

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.34 OF 2017

- 1) Rameshwar s/o Bhagwan Sonvane,
Age 24 years, Occu.Agri.,
R/o Pimpalkhuta, Taluka and
District Aurangabad
 - 2) Dnyaneshwar @ Ganesh s/o
Bhagwan Sonvane,
Age 22 years, Occu. Agri.,
R/o Pimpalkhuta, Taluka and
District Aurangabad
- ... APPELLANTS**

VERSUS

The State of Maharashtra **... RESPONDENT**

.....
Shri S.G. Ladda, Advocate for appellants
Shri S.P. Sonpawale, A.P.P. for respondent – State
.....

**CORAM : R. G. AVACHAT, AND
R. M. JOSHI, JJ.**

Date of reserving judgment : 23rd November, 2022

Date of pronouncing judgment : 8th December, 2022

JUDGMENT (PER : R.G. AVACHAT, J.) :

This appeal is directed against the judgment of conviction and order of sentence, passed by learned Additional Sessions Judge-6, Aurangabad in Sessions Case No.140/2015, decided on 6/1/2017. Vide the impugned

judgment and order, the appellants were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and fine, with default stipulation.

2. The case of prosecution, in short, is as follows :-

Bhagwan (deceased) had two sons – Rameshwar and Dnyaneshwar @ Ganesh (appellants herein). Narmadabai was his widow. It was their joint family. Rameshwar, being elder, got married first. Manisha (P.W.9) is his wife. Ganesh got married later on. Due to disputes amongst the members of the family, there was a vertical split. Deceased Bhagwan, appellant Rameshwar and his wife would reside together in a house on their agricultural field. While the other three would reside together in the village – Pimpalkhuta.

3. Both the appellants, on 16/3/2015, went to their house in agricultural field. The deceased and Manisha (P.W.9) were in the house. The house was bolted from inside. The deceased opened the door. Both the appellants done him to death with merciless assaults. The appellants then fled. P.W.1 Vithal (informant) has his agricultural land adjoining the

land of the deceased. Someone told the informant that there was a quarrel at the house of the deceased. The informant along with 2 – 3 others, therefore, went to the house of the deceased. They noticed the deceased to have suffered multiple injuries. They, therefore, rushed him to Ghati Hospital, Aurangabad in a Bolero Jeep of P.W.2 Karbhari. The deceased was declared dead at the hospital.

4. The informant lodged the F.I.R. (Exh.13) on the following day. A crime vide C.R. No.55/2015 was registered against the appellants. The scene of offence panchanama (Exh.19) was drawn. A crow bar and sticks came to be seized from the scene of offence. Post mortem was conducted on the dead body of Bhagwan, but not before the inquest panchanama (Exh.29) was drawn. The appellants were arrested. Clothes on their person came to be seized. Statements of persons acquainted with the facts and circumstances of the case were recorded. Seized articles were submitted to Forensic Science Laboratory (FSL) for chemical analysis. On receipt of the reports thereof, the appellants came to be proceeded against by filing a charge sheet.

5. On committal of the case to the Court of Sessions, learned Additional Sessions Judge framed the charge (Exh.5). The appellants pleaded not guilty.

6. The prosecution examined 11 witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence, sentenced the appellants as stated above.

7. Heard. Learned counsel for the appellants would submit that, it is almost a case of no evidence. Moral conviction is unknown to criminal jurisprudence. The trial Court relied on statement of P.W.9 Manisha recorded under Section 164 of the Code of Criminal Procedure, for convicting the appellants. The same is not permissible in law. Mere blood stains on the clothes of the appellants would not further the prosecution case. The learned counsel, therefore, urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, submit that, evidence of P.W.9 Manisha could not altogether be brushed aside. According to him, even evidence of a hostile witness may be relied on. The learned A.P.P., relied on

the judgment of the Apex Court in case of Rajesh Yadav & anr. Vs. State of Uttar Pradesh [2022 (2) R.C.R. (Cri.) 132 : 2022 (3) Supreme 294]. He took us through the entire evidence on record to ultimately submit that the impugned judgment warrants no interference therewith. He, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence relied on. The appellants are alleged to have committed patricide. The reason or motive for commission of the offence is unknown although it was tried to be posed to be a case of frequent quarrel among the members of the family. The deceased was also alleged to have been addicted to alcohol. He would entertain suspicion about behaviour of one of his daughters-in-law.

10. Admittedly, the deceased, appellant Rameshwar and his wife P.W.9 Manisha would reside in a house on their agricultural land. While appellant Dnyaneshwar, his wife and mother would reside in a village. Close reading of the entire evidence would suggest that, there is no reason or motive which could be attributed to appellant Dnyaneshwar, more so when the incident took place at or in the front-yard of the

house in the field.

11. The informant was neighbour of the deceased. He rushed to the scene of offence immediately. Some other neighbours had also accompanied him. The deceased had suffered multiple injuries. The deceased was, therefore, shifted to Ghati Hospital, Aurangabad in a jeep of P.W.2 Karbhari. The deceased was declared dead at the hospital. The informant, therefore, lodged the F.I.R. (Exh.13) at Karmad Police Station on the following day. Although the names of the appellants figure in the F.I.R., neither the informant nor P.W.2 Karbhari claim to have had witnessed the incidence. The evidence of the informant would only be relevant to the extent of setting criminal law in motion. The scene of offence panchanama (Exh.19) was drawn in the presence of P.W.2 Karbhari. A crow bar and sticks came to be seized from the scene of offence.

