

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 226 OF 2006**

The State of Maharashtra ... Appellant
(Through Avchit Murlidhar
Suryvanshi)
V/s.
1. Kautik Murlidhar Suryvanshi
2. Vimlabai Kautik Suryvanshi
3. Dattu Kautik Suryvanshi ... Respondents

Ms M.H. Mhatre, APP for the Appellant-State.
Mr. Anilkumar Patil a/w.Ms Sonal Rajput for the Respondents.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

**RESERVED ON : 08.03.2021.
PRONOUNCED ON : 22.06.2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal at the instance of State takes an exception to the judgment and order dated 7.4.2005 passed by the learned 1st Ad-hoc Additional Sessions Judge, Malegaon in Sessions Case No. 18 of 1998. By the impugned judgment and order, the respondents, who were accused before the trial court, have been acquitted of the offences punishable under section 302 read with 34 of the Indian Penal Code (for short 'IPC').

2] PW-1 Avchit Mulidhar Suryvanshi had filed the complaint case against the accused for the offence punishable under sections 302, 504, 506 read with 34 and section 120-B of the IPC.

3] The deceased Suman was the daughter of PW-1. Accused No.1 is the elder brother of PW-1. Accused Nos.2 and 3 are the wife and the son of accused No.1, respectively. According to PW-1 there was dispute between him and accused No.1 on account of sharing of water from common well situated in their ancestral agricultural land. The accused No.1 was not allowing PW-1 to take water from the said common well. Regular Civil Suit No. 424 of 1994 was thus filed by PW-1 in the court of Civil Judge, Junior Division, Malegaon.

4] The incident took place on 19.9.1996. On the date of incident, the daughters of PW-1 viz Suman and Anita were working in the field owned by PW-1. At about 2.00 p.m. accused No.2 started quarreling with the daughters of PW-1. It is alleged that during quarrel the accused Nos.1 to 3 caught hold of Suman. Then they dragged her towards the well. Suman tried to release herself. However, the accused overpowered her. It is alleged that the accused then threw her in the well.

5] The report in relation to the incident was lodged with Taluka Police Station, Malegaon. However, no cognizance of it was taken and instead accidental death was registered. Complaint case was thus filed against the accused.

6] The accused were charged and tried for the offence under section 302 read with 34 of the IPC. As stated earlier,

the trial court by the impugned judgement and order acquitted the accused of all charges.

7] We have heard the learned APP appearing for the appellant/State and the learned counsel appearing for the respondents/accused.

8] According to PW 1, on the day of incident, his daughter Anita disclosed to him that while she and Suman were working in the field, the accused raised quarrel with them and during quarrel, they caught hold of Suman and threw her in the well.

9] According to PW-1, he and his son thus rushed to the place of incident. The accused on seeing them started abusing and pelting stones at them. He then went to the house of Police Patil and narrated the incident to him. In the evening, the police came to the place of incident. On the next day, the body of his daughter Suman was taken out from the well and the postmortem was conducted. The police avoided to take the report against the accused. After one month, he went to the police station for enquiry, but he was told that the case is over and he should not come again. Therefore, he filed the complaint case before the court.

10] PW-1 was cross-examined on behalf of the accused. He has admitted in the cross-examination that the suit was decided before the incident in-question and the court dismissed his suit. On 19.9.1996 and 20.9.1996, the police did

not make enquiry with him about the incident. He has admitted that till 25.10.1996, he did not file complaint with the police. He then volunteered that he did file the complaint with the police, but same was not taken.

11] PW-2 Anita Avchit Suryvanshi is an eye-witness to the incident. She has stated in her evidence that at the relevant time, she was 10 years old and Suman was 17 to 18 years old. On the date of incident, at about 10.00 a.m., she and Suman had gone to the land owned by them near Junapani stream to collect Bajra crop. The accused were harvesting Bajra crop in their adjoining land. She has stated that at about 2.00 p.m., the accused raised quarrel with them. PW-2 has stated that accused No.2 said to Suman that she talks too much and caught hold of her hand. Accused Nos.1 and 3 also came there. Then they dragged Suman towards the well. They then threw her in the well. She started running. At that time, accused No.2 said that she also be caught and thrown in the well. She then went to the land where her father and brother were working. After going there, she became unconscious. After regaining consciousness, she told the incident to her father.

12] In the cross-examination conducted on behalf of the accused, PW-2 has admitted that she did not tell anything to the police Patil. She admitted that the police did enquire with her, in relation to the incident.

13] According to PW-3 Parashram K. Suryvanshi, on the day of incident, he was grazing bullocks in his fields. At about 12.00 to 2.00 p.m., he heard shouts of Anita that the accused pushed her sister in the well. Therefore, he went running towards the well. The accused said to him that he had no concerned with it and started pelting stones at him.

14] In the cross-examination, PW-3 has admitted that PW-1 is his relative. He has further admitted that he did not disclose about the incident in – question to any body else.

15] PW-4 Dr. Bharat B. Wagh, who conducted postmortem on the dead body of the deceased, has stated in his evidence that in his opinion the cause of death was asphyxia due to drowning.

16] It appears that after the alleged incident, the police did enquire into it and found it to be accidental death. Admittedly, the incident took place on 19.9.1996. PW-1 has admitted that till 25.9.1996, he did not file complaint with the police. He then volunteered that he did file the complaint with the police, but the same was not taken. However, there is no reference in the evidence as to on which date he lodged report with the police. PW-1 has mentioned different reasons in his complaint and his substantive evidence for not lodging the report immediately.

17] PW-2 Anita has admitted that her statement was recorded on the next day of cremation of the dead body of her sister. However, she has not spelled out as to what she has stated to the police. Afterthought attempt to implicate the accused, therefore, cannot be ruled out. It would not be, therefore, safe to rely upon the evidence of PW-2.

18] Admittedly, there was dispute between PW-1 and accused No.1 on account of sharing of water from the alleged common well. PW-1 has admitted that the suit filed by him was dismissed prior to few days of incident. Considering these facts and circumstances, the view taken by the trial court cannot be said to be perverse. No interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(SMT. SADHANA S. JADHAV, J.)