

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 695 OF 2014

1. Paraji s/o Haribhau Pund
Age 70 years, Occ., Agri.,
2. Ashok s/o Paraji Pund
Age 33 years, Occ. Agri.,
3. Vikram s/o Paraji Pund
Age 35 years, Occ. Agri.,
4. Gayabai w/o Vikram Pund
Age 27 years, Occ. Household

All R/o. Nandgaon
Tq and Dist. Ahmednagar ...Appellants

versus

The State of Maharashtra
(Copy to be served on P.P.
High Court Bench at Aurangabad) ...Respondent

.....
Mr. Satej S. Jadhav, advocate for the appellants
Mr. G.O. Wattamwar, A.G.P. for respondent State
.....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATED: 24TH SEPTEMBER, 2021

JUDGMENT (PER V.K. JADHAV, J.) :-

1. This appeal is directed against the judgment and order of conviction dated 10.11.2014 passed by the Additional Sessions Judge, Ahmednagar, in Sessions Case No. 177 of 2013.

2. Brief facts giving rise to the prosecution story are as follows:-

a) Deceased Dattatraya was the owner of land Gat No. 125 to certain extent, situated at village Nandgaon, Tq. and district Ahmednagar. Similarly, the accused persons are also owners and in possession of certain portion of land Gat No. 125. There is common well in the land and both the families had installed electric motors on the said common well to fetch the water. However, there was dispute in respect of fetching of water.

b) On 13.3.2013, appellant No.2 Ashok Paraji Pund (original accused No.2) and appellant No.3 Vikram Paraji Pund (original accused No.3) had been to the house of deceased Dattatraya at the evening time and threatened to kill if they would start their electric motor on the common well for watering the crops.

c) On 15.3.2013, at about 9.00 a.m., deceased Dattatraya had been to the said common well to start the electric motor. At 10.30 a.m., P.W.1 Sindhu and P.W.3 Macchindra had gone to the said field with lunch tiffin. As per the prosecution story, at about 1.00 p.m. the appellants accused persons came there and started quarrelling with them. The appellants accused allegedly assaulted the informant; her husband deceased Dattatraya and son Macchindra by fist and kick blows and also abused them in filthy language. The appellant accused No.3 Vikram allegedly untied the rope of electric motor, for

which deceased Dattatraya had questioned him. Thereafter, all accused started beating to deceased Dattatraya. As per the prosecution story, all the appellants accused had lifted deceased Dattatraya and thrown him in the well and went away. In consequence thereof, deceased Dattatraya had sustained severe injuries. He was immediately shifted to Civil Hospital, Ahmednagar. He was declared dead by the concerned doctor after examination.

d) On the basis of complaint (Exh.30) lodged by P.W.1 Sindhu on 15.3.2013, crime No.56 of 2013 for the offences punishable under Sections 302, 323, 504, 506 r.w. 34 of I.P.C. came to be registered in the concerned police station. P.W.5 P.I. Chandrashekhar Sawant took over the investigation of the crime on 15.3.2013 itself. On that day, he had effected the arrest of the accused Nos. 2 to 4 by drawing arrest panchnama. On the same day, he had seized the clothes of deceased Dattatraya under Panchnama Exh.46. He had also recorded the statements of witnesses P.W.4 Macchindra and others. On 15.3.2013 itself, the appellant-accused Vikram had lodged a complaint and on the basis of which, N.C. was registered by Station House Officer Mr. Shaikh. P.W.5 P.I. Sawant had collected the copy of said N.C. On the next day i.e. on 16.3.2013 he had visited the spot and drawn spot panchnama in presence of two panchas which is marked Exh.45. Meanwhile, he had sent the dead body for post mortem examination. He had received the post mortem notes of deceased Dattatraya on 28.3.2013. After completion of investigation,

he had submitted the charge sheet before the Court.

e) The learned Additional Sessions Judge, Ahmednagar has framed charge against the appellants-accused persons for the offences punishable under Sections 302, 323, 504, 506 r.w. 34 of I.P.C. The contents of all the charges were read over and explained to each of them. The accused pleaded not guilty to the said charge and claimed to be tried. The prosecution has examined in all five witnesses to substantiate the charges levelled against the accused. After completion of prosecution evidence, the statements of accused persons came to be recorded under section 313 of Cr.P.C. The defence of the accused persons is of simple denial and false implication. It is also suggested to P.W.1 Sindhu during the cross examination that deceased Dattatraya fell into the well due to slip of leg.

