

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.679 OF 1997

DATTA ANGANAPPA BAGADI)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Deepak More a/w. Mr.Nitesh Mohite, Advocate for the Appellant.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 5th FEBRUARY 2019

JUDGMENT :

1 In pursuant to the order dated 22nd December 2018 directing issuance ofailable warrant against the appellant/accused passed by the co-ordinate Bench of this court (Coram : N.J.Jamadar, J.), appellant/accused Datta Bagadi is present before the court along with his learned counsel and that is how this appeal is required to be taken up for final hearing.

2 By this appeal, the appellant/accused Datta Bagadi is challenging the judgment and order dated 12th September 1997 passed by the learned Additional Sessions Judge, Kolhapur, in Sessions Case No.29 of 1997 thereby convicting him of offences punishable under Section 304-II, 323 and 504 of the Indian Penal Code. For the offence punishable under Section 304-II of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 5 years apart from direction to pay fine of Rs.2,000/- and in default to undergo rigorous imprisonment for 2 months. For the offence punishable under Section 323 of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 1 month apart from direction to pay fine of Rs.500/- and in default to undergo further rigorous imprisonment for 1 week. For the offence punishable under Section 504 of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 1 month apart from payment of fine of Rs.500/- and in default, to undergo further rigorous imprisonment for 1 week. Substantive sentences are directed to run concurrently by the learned trial court.

3 Facts in brief, leading to the prosecution and resultant conviction of the appellant/accused, are thus :

(a) Vitthal Bagadi (since deceased) is maternal uncle of appellant/accused Datta Bagadi. They both were residents of Vichare Mala slum area, Dhangar area of Kolhapur. The incident in question took place on 15th December 1996. In the evening of that day, PW2 Ratna Bagadi, who happens to be widow of deceased Vitthal Bagadi, took her grandchild Surekha for defecation and made her to sit in open at the gutter in front of the house for defecation. Appellant/accused Datta Bagadi, who was residing in the neighbourhood came and started protesting. In that process, he gave abuses to PW2 Ratna Bagadi. This caused her son PW1 Shankar Bagadi to intervene. The appellant/accused gave fist blows on mouth of PW1 Shankar Bagadi when PW1 Shankar Bagadi questioned him over his act in protesting in the matter. At that point of time, Vitthal Bagadi (since deceased), who happens to be father of PW1 Shankar Bagadi and husband of PW2 Ratna Bagadi, reached

the spot. He questioned the appellant/accused as to why he is beating his son PW1 Shankar Bagadi. Upon that, the appellant/accused gave kick blows on abdomen and private part of Vitthal Bagadi (since deceased) and went away from the spot. Vitthal Bagade (since deceased) became unconscious.

- (b) PW1 Shankar Bagadi and his cousin as well as neighbours took Vitthal Bagadi (since deceased) to the C.P.R. Hospital, Kolhapur. Upon examining Vitthal Bagade (since deceased) the Medical Officer at the C.P.R. Hospital, Kolhapur, declared him dead. That is how PW1 Shankar Bagadi lodged report Exhibit 12 of the incident with the C.P.R. Karveer Out Post with Laxmipuri Police Station of Kolhapur. Accordingly, Crime No.0 of 1996 for the offence punishable under Section 302 of the Indian Penal Code came to be registered against the appellant/accused Datta Bagadi. The First Information Report (FIR) was then sent to jurisdictional Police Station i.e. Shahapuri Police Station

where Police Sub-Inspector Kanase registered Crime No.303 of 1996 for the offence punishable under Section 302 of the Indian Penal Code. The appellant/accused came to be arrested on 16th December 1996 itself. Spot came to be inspected and Spot Panchnama was drawn. Clothes of the deceased came to be seized vide Panchnama Exhibit 9. Inquest notes at Exhibit 8 were taken by inspecting the dead body. Statement of witnesses came to be recorded and on completion of investigation, the appellant/accused came to be charge-sheeted for offences punishable under Sections 302, 323 and 504 of the Indian Penal Code.

- (c) Charge for offences punishable under Sections 302, 323 and 504 of the Indian Penal Code was framed and explained to the appellant/accused by the learned trial court. He abjured his guilt and claimed trial.
- (d) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all six witnesses. The

First Informant/son Shankar Bagadi is examined as PW1. The FIR lodged by him is at Exhibit 12. His mother and widow of deceased Vitthal Bagadi namely Ratna Bagadi is examined as PW2. Dr.Dattatraya Shitole, Autopsy Surgeon of C.P.R. Hospital, Kolhapur, is examined as PW3. Report of postmortem examination is at Exhibit 15. Raghunath Sutar, neighbour, who witnessed the incident is examined as PW4. Maruti Shewale, Police Head Constable, who recorded the FIR lodged by PW1 Shankar Bagadi is examined as PW5. His report is at Exhibit 19. Police Inspector Narendra Waghmare, who investigated the subject crime, is examined as PW6.

