

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

Criminal Appeal No.183 of 2006

- 1) Dnyaneshwar s/o Rambhau Surwase
Age 53 years,
Occupation : Agriculture,
R/o Nakhegaon, Taluka Mahur,
District Nanded.
 - 2) Sanjay s/o Dnyaneshwar Surwase,
Age 32 years,
Occupation : Agriculture,
R/o Nakhegaon, Taluka Mahur,
District Nanded.
- .. Appellants.**

Versus

- * The State of Maharashtra,
Through Police Station Mahur,
District Nanded.
- .. Respondent.**

Shri. S.B. Bhapkar, Advocate, for appellants.

Shri. Y.G. Gujarathi, Additional Public Prosecutor, for
respondent.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 19 APRIL 2018

JUDGMENT (Per T.V. Nalawade, J.):

- 1) The appeal is filed against the judgment and
order of Special Case (SC/ST) No.1/2005 which was
pending in the Court of learned 2nd Ad-hoc Additional

Sessions Judge Nanded, Special Judge appointed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The trial Court has convicted the appellants for offence punishable under section 302 read with 34 of Indian Penal Code and under section 3(1)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Sentence of imprisonment for life is given to the appellants. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

3) The deceased Anusayabai Ramchandra Bhosle and Subhadrabai Rajgire were residents of village Nakhegaon, Tahsil Mahur, District Nanded. Subhadrabai was the mother of Anusayabai. They were living in the village by making construction of shed on the land which was not belonging to them but entry was made in the village assessment record in respect of the shed in their name. No male member was living with them at the relevant time. Accused No.1 Dnyaneshwar owns a shed

which is situated in the vicinity of the shed of Subhadrabai and he was living in that shed with his son, Sanjay (accused No.3) and wife Anusayabai Ramchandra Surwase (accused No.4). Maruti Gaikwad (accused No.2) was the Police Patil of this village at the relevant time. The family of Dnyaneshwar had dispute with Subhadrabai as Subhadrabai was not vacating the shed and it was the contention of Dnyaneshwar that the shed belongs to him. On 31-8-2004 Subhadrabai had approached Mahur police station and she had given report against Dnyaneshwar and his son Sanjay that they were giving threats of life to her on account of aforesaid dispute.

4) The incident took place in the evening of 31-8-2004. Information was received by Mahur Police Station that the dead bodies of Subhadrabai and Anusayabai were lying in their shed and they were murdered by somebody. Vishnupant Bedre, Police Inspector of Mahur Police Station went to the shed. He made inquiry with the neighbours and he formed opinion that out of the aforesaid dispute, Dnyaneshwar and his family members had committed the two murders and Police Patil Maruti

Gaikwad had helped them. He gave first information report and on the basis of his first information report Crime at CR No.62/2004 was initially registered for offence punishable under section 302/34 of Indian Penal Code against four accused persons.

5) Inquest was prepared on both the dead bodies and the dead bodies were referred for post mortem examination. Spot panchanama was prepared. The doctor who conducted the post mortem examination gave opinion that the death of Subhadrabai had taken place due to injury caused to her head which had caused injury to brain. Opinion was given that Anusayabai had died due to burn injuries.

6) It transpired that the accused persons are of Maratha caste and the deceased were belonging to Scheduled Caste. The investigation was then taken over by Deputy Superintendent of Police as provided in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The investigation was transferred on 18-9-2004. Statements of some witnesses were already

recorded by Police Inspector of Mahur Police Station but the Deputy Superintendent of Police made more investigation. The Deputy Superintendent of Police noticed that there were some irregularities in the previous investigation. Even action was taken against some police officers for those irregularities. After completion of the investigation charge sheet came to be filed against the aforesaid four accused for the aforesaid offences. The charge was framed. All the accused pleaded not guilty. Prosecution examined in all 36 witnesses to prove the offences. Some witnesses turned hostile. Whatever evidence is available is circumstantial in nature.

7) The prosecution has relied on the following circumstances :-

(i) The appellants, who are father and son, had motive for the crime as they had dispute with the deceased Subhadrabai and her daughter over the shed which they were occupying; and,

(ii) The appellants were the immediate neighbours of the two deceased and so they had the opportunity to commit the murder.

