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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.241 OF 2003

State of Maharashtra ... Applicant
(org. complainant)

Vs.

Shivlal Punaji Parmar
40 years, Occ.: Labour, ... Respondent
R/o. Avinath Mangal Karyalaya, (org. accused)
Talewadi, Pune

Mr.V.B. Konde-Deshmukh, APP, for the Appellant
None for the Respondent

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.
DATED: DECEMBER 14, 2021**

ORAL JUDGMENT (PER S.S. SHINDE, J.):

1. This is an Appeal preferred by the appellant – State challenging the impugned judgment and order dated 22nd October, 2002 in Sessions Case No.140 of 2002 passed by the learned 3rd Adhoc Additional Sessions Judge, Pune thereby acquitting the Respondent – accused Shivlal Parmar under section 302 of the Indian Penal Code.

2. The prosecution case in brief is as under:

On 21.5.2001 at about 7.30pm, the complainant Mukesh Thorat went to the place of his friend Vikas Sasane, the deceased,

and both went to drink toddy. After drinking toddy, they returned to the house of Vikas at about 8.30pm. and they were chit-chatting. In the meanwhile, they heard commotion from outside and hence, they went out. At that time, they saw that the accused Shivil Parmar was quarreling with the mother in law of Mukesh. When Mukesh intervened, the accused rushed at him and started abusing him. Mukesh requested the accused not to create any scene there and told him it would be better if they would go to roadside. Hence, all of them proceeded towards road when the accused caught hold of Mukesh by his neck and started assaulting him. In the meanwhile, Vikas intervened between them and tried to separate them. However, the accused caught hold of Vikas by his neck and started giving him fist blows on his stomach and chest. Consequently, Vikas collapsed on the ground. Mukesh immediately rushed to the house of Vikas to inform his wife, namely, Surekha Vikas Sasane. Both of them arrived at the place of incident and they noticed that Vikas was lying in an unconscious condition. They took him to YCM hospital, Pimpri by auto rickshaw where the doctor declared him as dead.

The information about the admission and death of Vikas

Sasane was given by the hospital to the Wakad police whereupon API Suresh Mane came to the hospital. He made inquiry with Mukesh who narrated the entire incident to him. The complaint by Mukesh was recorded by the API Suresh Mane.

Investigation commenced. Chargesheet was submitted in the Court of learned JMFC, Pimpri, who in turn, committed the case to the Court of Sessions for trial.

Charge under section 302, 323, 504 of Indian Penal Code was framed by the Sessions Court. The accused pleaded not guilty and claimed to be tried. After conducting the trial, the learned Sessions Judge, Pune, acquitted the Respondent – accused Shivilal Parmar under section 302 of the Indian Penal Code, however, convicted the accused under section 323 of the Indian Penal Code and sentenced to undergo R.I. for one year and to pay fine of Rs.1,000/- and in default thereof, to suffer RI for three months. Hence, this Appeal by the State.

3. Mr.V.B. Konde-Deshmukh, APP, learned APP appearing for the Appellant – State, has assailed the impugned judgment and order passed by the learned Sessions Judge and submitted that

the said order needs to be reversed. He submitted that the deposition of the wife of the deceased is sufficient enough to suggest that the accused gave fist blows on the chest and stomach of the deceased due to which the deceased collapsed on the ground. He submitted that the Dr.Milind Vasant Sonavane, Medical Officer, who conducted the autopsy of the deceased, gave his opinion about the cause of death as shock due to vaso-vagal inhibition due to fist blows. He also submitted that the accused was knowing that the deceased was in drunken state and assaulting with fist blows on chest and stomach would likely to cause death. The learned APP, therefore, submitted that the trial Court ought to have held the accused guilty under section 302 of the Indian Penal Code and sentenced him accordingly.

4. None appears for the Respondent. With the assistance of the learned APP appearing for the Appellant – State, we have perused the entire evidence. To prove its case, the prosecution has, in all, examined 7 witnesses. PW1 Surekha Vikas Sasane is the wife of the deceased Vikas Sasane. PW2 Arjun Bhima Khavale is the panch witness. PW3 Dr.Milind Vasant Sonawane is the medical officer, who had conducted the postmortem on the

dead body of Vikas Sasane. PW4 Kamal Mahadeo Khalse is the mother in law of the complainant Mukesh Thorat. PW5 Suresh Shankar Mane was the API at the relevant time in Shikrapur Police Station, Pune and he had recorded the complaint of Mukesh Thorat. PW6 Sunil Wamanrao Khaladkar was the API, Pune (Rural), Pune, at the relevant time and he had taken over the investigation from PW5 Suresh Mane pursuant to the transfer of PW5 Suresh Mane. PW7 Dr.Minal Vitthal Jadhav had examined all the specimen of the viscera of the deceased.

5. PW1 Surekha Vikas Sasane is the wife of the deceased. In her examination in chief, she had deposed that the accused used to frequently visit the place of Kamalabai, mother in law of Mukesh Thorat, the complainant. She stated that on the date of incident, at about 7.30pm, Mukesh came to their house and took away her husband alongwith him for drinking toddy. Thereafter, at about 8.30pm, Mukesh and her husband came back to their house and were about to eat food at their house. In the meanwhile, they heard some commotion from the house of Kamalabai. So, Mukesh left first and thereafter, her husband followed Mukesh. However, she did not go with them and went to the spot of incident

only after Mukesh had come to her house. She stated that there were about 20 persons who had gathered at the spot of incident.