- (e) Defence of the appellant/accused was that of total denial. According to him, quarrel took place between him and PW1 Shankar Bagadi. They were separated by others who gathered there. His gold chain was snatched in that quarrel by PW1 Shankar Bagadi. He feigned ignorance about death of Vitthal Bagadi (since deceased).

- (f) Upon hearing the parties, the learned trial court, by the impugned judgment and order, came to the conclusion that the prosecution has failed to prove the offence punishable under Section 302 of the Indian Penal Code. However, the prosecution has proved that the appellant/accused Datta Bagadi had caused culpable homicide not amounting to murder by causing death of Vitthal Bagadi without any intention but with requisite knowledge that his act in assaulting Vitthal Bagadi is likely to cause death of Vitthal Bagadi. It is further held that appellant/accused Datta Bagadi had voluntarily caused hurt to PW1 Shankar Bagadi so also to deceased Vitthal Bagadi. The learned trial court further held that the appellant/accused had also committed the offence punishable under Section 504 of the Indian Penal Code. That is how, the appellant/accused came to be sentenced as indicated in the opening paragraph of the judgment.

4 I have heard the learned counsel appearing for the appellant/accused at sufficient length of time. He argued that even if case of the prosecution is accepted as it is, then also, the offence cannot travel beyond the one punishable under Section 324 of the Indian Penal Code. The learned counsel further argued that evidence of PW4 Raghunath Sutar that the appellant/accused lifted deceased Vitthal Bagadi and hit him on the ground is inconsistent with evidence of other eye witnesses. Evidence on record suggests that because of kick blows of the appellant/accused, Vitthal Bagadi (since deceased) suffered a fall and that is how he got injuries on his head. Those injuries were accidental injuries and the act was even without any knowledge that it may cause death of Vitthal Bagadi.

5 The learned APP supported the impugned judgment and order of conviction and resultant sentence.

6 I have considered the submissions so advanced and perused the record and proceedings including oral as well as documentary evidence adduced by the prosecution. Death of Vitthal Bagadi occurring on 15th December 1996 is not in dispute. The defence has admitted Inquest notes Exhibit 8 which shows death of Vitthal Bagadi. PW3 Dr.Dattatraya Shitole, Medical Officer, working with the C.P.R. Hospital, Kolhapur, had conducted postmortem examination of the dead body of Vitthal Bagadi on 15th December 1996. His evidence shows that dead body of Vitthal Bagadi was having minor abrasion over forehead and raised contusion of 2 inches diameter over occipital region on right side. This Autopsy Surgeon noticed under scalp haematoma over occipital region 3 inches in diameter apart from fractured skull and subdural haematoma at the base of the skull. The Autopsy Surgeon has opined that death of Vitthal Bagade was caused because of shock due to fractured skull with intracerebral hemorrhage. Cross-examination of this witness shows that these injuries are possible if a person falls on the ground by losing balance. Evidence of this Medical Officer is corroborated by

undisputed autopsy report which is at Exhibit 15. This evidence proves that death of Vitthal Bagadi had occurred on 15th December 1996.

7 Now let us examine whether death of Vitthal Bagadi was caused by the appellant/accused by causing such injuries which were likely to cause his death, with requisite knowledge that by inflicting such injuries, he is likely to cause death of Vitthal Bagadi. There are three eye witnesses to the incident in question. Those are PW1 Shankar Bagadi, who apart from being First Informant, is son of the deceased Vitthal Bagadi. PW2 Ratna Bagadi is also an eye witness to the incident in question so also PW4 Raghunath Sutar. Evidence of PW1 Shankar Bagadi and PW2 Ratna Bagadi is consistent. Undisputedly, the incident took place because PW2 Ratna Bagadi made her granddaughter to sit at open gutter in front of the house for defecation. The appellant/accused protested this act. The FIR itself shows that he is neighbour of PW2 Ratna Bagadi and PW1 Shankar Bagadi. Evidence of both these witnesses shows that because of protest by

the appellant/accused, as granddaughter of PW2 Ratna Bagadi sat in open for defecation, quarrel started. He gave abuses to PW2 Ratna Bagadi. PW1 Shankar Bagadi then participated in the quarrel and questioned the reason for protest by the appellant/accused. As per version of PW1 Shankar Bagadi, appellant/accused Datta Bagadi then gave fist blows on his mouth. PW2 Ratna Bagadi has stated that the appellant/accused gave slap on cheek of PW1 Shankar Bagadi. Both these witnesses are unanimous in stating that then Vitthal Bagadi (since deceased) arrived on the spot and tried to separate the quarreling parties. As per version of PW1 Shankar Bagadi, appellant/accused Datta Bagadi gave kick and fist blows on private part of his father Vitthal Bagadi (since deceased) which led Vitthal Bagadi (since deceased) to become unconscious on the spot. Similar is version of PW2 Ratna Bagadi. She stated that as her husband Vitthal Bagadi (since deceased) tried to separate the quarreling parties, he suffered a fall on the ground and then appellant/accused Datta Bagadi gave kick on stomach or private part of her husband. She appeared to be not specific as to whether the kick blow landed on

abdomen or private part of her husband. She further deposed that her husband was then taken to the C.P.R. Hospital, Kolhapur.

