

VISHWANATH
SATYANARAYANA
SHERLA

Digitally signed by
VISHWANATH
SATYANARAYANA
SHERLA
Date: 2021.12.23
13:59:54 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE
CRIMINAL APPEAL NO.281 OF 2003**

State of Maharashtra ... Appellant

Vs.

Navnath Abu Londhe ... Respondent

Mr.S.S. Hulke, APP, for the Appellant – State
Ms.Vriddhi Maria for the Respondent – accused

**CORAM: S.S. SHINDE &
SURENDRA P. TAVADE, JJ.
DATED: DECEMBER 9, 2021**

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

1. This is an Appeal challenging the impugned order dated 29th November, 2002 passed by the learned Ad-hoc Sessions Judge, Pune in Sessions Case No.383 of 2001 thereby acquitting the respondent – accused of charges under sections 302 and 307 of the Indian Penal Code.

2. The case of the prosecution in brief is as under:

Complainant Jayabai Pandurang Lokhande was an agriculturist in village Valti and she was residing with her deceased husband Pandurang Shankar Lokhande. Their land was adjacent

to the land of the accused and a sandalwood tree was standing on the common bandh in between their lands. According to the prosecution, a few days prior to the date of alleged murder of the deceased, the accused had cut the said sandalwood tree and, therefore, the deceased Pandurang and his brother Shrihari went to the house of the accused to ask him about the cutting of the sandalwood tree. At that time, the accused abused and quarreled with them. The accused claimed ownership over the sandalwood tree. On 25th July, 2001 at about 7.30am, the accused came to the house of the Jayabai holding some weapon in his hand. He assaulted Jayabai on her head and hand with that weapon due to which she suffered bleeding injuries and was about to become unconscious. At that time, she saw the accused assaulting her husband with the same weapon. Her husband also sustained injuries and fell down. The complainant was unconscious for about half an hour after which she regained consciousness and saw that many persons had gathered at her place. She saw the body of her husband was lying nearby and he was dead. Thereafter, she lodged her complaint with Manchar Police Station at about 9.45am. The complaint was lodged at C.R. No.44 of 2001 against the accused under sections 302 and 307 of the Indian

Penal Code. Jayabai was treated for her injuries at Hardikar hospital for five days.

3. The accused was immediately arrested. Investigation commenced and the dead body was sent for postmortem. After completion of investigation, chargesheet was submitted against the accused with the allegations that he committed criminal house trespass by entering into the house of complainant, committed the murder of deceased Pandurang and attempted to commit the murder of complainant Jayabai and thus committed the offences punishable under sections 452, 302 and 307 of the Indian Penal Code. Charge came to be framed to which the accused pleaded not guilty. After a full fledged trial, the learned Sessions Judge acquitted the accused of the offences as aforesaid. Hence, this Appeal by the Respondent – State.

4. Learned APP appearing for the Appellant – State has assailed the impugned judgment and order on the grounds mentioned hereinafter. He submitted that the trial Judge erred in labelling the prosecution witnesses as interested witnesses. He submitted that the trial Judge has attached too much importance to minor omissions appearing in the evidence of witnesses. The trial

Judge has committed an error of law while appreciating the version of the eye witnesses. He submitted that even if there are certain contradictions and discrepancies in the evidence of witnesses, that alone cannot be a ground to discard the entire evidence led by the prosecution. He submitted that the trial Judge has attached unwanted importance to stray entries for disbelieving ocular evidence. It is also submitted by the learned APP that the trial Judge was incorrect in drawing inference that dacoity must have been committed in the house of the complainant and not the assault as alleged by the complainant. It is submitted by the learned APP that the defence of alibi taken by the accused cannot be sustained as his place of duty was at a distance of about 60 to 65 kms. away from the place of incident.

