

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 448 OF 2002

The State of Maharashtra = APPELLANT

VERSUS

- 1) Babu Reku Pawar, Age 30 Yrs.
- 2) Kashinath Reku Pawar, Age 26 Yrs.
- 3) Uttam Hira Jadhav, Age 30 Yrs.
- 4) Rekhu Gangaram Pawar, Age: 60 Yrs.
(Appeal as against Resp.No.4 stood
abated as per Hon'ble Court's Order
dated 15.12.2017)

R/o Accused 1, 2 & 4 at Jakni Tanda
and Accused No.3 at Mailapur Tanda = RESPONDENTS

Mr. S.M.Ganachari, APP for Appellant-State;

Mr. B.S.Kudale, Advocate holding for Shri Anant D.Gadekar,
Advocate for Respondent Nos. 1 to 4.

CORAM : SUNIL P.DESHMUKH &
P.R.BORA, JJ.

DATE : 2nd February, 2018.

JUDGMENT :(Per: P.R.Bora,J.)

- 1) Present appeal is filed by the State against the judgment and order passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.140/1996 decided

on 30th April 2002. The respondents herein, who are herein after referred to as accused were prosecuted in the aforesaid Sessions Case for the offences punishable under Sections 302, 504 read 34 of Indian Penal Code.

2) It was the case of the prosecution that on 15th May, 1995, the accused persons entered into a quarrel with Jagdish Ram Banjare in front of the grocery shop of Yusuf Qureshi in the evening at about 5.00 p.m. and in the said quarrel so occurred, made assaults on said Jagdish, which resulted in causing death of Jagdish.

3) One Yuvraj Parasram Rathod lodged a report of the said incident to Police Station, Naldurg, whereupon crime was registered against the accused and the investigation was set in motion. Initially offence registered against the accused was under section 307 of IPC. However, after death of Jagdish because of the injuries caused to him in the alleged occurrence, the offence which was initially registered under Section 307 of IPC was converted into the offence under Section 302 of IPC.

4) After the investigation was set in motion, the accused were arrested. The police visited the spot of occurrence; prepared spot panchanama as well as inquest panchanama of the death body of deceased Jagdish; dead body of Jagdish was forwarded for its post mortem examination. During the course of investigation, the Investigating Officer recorded the statements of necessary witnesses; collected necessary samples for their chemical analysis and after completing all the investigation filed charge sheet against the accused in the court of JMFC at Naldurg.

5) Since the offence charged against the accused was exclusively triable by the Court of Sessions, the learned JMFC, Naldurg committed the said case to the Court of Sessions. The learned Additional Sessions Judge framed the charge against all the four accused on 18.4.2001. The accused did not plead guilty and claimed to be tried.

6) In order to prove the guilt of the accused, the

prosecution examined as many 22 witnesses. The defense of the accused was of total denial. The learned Additional Sessions Judge after having assessed the evidence on record, acquitted all the accused by giving them benefit of doubt. Aggrieved by, the State has preferred the present appeal.

7) Shri S.M.Ganachari, learned APP appearing for the State, criticized the impugned judgment on various grounds. The learned APP submitted that despite ample evidence on record against the accused persons showing their complicity in knowing and intentionally causing death of deceased Jagdish, the learned Sessions Court on trifling grounds has acquitted the accused.

8) The learned APP, taking us through the evidence on record, submitted that there were eye-witnesses to the alleged incident and their evidence was duly corroborated by the medical evidence on record and other circumstances. The learned APP further submitted that recovery of weapons was also duly proved by the

prosecution and the injuries caused to deceased Jagdish, which ultimately resulted in causing his death, were also duly proved by examining the necessary witnesses in that regard. The learned APP further submitted that motive was also brought on record by the prosecution and in such circumstances; the learned Additional Sessions Judge could not have endorsed clean acquittal in favour of the accused persons. The learned APP further submitted that the evidence adduced by the prosecution needs re-appreciation by this Court. The learned APP further submitted that the evidence brought on record by the prosecution beyond reasonable doubt proves the guilt of the accused, and as such, all the accused are liable to be held guilty for the offences punishable under Sections 302, 504 read 34 of IPC and needs to be adequately punished.

9) The learned counsel appearing for the Respondents – accused supported the impugned judgment and order. The learned Counsel submitted that the court below has passed a well-reasoned order and no interference is required in the finding of facts recorded by

the trial court. The learned Counsel, therefore, prayed for dismissal of the appeal.

10) After having heard the submissions advanced by the learned APP and learned Counsel appearing for the accused and on perusal of the impugned judgment and the evidence on record, it does not appear to us that the trial court has committed any error in recording the acquittal of the accused. The material on record shows that three witnesses viz. PW 1 – Yuvraj Parasram Rathod; PW4 – Motabai Ram Banjare and PW 15-Kusumbai Raju Chavan were posed as eye-witnesses of the alleged assaults made on deceased Jagdish by the accused persons. One Rajendra Sakhare – PW 3 was also stated to be an eye-witness, but, he pleaded total ignorance about the alleged incident. In so far as evidence of PW 1 – Yuvraj; PW 4 – Motabai and PW 15 – Kusumbai, is concerned, the learned Trial Judge has observed that they have not corroborated the facts stated by each other.