8 Careful scrutiny of evidence of PW1 Shankar Bagadi and PW2 Ratna Bagadi, as such, shows that deceased Vitthal Bagadi tried to separate the quarreling parties and had suffered a fall in that process. As per version of PW2 Ratna Bagadi, after her husband Vitthal Bagadi (since deceased) suffered a fall, he was given a kick blow by appellant/accused Datta Bagadi. PW1 Shankar Bagadi is not narrating the incident in that manner. As per his version, as soon as his father Vitthal Bagadi (since deceased) intervened, appellant/accused Datta Bagadi gave fist and kick blows at private part of his father Vitthal Bagadi (since deceased). As against this, PW4 Raghunath Sutar, who is neighbour, has deposed that as soon as Vitthal Bagadi (since deceased) intervened, the appellant/accused gave fist blows on his stomach and private part. Then, appellant/accused Datta Bagadi lifted Vitthal Bagadi (since deceased) and had thrown him on ground twice.

9 It is, thus, seen that all three eye witnesses are narrating the incident in different manner though they are consistent in stating that appellant/accused Datta Bagadi gave kick blows on private part of the deceased Vitthal Bagadi. PW2 Ratna Bagadi is stating that her husband first suffered a fall and then was hit by appellant/accused Datta Bagadi. Part of body chosen for giving kick blows, as stated by these witnesses, was either abdomen or private part of deceased Vitthal Bagadi. If this ocular evidence is compared with the medical evidence, then it is seen that during autopsy no injury was found at the external genital of deceased Vitthal Bagadi. His organ of generation was found normal in the postmortem report Exhibit 15. As against this, as seen from version of Autopsy Surgeon PW3 Dr.Dattatraya Shitole and postmortem report at Exhibit 15, deceased Vitthal Bagadi had suffered head injury causing fracture of skull and his death occurred due to fractured skull and intracerebral hemorrhage. If ocular evidence coming on record from mouth of PW2 Ratna Bagadi and PW4 Raghunath Sutar is appreciated in

proper perspective, then it becomes clear that PW2 Ratna Bagadi has properly described the incident of assault on her husband Vitthal Bagadi (since deceased). She has stated that initially her husband suffered a fall and then he was hit by kick blows at the private part by appellant/accused Datta Bagadi. Other witness namely PW4 Raghunath Sutar appear to be adding embellishment to his version by stating that appellant/accused Datta Bagadi lifted Vitthal Bagadi (since deceased) twice and hit him on the ground. Thus, it is clear that, when Vitthal Bagadi (since deceased) tried to intervene in the quarrel, he suffered a fall and then he was assaulted by means of kick blows by appellant/accused Datta Bagadi. Injuries suffered by deceased Vitthal Bagadi on his head at the best can be called as accidental injuries. Those cannot be attributed to appellant/accused Datta Bagadi as neither PW1 Shankar Bagadi nor his mother PW2 Ratna Bagadi are stating that appellant/accused Datta Bagadi had assaulted Vitthal Bagadi (since deceased) on head by any means. Thus, it cannot be said that appellant/accused Datta Bagadi had caused culpable homicide of Vitthal Bagadi which is not amounting to murder with

the knowledge that by his act of assaulting Vitthal Bagadi (since deceased) he is likely to cause death of Vitthal Bagadi.

10 The incident as unfurled by prosecution witnesses goes to show that appellant/accused Datta Bagadi was intending to commit hurt to deceased Vitthal Bagadi by kicking him on his abdomen. Similarly, he has also caused hurt to PW1 Shankar Bagadi by hitting him on his face. Thus, the prosecution has proved commission of the offence punishable under Section 323 of the Indian Penal Code by appellant/accused Datta Bagadi. Evidence on record does not reflect commission of the offence punishable under Section 304-II of the Indian Penal Code by appellant/accused Datta Bagadi. Similarly, there is no evidence to infer commission of the offence punishable under Section 504 of the Indian Penal Code.

11 The net result of the foregoing discussion requires me to pass the following order :

ORDER

- i) The appeal is partly allowed.
- ii) Conviction and resultant sentence imposed on appellant/accused Datta Bagadi for the offence punishable under Section 304-II of the Indian Penal Code is quashed and set aside.
- iii) Similarly, his conviction for the offence punishable under Section 504 of the Indian Penal Code so also the resultant sentence is quashed and set aside.
- iv) However, conviction of appellant/accused Datta Bagadi and the resultant sentence imposed on him for the offence punishable under Section 323 of the Indian Penal Code is maintained.
- v) The appeal is accordingly disposed off.

(A. M. BADAR, J.)