f) The learned Additional Sessions Judge, Ahmednagar by judgment and order of conviction dated 10.11.2014 in Session Case No. 177 of 2013 convicted the appellants accused for the offences punishable under Sections 302, 323, 504, 506 r.w. 34 of I.P.C. and sentenced them to suffer imprisonment in the following manner:-

- “1. Accused No.1 Paraji Haribhau Pund, age 70 years about, No.2 Ashok Paraji Pund, age 34 years about, No.3 Vikram Paraji Pund, age 35 years about and No. 4

Gayabai Vikram Pund, age 30 years about are hereby convicted under Sec. 235(1) (2) of the Cr.P.C. for the offences punishable under Sections 302, 323, 504, 506 & 34 of the Indian Penal Code and for all the counts they are sentenced as follows:-

2. Accused Nos. 1 to 4, named above, are sentenced to suffer life imprisonment for the offence punishable under Secs. 302, 34 of the Indian Penal Code.
3. Accused Nos. 1 to 4, named above, are sentenced to suffer rigorous imprisonment for six months each for the offence punishable under Secs. 323, 34 of the Indian Penal Code.
4. Accused Nos. 1 to 4, named above, are sentenced to suffer rigorous imprisonment for six months each for the offence punishable under Secs. 504, 34 of the Indian Penal Code.
5. Accused Nos. 1 to 4, named above, are sentenced to suffer rigorous imprisonment for one year each for the offence punishable under Secs. 506, 34 of Indian Penal Code.
6. The accused Nos. 1 and 4 shall surrender their bail bonds forthwith. The accused Nos. 1 and 4 be remanded into jail custody to suffer the sentence.
7. The accused No.2 Ashok Paraji Pund and accused No.3 Vikram Paraji Pund both were arrested on 15.3.2014 (it must be 15.3.2013) and they are in jail custody. The accused No.1 Paraji Haribhau Pund was arrested on

16.3.2013 and was released on bail on 20.7.2013. The accused No. 4 Gayabai Vikram Pund was arrested on 15.3.2013 and was released on bail on 26.3.2013. A set of U/s. 428 of the Cr.P.C. be given to the accused No. 1 to 4 according to law.

8. All the above substantive sentences to run concurrently.
9. The muddemal articles i.e. Article No.1 – faint chocolate colour old used full pants, Article No.2- one cut underwear having strips and Article No.3- one cut white colour vest, being worthless may be destroyed after period of three years from today and if no orders are received from superior courts till then and if the orders of superior courts are received then it be governed as per the orders of the Superior Court.
10. Copy of this judgment be given to the accused Nos. 1 to 4 free of cost immediately.
11. The Sessions Case No. 177 of 2013 stands disposed of accordingly.
12. The judgment is dictated and declared in open Court.”

3. Learned counsel for the appellants-accused submits that the prosecution has examined P.W.2 Dr. Gorakhnath Gaikwad. P.W.2 Dr. Gaikwad has noted four external injuries on the dead body of deceased Dattatraya. All external injuries are in the nature of contused abrasions and considering the size of those injuries, the

possibility that deceased Dattatraya accidentally slipped in the well cannot be ruled out. Learned counsel submits that P.W.2 Dr. Gaikwad has also admitted in his cross examination that the injuries mentioned in column No.17 of the post mortem report are possible due to coming into contact with rough wall of well made of stones. P.W.2 Dr. Gaikwad has further admitted in the cross examination that there is difference in throwing one in the well and a person falling in the well by himself. If a person is thrown by others, he will fall in the middle of well. If a person falls on the iron foundation in the well due to slipping of leg, such type of injuries as mentioned in the post mortem report are possible.

4. Learned counsel for the appellants-accused submits that P.W.1 Sindhu has admitted in her cross examination that there is no parapet wall over ground level of the well. Learned counsel has pointed out from the contents of spot panchnama Exh.45 that the well on its upper portion is constructed with the help of stones and two electric motors were installed on iron foundation alongwith pipes laid in the well for fetching the water. Learned counsel submits that considering the external injuries alongwith internal corresponding injuries on the person of deceased Dattatraya and from the description of the well, the only irresistible inference could be drawn that deceased Dattatraya might have slipped in the well and sustained injuries. Learned counsel submits that there was dispute in respect of fetching of water from common well since long. Even

though P.W.1 Sindhu had an opportunity to lodge the complaint immediately in the police station, the informant's family took time and afterthought the complaint Exh. 30 came to be lodged in the concerned police station. P.W.3 Macchindra has also admitted about the same in his cross examination to the extent that he himself and his brother-in-law, maternal uncle and other persons when gathered in the hospital, discussed about the strategy for further course of action and accordingly they had decided to lodge the report.

