

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 363 OF 1998**

1 Ladkya Jiva Bhurbhura,
Age about 64 years,
2 Manji Shantaram Tumbda,
Age 47 years,
Both residing at Indgaon,
Taluka: Wada,
Dist. : Thane. ... Appellants.

v/s.

The State of Maharashtra. ... Respondent.

Mr. Shailesh Kharat, advocate appointed for appellants.

Ms. G.P. Mulekar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : SEPTEMBER 24, 2021.

PRONOUNCED ON : FEBRUARY 8, 2022.

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JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellants herein are convicted for the offence punishable under section 302 read with section 34 of the Indian Penal Code by the Additional Sessions Judge, Thane vide Judgment and Order dated 12/1/1998 in Sessions Case No. 381 of 1988 and

sentenced to undergo imprisonment for life and also to pay a fine of Rs. 500/- each I.d. to undergo further R.I. for 3 months. Both the appellants are further convicted for the offence under section 452 read with section 34 of Indian Penal Code and sentenced to undergo R.I. for two years and to pay a fine of Rs. 300/- each I.d. to suffer R.I. for two months. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows:

(i) Shankar happens to be the husband of the deceased Girija. Ladkyai also happens to be the wife of P.W. 1 Shankar. The maternal house of Girija was at Indgaon. The appellants also hail from village Indgaon in Taluka Wada. The accused appellants were acquainted with the parents of Girija.

(ii) On 8th October, 1987 Shankar lodged a report with Vikramgad Police Station alleging therein that on 7/10/1987 he alongwith his two wives retired for his sleep in his hut. That the hut does not have a door. They had kept oil lantern burning in the hut.

(iii) At about 11.30 p.m. to 12 midnight, 3 persons entered into

his hut. One of them shouted at him and asked him to wake up, threatened him that they were going to kill two person. He identified the said persons as Ladkya Bhurbhura and Manji Tumbda and one unknown person. That Ladkya was armed with spear. That person asked his wife as to why she had not returned to Indgaon, despite the fact that she was called by them. Shankar got scared and escaped from the hut. He ran towards an adjacent hamlet and gathered people. When they returned to the hut, they saw that Girija was lying in a pool of blood. She had died. She had injuries on his chest. That his first wife Ladkai happens to be an eye witness to the whole incident.

(iv) The investigation was set in motion. The accused were arrested. After completion of investigation, charge-sheet was filed and the case was registered as Sessions Case No. 381 of 1988.

3 The prosecution examined as many as 6 witnesses to bring home the guilt of the accused. However, prosecution rests on the evidence of P.W. 1 Shankar Wagh, P.W. 3 Ladkyai, who is the first wife of the complainant, P.W. 4, Lakhma Ghatal, a close acquaintance of

complainant, P.W. 5 Dr. Arun Gavali and P.W. 6 Investigating Officer Pundlik Satoshe.

4 According to P.W. 1 Shankar, on the day of the incident, assailants had entered into his hut at midnight. There was no prelude to the incident. They threatened the inmates of the hut. That the accused had informed P.W. 1 that they wanted to kill his second wife Girija. He got scared and therefore, he rushed out of the hut. He had rushed towards Khaparde Pada, which is a part of his village Dhereje. He raised hue and cry. Thereafter, he alongwith villagers returned to his hut only to see that his second wife Girija was lying on the ground with bleeding injuries on her chest. His wife Ladkyai was present near the scene of offence. On the following day, he had lodged the report with Vikramgad Police Station. He has proved the contents of the FIR and the same is marked at Exh. 8. It is elicited in the cross-examination that Vikramgad Police Station is about 4 k.m. away from his hut.

5 It appears from the evidence of P.W. 1 that Girija was

previously married to Balu Chaudhary and she was blessed with two children from her first marriage. Specific question was asked to P.W. 1 as to whether the deceased was wearing blouse when she slept on that night. He has answered in the affirmative. However, inquest panchanama, which is at Exh. 11 would clearly indicate that she was wearing saree, but not blouse. There is stab injury on her chest on the right side auxiliary region. P.W. 1 has feigned ignorance as to whether Girija was having illicit relations with one Ladkya Medhaya prior to her marriage with P.W. 1. There are material omissions in the evidence of P.W. 1. It is elicited in the cross-examination that he had raised shouts to the effect that thieves had entered his hut when he was seeking help from the residents of Dhereje.

6 P.W.3 Ladkyai happens to be the first wife of the complainant. She also claims that she was residing in the hut with her husband and his second wife. She has also stated that on the unfateful night, 3 persons entered into her hut. She had identified Ladkya and Tumbdya. Third assailant was unknown. She also identified them before the court. As soon as the assailants entered into the house,

Ladkya had disclosed to Shankar that Girija had not returned to Indgaon and therefore, he intended to kill Shankar and Girija. Saying so, Ladkya had assaulted Girija with a spear with which he was armed. P.W. 3 also claims to be assaulted. She therefore, got frightened and fled from the hut. Similarly, P.W. 1 had also fled from the hut. According to her, she and her husband had raised hue and cry and informed villagers that thieves had come to their hut. Within a short while, her husband returned to the hut with other villagers. By the time, they returned, the accused had fled from the scene of offence. She has further stated that Ladkya was armed with spear, whereas Tumbda was armed with stick.

