

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1449 OF 2003**

State of Maharashtra ... Appellant

V/s.

Uttam Khandu Salve,
23 years, R/o Walmik Nagar, Panchawati,
Nashik. ... Respondent

Ms. Prajakta P. Shinde, APP for the Appellant - State.

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**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 6th OCTOBER 2020.

JUDGMENT PRONOUNCED ON : 16th OCTOBER 2020.

JUDGMENT : PER SADHANA S. JADHAV, J.

1. The State of Maharashtra being aggrieved by the judgment and order dated 14th July 2003 passed by the Adhoc Additional Sessions Judge, Nashik thereby acquitting the accused for the offence punishable under section 302 of the Indian Penal Code and convicting him for the offences punishable under section 323 and 504 of the Indian Penal Code has filed the present appeal.

2 The facts which are unfolded by the prosecution are as follows :-

(i) Smt. Pratibha Dharmapal Umale was residing in the neighbourhood of the respondent – Uttam Khandu Salve. On 15th March 2002 she filed a report at Panchavati Police Station, Nashik alleging therein that ever since the demise of her husband four years ago, she had started residing with her parents Shewantabai and Ram Rathod along with her three children.

(ii) On 13th March 2002, at about 10.00 am she had gone to fetch water from the municipal tap near Ram Mandir. Her neighbour Jeejabai had overtaken her and had taken water out of turn and had filled water therefore, there was a verbal altercation between both the women. Her father was concerned and therefore, had complained about the same to panch Ashok Nirbhavane who had warned both the ladies and others to refrain from quarreling over water.

(iii) That on 15th March 2002 at about 8.30 am when she was filling water from the tap the son of Jeejabai viz. Uttam i.e. the respondent in the present case abused her as he was annoyed because the complainant had quarreled with his mother. She was trying to be defensive and at that juncture, the respondent had slapped her, he was armed with a wooden log. He threatened her of dire consequences and therefore, she rushed towards her house. At that time, her father was

heating water outside the house. She tried to disclose the incident to her father. She was followed by the respondent who assaulted her father with the wooden log on the nape. Her father collapsed. The neighbours viz. Mr. Vandana Tadge and Rekha Jogdand had seen the incident of assault. The respondent fled from the spot. Pratibha tried to administer water to him, but by then he had breathed his last. The body was sent for autopsy. Post-mortem notes indicates that the cause of death was “cardio respiratory arrest due to fracture of C₃ C₄ spine”. No external visible injury was noted in column nos.17 and 19. On the basis of the said report, Crime No.52 of 2002 was registered at Panchavati Police Station against the respondent for the offences punishable under sections 302, 323 and 504 of the Indian Penal Code and under section 135 of the Bombay Police Act.

3 At the trial, the prosecution examined 8 witnesses to bring home the guilt of the accused. However, the material witnesses are P.W.1 – Pratibha Umale, the complainant - the daughter of the deceased. Most of the witnesses have resiled from their earlier statements and therefore, the material witnesses are P.W.1, P.W. 6, P.W. 7 and P.W. 8. P.W. 6 – Manoj Pimpalse resides in the neighbourhood,

P.W.7 – Tanhaji Sawant is the Investigating Officer and P.W. 8 – Shailendra Patil is the Medical Officer who performed autopsy and has proved post-mortem notes and the opinion given at the instance of the Investigating Agency.

4 P.W.1 – Pratibha has deposed before the Court that there was an altercation between the mother of the respondent and herself two days prior to the incident and on the day of incident at about 8.00 a.m. when she was at the municipal tap for fetching water, the accused had beaten her with fist blows and therefore, she was constrained to leave the vessels at the tap and rush to her house. She was followed by the accused, who was holding a stick in his hand. She saw her father igniting the firewood in the hearth and at that time, the accused gave a blow of stick on the 'back of the head' of her father. She has proved the contents of the report under section 154 of Cr.P.C., which is marked and exhibited as Exh.12.

5 It is elicited in the cross-examination that the deceased was suffering from leprosy and had lost his fingers. Similarly, one of his legs was amputated. That the deceased was an alcoholic and after consuming alcohol he used to become abusive. The most pertinent admission in

the cross-examination is that the deceased was complaining of joint pain in the chest and that his health was deteriorating due to his addiction to alcohol. The relation between the accused and the deceased were cordial. It is also conceded in the cross-examination that she was passing through difficult times and was struggling to maintain her children and her family problems and hence, she had become furious in nature. That it is also conceded by her that on the day of incident when she had been to the water tap, the mother of the accused was already taking water from the water tap. In the morning, she is pressed with completing her domestic chores and, therefore, is in hurry. The mother of the accused is also suffering from leprosy and she had lost her two fingers because of leprosy.

