

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 476 OF 2015

Indubai w/o Narayan Jamdade
age 34 years, occ. Household
r/o Rakaswadi
Tq. Ambajogai, Dist. Beed
at present Dage Colony
Barshi Naka Beed
Tq. & Dist. Beed.

Appellant

Versus

The State of Maharashtra
Through Police Station Officer
police station, Peth Beed
Tq. & Dist. Beed.

Respondent

Mr. Joydeep Chatterji, Advocate (appointed) for the appellant.
Mr. R. B. Bagul, APP for the State.

WITH
CRIMINAL APPEAL NO. 447 OF 2015

Shaikh Haji Shaikh Babu
age 32 years, occ. Agriculture
r/o Near Ahmadiya Masjid
Mominpura, Beed.

Appellant

Versus

The State of Maharashtra

Respondent

Mr. Rajendra Deshmukh, Senior Counsel instructed by Mr. G. A.
Kulkarni, Advocate for the appellant.
Mr. R. B. Bagul, APP for the State.

CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.

DATE :15th DECEMBER, 2022.

JUDGMENT : (PER R. M. JOSHI)

1. Being aggrieved by the judgment and order dated 5th May, 2015, passed by the Additional Sessions Judge, Beed in Sessions Case No 49/2013 thereby convicting the appellants for offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, the appellants have preferred these appeals under Section 374 of the Code of Criminal Procedure.

2. In short, the case of prosecution is that on 14th May, 2012, deceased came to the house of appellant-wife and there occurred a quarrel between them. As per the version of Pooja, daughter of the deceased, both the appellants took deceased forcibly behind the house and later she heard cries of her father while he being assaulted. Initially, First Information Report was lodged by Hirabai against unknown person, bearing C.R. No. 37/12 with Peth Beed Police Station. Though the incident in question has occurred on 14th May, 2012, the statement of child witness Pooja came to be recorded after five months. Both the appellants were arrested in connection with the crime. On conclusion of investigation, charge-

sheet is filed. As appellants abjured the charge before Additional Sessions Judge, they were tried.

3. Learned advocates for the appellants submitted that the only relevant testimony in this case of Pooja (PW 4) is not trustworthy for the reason that she disclosed the alleged incident after five months of occurrence thereof. They took this Court through the cross-examination of this witness which according to them, indicates that she was forced to make statement against both the appellants. It is further argued that except the statement of Pooja, there is absolutely no evidence on record to indicate involvement of appellants in this crime and hence, the impugned judgment deserves interference.

4. Learned APP on the other hand strenuously argued that there is no reason to disbelieve the testimony of child witness as she would not have any reason to depose against her own mother. By referring to the evidence of this witness, it is pointed out that since her mother has threatened her citing her arrest, the witness did not disclose the incident to the police, this was sufficient for a child of 14 years of age to keep quite. According to him, once the prosecution

has proved that it is a case of homicidal death and there was motive for the appellants to eliminate the deceased with the aid of testimony of this witness, the appellants are rightly convicted by the trial Court.

5. Dr. Prakash Shivnikar (PW 7), who conducted autopsy on the dead body in post mortem notes (Exhibit 43) noted external and internal injuries noticed by him on the dead body. He opined the cause of death is shock due to lung and heart laceration with fracture of multiple ribs. Defence was unable to elicit any admission during cross-examination to create doubt about the cause of death opined by Medical Officer. The spot panchanama (Exhibit 21) shows that the dead body was found in pool of blood. Considering the nature of injuries on person of deceased, the circumstances in which dead body was found and medical opinion, we find no hesitation to hold that deceased Narayan died homicidal death.

6. Though prosecution has examined 11 witnesses but for all practical purposes its case rests on sole testimony of Pooja (PW 4). At the outset, it needs to be recorded that her statement came to be recorded five months after the occurrence of the incident in question and hence her version about incident must be taken with pinch of

salt. Even assuming that she preferred to keep quiet due to the possibility expressed by her mother of her arrest, if she discloses the incident to the police, but careful consideration of her entire evidence indicates that statement made by her at different stages were not voluntary but at instance of her paternal uncle.

7. Even if we give some latitude to this witness being child for not disclosing the fact immediately but when it is found that her entire version is tutored or prone to manipulation by paternal uncle and aunt. This become more obvious when the poor witness is wholly dependent upon them for survival. Ignoring delay in recording statement also, her evidence discloses that after 15 days of incident she joined her paternal uncle's home. She admits to have been to the police station at the instance of her uncle thrice but she did not give any statement to the police as desired by him. She candidly admitted that she was questioned by paternal uncle and aunt as to why she did not tell to police that her mother killed father. She further went to admit that she did not know anything about the incident, she had not disclosed about it to the police. There is further evidence on record to show that at all point of time i.e. at the time of recording her statement before police as well as statement

under Section 164 of the Code of Criminal Procedure, her paternal uncle and aunt were present and it is sufficient to infer therefrom that the statements were made under their influence. She was candid to admit at one stage to state that her uncle was angry with her when she stated that she suspect that her mother killed father. Apart from this, Pooja claims that the appellants took her father to a room wherein he was allegedly assaulted. However, spot panchanama indicates otherwise as the spot is sown to be the open place and not a room. This also makes the claim of Pooja doubtful regarding the occurrence of the incident in the manner she narrates. Thus, we find her testimony wholly unreliable for being prone to tutoring and it would not be safe to base conviction on such evidence.

8. The prosecution has come with a case that there was illicit relationship between the appellants which provided motive for them to eliminate the deceased. In this regard, however, evidence of Pooja shows that deceased and his wife were staying separately. Even on the date of the incident, a quarrel is claimed to have occurred but it was not on account of relationship of the appellants but it was owing to the claim of deceased and his wife over the children.

9. The prosecution is relying upon the alleged recovery of saree and sickle from house of appellant Indubai. Apart from the fact that panch witness Santosh (PW 6) did not support the prosecution but even otherwise as per CA report (Exhibit 56) those articles were not found stained with blood. Thus, the said recovery is insufficient to connect it with death of deceased.

10. From the testimony of Pooja and Hirabai though it can be said that there was suspicion about the illicit relationship between appellants however, once testimony of Pooja on the incident is excluded from consideration, there remains absolutely no evidence to connect appellants with the crime. It is settled position of law that suspicion howsoever strong cannot take place of the proof of the guilt of accused. Having regard to the evidence on record, prosecution could not take its case any further beyond suspicion against appellants and hence on material evidence on record, they cannot be convicted. The inevitable result of this discussion would lead to acquittal of appellants. Hence the order :-

ORDER

(i) Criminal Appeal No. 476/2015 and Criminal Appeal No. 447/2015 are allowed.

(ii) Impugned judgment and order dated 5th May, 2015, in Sessions Case No. 49/2013 is set aside.

(iii) Appellants Indubai w/o Narayan Jamdade and Shaikh Haji Shaikh Babu are acquitted of the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

(iv) Appellants Indubai w/o Narayan Jamdade and Shaikh Haji Shaikh Babu be released forthwith, if not required in any other crime.

(v) Fine amount be refunded, if paid.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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