

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.772 OF 2015

1) Ravindra Ambar Naik,
Age 23 years, Occu. Agri.

2) Somnath Abhiman More,
Age 22 years, Occu. Agri.

3) Anil Sukdeo More
Age 23 years,

No.1 R/o Bupkari,
No.2 and 3 R/o Varde- Temhe
Tal. Shahada, Dist. Nandurbar

... APPELLANTS

VERSUS

The State of Maharashtra
Through P.S.O., Police Station-
Shahada, Tal. Shahada,
Dist. Nandurbar
(Copy to be served through the
Office of the Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. S.U. Chaudhari, Advocate for appellants
Mr. P.G. Borade, A.P.P. for respondent – State
.....

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

Date of reserving judgment : 14th December, 2022

Date of pronouncing judgment : 19th December, 2022

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

This is an appeal against conviction. The appellants, vide impugned judgment and order dated 3/9/2015, passed by learned Additional Sessions Judge, Shahada in Sessions Case No.53/2012, have been convicted for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- each, in default to undergo simple imprisonment for 2 months. The appellants are also convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code and rigorous imprisonment for one year. The substantive sentences of imprisonment have been directed to run concurrently.

2. The facts giving rise to the present appeal are as follows :

Bijubai (P.W.7) was residing along with her

husband Bhima (deceased) at village Bhupkari, Taluka Shahada, District Nandurbar. The couple is blessed with a child. Appellant Ravindra along with his wife was residing in the neighbourhood of the informant at village Bhupkari itself. Appellant Somnath and Anil are the close relations of appellant Ravindra. The appellants came together to the house of the informant. It was about 7.30 p.m. They gave call to Bhima (deceased). They questioned him as to why did he insult Surekhabai (wife of appellant Ravindra). All of the appellants mounted attack on Bhima. Appellant Ravindra assaulted him with an axe. Appellants Somnath and Anil beat Bhima with sticks. When the informant intervened, she too was not spared. The informant went to village Prakasha. She was apprehensive of the appellants. She stayed at village Prakasha overnight. On the following day, she lodged the First Information Report (F.I.R. - Exh.33).

3. Police had already arrived in the village pursuant to a call by villagers. An inquest panchanama was drawn. Based on the F.I.R. (Exh.33), crime came to be registered. It was investigated as well. On completion of the investigation, the appellants were proceeded against by filing a charge sheet.

4. On committal of the case, the trial Court framed the charge (Exh.6). Appellants pleaded not guilty. The prosecution examined 15 witnesses and produced in evidence certain documents.

5. The trial Court, on appreciation of the evidence before it, convicted and sentenced the appellants as stated above.

6. Learned counsel for the appellants would submit that, except the informant, no prosecution witness gave evidence against any of the appellants. According to him, the F.I.R. was lodged 28 hours after the incident. The informant was not at the village. She was an interested witness. No conviction could be based on the sole testimony of an interested witness. He relied on a judgment of the Apex Court in case of **Anil Phukan Vs. State of Assam** reported in **(1993) 3 SCC 282**. He would further submit that, the informant was a tribal woman. Admittedly, she did not understand Marathi. The same suggests that, someone else narrated the contents of the F.I.R. and her thumb impression was simply obtained thereon. The learned counsel ultimately urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit

that, the informant was a tribal woman. The fact that none of the witnesses stand by her indicate they have been won over. She had no reason to falsely implicate any of the appellants. When she had intervened, she too was assaulted. Her injury certificate reinforces her case. Evidence of injured witness is reliable one. The fact that other prosecution witnesses did not stand by her, speaks in volumes to suggest of isolating the informant. The police officer Vasant Mahale (P.W.14), who recorded the F.I.R., testified to have understanding of Ahirani language. His evidence suggests that, he translated into Marathi, the contents of the F.I.R. given by the informant in Ahirani. According to learned A.P.P., no particular number of witnesses are necessary to sustain a conviction. The testimony of a sole witness, if found to be reliable, can form basis of conviction. The learned A.P.P. ultimately urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence relied on. P.W.1 Ravindra Thakre and P.W.2 Navneet Pawar are the witnesses to the scene of offence and inquest panchanama (Exh.17). Both of them did not stand by the prosecution. Same is the case about the evidence of eye witnesses P.W.3 to P.W.6.

