

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPEAL NO. 423/2016
WITH
CRIMINAL APPEAL NO. 345/2017

CRIMINAL APPEAL NO. 423/2016

- 1) Mayawati w/o Rupchand Lade
Aged about 40 years, occu: labour
- 2) Sulochana w/o Ramkrushna Lade
Aged about 42 years, occu: Labour

Both R/o Bolde, Tah. Sakoli
Dist.Bhandara. . ..

..APPELLANTS

v e r s u s

The State of Maharashtra
Through Police Station Officer
Police Station Sakoli
Dist. Bhandara. ..

RESPONDENT

.....
Mr. K.S.Motwani , Advocate for appellants
Mr. A.D.sonak, APP for respondent
.....

CRIMINAL APPEAL NO.345/2017

- 1) Ramratan s/o Rajiram Lade
Aged about 45 years, occu: labour
- 2) Smt.malta w/o Ramratan Lade
Aged about 38 years, occu: Labour

Both R/o Bolda, Tah. Sakoli
Dist.Bhandara. . ..

..APPELLANTS

v e r s u s

The State of Maharashtra
Through Police Station Officer
Police Station Sakoli
Dist. Bhandra.

..

RESPONDENT

.....
Mr. R.V.Khaparde, Advocate for appellants
Mr. A.D. Sonak, APP for respondent
.....

CORAM: P.N. DESHMUKH &
MRS. SWAPNA JOSHI, JJ.
DATE OF RESERVING: 30/10/2018
DATE OF PRONOUNCEMENT: 30/11/2018

JUDGMENT: (PER MRS.SWAPNA JOSHI, J.)

1. Both these Appeals have been directed against the judgment and order dated 24th October, 2016 in Sessions Trial No. 39/2014 delivered by learned Additional Sessions Judge, Bhandara convicting the appellants for offence punishable u/s. 302 r/ws. 34 of Indian Penal Code and were sentenced to suffer imprisonment for life and to pay a fine of Rs. 2000/- in default, to suffer RI for three months.

2. The prosecution case can be summarized as under :

On 17.04.2014 at about 9.00pm, the complainant-Amit Ishwar Kolhe (PW2) received a phone call that A1-Ramratan Lade, his wife A2-Smt.Malta Lade, A3-Smt. Mayawati Lade and A4-Sulochana Lade assaulted his father-Ishwar Kolhe by an iron rod and fist blows near the house of one Laldas Sahare. On receipt of the said information, complainant/PW2-Amit proceeded to the place of incident. He noticed his

father-Ishwar in a sitting position near the house of Laldas Sahare and there was a bleeding injury on the back side of his head. Many people had gathered at that place. PW2-complainant took his father to the Government Hospital at Sakoli with the help of some people. Ishwar was declared as dead in the said hospital. According to the complainant, on 17.4.2014 at about 9.00pm, there was a dispute between accused and the deceased on the count of an accident of brother of complainant, some six months back. Therefore, A1-Ramratan assaulted Ishwar on his head by means of iron rod. Similarly, A2-Malta assaulted Ishwar by means of stick, A3-Mayawati and A4-Sulochana gave fist blows to Ishwar, as a result of which he was seriously injured and then succumbed to his injuries. Complainant-Amit proceeded to the Police Station and lodged the complaint (Exh.40). On the basis of said report, offence came to be registered vide Crime No.48/2014 against the accused. PW10 Ganesh Khandate, API, visited the place of incident and conducted the spot panchnama (Exh.46). He then prepared inquest panchnama of the dead body of deceased-Ishwar in the presence of *Panchas* vide Exh.38. PW10 then arrested the accused. He took charge of the clothes of the accused under different Panchnamas. On 18.4.20104, A2-Sau.Malta showed her willingness to point out stick used in the crime, kept in the grass. Accordingly, memorandum panchnama was prepared vide Exh.74. A2-Sau,Malta then led the police and panchas to village Bolde. A2 produced the stick from the grass. Accordingly, seizure panchnama was prepared vide Exh.75. PW10 seized the clothes of deceased-Ishwar vide panchnama Exh.37. He also took charge of the clothes of A1-Ramratan vide panchnama (Exh.57). The seized articles were sent to CA office for its

analysis. On 20.4.2014, A1-Ramratan showed his willingness to point out the place where he had kept the iron rod used in the crime from near the canal of village Bolde. The memorandum Panchnama was prepared vide Exh.65. Accordingly, he produced the iron rod from the canal and seizure panchama was prepared vide Exh.58. PW11 sent the seized articles to Chemical Analysis for its analysis. During the course of investigation, statements of witnesses were recorded. After completion of investigation charge-sheet was filed. The case was committed to the court of Sessions. The learned Sessions Judge framed charge and conducted trial. On analysis of the evidence and after hearing both sides, he convicted the accused as aforesaid.