8) The record of the trial Court and the submissions show that the defence did not dispute that both Subhadrabai and Anusayabai died unnatural death. The prosecution has not examined the medical officer who conducted post mortem examination and the record was given exhibits as the defence did not dispute the case of the prosecution that both the ladies died unnatural death. The post mortem reports are at Exhibits 114 and 115. The post mortem reports show that Subhadrabai died due to injury which was caused mainly to her head. The post mortem report shows that there was incised wound of the size of 10 x 10 x 5 cm over left temporal frontal maxillary region and there was one more incised wound of the size of 4 x 1 x 3 cm over right temporal side. These injuries had caused injury to the brain. The dead body of Anusayabai had extensive burns and the burns were on head, face, neck, chest, abdomen, both upper limbs, both lower limbs, back, buttock and external genital region. The burns were ante mortem in nature. Thus, there is more than sufficient evidence to show that the two deaths were not natural. The tenor of the cross examination shows that the defence has tried to suggest that there

used to be quarrels between the two ladies and there is possibility that Anusayabai first assaulted Subhadrabai and when she realized that she had finished Subhadrabai she committed suicide by setting herself to fire.

9) For proving motive for the crime the prosecution has examined some close relatives of the victim like PW-7, PW-14, PW-15 and PW-18. Deceased Anusayabai was sister-in-law of Ram Kamble (PW-7). He is resident of Mahur. He has given evidence that the deceased used to visit his place from Mahur and she had disclosed that she had dispute with Dnyaneshwar over the piece of land where she had made construction of hut. He has given evidence that on 31-8-2004 deceased Anusayabai had handed over a letter to him in which she had mentioned about the trouble and on her request he had visited Mahur Police Station with her and the application was handed over to Mahur police by them on 31-8-2004. That application is proved at Exhibit 37. There is mention about this application in the F.I.R. given by Bedre (Exhibit 35). However, there is no record with the prosecution to show that this application was registered in

any register which is ordinarily maintained by the police station. The evidence of this witness shows that he does not know as to who had written the application at Exhibit 37 as both, Anusayabai and Subhadrabai were illiterate and Exhibit 37 shows thumb impression which is purportedly of Subhadrabai.

10) Kavita (PW-14) is daughter of Anusayabai and her evidence is similar to the evidence of PW-7. In addition to that she has deposed that she had heard the quarrel which was going on between Dnyaneshwar and her mother and they were asking her mother and Subhadrabai to vacate the house and they had given threats of life. In the year 1977 she was given in marriage. She has not given the particulars of the incident mentioned by her. However, there is evidence of all the witnesses on motive and due to that the trial Court has believed this lady also.

11) Ramchandra (PW-15) is the husband of Anusayabai. His evidence shows that he had married with Anusayabai in 1972 when the evidence of Kavita shows

that Anusayabai was her mother and the marriage of witness Kavita had taken place in the year 1977. Ramchandra has deposed that Kavita is his daughter. His evidence is similar to the evidence of Kavita and PW-7. He was living at Mangrule, District Yavatmal and he had learnt about the incident from others. His evidence is also on motive that the disclosure was made by the deceased to him. Ambadas (PW-18) has deposed that Subhadrabai was his maternal aunt and Anusayabai was his cousin sister. He is also resident of Wanola and not of the village of the deceased. He has given evidence that Government had given permission to Subhadrabai to make construction of shed on that piece of land and so she was living there. He has given evidence that he had also knowledge about the dispute which was going on between the accused persons and the deceased. His evidence is also only on motive. He tried to say that on 28-8-2004 he had met both the deceased at S.T. Stand Mahur and on that occasion also the deceased had disclosed to him about the dispute.

12) There is evidence of Gram Sevak, Munjal (PW 19) to the effect that the house was entered in the name of deceased Subhadrabai for the purpose of assessing the tax and that entry was made in the year 2004. Record in that regard is produced at Exhibits 58 and 59. Thus, there is record to show that name of Subhadrabai was entered in the village record as owner of the shed and there is oral evidence of aforesaid nature on the dispute, motive. There is also evidence of other witnesses like Chandrakant Gavali (PW-2) on the dispute. Ramesh (PW-4), the village Sarpanch has given evidence on the dispute and he has deposed that when the village panchayat was attempting to measure the property the accused had objected to the measurement by saying that the property was belonging to them and so the measurement was not conducted.

13) The prosecution was expecting Dilip Wagh (PW-6) to give some evidence of circumstantial nature but the witness was cross examined by learned A.P.P. for the State by submitting that he was not supporting the case of the prosecution on material points. He only admitted that one application which was bearing signatures of persons like

Kantarao, Ganesh, Ramesh and he himself was given to police for seeking police protection from the accused. He has not given evidence on motive against any of the accused. He was expected to say that at the relevant time, at 5.00 p.m. on 31-8-2004 he had heard noise coming from the house of the deceased but he has not given such evidence. Thus the evidence of Dilip Wagh (PW-6) is of no help to the prosecution.

