

12.02.2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 248/1998

1. Rambhau Baban Marne  
2. Kondiba Mahipati Dighe,  
3. Kondiba Dagadu Marne,  
1 to 3 aged : 41, 74 and  
74 respectively, all agriculturists  
residing at Village-Bhode,  
Taluka-Mulshi, District-Pune

....Appellants

(Original accused

no.1 to 3 respectively)

V/s.

1. State of Maharashtra  
2. Smt. Parubai Nathuram Shinde

Adult, Occupation :Agriculturist,

Residing at : Village-Watunde,

Taluka-Mulshi, District-Pune

.....Respondents

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Ms. Devyani Kulkarni, appointed Advocate for the appellants.

Mr. R.M. Pethe, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Reserved on : Tuesday, 2<sup>nd</sup> February, 2021.

Pronounced on : Friday, 12<sup>th</sup> February, 2021.

JUDGMENT :

1. Aggrieved, by conviction recorded under Section 323 read with Section 34 of the Indian Penal Code and sentence to suffer rigorous imprisonment for one year, accused nos.1, 2 and 3 in Sessions Case No. 296/1994, have preferred this Appeal.

2. Prosecution's case in brief is, Nathuram Dondiram Shinde (deceased) was Police Patil of Village-Vatunde; whereas, Baban Marne (accused no.4) was Police Patil of Village-Ghodegaon. Baban was

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not continued as Police Patil of Village-Ghodegaon and thus, Tahsildar, vide order dated 21<sup>st</sup> May, 1993 directed Nathuram Shinde (deceased), to take over additional charge of Police Patil for Village-Ghodegaon, for two months. Thus Nathuram, was holding additional charge of Police Patil for Village-Ghodegaon since May, 1993, besides, regular charge of Village-Vatunde. Accused nos.2 and 3, Kondiba Dighe and Kondiba Marne, both residents of Village-Ghodegaon, had approached Nathuram to help them to get 7/12 extracts of their lands and as such in the morning hours of 6<sup>th</sup> June, 1994, accused nos.2 and 3 proceeded to the office of the Talathi (Revenue Officer), Village-Kharawade. It is unfolded in the evidence that, Nathuram (deceased) with accused nos.2 and 3 had been to the office of Talathi and after completing the work, they left the office at around 3:00 p.m. Mr. Holkar, Talathi was examined as P.W.6, who fortified this fact. Prosecution Witness

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No.7, Kotwal of Village-Vatunde and the Talathi of another Village-Javalgaon, had also seen the deceased in the company of the accused nos.2 and 3 in the office of the Talathi. It appears from the evidence that, in the Talathi's office, Baban Babaji Marne-accused no.4, met Nathuram Shinde and enquired about additional charge of Police Patil for Village-Ghodegaon. Prosecution would contend that, accused no.4 was dejected since his charge of Police Patil of Village-Ghodegaon, was given to Nathuram Shinde and thus was harbouring grudge against him. Herein, Rambhau Baban Marne-accused no.1 is the son of Baban Babaji Marne.

3. Evidence discloses that, Nathuram while returning to the village, on the way, was assaulted by the accused by fist and kick-blows and the incident was seen by Dattatray Mankar-P.W.2, a resident of Village-Vatunde. In the late evening of

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6<sup>th</sup> June, 1994, Dattatray informed the incident to Parubai (wife of Nathuram), P.W.No.1. It appears, soon thereafter, Parubai alongwith Sambhaji Mankar, Kalu Bhalekar (Villagers) and her daughter-Sangita, reached the place of the incident, where she found her husband was lying unconscious on the road in naked condition. She brought Nathuram to home with the help of the Sambhaji Mankar and Kalu Bhalekar. Nathuram could not be hospitalised or treated for want of facility, but fortunately, he regained unconsciousness in the early morning of 7<sup>th</sup> June, 1994 when he told Parubhai and his daughter, the incident of assault on him by the accused. Parubai, thereafter made efforts to hospitalise him but on the way, Nathuram died, whereafter she lodged complaint and crime came to be registered under Sections 302, 323, 326 of the Indian Penal Code.

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4. The learned trial Court, framed charge under Section 302 read with Section 34 of the Indian Penal Code and Section 302 read with Section 109 of the Indian Penal Code.

5. That vide judgment and order dated 13<sup>th</sup> December 1997, learned Additional Sessions Judge, Pune acquitted accused no.4-Baban Babaji Marne of all the offences. The appellants-accused nos.1 to 3 were acquitted of the offence punishable under Section 302 of the Indian Penal Code but, convicted for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,000/- with default stipulation.

6. It is against the aforesaid conviction and sentence, accused nos.1, 2 and 3 have preferred this Appeal.

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7. It may be noted that, State has not preferred Appeal against the order, acquitting the accused of the offence punishable under Section 302 of the Indian Penal Code.

8. I have perused the evidence with the able assistance of the Appointed Counsel, Ms. Kulkarni, for the appellants and learned APP for the State.

9. Before advertng to the arguments of the respective Counsel, it may be stated that, key witnesses, Narayan Kalbhor (P.W.4), Kotwal of Village-Vatunde; Holkar-Talathi (P.W.7) of Village Vatunde and Baban Shinde (P.W.8) turned hostile.

