

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.380 OF 1999

The State of Maharashtra

].... Appellant/Orig.Complainant

versus

- | | | |
|----|------------------------------|---------------------|
| 1] | Dnyaneshwar Vasant Yepre, |] |
| | age 29 yrs. Occ. Service |] |
| | Res. At 1324, Raviwar Peth, |] |
| | Pune |] |
| | |] |
| 2] | Ashok Anant Yepre |] |
| | age 49 yrs. Occ. Service |] |
| | Res. At 1324 Raviwar Peth |] |
| | Pune |] |
| | |] |
| 3] | Yogesh Laxman Kondhare |] |
| | age 27 yrs. Occ. Wireman |] |
| | Res. At 1683, Shukrawar Peth |]..... Respondents. |
| | Pune |] (Accused) |

Mr. V B Konde-Deshmukh, APP for the Appellant/State.

Mr. S V Marwadi a/w Mr. N M Nadar for Respondent Nos.1 to 3.

CORAM : S. S. SHINDE,
V. G. BISHT, JJ

DATE : 05th FEBRUARY 2020

ORAL JUDGMENT : (PER S. S. SHINDE, J.)

1 The Appellant-State has preferred this appeal against the judgment and order passed by the learned 6th Additional Sessions Judge, Pune in Sessions Case No.386 of 1995 thereby acquitting the Respondents – Accused for the offence punishable under Sections 302, 323 and 504 r/w Section 34 of the Indian Penal Code (for short “IPC).

2 The Respondents – Accused were tried for having committed offence of murder of Ashok Dattatraya Babade (the Deceased) on 04/03/1995 at about 9.45 pm in front of the utensils factory of the deceased at Ravivar Peth, Pune on account of the alleged dispute in between the employees of Ashok Babade (the deceased) and the accused. It is the case of the prosecution that on the date of incident the accused had been to the factory of deceased, they demanded the vessel for water (Tambya), therefore, at the request of Accused No.1 a plastic can was given by employee Gunjkar to Accused No.1. After completing dinner, when the complainant went outside the factory to bring the said can from the accused, he noticed that Accused Nos.1 and 3 were consuming liquor in the open space which is in front of the factory. When the complainant demanded back the can, Accused No.1 became annoyed and started abusing and insulting him. Therefore, the complainant apprised his employer i.e. the deceased. It is the case of the prosecution that when the deceased inquired with the accused, Accused Nos. 1 and 3 started abusing and assaulting the deceased. At that time, Accused No.2 came there and caught hold the deceased from back side, then Accused No.1 gave the knee blows on the private part i.e. scrotal of the deceased on two occasions and hit the abdomen with the head due to which the deceased fell down, then also the Accused Nos.1 and 3 alleged to have assaulted the deceased. When the complainant tried to intervene, he was assaulted on the abdomen by Accused

No.3 . Kondu Kondhalkar came there and took the deceased to K E M Hospital, Pune. The complainant went to Subhash Police Chowky to inform the incident. Thereafter he went to K E M hospital, where he came to know that Babade is no more. The complainant was also treated in the Sasoon Hospital for the injury sustained by him. According to the prosecution, due to the alleged injuries to the testis of deceased, the deceased died a homicidal death. On the basis of the complaint of Gunjkar, the police registered the crime being C R No.51/1995 for the offences punishable under Sections 302, 323, 504 r/w 34 of the IPC against the accused on 05/03/1995.

3 After registration of offence, it appears that, the matter was investigated by Investigating Officer Vithal Sopan Ghadge (PW10), who during the course of investigation visited the spot of incident, prepared panchanamas including inquest panchanam, spot panchanama, panchanama of seizure of clothes of deceased, recorded the statements of witnesses, as also collected Post-Mortem Notes. The IO thereafter arrested the Respondents – Accused and during their arrest prepared panchanama of seizure of clothes of accused. After completing the investigation, a charge-sheet came to be filed against the Respondents – Accused. The learned Additional Sessions Judge, Pune thereafter framed charge against the Respondent – Accused for committing offences punishable under Sections 302, 323, 504 r/w 34 of the IPC.

4 The charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial. To bring home the guilt of the accused, during the trial, the prosecution has examined in all ten witnesses in support of its case. The Trial Court has recorded statements of accused under Section 313 of the Criminal procedure Code. The learned Additional Sessions Judge, after considering the evidence and material on record came to the conclusion that the prosecution has failed to bring home the guilt of the accused and has failed to prove that the death in question is homicidal, and the witnesses were assaulted and/or abused. As stated herein above, the learned Additional Sessions Judge, by giving benefit of doubt to the accused, by the impugned judgment and order, acquitted the Respondents – accused for the offences punishable under Section 302, 323, 504 r/w 34 of the IPC. Hence this Criminal Appeal filed by the State against the said order of acquittal.