5. Learned counsel for the appellants-accused submits that P.W.1 Sindhu and P.W.3 Macchindra are highly interested witnesses. Even though independent witnesses were available and their statements came to be recorded during the course of investigation, the prosecution has not examined any independent witness to substantiate the charges levelled against the accused persons. Learned counsel for the appellants submits that there is no evidence about abuses so also the criminal intimidation to attract the provisions of Sections 504 and 506 of I.P.C. Furthermore, except those contusions and abrasions of excessive size on the dead body, which were possible while falling into the well, there are no other injuries on the dead body of deceased Dattatraya indicating that he was subjected to extensive beatings. Learned counsel submits that even there is no evidence in respect of charge under Section 323 of I.P.C.

6. Learned counsel for the appellants-accused submits that P.W.1 Sindhu and P.W.3 Macchindra though deposed that the appellants accused have extended beatings to them, however, they have not sustained the injuries nor subjected to medical examination at any point of time. Learned counsel thus submits that the appellants accused persons are entitled for benefit of doubt.

7. Learned counsel for the appellants-accused in the alternate submits that P.W.1 Sindhu has deposed that on 13.3.2013 i.e. two days prior to the alleged incident, appellant accused No.2 Ashok and appellant accused No.3 Vikram came to their house at the evening time and threatened to kill if they start their electric motor installed on the well for watering the crops. Learned counsel submits that P.W.1 Sindhu in para 9 of her cross examination has also admitted that there was altercation going on between her husband deceased Dattatraya on one side and appellant accused No. 2 Ashok and appellant accused No.3 Vikram on the other side. The appellant accused No.3 Vikram untied the rope of electric motor by the side of well. Learned counsel submits that the possibility of implicating all family members in connection with the present crime cannot be ruled out. There are omnibus allegations against all appellants-accused persons. Learned counsel submits that even if the prosecution case is accepted as against appellant accused No.2 Ashok and appellant accused No.3 Vikram, then there was no intention to commit murder of deceased Dattatraya. Learned counsel submits that same is

evident from the fact that all the accused persons went towards common well without any weapon. It further appears from the prosecution evidence that on reaching there, there was altercation of words and quarrel had taken place between two families. Learned counsel submits that had there been any intention to commit murder and if all appellants-accused in furtherance of their common intention went to the common well to eliminate deceased Dattatraya, without waiting for time they would have instantly assaulted and killed him. Learned counsel submits that even if the prosecution case is accepted as it is as against the appellant accused No.2 Ashok and appellant accused No.3 Vikram, it appears that the incident had taken place without any premeditation in the heat of passion upon sudden quarrel. Learned counsel submits that since the appellants accused were without any weapon and allegedly lifted deceased Dattatraya and thrown him in the water of well, it cannot be said that the appellants accused had taken undue advantage or acted in cruel or unusual manner. Learned counsel submits that the appellants accused Nos. 2 and 3 Ashok and Vikram, respectively, are in jail since the date of their arrest and as such, ends of justice would meet if they are convicted for the offence punishable under Section 304 Part II of I.P.C. and sentenced them to suffer the imprisonment which they have already undergone.

8. Learned A.P.P. submits that there are eye witnesses to the incident. P.W.1 Sindhu and P.W.3 Macchindra are the eye witnesses

to the incident. Their evidence cannot be discarded merely on the basis that they are interested witnesses. Learned A.P.P. submits that even if their evidence is scrutinised carefully, they appear to be reliable and trustworthy witnesses and their evidence is consistent on material aspects. P.W.1 Sindhu and P.W.3 Macchindra both have consistently deposed that the appellants accused have lifted deceased Dattatraya and thrown him in the well. There is no reason to disbelieve their evidence. The medical evidence, which is hypothetical in nature, cannot prevail over the ocular evidence. Learned A.P.P. submits that the prosecution has proved the case beyond reasonable doubt against the accused. The trial court has rightly convicted the appellants accused.