10. Indisputably, the incident of assault was neither seen by Parubai nor by her daughters. Dattatray Mankar, P.W.2 claims, he had seen the accused assaulting the deceased. On close scrutiny of the evidence of the sole eye witness, in my view,

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his evidence is not trust worthy. One of the reasons is that, the evidence discloses material inconsistencies in the testimonies of the prosecution witnesses especially, as to who, had made the assault. Dattatray Mankar, testified that Nathuram was assaulted by accused no.1, accused no.2 and Ankush Halande (absconding accused); whereas, Parubai said Dattatray Mankar, told her that accused no.1, Sarpanch of Village-Monde assaulted Nathuram. In context of this evidence, Parubai deposed, Holkar (P.W.6), Talathi of Village-Vatunde told her accused nos.1, 2 and 3 assaulted her husband; Whereas, according to Parubai and her daughter (P.W.3), Nathuram, told them that accused nos.1, 2 and 3, assaulted him. It may be stated, accused nos.2 and 3, both were 70 year old persons at the relevant time and were on visiting terms with the deceased. Infact, accused no.3 is the relative of Nathuram. In consideration of the evidence, it is to be held that

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prosecution was, 'uncertain' as to who were the assailants. However, amongst witnesses, though Dattatray Mankar, P.W.2 claims to be the eye-witness, he testified accused nos.1, 3 and Ankush Halande, assaulted the deceased. This witness, therefore absolves accused no.2. It is interesting to note that, neither the Investigating Officer nor, the other witness (except P.W.2), said about Ankush Halande. It appears, the learned trial Court convicted the appellant-accused under Section 323 believing the evidence of Narayan Kalbhor, Ashok Holkar and Baban Shinde, all Revenue Officers, who had seen the deceased leaving the office on the day of the incident alongwith accused nos.2 and 3, as were "last seen together".

11. At any rate, scrutiny of the evidence of P.W.2 and of other witnesses, also renders the prosecution's case debatable. In other words, the

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prosecution has not placed correct facts of occurrence of the incident before the Court, and I say so, for more than one reasons. Foremost, the evidence lacks inherent consistency, as to who were the assailants. P.W.2-Dattatray Mankar deposed, by the time he reached the spot, Nathuram was found and seen lying unconscious in naked state. However, in the next breath, he said, he had seen accused nos.1 and 3 were assaulting Nathuram. Moreso, he testified that, after informing the incident to Parubai, he had accompanied her to the spot where Nathuram was lying unconscious. However, evidence of Parubai is otherwise. She was very precise and stated that, she was accompanied by Sambhaji Mankar (eventually the brother of P.W.2), Kalu Bhalekar and her daughter. Indisputably, deceased Nathuram was brought home at around 8:00-9:00 p.m. on 6<sup>th</sup> June 1994, but there is no evidence on record to suggest that, any efforts were made either by Parubai or by

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other villagers, to seek medical help. Infact, Parubai, stated that, on the fateful night, Dattatray Mankar-(P.W.2) had been to her house, but this fact was not disclosed by Mankar. Thus, in my view, evidence of Mankar (P.W.2) was not credible. Be that as it may, even Parubai's evidence is uncertain. It is because, her husband was the Police Patil and thus it was unlikely that, Parubai would not inform the incident to the Police. This conduct of Parubai, raises reasonable suspicion which leads me to hold that prosecution's story lacks rationality. Another circumstance which fortifies, my view is that, on the next day after lodging the complaint, a spot panchanama was drawn, wherefrom the Police have recovered the 7/12 extracts in relation to lands of accused nos.2 and 3. Prosecution's case is that, accused nos.2 and 3 had sought the help of the deceased for their work in the office of the Talathi concerning their lands. Evidence of the Talathi,

P.W.6, shows he handed over the land extracts to them, whereafter they left the office together. Prosecution, further alleged that, accused nos.2, 3 and other accused, assaulted the deceased on the way while returning home. However, it is surprising, that the revenue extracts relating the lands of accused nos.2 and 3 were found lying on the spot of the incident till the panchanama was drawn on the next day i.e. on 7<sup>th</sup> June, 1994. It is far-fetched, because, assuming accused nos.2 and 3 had assaulted the deceased, as a natural conduct they would not leave the papers relating to their lands with the deceased or atleast at the place of the incident. Next circumstance, which also renders the prosecution's case doubtful is, the recovery of clothes of the deceased. Prosecution's case is that, Nathuram was lying in naked condition and he was brought home by his wife and two villagers in the evening/night of 6<sup>th</sup> June. It is surprising or rather does not appeal

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to a reasonable mind that, Parubai would remove her husband without noticing his clothes lying over there. As a natural conduct, Parubai would have collected the clothes and thereafter brought Nathuram to home. However, prosecution's case proceeds to say that, on the next day while drawing the panchanama, they found torn clothes of the deceased, which had blood stains.

12. As such, close scrutiny of prosecution's evidence, leads me to hold that, prosecution has not proved beyond the reasonable doubt that, the appellant-accused caused homicidal death of Nathuram.

13. In consideration of the facts of the case and evidence and for the reasons stated above, Appeal is allowed and impugned conviction recorded in Sessions Case No. 296/1994 by the Additional Sessions Judge,

Pune is set aside. Their bail bonds are cancelled and sureties are discharged. Fine amount if paid, be refunded to them.

14. Appeal is disposed off accordingly.

Neeta  
S.  
Sawant

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signed by  
Neeta S.  
Sawant  
Date:  
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**(Sandeep K. Shinde, J.)**