5. To prove its case, the prosecution has examined four witnesses. PW1 Jayabai is the complainant and wife of the deceased Pandurang. She has deposed that she had seen the accused cutting the sandalwood tree which was standing on the common bandh between their lands and so, she had narrated to her husband Pandurang about the said cutting of the tree. Accordingly, her husband Pandurang and his brother Shrihari went

to the house of the accused when the accused abused and quarreled with them. Thereafter, on 25.7.2001, the accused came to the house of Jayabai and Pandurang with some weapon in his hands. He assaulted Jayabai due to which Jayabai sustained injuries on her head and hands and she fell down. The accused also assaulted her husband and he also fell down. Thereafter, Jayabai became unconscious. After some time, when Jayabai regained consciousness, she found her husband dead and so, she was taken to Manchar police station where she lodged the FIR against the accused. In her deposition, Jayabai admitted that some of the tiles of the roof of her house were removed at the time of incident. However, she denied the suggestion that some dacoity had taken place in her house in the night during which her husband was murdered and she was assaulted by the dacoits and accordingly narrated this history to the Doctor at Hardikars hospital. She had also deposed that some articles such iron trunk and two bags were found in the land of Baban Hinge before she went to Manchar police station for filing complaint.

In her cross-examination, she PW1 stated that she was not aware whether the alleged weapon in the hands of the accused

was sharp or not. She stated that her husband was sleeping when he was assaulted. She also stated that she was not sure whether many persons were gathered and police also had arrived when she regained consciousness.

PW2 Shrihari Shankar Lokhande is the brother of the deceased. He has deposed that on 23.7.2001, he saw quarrel was going on between Pandurang and Navnath Londhe in the field of Pandurang, on account of cutting of sandalwood tree. He tried to convince Pandurang and took him to the house of their father. After about an hour or two, he was informed that the accused had cut the sandalwood tree and hence, they started proceeding towards the field of the accused, however, they returned back thinking no useful purpose would be served. Thereafter, on 25.7.2001 at about 8am / 8.30 am, he was informed that Jayabai and Pandurang have sustained injuries. So, he reached the house of Pandurang where he noticed many persons had gathered. He noticed that Jayabai had sustained injuries to her head and hands. So, they took her to hospital. In the meanwhile, he noticed that Pandurang was lying dead in the house. There was injury on the neck of Pandurang. In his cross-examination, PW2 had stated

that he had seen as to who had cut the sandalwood tree when the quarrel was going on. He had stated that tiles of the roof of the house of Pandurang were removed prior to the incident.

PW3 Vilas Thorat is a panch witness and he deposed about the panchanama of clothes of the accused. He stated that the accused was arrested by the police in his presence at which time his clothes were attached.

Lastly, the prosecution examined the Investigating Officer PW4 ASI Bhaskar Pawar. He had deposed that he recorded the complaint of Jayabai on 25.7.2001. He referred the complainant to Sassoon hospital for medical examination and treatment. He drew the inquest panchanama and sent the dead body for postmortem. He arrested the accused and attached the clothes which were on the person of the accused under panchanama.

6. On the other hand, the learned Counsel appearing for the Respondent – accused relying upon the reasons given in the impugned judgement and order of the trial Court submitted that the Appeal is devoid of any merit and needs no interference and, therefore, it needs to be dismissed. The defence had adopted the

stand of alibi of the accused and to prove the same, the defence Counsel had examined 3 defence witnesses to show that the accused was not at the scene of offence and he was on duty at the time of the alleged incident.

DW1 Arun Choudhari is a clerk in Octroi department of P.C.M.C. He had deposed that the accused was working as a Watchman in Octroi department and he was on night duty at Talavade Naka during the night between 24.7.2001 and 25.7.2001. His duty hours were 10pm to 7am. The accused had signed muster roll when he resumed his duty on 24.7.2001.

DW2 Pramod Telenge was Octroi Inspector at the relevant time. He has deposed that the accused was on duty and the same is reflected in the duty chart which was produced in evidence.

DW3 Ashok Kumar Dalvi was a Security Officer at the relevant time and he stated that he was enquired by the police about the presence of the accused on duty and accordingly, he had perused the record and replied to the police that the accused was on duty during that night.