9. The informant Bijubai (P.W.7) is the widow of the deceased. It is in her evidence that, on the fateful night, she was home along with her husband (deceased Bhima) and their child. The appellants came together to her residence. They gave call to her husband. Both of them came out of their house. The appellant Ravindra questioned Bhima as to why did he insult his wife – Surekhabai. Bhima was sporting underpant only. The appellants started assaulting him. The appellant Ravindra assaulted on his head with an axe. Appellants Somnath and Anil beat him with sticks. When she intervened, appellant Somnath gave on her head a stick blow. She got scared. She took her child in her arm and ran towards village Prakasha. It is further in her evidence that, since it was 10.00 in the night, she did not go to the police station to report about the incident. Her evidence would further suggest that, she took shelter in a temple at village Prakasha. On the following morning, she came back to her residence at village Bhupkari. The police had already arrived in response to a call by police patil. She then went to Shahada Police Station and lodged the F.I.R. (Exh.33).

10. Although the informant was a rustic tribal woman, she stood the ground during searching cross-examination. She admitted to have no understanding of Marathi language.

Police Officer – P.W.14 Vasant testified that, he understood Ahirani language. He translated the F.I.R. given by the informant and then recorded it into Marathi.

11. P.W.12 Dr. Rajendra conducted autopsy on the dead body of Bhima. He noticed 8 external injuries on his person. The post mortem report (Exh.56) suggests the deceased died of cardio respiratory arrest due to haemorrhagic shock due to multiple injuries. There is also injury certificate of the informant. It is at Exh.57.

12. It is true that the F.I.R. has been lodged after little over 24 hours of the incident. The fact is, however, that, the incident took place by 8.00 in the evening. The informant, a rustic and tribal woman, was the only major person along with the deceased at their residence. Her evidence that she was frightened and, therefore, took shelter at a temple at village Prakasha, could not be doubted. The eye witnesses who stood by the prosecution during investigation appear to have been won over when the trial commenced. The informant was a victim. She too suffered head injury. On appreciation of her entire evidence, supported by the medical evidence, we do not find any reason to disbelieve her testimony. Section 134 of the Evidence Act states that, no particular number of

witnesses shall, in any case, be required for the proof of any fact.

13. On appreciation of evidence in the case, it is evident that, appellant Ravindra assaulted the deceased with an axe. He had a reason to intend to kill Bhima. It was a tribal area. It is common knowledge that, tribals happen to be armed with sticks. True, all the appellants assaulted the deceased. Even they had come together. There is, however, nothing to suggest all the three to have had a pre-concert to eliminate the deceased. The injuries suffered by the deceased and proved to be fatal could only be attributed to appellant Ravindra. The other two appellants since assaulted the deceased with sticks and there is nothing to suggest them to have had shared common intention with appellant No.1 Ravindra to eliminate Bhima, we find the conviction of Somnath and Anil for offence punishable under Section 302 of the Indian Penal Code with the aid of Section 34 is unsustainable. Their conviction on that count is, therefore, required to be set aside. The role attributed to them and injuries caused by them make them liable to be convicted for offence punishable under Section 324 of the Indian Penal Code. They would, therefore, be sentenced to suffer rigorous imprisonment for three years with fine of Rs.1000/-.

14. In the result, the appeal partly succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) Appeal preferred by appellant Ravindra Ambar Naik stands dismissed.
- (iii) The order dated 3/9/2015, passed by learned Additional Sessions Judge, Shahada in Sessions Case No.53/2012, convicting the appellants Somnath Abhiman More and Anil Sukdeo More for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and their consequential sentence of life imprisonment and fine, is hereby set aside. Both of them stand acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.
- (iv) The appellants Somnath Abhiman More and Anil Sukdeo More are hereby convicted for the offence punishable under Section 324 of the Indian Penal Code and, therefore, sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/- (Rupees one thousand) each. In

default of payment of fine, they shall undergo simple imprisonment for one month. Fine amount paid by these appellants on sentence by the trial Court for offence punishable under Section 302 of the Indian Penal Code be adjusted towards fine imposed for offence punishable under Section 302 of the Indian Penal Code.

(v) Both the appellants Somnath Abhiman More and Anil Sukdeo More have been behind the bars for more than three years. They be set at liberty forthwith if not required in any other case since the sentences imposed upon them has already been served out.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

fmp/-