

Shambhavi
N. Shivgan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 346 / 1998

Vilas Bajirao Jadhav

Aged about 26 years,

Occupation : Agriculturist,

Resident of Karad, Taluka Karad,

Dist. Satara.

.. Appellant

Versus

The State of Maharashtra

(To be served through the Learned Public

Prosecutor, High Court (A.S), Mumbai).

.. Respondent

Mr. Rahul S. Kate, Advocate for Appellant.

Smt. Sharmila Kaushik, APP for State/ Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 22nd FEBRUARY, 2021.

ORAL JUDGMENT :-

1. Aggrieved by the conviction under Section 304 Part-II of the Indian Penal Code, 1860 and sentence to undergo rigorous imprisonment for five years, accused in the Sessions Case No. 298 / 1990 has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure, 1973.

2. Heard. learned Counsel for the Appellant and learned APP for State.

3. Prosecution case in brief is that;

Sunil @ Anil Chandan Shive (deceased) was working as a contract labour on the establishment of M/s

Siemens Company. Balasaheb Bhosle was his immediate Supervisor. On 28th August, 1989, his accidental death, was reported; whereupon enquiry was held under Section 174 of Cr.P.C. In enquiry, inquest panchanama was drawn in presence of independent panchas, wherein no injury was noted on his person. Deceased, while working in the Company premises suddenly fell down and thus was taken to dispensary of the Company and thereafter removed to ESIS Hospital at Mulund, where on admission, he was declared dead. One Balasaheb Bhosle (Supervisor) had removed the deceased to the Hospital. Dr. (Mrs.) Sita – PW-7, Medical Officer attached to ESIS Hospital at Mulund, who had examined deceased on admission, testified that when deceased was brought in to the Hospital, a letter was forwarded by Company stating that Sunil Chandan Shive (deceased) had suffered giddiness and after vomiting, he fell down.

Admittedly, this letter has not been brought on record by the Investigating Officer.

4. Be that as it may, the Autopsy Surgeon Dr. Prakash Ambekar (PW-6) testified that he did not notice external injuries on the person of deceased and he opined; cause of death was “severe shock due to internal hemorrhage due to rupture of spleen-unnatural”.

5. It appears in the course of enquiry under Section 174 of Cr.P.C., the statements of Balasaheb Bhosle and one Khandu Bansode including the father of deceased were recorded. Indisputably, Balasaheb Bhosle, who had taken the deceased to the Company's dispensary and thereafter to Hospital, has not been examined by the Prosecution. In fact, the investigation record suggests that Balasaheb Bhosle

was present, even while drawing inquest. As such Balasaheb Bhosle's evidence was imperative. However he has not been examined. Be, that as it may, it is prosecution case that appellant – accused also a contract labour, assaulted deceased by fist blows on 28th August 1989 in the company premises, over a verbal spat, which proved a fatal blow. However, complaint was lodged nearly after six months i.e. on 23rd February, 1990 by Police Sub-Inspector.

6. Perusal of complaint in no uncertain terms suggests that father of deceased was suspecting the death of his son was not accidental, but homicidal and thus taking cue, in further investigation, statements of one Ashok @ Pappu Kapse and Khandu Shankar Bansode were recorded. Out of these two persons, prosecution had examined Ashok Kapse - PW-5 as a eye-witness, who testified that he had witnessed the

assault.

7. The learned trial Court as it appears from the impugned judgment has accepted the testimony of Ashok Kapse (PW-5), as a gospel truth and founded the conviction on his testimony. Though the charge was framed under Section 302. Conviction ended under Sections 304 Part-II of IPC, since evidence admits, case was one falling within fourth exception to Section 300 IPC. Thus to be stated, the trial Court held it was a case of culpable homicide not amounting to murder, since committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel.