3. We have heard S/Shri Motwani and Khaparde, learned counsel for the appellants and Mr. A.D. Sonak, learned APP for respondent-State. Learned counsel for the appellants vehemently submitted that the learned trial Judge has not assessed the evidence led by the prosecution in its right perspective and has erroneously convicted them. They further submitted that there are glaring discrepancies in the testimony of the alleged eye witnesses which are not considered by the learned trial Judge. It is submitted that even the discovery of iron rod as well as the stick allegedly used in the crime is not proved by the prosecution beyond reasonable doubt. It is pointed out that the CA report in no way assist the prosecution case and although it shows bloodstains of blood group of deceased on the iron rod as well as the stick, the seizure of these articles has not been proved beyond reasonable doubt. The CA report would not assist the prosecution case in any manner. Finally, it is submitted

that the impugned judgment be set aside and the appellants be acquitted of the offences with which they are charged.

4. As against this, Shri A.D.Sonak, learned APP supported the impugned judgment and submitted that since the eye witnesses have submitted true account of the incident before the court which the learned trial Judge has considered in its proper perspective and the medical evidence also supports the prosecution case, the learned trial Judge has rightly convicted the accused.

5. In order to consider the rival contentions of both sides, it would be advantageous to consider the evidence led by the prosecution witnesses, more particularly, the alleged eye-witnesses PW1- Manoj Pathode, PW2-Amit Kolhe and PW4-Satish Lanjewar and the witnesses on the point of recovery of iron rod i.e. PW7-Raju Rahangdale and PW9-Gyandeo Kumbhare, coupled with the evidence of the Investigating Officers.

6. The testimony of PW1-Manoj Pathode, shows that on the date of incident i.e. 17.4.2014 between 7.15 and 7.30pm, A2 to A-4 informed him that a quarrel is going on between Ishwar and A1-Ramratan, therefore, PW1 proceeded to the place of incident. At that time, Ishwar was not seen at that place. When PW1 was sitting in the shop of one Raju Meshram with Nilkanth Wadhve and Dakram Kapgate, at about 8.00 to 8.15pm, Ishwar came in front of the house of Laladas

Sahare and a quarrel started between Ishwar and accused. A1-Ramratan came from house of Jagdish Rangari holding an iron rod. A1 then assaulted on the head of Ishwar by iron rod two to three times as a result of which Ishwar fell down. Thereafter A-2 to A-4 started beating Ishwar by fists and kicks. When PW1 tried to intervene, the accused ran away from the place of the incident. After some time son of Ishwar, namely, Amit offered water to Ishwar which he could not drink. Ishwar was not in a condition to drink. Ishwar was taken in a tractor to the Hospital wherein after examining, the doctor declared Ishwar as dead. According to PW1 there was some dispute between Ishwar and the accused, as an accident had taken place in which the younger son of Ishwar and sons of accused no.1 were involved and so, according to him, this must be the motive behind the alleged incident of assault. PW1 categorically stated that he visited the Police Station twice after the incident on 18.4.2014. and thereafter, he did not visit the Police Station.

7. The evidence of PW2-Amit Kolhe, who is the son of deceased, indicates that on the date of the incident at about 9.30pm, one Dhananjay Meshram informed him telephonically that accused had assaulted his father. On receipt of said message, PW2- Amit rushed to the place of incident and saw his father lying on the ground in an injured condition. He took him in a tractor to the Hospital where he was declared dead. PW2 then proceeded to the Police Station and lodged his report (Exh.40). Thus, it is clear that PW2 has not actually witnessed the incident.