14) The evidence to show that the accused persons had opportunity to commit murder is given by examining some persons like Subhash Dhanve (PW-17). He had only made inquiry about the dispute and he had given report that Subhadrabai was owner of the structure as Subhadrabai had paid tax to the village panchayat. He avoided to give description of the boundaries of this structure.

15) Tukaram Pendur (PW-30) is examined to prove the map prepared by him to show the locations of the houses. The map is proved in his evidence at Exhibit 91. It shows that on South side there is property of accused

No.3 Sanjay Surwase. On North side of the property of Subhadrabai there was property of Tushar Wagh and Gunjewar. On the West there is a brook and beyond that there is property of one Pendur. On the West side of the property there was road leading to Murali and this road is meeting to the main road of the village after the property of Sanjay Surwase. Thus, not only accused Nos.1,3 and 4 were living in the vicinity of the house of the deceased but there were other persons also as mentioned above and those persons have not given evidence that they had even heard anything about the quarrel or anything on the date of the incident.

16) The evidence given by the prosecution witnesses including police officers shows that a trail of blood stains was found which was coming from the outside and it was entering the house of the deceased. The earth samples mixed with blood were collected in that regard. These circumstances create possibility that Subhadrabai was assaulted outside of the house. In the spot panchanama, which is proved at Exhibit 71, there is the mention that the dead body of Anusayabai was lying

inside of the house and it was in second room when the dead body of Subhadrabai was lying in the room which was situated towards road side. The panchas felt that head of Subhadrabai was dashed against rolling stone used in kitchen. Hand sketch map was prepared by the panchas showing that blood was found outside of the house and at one more place some stones having blood were found. In the post mortem report there is mention that there were two incised wounds on the dead body of Subhadrabai. Police could not recover the weapon which must have been used for inflicting the incised wounds on the head of Subhadrabai and there are aforesaid circumstances. Further, the exact time of the incident is not fixed in the evidence given by the prosecution though some witnesses were expected to say that the incident took place after 5.00 p.m., in the evening time.

17) The evidence is given by the prosecution to show that on that date at least in the noon time Anusayabai was present in Mahur for giving of the application to police. There is no evidence to show as to when she returned to the village and the witness who was

expected to say that the incident took place at about 5.00 p.m. has turned hostile. These circumstances cannot be ignored when the case rests entirely on the circumstantial evidence. Surprisingly in the present matter there is no evidence to show that on that date the accused persons were seen by anybody. Thus, the chain of circumstantial evidence is not completed.

18) The evidence which is discussed above shows that the evidence is mainly on motive. It is brought on the record that one of the accused is Ex-Sarpanch and one accused is Police Patil. It is brought on the record that there is political rivalry in the village and most of the witnesses are from the group which was rival to the accused. Even if the political rivalry is ignored, it can be said that the evidence on the record has made out only the case on motive. Some witnesses have given evidence that the house of the Police Patil is also situated in the vicinity. When the case was tried against 4 accused, the trial Court has given conviction only to accused Nos.1 and 3 and no reasons are recorded as to how their case is separable from the case against accused Nos.2 and 4. No other

circumstantial evidence is available. Though from the medical evidence it can be said that some sharp edged weapon was used such sharp weapon is not recovered and other circumstantial evidence which could have been there in ordinary circumstances was not collected by police. In view of these circumstances, it cannot be said that the appellants only had the opportunity to commit the offence and they committed the offence. In such cases, false implication also cannot be ruled out. As there are other probabilities, conviction could not have been given against the appellants. This Court holds that the trial Court has committed serious error in convicting the appellants for both the offences. In the result, following order :

19) The appeal is allowed. The judgment and order of learned 2nd Ad-hoc Additional Sessions Judge Nanded [Special Judge appointed under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act] delivered in Special Case No.1/2005 convicting and sentencing the appellants for offence punishable under section 302 read with 34 of Indian Penal

Code, for murder of Anusayabai and Subhadrabai, is hereby quashed and set aside. Both the accused stand acquitted of the said offence. Fine amount if any deposited by them is to be returned to them.

20) Similarly, the conviction and sentence given to the appellants for the offence punishable under section 3(1)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act is hereby set aside and the appellants stand acquitted of the said offence also. Fine amount if any deposited by them is to be returned to them.

21) Bail bonds of the accused shall continue for a period of six months under the provisions of section 437-A of the Code of Criminal Procedure.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)