PW2 Arjun Bhima Khavale is the panch witness, who was called by the police to act as a panch. He was taken to the spot alongwith his brother Sarjerao and is the panch witness to the seizure pachanama whereby a wrist watch was seized.

PW3 Dr.Milind Vasant Sonawane is the medical officer, who had conducted the postmortem on the dead body of the deceased Vikas Sasane. He stated that the dead body was brought to YCM hospital, Pimpri, Pune where he was attached at the relevant time. He had prepared the postmortem notes at exhibit 17. He stated that he had sent some body parts of the deceased for histopathological examination and some parts to the chemical analyser. He had deposed that the histo pathological report was not suggestive of any pathology or any disease and that it suggested only congestion of all organs. Further, the Chemical Analyser report suggested presence of alcohol. He has stated that after going through histopathological report, CA report, postmortem examination and history of scuffle alleged by the police, he issued the final cause of death on 18.10.2001 about the cause of death

as shock due to vaso-vagal inhibition due to fist blow. He has also deposed that the death can be possible due to fist blow on chest/abdomen under influence / consumption of alcohol/toddy. He had also opined that death could be caused by fist blows in case victim is under the influence of alcohol. In his cross-examination, this witness had stated that in case the vomited contents go into trachea, there is a possibility of aspiration and pneumonia and death.

PW4 Kamal Mahadeo Khalse is the mother in law of the complainant. She stated that she had married the accused and that she had not witnessed the entire incident. PW4 was declared hostile.

PW5 Suresh Shankar Mane was attached to Wakad police chowky at the relevant time when he had received information from YCM hospital that one Vikas Sasane was admitted in the hospital for treatment and he died. He, therefore, rushed to the hospital and after inquiry with the complainant, registered the complaint. He stated that he had carried out inquest panchanama; sent the body for postmortem; sent the viscera to the Chemical Analyser for analysis. He had also recorded the statements of six

witnesses. Thereafter, he was transferred and another API Khaladkar took over the investigation from him.

PW6 Sunil Wamanrao Khaladkar was the API who took over the investigation from PW5 Suresh Mane after he was transferred. He filed the chargesheet after clubbing all the investigating papers.

PW7 is Dr.Minal Vitthal Jadhav, who had stated in her examination in chief that he had received pieces of lung and liver, spleen, one half of the kidney, whole heart and piece of brain. She had carried out the gross-examination of all these specimen and gave her report under her signature.

6. We have perused the record in detail. It is pertinent to note that the complainant Mukesh Thorat has not been examined by the prosecution. He would have been a crucial witness to establish the case of the prosecution, however, the prosecution for reasons best known to it, has not examined him. The reason assigned by the Investigating Officer PW5 that at the relevant time Mukesh was residing in a transit camp and he left his place of residence and his whereabouts were not known, is not satisfactory, to say the least.

7. PW3 Dr.Milind Vasant Sonawane is an important witness in

this case. He had conducted the postmortem on the dead body of the deceased Vikas Sasane. He stated that the dead body was brought to YCM hospital, Pimpri, Pune where he was attached at the relevant time. He had prepared the postmortem notes at exhibit 17. He stated that he had sent some body parts of the deceased for histo-pathological examination and some parts to the chemical analyser. He had deposed that the histo pathological report was not suggestive of any pathology or any disease and that it suggested only congestion of all organs. Further, the Chemical Analyser's report suggested presence of alcohol. He had stated that after going through histopathological report, CA report, postmortem examination and history of scuffle alleged by the police, he issued the final cause of death on 18.10.2001 about the cause of death as shock due to vaso-vagal inhibition due to fist blow.

In his cross-examination, PW3 has admitted that it is very rare if any drunkard vomits and the vomited substance goes into lungs, then there is possibility of death of such person. He has also deposed that in case the vomit contents goes into trachea, there is a possibility of aspiration and pneumonia and death. This

opinion given by PW3 Dr.Milind Vasant Sonawne is very crucial to come to a conclusion that the deceased Vikas might have died an accidental death.

8. Upon appreciating the entire evidence, except the evidence of PW1 that accused gave fist blows to the deceased Vikas, there is no cogent and convincing evidence to reverse the order of acquittal. In absence of findings of homicidal death, there can be no conviction under section 302 of the Indian Penal Code.

9. The trial Court, after considering the entire evidence, has rightly held that the prosecution has not come with the case of motive on the part of the accused to cause the death of the deceased. It has held that it cannot be assumed that the accused was knowing about the drunken condition of the deceased so that knowledge can be imputed to the accused and therefore, it cannot be inferred that the accused had intended to cause the death of the deceased with knowledge that the death of accused could be caused by blows inflicted by him on the deceased. However, the fact remained that the accused assaulted the deceased and at the most, it held, the accused could be held responsible for causing simple injury under section 323 of Indian Penal Code.

10. We concur with the reasoning given by the trial Court in the impugned order. In that view of the matter, we are unable to persuade ourselves to interfere with the impugned order. Accordingly, the appeal deserves to be rejected and it is hereby rejected. No order as to costs.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)