

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 312 OF 2003

The State of Maharashtra ...Appellant
Versus
Shankar Dehu Waghmare & ors. ...Respondents

Mr. H. J. Dedhia, APP for the State/Appellant.
None for respondents.

CORAM: A. S. GADKARI &
N. J. JAMADAR, JJ.
DATED : 17th SEPTEMBER, 2020

PC:-

1. Heard Mr. Dedhia, the learned APP for the State/appellant. Perused the record.
2. This is an appeal against the impugned judgment and order dated 29th August, 2002, passed by the learned Additional Sessions Judge, Raigad-Alibag, in Sessions Case No.164 of 1999, thereby acquitting the respondent from the offence punishable under Sections 302 read with 34 and 452 read with 34 of the Indian Penal Code.
3. The prosecution case in nutshell is that, on 18th May, 1999, at about 1.00 am. in the midnight, the respondents in furtherance of their common intention committed house trespass, entered into the house of deceased Mahipat Waghmare and committed his murder by assaulting him on his face and

other parts of the body with an axe. The motive alleged by the prosecution as enmity between the deceased and the respondents due to local politics of village Sangode, Tadwadi, Taluka Khalapur, District Raigad.

4. Minute perusal of the record would indicate that Krishna (PW-2) the son of deceased was an alleged eye witness to the incident. In his testimony he has stated that at about 9.00 pm. the lights in the house were switched off and a kerosene lamp was kept in the middle of the house. At about 1.00 am., he woke up due to noise and saw respondent no.2 Dehu with an axe in his hand assaulting his father with an axe. As he got frightened after seeing the ghastly attack, just kept lying at the said place along with his nephew, namely Balu (PW-3). He had seen all the three respondents in the house. At about 3.00 am. his sister Avadi woke up to answer nature's call and while going to toilet she noticed that, blood had spilled on the floor and therefore she raised alarm by shouting after seeing the blood. The family members of deceased Mahipat thereafter approached the Police Patil, who in turn lodged complaint with the police.

5. Mr. Laxman N. Patil (PW-1) was the Police Patil of the said village at the relevant time. In his testimony he has stated that when Krishna (PW-2) son of deceased along with his uncle

Sakharam approached him, they told him that they were not aware who had killed deceased Mahipat. He has further admitted that on the day of incident, at the relevant time the supply of electricity was not available in the house of Mahipat and they were using kerosene lamp. The testimony of Balu Waghmare (PW-3) is similar to that of PW-2.

6. Minute perusal of evidence on record clearly indicates that, PW-2 and PW-3 have not deposed true and correct facts before the Court and the defence was successful in bringing the exact true and correct facts on record from the cross-examination of PW-1. The prosecution case proceeds on the footing that there were two eye witnesses to the incident. However, the credentials of PW-2 and PW-3 have been impeached through the testimony of PW-1. The record clearly reveals that, there were other family members also present in the house such as Avadi, sister of PW-2, who have not been examined by the prosecution to bring the true and correct facts on record. The conduct of PW-2 and PW-3 is shrouded with suspicion as according to us they have made material improvements in their testimony.

7. Perusal of the entire evidence on record and the impugned Judgment and Order, would clearly indicate that, the Trial

Court has not committed any error either in law or on facts while passing the Judgment and Order dated on 29th August, 2002.

8. We find no merits in the appeal. Appeal is accordingly dismissed.

9. This order is digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

[N. J. JAMADAR, J.]

[A. S. GADKARI, J.]