12. Dr. Sachin (P.W.6) conducted post mortem examination on the dead body. He noticed 35 external injuries on the person of the deceased. The post mortem report (Exh.42) suggests that the deceased died of shock and haemorrhage due to multiple injuries and fractures.

13. P.W.3 Harishchandra is a panch witness to the seizure of clothes of both the appellants under the panchanamas (Exhs.24 and 25) respectively. While P.W.4 Uttam and P.W.5 Namdeo are witnesses to the inquest panchanama (Exh.29). In presence of P.W.5 Namdeo, clothes on the person of the deceased were taken charge of under the panchanama (Exh.30).

14. Dr. Ashish (P.W.7) was examined to prove P.W.9 Manisha to have suffered injury in the incident. She was examined by him on 22nd March i.e. five days after the incidence. The injury suffered by her was simple in nature. P.W.9 Manisha did not allege any of the appellants to have assaulted her.

15. The evidence of the witnesses referred hereinabove would no way be incriminating against any of the appellants.

16. Jijabai (P.W.8) would reside in the nearby of the residence of the deceased. Her evidence suggests that, P.W.9 Manisha had come to her residence in the evening of

16/3/2015. She claimed to have been told by P.W.9 Manisha that the appellants were assaulting the deceased. She had, therefore, come to request her to settle the quarrel. Her evidence would suggest that, she did not oblige P.W.9 Manisha since according to her, the quarrel at the house of the deceased was a regular feature.

17. The material witness, according to the prosecution, was P.W.9 Manisha. In her examination-in-chief itself, she testified that, no quarrel ever took place among the members of her family. It is, however, in her evidence that, her mother-in-law would suspect her chastity. Since P.W.9 Manisha did not stand by the prosecution, she was subjected to cross-examination by learned A.P.P. She then admitted that, due to quarrel, the family was disintegrated. Herself and her husband Rameshwar would reside together in a house on the land. Other three would reside in a house at the village. It is further in her evidence that, on the fateful day, the deceased was in the house. She too was present. Her husband (appellant Rameshwar) came. She, however, denied Rameshwar to have abused the deceased. The case of the prosecution was put to her. She denied each and every suggestion. She, however, admitted that, she was frightened

due to the incident. She had, therefore, been to the house of Jijabai (P.W.8) to ask her for help. Her evidence would further suggest that, the informant, P.W.2 Karbhari and others came in a jeep and took the deceased to the hospital.

18. P.W.9 Manisha was confronted with her statement (Exh.59), recorded under Section 164 of the Code of Criminal Procedure. According to her, it was recorded as per her say. She denied to have not been supporting the prosecution with a view to save her husband.

19. There can be no dispute over a legal proposition that, evidence of a hostile witness cannot altogether be disbelieved. Relevant parts thereof, which are admissible in law, can be used by the prosecution or the defence.

20. If we appreciate the evidence of P.W.9 Manisha and P.W.8 Jijabai, what could be said to have been brought on record (proved) was that, there was some incidence at her residence. She got frightened. She went to Jijabai (P.W.8) and asked for help. Jijabai (P.W.8) did not accompany her to her residence. The injury suffered by P.W.9 Manisha could not be said to have been as a result of the incidence since she

denied to have been assaulted by her husband.

21. It is true that, P.W.9 Manisha in her statement (Exh.59) given to the Executive Magistrate P.W.10 Laxman Shirude described the incident. It is reiterated that, the trial Court has relied on the said statement to hold the appellants guilty of the offence they were charged with. In our view, the trial Court committed a glaring mistake. It needs no mention that, statement recorded under Section 164 of the Code of Criminal Procedure could only be used for contradicting or corroboration of the evidence of the maker of the statement. The evidence of P.W.9 Manisha would only suggest that, she, in her statement recorded under Section 164 of the Code of Criminal Procedure, only stated that the appellants assaulted the deceased in her presence. She did not reiterate the said statement in evidence before the Court. As such, whatever was stated by her in her statement under Section 164 of the Code of Criminal Procedure, could not partake status of evidence on oath before the Court. The trial Court ought not to have relied on such statement of P.W.9 Manisha to convict the appellants.

22. Then what remains is the evidence in the nature

of C.A. reports pertaining to blood groups of the appellants, deceased and group of blood stains found on their clothes. The C.A. report (Exh.70) suggests that, blood group of appellant Rameshwar is "O". The report regarding appellant Dnyaneshwar's blood group is inconclusive. The deceased had his blood group "B". Necessarily, clothes on the person of the deceased had blood stains of his own blood group. Articles No.6 to 8, namely two full pants and shirt of the appellants did not bear any blood stains. Article 5 is a pant said to be of appellant Rameshwar. There is, however, nothing to suggest that, this trouser was on his person when the offence did take place. In our view, therefore, such kind of evidence is too feeble to connect the appellant Rameshwar with the offence in question, more so when there is no other material suggesting his involvement in commission of the offence.

23. We are, therefore, of the view that the prosecution evidence fell short to bring home the guilt of the appellants. In the result, the appeal succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) Conviction of the appellants and consequential sentence recorded by learned Additional Sessions Judge-6, Aurangabad in Sessions Case No.140/2015, by judgment and order dated 6/1/2017 is hereby set aside. The appellants are acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The appellants be set free forthwith if not required in any other case. Fine amount, if paid, be refunded to them.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

fmp/-