5 We have heard the learned APP Mr. V. B. Konde-Deshmukh appearing for the Appellant – State and the learned counsel Mr. S V Marwadi appearing for the Respondents/Accused. With their able assistance, we have also perused the grounds taken in the Appeal Memo, the evidence led by the prosecution, the documents produced on record and the reasons recorded by the learned Additional Sessions Judge in the impugned judgment

6 The learned APP appearing for the Appellant/State invites attention of this Court to the evidence of eye witnesses and in particular evidence of Anita Ashok Babade (PW-2), who is the wife of deceased Ashok Babade and Kamal Vasant Shinde (PW-4) and submits that both these witnesses so also Shantaram Pandurang Yadav (PW-5) have stated that the accused assaulted on the private part of Ashok Babade (the Deceased). It is submitted that the evidence of the aforesaid three eye witnesses is consistent. Even Bandu Deoram Gunjkar (PW-1), who is the informant, has stated about the manner in which the accused assaulted Ashok Babade (the Deceased). It is submitted that Dr. Laxmikant Kashinath Bade (PW-6), who is the medical officer, also noticed the injuries on the private part i.e. scrotal of the deceased, and therefore, there is consistency in the ocular evidence and the medical evidence and therefore the findings recorded by the Trial Court of acquitting the Respondents/Accused deserve to be interfered with and the Respondents/Accused should be convicted.

7 On the other hand, the learned counsel appearing for the Respondents/Accused, invites attention of this Court to the evidence of Shantaram Pandurang Yadav (PW-5), in particular paragraph 4 of this cross examination and submits that this witness (PW-5) has stated that there were no lights at the place of incident and when Babade (the deceased) fell down, the only persons who came there were Nandkumar Kondhalkar, Chandrakant

Ghade and Shekhar Shinde. It is further submitted that the aforesaid evidence of Shantaram Pandurang Yadav (PW-5) makes it clear that Anita Ashok Babade (PW-2) and Kamal Vasant Shinde (PW-4) did not witness the incident. The learned counsel for the Respondents/Accused submits that PW-1 has stated that the accused assaulted in the abdomen Ashok Babade (the deceased) and not on the private part as stated by PW-5. It is submitted that the evidence of PW-1 and PW-5 is not consistent with each other and therefore deserves to be discarded. The learned counsel for the Respondents invites attention of this Court to the medical evidence, and in particular cross examination of Dr. Laxmikant Kashinath Bade (PW-6) and submits that the said witness has stated that abrasion on the private part of Ashok Badade (the deceased) was not possible due to the alleged blows given by the accused. It is further submitted that Dr. Laxmikant Bade (PW-6) also opined that Injury Nos. 1 to 6 are possible by fall on the rough substance and likewise the Injury No.7 is also possible. The learned counsel for the Respondents/Accused submits that the Investigating Officer in his deposition admitted that there was rough surface on the spot and therefore relying upon the findings recorded by the Trial Court, the learned counsel appearing for the Respondents/Accused submits that a plausible view is taken by the Trial Court and therefore, this Court may not interfere in the order of acquittal.

8 We have carefully perused the evidence of the 4 alleged eye

witnesses so also the evidence of Medical Officer (PW-6) and the evidence of Investigating Officer (PW-10). Upon careful perusal of the evidence of Bandu Deoram Gunjkar (PW-1), in so far as actual incident is concerned, he stated about the presence of Accused Nos.1 and 3. He also stated details about the conversation between himself and those Accused. He apprised the incident to Ashok Badade (the Deceased). The deceased thereafter went to the place where Accused Nos.1 and 3 were sitting and were consuming liquor. The deceased inquired with Accused Nos.1 and 3 as to why they had assaulted his workers, but the Accused Nos.1 and 3 started abusing Ashok Badade and started beating him. At that time Accused No.2 came there who is the uncle of Accused No.1. The Accused No.2 thereafter caught the waist of Ashok Badade from back side and put his two hands around the waist. The Accused No.1 thereafter had given 2/3 blows with the knee in the abdomen of Ashok Badade and also had given 2/3 dash with the head in the abdomen. When he tried to intervene, the Accused No.3 beat him. Thereafter PW.1 has stated further details, but so far as the main incident is concerned, he has stated that Accused Nos.1 and 3 started abusing Ashok Badade and started beating him and Accused No.1 had given blows with the knee in the abdomen of Ashok Badade (the Deceased). However, Shantaram Pandurang Yadav (PW-5) deposed that at that time Accused No.2 came there and he caught Badade and thereafter Accused No.1 had given the blows with a knee on the private part of Badade as well as he had given a dash with the head in the abdomen due to which

Badade fell down, hence they raised hue and cry, and hearing it the neighbours gathered. The said neighbours were Nandu Kondhalkar, Chandrakant Lande and Shekhar Shinde and they removed Badade to hospital. PW-5 has not stated the presence of Anita Ashok Babade (PW-2) and Kamal Vasant Shinde (PW-4). This witness (PW-5) has also admitted in his cross examination that there were no lights at the place of incident.