8. The deposition of PW4-Satish Lanjewar shows that on the date of incident at about 7.30pm, he went to the pan-shop. After taking 'kharra' he sat near the *nullah* adjoining to the house of one Hulkaram Parvate. At about 9.00pm he heard the commotion. Therefore he rushed to the house of Laldas Sahare. He noticed A2-Malta Lade, A3-Mayawati Lade and A4-Sulochana Lade quarreling with Ishwar. At that time, A1- Ramratan Lade came from the house of Jagdish Rangari, holding iron rod and with the said rod he assaulted deceased-Ishwar on his head. As a result, deceased Ishwar fell down on the ground. A2-Malta brought one wooden stick which was lying in the *nullah* and assaulted on the head of deceased Ishwar. A3 Mayawati and A4- Sulochana too assaulted deceased by means of fist and kick blows. The testimony of PW4 shows that A1-Ramratan gave 2/3 blows of iron rod on the head of Ishwar. In the cross-examination, PW4 stated that A-1 assaulted deceased once and after 5 to 10 minutes, again he assaulted thrice.

9. A careful scrutiny of evidence of PW1-Manoj and PW4-Satish Lanjewar makes it clear that there is discrepancy in the version of PW1 and PW4 with regard to the manner in which the actual incident had taken place. As per the version of PW1-Manoj Pathade, A-1 assaulted the deceased on head with iron rod and A2 to A4 assaulted him by fist and kick blows, whereas the testimony of PW4-Satish Lanjewar indicates that A-1 assaulted the deceased by means of iron rod on his head, whereas A-2 assaulted him by means of stick on the head of deceased, while A-3 and A-4 assaulted him by fists and kicks. In these circumstances, it is not

clear as to how the deceased received injuries on his head, whether by iron rod used by A1-Ramratan or by the stick used by A2-Malta, as both of them allegedly assaulted the deceased on his head. Similarly, according to PW1-Manoj Patode, the quarrel was going on between deceased-Ishwar and A1-Ramratan, whereas PW4-Satish Lanjewar stated that A2, A3 and A4 quarreled with deceased-Ishwar. Thus, there are discrepancies in the version of PW1-Manoj and PW4-Satish on material aspects

10. In this context, the testimony of PW5-Gulab Parvate shows that at about 8.00pm, A2 to A4 informed him that a quarrel was going on between deceased Ishwar and accused. Thereafter they went away. After 10 minutes, PW5 proceeded to the place of incident. He noticed Ishwar lying in front of the house of Laldas Sahare and 10 to 15 persons had gathered there. On enquiry he came to know that A1-Ramratan gave blows of iron rod two to three times on the head Ishwar due to which he fell down. Significantly, PW5 does not speak about the remaining accused.

11. So far as the medical evidence is concerned, PW8 Dr.Ashish Chidhalore conducted the autopsy on the dead body of Ishwar and found the following external injuries:-

“1) Lacerated wound over posterior half of bilateral parietal region of scalp with irregular margin of size 13 cm x 1.5 cm x Bony depth with underlying cranium

exposed.

- 2) Lacerated wound over right parietal region of scalp directing upside down measuring 7 cm. X 1 cm x Bony depth with underlying cranium exposed and irregular margin.
- 3) Lacerated wound over anterior half of right parietal region of scalp measuring 5cm x 1 cm x Bony depth with underlying cranium exposed and irregular margin.
- 4) Lacerated wound over right temporal region of scalp measuring 2 cm x 0.5 cm x Bony depth with irregular margin and exposing underlying cranium,.
- 5) Two lacerated wound over occipital region of scalp with horizontal direction and irregular margin measuring 3cm.x 1cm x.05.cm each reaching up to bone.
- 6) Lacerated wound over left half of forehead with irregular margin measuring 1 cm. X 0.5 cm x Bony depth.
- 7) Perisital dark coloured swelling of right side present.
- 8) Abrasion over right lower legl (Anterior Aspect) Reddish measuring 1 cm,x3 cm.
- 9) Abrasion over digital phalynx of left Ring finger measuring 1 cm x 3 cm.”

The Doctor also found the following internal injuries.

- “i) Diffuse under scalp Haematoma is present over both cerebral Haemesphere, redish coloured.

ii) Communitied and displaced fracture of panetoceipital region of vault of skull measuring 13 cm x 10 cm. Fracture fragments are depressed.

lii) Meninges torn. Brain matter grossery deleterious and compressed. Film of susarachnoid haemorrhage over cerebal haemesphere are present.”