9. Learned A.P.P. submits that on 13.3.2013 i.e. two days prior to the incident, appellant-accused Nos. 2 Ashok and appellant accused No.3 Vikram had been to the house of informant and given threats. On 15.3.2013, all the appellants accused had been to the common well together. This fact itself indicates that there was prior concert of mind and in furtherance of their common intention; they have committed murder of deceased Dattatraya. Learned A.P.P. submits that during the course of investigation, the investigating officer has got prepared a map Exh.58 through the Tahsil office. On perusal of the said map, it is clear that there is parapet wall to the said well and one place is also earmarked on the said well for fetching the water. Learned A.P.P. submits that the appellant

accused No.3 Vikram has lodged the complaint in respect of same incident and on the basis of his complaint, N.C. No. 136 of 2013 for the offences punishable under Sections 323, 504, 506 of I.P.C. came to be registered against deceased Dattatraya and P.W.3 Macchindra. Learned A.P.P. submits that appellant accused No.3 has thus accepted that the incident had taken place near the common well. Learned A.P.P. submits that there is no substance in this appeal and the appeal is thus liable to be dismissed.

10. We have perused the material exhibits tendered by the prosecution; the evidence of the prosecution witnesses, the statement of the appellants-accused recorded under Section 313 of Criminal Procedure Code, the evidence of the appellants-accused themselves and the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is some substance in this appeal and the same must be partly allowed.

11. We have carefully gone through the evidence of P.W.1 Sindhu. She had deposed that on 13.3.2013, accused No.2 Ashok and accused No.3 Vikram came to their house at the evening time and threatened to kill them if they would start their electric motor on the common well for watering the crops. It is rather an admitted fact that there was dispute in respect of fetching of water from common well between two families. The incident had taken place on 15.3.2013. On that day at about 9.00 a.m. deceased Dattatraya had

gone to start the electric motor and following him at about 10.30 a.m. P.W.1 Sindhu alongwith her son P.W.3 Macchindra had gone to the said field with lunch tiffin. It further appears from the evidence of P.W.1 Sindhu and P.W.3 Macchindra that a quarrel had taken place between the informant, deceased Dattatraya and P.W.3 Macchindra on one side and the appellants accused on other side. Thereafter, the appellants accused allegedly thrown deceased Dattatraya in the well and went away.

12. P.W.1 Sindhu in para 4 of her cross examination has admitted that there are two separate electric motors installed by two families i.e. the informant's family and the appellants' family on the said common well. She has further admitted that there is no parapet wall over the ground level of the well. She has also accepted that both the electric motors were installed at a distance of 1 to 2 ft from the well. We have carefully gone through the contents of the spot panchnama Exh.45. It has been specifically stated in the spot panchnama that the well is constructed with stone up to upper level to the extent of 15 ft. and one wheel is installed on two stones towards eastern side for fetching the water. There is no reference in the spot panchnama that there is parapet wall to the said common well. There is reference of installation of two electric motors on the iron foundation alongwith pipes laid in the well for fetching of water. We have also carefully gone through map Exh.58 as pointed out by learned A.P.P.. We do not find that the parapet wall is mentioned in the said map Exh.58.

Even though considering the description of well and even on the basis of admission given by P.W.2 Dr. Gaikwad, we are not inclined to discard the evidence of eye witness in toto. It appears from the prosecution evidence that the incident had certainly taken place near the common well, wherein some members of both the families were involved. On the basis of external injuries alongwith the corresponding internal injuries on the person of deceased Dattatraya, we are not inclined to discard the evidence of eye witnesses by observing that deceased Dattatraya slipped in the well accidentally. The medical evidence is always treated as hypothetical and cannot prevail over the ocular evidence.

13. However, we find much substance in the alternate submission made by learned counsel for the appellants Mr. Satej Jadhav that there was dispute in respect of fetching of water from common well between two families. The members of both the families are farmers. There are no antecedents. As per the prosecution story, at the time of incident, the appellants accused persons went towards the common well without carrying weapons. The quarrel had taken place near the well with altercation of words. It further appears from the prosecution evidence that the incident had taken place without any premeditation in the heat of passion upon sudden quarrel. Though there was water in the well to the extent of 10 ft, however, the depth of the well is near about 30 ft. Deceased Dattatraya was allegedly thrown in the water of well from the height of 30 ft. In the given set of