9 Upon perusal of evidence of Anita Ashok Badade (PW-2), she has stated that Accused assaulted her husband on his private part i.e. scrotal , so also Kamal Vasant Shinde (PW-4) has stated that accused assaulted Ashok Badade on his private part i.e. scrotal . The prosecution has not brought on record the distance between the house of Anita Ashok Badade and the actual spot of incident. The evidence of Shantaram Yadav (PW-5) clearly rules out the possibility of witnessing the incident by PW-2 and PW-4. Upon careful perusal of the cross examination of PW-2, her conduct appears to be unnatural inasmuch as when she was asked by defence counsel, whether she tried to rescue her husband i.e. Ashok Badade (the deceased), she stated that she herself and Shinde never tried to rescue her husband as he had already fallen down. She also stated that they never tried to administer the water to her husband. The said conduct of PW-2 appears to be most unnatural.

10 The Medical Officer – Dr. Laxmikant Kashinath Bade (PW-6) in his

deposition stated about the injuries. He had noticed following external injuries on the person of Ashok Badade (the Deceased) :-

- 1] Abrasion 2" below left knee joint on leg, vertical in direction 1 ½" x ½", red in colour.
- 2] Abrasion front of left patella measuring ½" x ¼", red in colour.
- 3] Abrasion right arm middle measuring ¾" x ½", red in colour.
- 4] Abrasion right index finger proximal phalynx dorsum measuring ¼" x ¼".
- 5] Abrasion over the back mid-line 2" below 7th cervical spine measuring ¾" x ½", red in colour.
- 6] Abrasion posterior side right fore-arm upper 1/3, measuring ½" x ¼", red in colour.
- 7] Abrasion on front of the scrotal involving both halves measuring 2" x 1 ½" with contusion in mid-line ¾" x ½", red in colour.

The Medical Officer (PW-6) also noticed the following internal injuries :-

- 1] Haematoma over both testis 1" x ½" each.
- 2] On sectioning of the testis inter.
- 3] Stitial haematoma (inside tissue present in both testis)

PW-6 further stated that all injuries were anti-mortem and were recent. He further deposed that the external Injury No.7 associated with internal injuries are sufficient in ordinary course to cause death. However, the Medical Officer (PW-6) voluntarily stated that the abrasion on the private part of Ashok

Badade (the deceased) is not possible due to said assault. He further stated in his cross examination that all external injuries were accompanied by abrasions, and Injury Nos. 1 to 2 being on front side, are possible due to fall on the rough substance. He further deposed that Injury Nos.1 to 6 are simple in nature. He further deposed that Injury No.7 is possible by fall on any protruding or uneven hard and rough substance. In his cross examination, PW-6 opined that by knee blow the Injury No.7 is not possible, and Injury No.7 may result into instant death or sudden death. He further opined that in case of blow with the substance in the abdomen there may not be external injuries but there may be internal injuries.

11 If the evidence of eye witnesses is considered in the light of the opinion expressed by Medical Officer Dr. Laxmikant Bade (PW-6), there appears to be inconsistency inasmuch as PW-6 in his evidence voluntarily stated that the abrasion is not possible on the private part i.e. scrotal of the deceased due to alleged knee blows given by the accused.

12 Vithal Sopan Ghadge (PW-10), who is the Investigating Officer, deposed in his cross examination that apart from the inquest, there is no evidence with him to show as to what was the condition of the dead body and the clothes. He further stated there is no reference in the spot panchanama to the effect that the constable were deputed to guard the spot. He accepted the

suggestion of the defence that the spot is having rough and broken country tiles. Therefore, if the evidence of eye witnesses (PW Nos.1, 2, 4 and 5), Medical Officer (PW-6), and Investigating Officer (PW-10) is considered in its entirety, it cannot be definitely gathered that the Respondents/Accused are responsible for the death of Ashok Badade (the deceased).

13 We have carefully perused the findings recorded by the Trial Court. Those findings appear to be in consonance with the evidence brought on record. The Trial Court has taken a plausible view. Once the plausible view is taken by the Trial Court, in that case, there is no reason to cause interference in the order of acquittal. Even for a moment, it is assumed that another view is possible on the basis of the evidence brought on record by the prosecution, however, once a plausible view is taken by the Trial Court, in view of the settled position in law, no interference can be caused in the order of acquittal, We are of the considered view that no case is made out to interfere in the order of acquittal passed by the Trial Court.

14 For the discussion made in the foregoing paragraphs, we do not find any substance in the Appeal. The Criminal Appeal stands dismissed. Bail Bonds, if any, shall stand cancelled.

Laxmikant [V. G. BISHT, J]
G.
Chandan

[S. S. SHINDE , J]

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