself as in view of law laid down there is no necessity of grant of leave to file appeal by the first informant. In any case the Criminal Appeal Stamp No. 13/2017 is filed as appeal and all these three matters needs to be decided together.

2. This Court has carefully gone through the evidence given before the trial Court and reasons given by the trial Court for acquittal. The prosecution evidence included direct evidence of PW. No.5 and some circumstantial evidence of the neighbours who have deposed that they had seen the accused in the vicinity of the place of offence at the relevant time. Some evidence on motive is also given.

3. Atmaram (PW. No.5) is examined as eye witness to the incident.

He is not resident of Maruti Vasti Bodhegaon but he was proceeding to the house of his sister who was given in marriage to the deceased Ramesh Tanwade. He has given evidence that at 11.30 p.m he reached the house of the sister on motorcycle and after reaching the spot he noticed that on one cot one person was sleeping and accused was assaulting the said person by using stick. He has deposed that after seeing him the accused ran away. He has given evidence that after witnessing the incident he went to the house of his son namely Bharat Hinge who was living at other place and narrated the incident to him and then he returned back with Bharat to the house of his sister where the dead body was lying. Surprisingly, he has tried to say that after 2 to 3 days he learnt that his brother-in-law Ramesh was dead. His evidence shows that he approached to police to give such statement after one and half months of the incident.

4. Gorakshnath (PW.No2) who is resident of Maruti Vasti Bodhegaon has given evidence that on the date of incident after taking dinner, he was sleeping and after about 11.00 p.m when he heard the barking of dogs he woke up and then he witnessed that accused was running towards his house with stick in his hands. He has deposed that when he heard the shouts coming from the house of deceased Ramesh he rushed there and then he saw that injured Ramesh was lying on the cot. When the incident took place on 26.05.2011, his police statement was

recorded on 29.05.2011.

5. Santosh (P.W. No.11) son of the deceased has given evidence that he was living with the deceased, grand mother, mother and even wife of his brother, and his brother Nanasaheb. His evidence shows that on the day of the incident he was at home and he had taken dinner and after that he had gone to the house of his friend for chit-chating. His evidence shows that at mid-night hours he returned to the home and he noticed that his father was still sleeping on the cot and when he went near the father he noticed that there was blood and then he raised shouting. He has given evidence that due to his shouting the inmates of his house like grand mother, the wife of the brother and also the neighbours rushed there and then his father was shifted to the Government Hospital where doctor declared that his father was already dead.

6. Some evidence is given by Santosh (P.W. No.11) on motive by saying that deceased Ramesh was taking side of Sukhdeo the brother of the respondent in the dispute which was going on between respondent and Sukhdeo and due to that the relation between respondent and deceased were strained. Evidence is given that in the past there was one incident of quarrel between the deceased and the respondent and threat of life was given by the respondent to the deceased. The F.I.R was given by Santosh on the basis of suspicion against the respondent.

7. The aforesaid evidence shows that if somebody shouts near the house of the deceased the neighbours would immediately rush to the house as they are able to hear shouts coming from the house of the deceased. The *post mortem* report shows that as many as seven injuries were inflicted on the deceased by using hard and blunt object. In ordinary course, the deceased must have raised shouts if he was assaulted there and neighbours would have rushed to the spot. That did not happen. The neighbours rushed only when they heard the shouting of Santosh. If the neighbours had rushed to the house of the deceased and the witnesses who have given the evidence that they had seen respondent running away on that night would have informed Santosh about that incident also, but there is no such mention in the FIR. This neighbour approached police late as already mentioned and so the evidence given by the neighbours that they had seen the respondent in the vicinity on that night cannot be believed. Further the map of scene of offence is not there to create probability that the witnesses could have seen the respondent, if respondent had gone towards the side of the house of deceased on that night from his residential place. In respect of evidence of so called eye witness of (P.W. No.5) it can be said that nobody witnessed him on that night and he approached police very late. In ordinary course, he would not have left the place, if he had seen the accused assaulting the deceased who was the husband of his sister. His evidence that he contacted the brother after two days and then he learnt

about the death of Ramesh shows that he is not telling the truth. His evidence is not probable in nature. Due to all these circumstances the trial Court has disbelieved these witnesses.

8. Some evidence is given on the recovery of the bambu stick, weapon, but that cannot be called as incriminating evidence. The evidence is there on motive but on the basis of reasons given for the crime the accused cannot be convicted. The view taken by the trial Court is possible view. In view of these circumstances this Court holds that nothing can be achieved by granting leave to State to file appeal or by admitting the appeal filed by the first informant. In the result all the three proceedings stands dismissed.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/