allegations, it cannot be said that there was intention to commit murder. However, at the same time, it cannot be said that the appellants accused had no knowledge that if deceased Dattatraya was thrown from such a height in the water of well he may sustain fatal injuries. It thus appears that even if the prosecution case is accepted as it is, the accused seem to have committed offence of culpable homicide not amounting to murder. So far as the involvement of appellant accused persons in the alleged commission of crime is concerned, we find that the appellant-accused No.1 Paraji and appellant-accused No.4 Gayabai are entitled for benefit of doubt. There are no direct allegations against them. Even no specific role has been attributed to them. The appellant-accused No.1 Paraji was 70 years of age at the time of incident whereas appellant accused No.4 Gayabai is a woman. P.W.1 Sindhu has given reference to the incident dated 13.3.2013 when appellants-accused No. 2 Ashok and accused No. 3 Vikram went to their house and given life threats to deceased if they start the electric motor for watering the crops. It has further come in their evidence that the appellant-accused No.3 Vikram has tried to untie the rope of electric motor and the altercation of words had taken place between deceased Dattatraya and appellants-accused No.2 Ashok and accused No.3 Vikram on account of untying of rope of the electric motor by the side of well. Thus, the inference could be drawn that appellants-accused No. 2 Ashok and accused No.3 Vikram without any premeditation, in the heat of passion upon a sudden quarrel, had lifted deceased

Dattatraya and thrown him in the water of well. We thus hold that the appellant-accused No.1 Paraji Haribhau Pund and appellant-accused No.4 Gayabai Vikram Pund are entitled for benefit of doubt.

14. So far as appellant-accused Nos. 2 and 3 i.e. Ashok and Vikram, respectively, are concerned, they are young persons. As observed in the foregoing paras, the incident had taken place without any premeditation and intention. The appellants-accused Nos. 2 and 3 i.e. Ashok and Vikram, respectively, have committed the offence of culpable homicide not amounting to murder and as such, they are liable to be convicted for the offence punishable under Section 304 Part II of I.P.C. and certainly not under Section 302 r.w. 34 of I.P.C. Thus, considering entire aspect of the case, we deem it appropriate to alter the conviction of appellant accused No.2 Ashok Paraji Pund and appellant accused No.3 Vikram Paraji Pund from Section 302 r.w. 34 of I.P.C. to Section 304 Part II of I.P.C. Both these appellants-accused are in jail for more than eight years. In view of the same, if they are convicted and sentenced to the imprisonment which they have already undergone, that would meet the ends of justice. The appellants-accused No. 1 Paraji and accused No.4 Gayabai are entitled for the benefit of doubt and thus, we acquit them for all the charges levelled against them. Hence, the following order:-

O R D E R

- I. Criminal appeal is hereby partly allowed.
- II. The impugned judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 10.11.2014 in Sessions Case No. 177 of 2013 convicting the appellant-accused No.1 Paraji Haribhau Pund and appellant-accused No.4 Gayabai Vikram Pund for the offence punishable under Sections 302, 323, 504, 506 r.w. 34 of I.P.C. is hereby quashed and set aside.
- III. The appellant-accused No. 1 Paraji Haribhau Pund and appellant accused No.4 Gayabai Vikram Pund are hereby acquitted of all the charges levelled against them. They are on bail. Their bail bonds stand discharged.
- IV. The impugned judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 10.11.2014 in Sessions Case No. 177 of 2013 convicting the appellant accused No.2 Ashok Paraji Pund and appellant accused No.3 Vikram Paraji Pund for the offence punishable under Sections 323, 504, 506 r.w. 34 of I.P.C. is hereby quashed and set aside and they are hereby acquitted of the charges levelled against them under Sections 323, 504, 506

r.w. 34 of I.P.C..

- V. The impugned judgment and order of conviction passed by the Additional Sessions Judge, Ahmednagar dated 10.11.2014 in Sessions Case No. 177 of 2013 convicting the appellant accused No.2 Ashok Paraji Pund and appellant accused No.3 Vikram Paraji Pund for the offence punishable under Sections 302 r.w. 34 of I.P.C. and sentencing them to suffer imprisonment for life is hereby altered and

instead

the appellant accused No.2 Ashok Paraji Pund and appellant accused No.3 Vikram Paraji Pund are hereby convicted for the offence punishable under Sections 304 Para II of I.P.C. and sentenced to suffer imprisonment which they have already undergone.

- VI. The appellant accused No.2 Ashok Paraji Pund and appellant accused No.3 Vikram Paraji Pund be set at free forthwith if not required in connection with any other case.
- VII. The appellants-accused No. 1 Paraji Haribhau Pund, accused No.2 Ashok Paraji Pund, accused No.3 Vikram Paraji Pund and accused No.4 Gayabai Vikram Pund shall

execute P.B. of Rs.15,000/- each with one surety each of the like amount to appear before the higher court as and when the notice is issued in respect of any appeal or petition filed against the judgment of this Court. Such bail bonds shall remain in force for a period of six months from the date of its execution.

VIII. Criminal Appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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