6 The admissions of P.W.1, the star witness speak for itself. The deceased was suffering from chest pain and had also complained about it. The cause of death is also cardio respiratory shock. It is true that he had suffered a fracture of C₃ and C₄, but there is a specific admission by P.W.8 – Medical Officer that “death due to injury to the spine are rarely possible”. He has also opined that when a person is hit by a blunt object bruises may occur on the body. Such bruises are not

commonly found on the part of the body like nape of the neck, gluteal region, sole and palm. The Doctor has also denied that damage to the spinal cord will not result in death, but according to P.W.8, it would cause only paralysis. In the present case, the deceased was already a leper. The Doctor has specifically stated in the cross-examination that the injury on the spine of Ramsingh rules out possibility of cardio respiratory arrest because of fear, fright or anger. It is reiterated that the cause of death is cardio respiratory arrest.

7 P.W.6 – Manoj Pimpalse is the only witness besides P.W.1 who has testified that he had seen the accused following P.W.1 with a stick in his hand.

8 Besides the medical evidence, the prosecution has also placed implicit reliance on the evidence of P.W.7, who has deposed before the Court that a stick was recovered at the instance of the accused and that the accused in the presence of the panchas had stated in his memorandum at Exh.20 that he had assaulted P.W.1 and the father of P.W.1 with a stick. In fact, it is a memorandum leading to recovery and the inculpatory statement cannot be considered, as it was made to the Police.

9 The learned Sessions Judge has placed implicit reliance upon Mosby's Medical Encyclopedia, in which the symptoms of leprosy have been elaborately discussed. The learned Sessions Judge has also discussed the Mosby's Medical Encyclopedia to describe the causes of spinal cord injuries in patients of leprosy. One of the reason is vertebral disc degeneration, which is common non-traumatic causes of spinal cord injury. The learned Sessions Judge has disbelieved the recovery of stick.

10 Although P.W. 1 has proved the contents of Exh. 12 FIR, there are material inconsistencies in her narration in the FIR and her testimony before the Court. The learned Judge has rightly held that P.W. 1 in her testimony before the Court has stated that her father was assaulted on the back of the head, but there is no corresponding external injury to that effect and therefore, P.W. 1 as an eye witness has not substantiated that the accused had assaulted on the nape of the neck to cause the fatal injury to his spinal cord and therefore, the learned Judge has discussed Mosby's Medical Encyclopedia.

11 P.W.1 had deposed to the effect that the

accused/respondent had abused her at the water tap and assaulted her with fist and kick blows and hence, the learned Sessions Judge has convicted the accused for the offences punishable under sections 323 and 504 of IPC. Although the accused is alleged to have held a stick in his hand when he was abusing P.W.1, he had assaulted her with fist blows and therefore, it is doubtful as to whether he was armed with a stick at the relevant time and had actually followed her to her house.

12 In the case of *Sambhaji Hindurao Deshmukh Vs. State of Maharashtra (2008)11 SCC 186*, the Apex Court has held as follows :

“While the High Court can review the entire evidence and reach its own conclusions, it will not interfere with the acquittal by the trial Court unless there are strong reasons based on evidence which can dislodge the findings arrived at by the trial court, which were the basis for acquittal. The High Court has to give due importance to the conclusions of the trial Court, if they had been arrived at after proper appreciation of the evidence. The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it had taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt.”

13 Taking into consideration the above guidelines of the Hon'ble Apex Court, in the present case, it cannot be said that the learned Sessions Judge had not appreciated the evidence properly or judiciously.

14 In view of the totality of the evidence and the aforestated discussion, the judgment passed by the Adhoc Additional Sessions Judge, Nashik dated 14th July 2003 in Sessions Case No.102 of 2002 calls for no interference. Hence, the appeal deserves to be dismissed. Hence, the following order :-

ORDER

(i) The appeal stands dismissed and disposed of.

15 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J.)

(SMT. SADHANA S. JADHAV, J)