7 In the cross-examination, she has stated that one Laxman Gangurda was the first husband of Girijabai. After she was abandoned by Laxman, she started residing with Balu Chaudhary. She had borne two sons to Laxman and two to Balu Chaudhary. That Balu expired and then she started residing with Ladkya Medhya and they were living in a live-in relation, but thereafter, Ladkya Medhya had also abandoned Girija and therefore, she had started residing with P.W. 1. There are material omissions in the evidence of P.W. 3, in as much as

the fact that, Girija was seen lying in pool of blood by the time when she returned, is a material omission in her evidence.

8 PW. 4 Lakhama Ghatal was acquainted with P.W. 1 and P.W. 3. According to him, on the unfateful night, P.W. 1 Shankar had come running to the village Dhereje raising shouts to the effect that thieves have entered in his house. Therefore, P.W. 4 and other villagers rushed to the hut of P.W. 1 Shankar.

9 PW. 5 Dr. Arun Gavali was attached to Primary Health Center, Talukar Javahar as a medical officer. He had performed autopsy on the dead body of Girija. He found two stab injuries on the right intra mamary region and he had opined that the said injuries must have been caused 17 to 18 hours prior to conducting autopsy. The post mortem was performed on 8/10/1987 between 5.50 p.m. to 6 p.m.. The injuries had caused puncture of right middle and lower lobe of right lung leading to hemorrhage and respiratory failure and the said injuries were sufficient in the ordinary course of nature to cause death. The advance death certificate was issued on the same

day. The weapons were shown to the medical officer and he has opined that the said weapons must have caused the injuries.

10 PW. 6 Pundalik Satoshe happens to be investigating officer. He had recorded statement of P.W. 1 and registered Crime No. 67 of 1987 for the offence punishable under section 452, 302 read with section 34 of the Indian Penal Code. He had visited the scene of offence and had seen the dead body of Girija at the spot. He has narrated before the court the steps taken by him in the course of investigation. According to him, spear was recovered under section 27 of the Indian Evidence Act from Ladkya near foot-way leading to Goanpada to village Moha, in the field of Jowar. It is pertinent to note that slip was pasted on the stick, which was missing when it was sent for forensic examination. Neither Article 9 spear was bearing signatures of panchas nor the signature of P.W. 6. The kerosene lamp was not seized from the scene of offence. P.W. 6 has proved omissions and contradictions of all the witnesses.

11 In the present case, the evidence of P.W. 1 and P.W. 3 do not

inspire the confidence of the Court for the following reasons :

(a) According to P.W.1 and P.W. 3, Girija was sleeping next to them. The assailants had, upon arrival, declared that they wanted to kill Girija. They were armed with weapons like spear and stick. There was no reaction from either P.W. 1 or P.W. 3 or the deceased.

(b) That instead of saving life of Girija, P.W. 1 and P.W. 3 rushed to the village and raised hue and cry that thieves had entered into their hut. It is the case of P.W. 1 and P.W. 3 that they could identify the accused in the kerosene oil lamp which was burning in the house.

(c) Then, there was no reason for them to raise false cry that thieves had entered into the house.

(d) It is the case of P.W. 3 that after assaulting Girija, accused had also assaulted P.W. 3. However, the said contention is neither supported by medical evidence nor by any other material cogent evidence.

(e) P.W. 3 had not even stated as to whether she had even attempted to save the life of Girija. Her evidence would show that she was standing as a silent spectator when she saw the accused assaulting Girija.

(f) The evidence of the eye witness does not appear to be a sterling testimony upon which conviction can be maintained. There are material omissions and contradictions in the evidence of the eye witnesses, which go to the root of the matter and cannot be taken into consideration by a prudent mind.

(g) P.W. 4 has also categorically stated that the cry raised by P.W. 1 and P.W. 3 was that thieves had come.

12 It is therefore, doubtful as to whether the present appellants had committed the offence alleged against them. To uphold the conviction for offence punishable under section 302 of the Indian Penal Code, the evidence of eye-witness has to be a sterling testimony, leaving no room for doubt. It appears that the death of Girija, unfortunately, is shrouded with mystery. Hence, the accused would be entitled to benefit of doubt. In view of this, the appellants deserves to be acquitted.

13 Before parting with the Judgment, this Court appreciates the efforts taken by the learned Counsel appointed to espouse the

cause of the appellants. The learned Counsel Mr. Shailesh Kharat is entitled to the professional fees as per rule.

14 Hence, following order is passed :

ORDER

(I) The appeal is allowed

(II) The conviction and sentence imposed upon the appellants vide Judgment and Order dated 12/1/1998 by the Additional Sessions Judge, Thane in Sessions Case No. 381 of 1988 is hereby quashed and set aside.

(III) The appellants are acquitted of all the charges levelled against them.

(IV) Their bail bonds stand cancelled.

15 The appeal is disposed of accordingly.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)