PW8-Dr. Ashish opined the cause of death due to craniocerebral injuries. He prepared the post mortem report (Exh.60). According to him, the injuries were possible by hard and blunt object. The injuries were possible by iron rod as well as wooden stick. Significantly, during the cross-examination, the Doctor opined that injuries mentioned in the PM report may also cause due to road traffic accident. If the medical evidence is compared to the evidence of the alleged eye witnesses, it is noticed that it is this specific case of the witness that A1-Ramratan gave 2/3 blows of iron rod on the head of deceased-Ishwar. It is, however, not clear as to how the deceased received so many injuries on his head. Thus, the medical evidence is not in consonance with the ocular testimony of the alleged eye witnesses which creates a serious doubt about the manner in which the alleged incident had taken place. It is not seriously disputed that deceased-Ishwar died a homicidal death, however, the involvement of the accused in the crime is not proved beyond reasonable doubt by the prosecution

12. On the point of recovery of iron rod, the prosecution relied upon the

testimony of PW7-Raju Rahangdale as well as PW9-Gyandeo Kumbhare who are the panch witnesses in whose presence the iron rod was taken charge at the instance of A-1 Ramratan. According to PW7-Raju, A1-Ramratan produced one iron rod from *nullah*. The police took charge of the said iron rod and prepared the panchnama (Exh.58). The testimony of PW7 does not throw any light on the aspect of A1 making any voluntary statement with regard to the discovery of the weapon. In view thereof, his testimony is of no assistance to the prosecution case.

13. PW9-Gyandeo Khumbhare states that on 18.4.2014, A1-Ramratan offered to produce the iron rod from Bolde village. The memorandum panchnama (Exh.55) was drawn accordingly. He along with other panch, police and A1-Ramratan proceeded to village Bolde by police jeep. A1 produced the iron rod from near the canal, which was seized by the police vide panchnama (Exh.58). In the cross-examination, PW9 stated that on 18.4.2014 twice he visited the Police Station. He failed to state the boundaries of the place from where the iron rod was produced. Significantly, PW9 identified a crowbar article "A" which was produced in the Court. Thus, the weapon-crowbar (article- A) does not appear to be the weapon which was taken charge at the instance of A-1 Ramratan from near the canal. Similarly, the said place appears to be accessible to the public and the said weapon does not appear to be in a concealed condition. In view thereof, it cannot be said that it was discovery of the weapon at the instance of A1-Ramratan.

14. It is worthwhile to note that Article-" A" is a crowbar which appears to be produced before the Court, whereas according to PW 8-Doctor, he had examined an iron rod which was rough with blunt margin, having length of 49 cm, blade 7.5 cm and circumference over middle 8.5 cm, over blade 8 cm, over top 11 cm and immediate blow top 8.5 cm. Thus, there appears to be difference in the weapon- Iron rod which was used in the offence and the iron rod which was examined by the Medical Officer. Thus, the recovery of iron rod has not been established by the prosecution.

15. On the point of recovery of stick, the testimony of PW10-Ganesh Khandate , API, shows that on 18.4.2014 A2-Malta offered to produced a stick used in the crime from near village Bolde from the grass. The memorandum panchnama was prepared accordingly vide Exh.74. A2-Malta produced the stick from the grass. The testimony of PW10 does not show that the wooden stick was concealed in the grass. The said Panchnama (Exh.75) does not appear to be a discovery panchnama as such. Similarly, the version of PW10 is not supported by any independent witness.

16. So far as the CA report is concerned, no doubt, it shows the blood group of the deceased on the iron rod as well as the stick, however, since the recovery of the stick and the iron rod is not proved by the prosecution beyond reasonable doubt, simply finding the bloodstains on the stick and the iron rod does not connect those weapons with the guilt of the accused.

17. In view of the facts and circumstances, it is held that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The learned trial Judge should have considered this aspect in its proper perspective. In that view of the matter, we are of the considered view that the Appeal deserves to be allowed.

Hence, the following order :

ORDER

- (a) Criminal Appeal Nos.423/2016 and 345/2017 both are allowed.
- (b) The impugned judgment and order dated 24th October, 2016 in Sessions Trial No. 39/2014 passed by learned Additional Sessions Judge, Bhandara, is set aside.
- (c) The appellants/accused are acquitted of the offence punishable u/s 302 read with Section 34 of the IPC, respectively.
- (d) The appellant no.1-Ramratan s/o Rajiram Lade in Criminal Appeal No. 345/2017, who is in jail, be released forthwith, if not required in any other offence. His bail bonds shall also stand cancelled.
- (e) The rest of the appellants are on bail. Their bail bonds shall stand cancelled.
- (f) Fine amount if any paid, shall be refunded back to appellants.

JUDGE

JUDGE

sahare