. After having gone through the testimonies of the aforesaid witnesses, we do not see that the

observations made by the trial judge are erroneous or contrary to the evidence on record. As has been observed by the learned Trial Judge, PW 1 – Yuvraj appeared on the scene of occurrence bit later and possibly did not eye witness the accused making assaults on deceased Jagdish.

11) PW 4 – Motabai in her evidence has deposed that she was in her house and after hearing the quarrel came out of her house and reached on the spot. She has also deposed that, she witnessed the accused persons making assault on deceased Jagdish. However, in the cross-examination, PW 4 – Motabai has candidly admitted that her house is at such a distance from place of occurrence which can be covered within the time which required for preparing two Jawar Rotis (Jawar Bhakaris). The learned Additional Sessions Judge has observed that for preparing two Jawar Rotis, at least 5-10 minutes may be required. The learned Trial Judge has further observed that if the house of PW 4 – Motabai may be at the distance of 5-10 minutes of walk from the alleged occurrence, there was no possibility of PW 4–Motabai eye-witnessing the

assaults made on deceased Jagdish.

12) The third eye-witness Kusumbai (PW 15) had deposed in her testimony before the court that when she was returning to her house after completing the work, she saw the crowd in front of the STD booth and also heard noise and when she went near the crowd, she saw the accused persons making assaults on deceased Jagdish. In her examination-in-chief, though Kusumbai did state that she eye-witnessed Kashinath giving blow on head of Jagdish and Uttam by using tommy; in the cross-examination she has admitted that she walked away from the crowd and she cannot certainly tell as to exactly what was going in the crowd. Moreover, Kusumbai did not tell the police as to when her statement was recorded that Uttam gave blow with the help of tommy on the head of Jagdish. The Trial Court has, therefore, rightly observed that the evidence of Kusumbai could not have been relied upon to pose conviction of the accused for the serious offence of murder.

13) The learned Sessions Judge has also elaborately discussed the medical evidence on record. It was the specific case of the prosecution that the injury on the head of Jagdish was caused by accused Kashinath with the help of a wooden log which has resulted in causing death of Jagdish. However, the Medical Officer – Dr.Shankar Bhanudas Kasbe (PW 14) has clearly opined that there was no possibility of causing lacerated wound with the help of the wooden log. The said wooden log was shown to the Medical Officer during the course of his evidence. As has been observed by the learned Additional Sessions Judge in Para 25 of the judgment, the Medical Officer was quite firm on his opinion that the injury, which was noticed to be fatal, was not possible with the help of the wooden log. It has come in the evidence of the Medical Officer that CLW, in question, was having irregular edges. Further, the wooden log so seized by the prosecution during the course of the investigation, was sent for its chemical analysis and the report received thereof reveals that no blood was detected on the said wooden log. It has to be further stated that in his evidence the Medical Officer Dr. Kasbe

has categorically deposed that the injury on the head of deceased Jagdish, which ultimately resulted in causing his death, was possibly caused by an axe, which was the incriminating article in Crime No. 101/1995. Crime No. 101/1995 was registered on a cross-complaint filed by Kashinath Reku Pawar arising out of the same incident. During the course of hearing of the present Sessions Trial, the said axe, though it was seized in Crime No.101/1995, was called for by the Court and it was shown to Dr. Kasbe during the course of his evidence. The learned Sessions Judge has also observed that though it has come on record through some of the prosecution witnesses that Uttam Jadhav made an assault on deceased Jagdish with the help of tommy, the said evidence has not been corroborated by the circumstances as well as the medical evidence on record.

14) After having considered the entire evidence on record, what is transpired is the fact that there was a scuffle between the persons, who are the accused in Sessions Case No. 140/1996 and the persons who are the

accused in Sessions Case No. 186/1996. In Sessions Case No. 140/1996, it was the case of the prosecution that since Jagdish had refused to marry with daughter of accused – Babu Reku Pawar, the accused were annoyed and that annoyance has resulted in making assaults by them on deceased Jagdish causing his death. It has to be stated that Babu Reku Pawar (accused No.1) and Kashinath Reku Pawar (accused No.2) are real brothers of mother of deceased Jagdish; whereas accused No.4 – Reku Gangaram Pawar is father of mother of deceased Jagdish. Accused No.3 – Uttam Hira Jadhav is the brother-in-law of father of deceased Jagdish. Thus, the accused are the close relatives of deceased Jagdish. As against it, the another complaint was filed by Kashinath Reku Pawar against deceased Jagdish; Yuvraj Parasram Rathod; Ashok Ram Banjare and Raju Tukaram Rathod that the accused unnecessarily picked up quarrel with him when he was sitting in front of the grocery shop of Yusuf Qureshi. It was alleged by him that he was assaulted by Yuvraj Rathod by an axe.

15) After having considered the facts, as aforesaid, though it appears that there was scuffle between Babu Reku Pawar and others on one side and Yuvraj Parasram Rathod on the other side, no such evidence has come on record in both the Sessions cases so as to hold the accused persons in the respective Sessions cases guilty for the offences with which they are charged.

16) After having considered the entire evidence on record we do not see that any apparent error has been committed by the learned Additional Sessions Judge. There appears no substance in the appeal filed by the State. Hence, the following order.

ORDER

. The Criminal Appeal is dismissed.

(P.R.BORA)
JUDGE

(SUNIL P.DESHMUKH)
JUDGE