7. In support of her contentions, the learned Counsel relied on the decisions of the Supreme Court in **State of Maharashtra vs. Narsingrao Gangaram Pimple¹** and **Muralidhar @ Gidda & another vs. State of Karnataka²**.

8. We have given a careful consideration to the rival submissions of the parties. With the able assistance of the learned Counsel appearing for the learned APP appearing for the Appellant – State and the learned Counsel for the Respondent - accused, we have carefully perused the pleadings and the grounds taken in the Appeal, the evidence and the reasons assigned by the learned trial Judge in the impugned judgement and order while acquitting the accused.

9. The trial Court, after assessing the evidence on record, had held that the evidence of PW1 Jayabai suffers from serious infirmities and they assumed importance in view of the fact that there was no other eye witness to the incident. It had held that PW1 was taken to Hardikar hospital immediately after the assault and there she had told the doctor that she was assaulted by dacoits and her husband had died in the same incident. This is

1 (1984) 1 SCC 446

2 Criminal Appeal No.551 of 2011 dated 9.4.2014

reflected in the certificate issued by the concerned doctor of Hardikar hospital. The said certificate is at exhibit 30. PW1 had admitted in her deposition that she had given correct information at Hardikar hospital at the time of her admission for treatment. The trial Court had held that this is an important piece of documentary evidence which cannot be discarded. To support this theory of dacoity, it has come on record that the tiles of roof of the house of the appellant were found displaced. Further, PW1 Jayabai had admitted in her cross-examination that soon after the incident, some of the household articles such as one iron trunk and two large boxes were found lying in the adjacent land of one Baban Hinge before she left for Manchar police station for filing complaint.

10. PW1 Jayabai had deposed in her evidence that she was assaulted by the accused with the same instrument with which her deceased husband Pandurang was assaulted. The postmortem report at exhibit 28 reveals that the vital injury was incise wound extending from 1cm below zygomatic arch left side downwards and the dimensions were 5"x1"x3". The medical officer's opinion as to the probable cause of death is given as 'death due to shock due to haemorrhage due to injury to main vessels by use of sharp

object'. This would show that the vital injury sustained by the deceased Pandurang was due to sharp and cutting object. It is deposed that PW1 Jayabai was also assaulted with the same object. However, the discharge summary of the complainant at exhibit 30 indicates that there is evidence of 'parietal extradural haematoma with right fronto-parietal contusion with comminuted fracture in the orbital margin and orbital plate of the left frontal bone is seen'. This indicates that the injury would have been caused by hard and blunt object and not by a sharp or cutting instrument.

11. The accused has pleaded alibi and contended that he was on duty at the time of the alleged incident and was not present at the scene of offence. To establish this plea, he has adduced the evidence of three witnesses. It can be gathered from the evidence of all the defence witnesses that the working hours of the accused was 10 pm to 7am. He was on night duty at Talavade octroi naka during the night between 24.7.2001 and 25.7.2001. The alleged incident took place on 25.7.2001 at about 7am to 7.30 am. The distance between the place of duty of the accused and the place of incident is around 60 to 65 kms. Thus, it was not possible for the

accused to travel 60 to 65 kms. after leaving his work place at 7am or 7.30am and reach the place of incident by 7.30am, when the alleged incident took place. It has come on record that the prosecution has raised a doubt that the accused might have left his place of work early and reached the spot of incident before 7.30am. However, the evidence indicates that the working hours of the accused were 10pm to 7am and there is no contrary evidence to indicate that he left his place of work before 7am. Thus, this will give rise to presume that the accused was working at his place of work till 7am. It is important here that the prosecution is expected to establish its case beyond reasonable doubt while the plea of alibi is taken by the accused.

12. In the circumstances, we concur with the reasoning given by the trial Court in the impugned judgment and order dated 29th November, 2002. In that view of the matter, we are unable to persuade ourselves to interfere with the impugned order. Accordingly, the appeal deserves to be dismissed and it is hereby dismissed. No order as to costs.

(SURENDRA P. TAVADE, J.)

(S.S. SHINDE, J.)