8. Mr. Kate, learned Counsel in support of the appeal submitted that prosecution has not explained inordinate delay of six months caused in lodging the

complaint which itself renders the case indefinite and doubtful. It is submitted that the appellant was arraigned as a accused, only after the father of the deceased suspected, foul play over his son's death, which was initially registered as accidental death. It is submitted that prosecution has not placed the correct facts on record, which otherwise were within their reach. It is submitted, prosecution did not seize a letter addressed to Hospital by the Company, while admitting the deceased to the ESIS Hospital. In support of the submission, learned Counsel for the appellant relied on the evidence of Dr. Sita – PW-7, who testified that vide letter, it was informed that deceased suffered giddiness after severe vomiting. As such had this letter been produced, it would have fully revealed prosecution case without vagueness. Mr. Kate, learned Counsel for the appellant submitted that father of deceased, in his testimony did not suspect

the foul play over his son's death and therefore possibility of planting, Ashok Kapse as eye-witness cannot be ruled out, in order to absolve to the Company from paying compensation to the deceased under the relevant laws, since he died while working on the company premises. It is also submitted that the deceased suffered natural death as at the relevant time, he was terminally ill. In support of this submission, learned Counsel for the appellant has relied on evidence of Dr. Prakash Ambekar, Autopsy Surgeon. On these ground he seeks acquittal of the appellant.

9. Learned APP has supported the conviction and sentence.

10. I have carefully considered the submissions of Counsel for the appellant and learned APP. Perused

the evidence.

11. It is not in dispute that the alleged incident had occurred on the Company premises on 28th August, 1989, but the crime was registered on 23rd February, 1990. Complaint filed by Officer, suggests that father of the deceased was suspecting foul play over his son's death and thereafter taking cue therefrom, statement of co-worker PW-5 has been recorded, who claims to be a eye-witness to assault, by fist blows inflicted by the appellant on the deceased. Prosecution has largely relied on testimony of PW-5. I have perused his testimony. However, it may be stated that prosecution has not proved, that on the date and at place of the incident eye-witness was present. Though eye-witness was co-worker on the establishment of the Siemens Company, prosecution has not made efforts to seize

the muster roll to show and establish his presence. It was so imperative to prove his presence, because initially cause of death was enquired being accidental death. It is not known when statement of co-worker (eye-witness) was recorded. Admittedly, though statement of Balasaheb, a immediate Supervisor was recorded, prosecution has not examined him. Therefore, it is not known what capacity, this witness was present on the premises of the Company. Though the prosecution has examined labour contractor, he did not say that Ashok Kapse – PW-5 was working under his contract. The investigation record clearly indicates that Supervisor, Balasaheb Bhosle was present on the spot and he was the person who had taken the deceased to the Hospital. Balasaheb Bhosle was also present, while drawing inquest. However, for the reasons best known to the prosecution, he was not examined. Besides Balasaheb Bhosale, Khandu Bansode

was also present when the deceased was removed to the Hospital. Testimony of deceased father reveals that Khandu Bansode informed him, his son died while chewing tobacco and due to severe vomiting. Thus, testimony of this witness apparently indicates cause of death was within his knowledge. However, Khandu Bansode did not inform that over a spat appellant assaulted deceased. This renders the prosecution case uncertain. It may be stated that though prosecution would assert that father of deceased was suspecting homicidal death, but his evidence is plain and simple. He did not say anything about his son's death; whether homicidal, accidental or otherwise. In the back drop of the aforesaid facts, the evidence of eye-witness is not inspiring confidence of this Court. The prosecution in the circumstances, ought to have proved the presence of eye-witness on the spot of incident and further was

expected to explain, as to when the prosecution came to know that PW had witnesseth the incident. In fact, the eye-witness was also co-worker and was working on the establishment of company and therefore it was within the reasonable reach of the prosecution to register the offence, soon after the incident. Thus upon reading the evidence of together, in my view, prosecution has not brought on record material facts to reach the just and correct conclusion. That even otherwise, the evidence of Autopsy Surgeon, also suggests spleen of deceased was enlarged and rupture to spleen was possible, due to underline pathological cause.

12. In the consideration of the entire evidence, in my view, the prosecution has not proved beyond reasonable doubt that the accused inflicted fist blows on the abdomen of the deceased in the heat of

passion upon a sudden quarrel. Thus for the reasons stated, the impugned conviction and sentence rendered in Sessions Case No. 298 / 1990 by the learned III Additional Sessions Judge, Thane is quashed and set aside.

13. Appeal is allowed. Bail bond of the appellant stands cancelled. Sureties are discharged. Fine, if any paid, be refunded to the appellant.

14. Appeals is disposed of.

(SANDEEP K. SHINDE, J).

N A J E E B..