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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 976 OF 2015

Mangesh Arjun Bhosale
Aged 26 yrs. R/o. Room No.5,
Chawl No.4, Om Shakti Seva
Sanstha, Maharashtra Nagar,
Mumbai -400 088.
(presently in Nasik Central Prison) ... Appellant

V/s.

The State of Maharashtra
(through Ld. APP for the State) ... Respondent

AND
CRIMINAL APPEAL NO. 1167 OF 2015
WITH
INTERIM APPLICATION NO. 3138 OF 2021

Atul Chandrakant Pawar
Aged 26 yrs. Occ. Driver
R/o. Mohite Patil Nagar,
Sutar Chawl No.6, C-Ward,
Room No.7, Ghatkopar, Mankhurd
Link Road, Mankhurd, Mumbai-400 043.
(presently in Nasik Jail) ... Appellant

V/s.

The State of Maharashtra
at the instance of Mankhurd
Police Station, Mumbai
vide C.R. No. 279/2013 ... Respondent

AND
CRIMINAL APPEAL NO. 584 OF 2017

Mrs. Naina Atul Pawar
Aged Major Occ. Household

R/o. Room No.7, Sutar Chawl
Motihe Patil Nagar, Ghatkopar- Mankhurd
Link Road, Mankhurd, Mumbai-43.
(Prison at Yerwada Jail, Pune)

... Appellant

V/s.

The State of Maharashtra
at the instance of Mankhurd
Police Station
(to be serve to APP High Court,
Bombay)

... Respondent

Mr. Harshad Sathe, Appointed Advocate for the Appellant in
Appeal No. 976 of 2015.

Ms Ankita Pawar for the Appellant in Appeal No. 1167 of 2015
and for the Applicant in IA No. 3138 of 2021.

Ms. Janaki Ravi a/w. Ms Ankita Pawar for the Appellant in
Appeal No.584 of 2017

Mr. S.S. Hulke, APP for the Respondent/State in all the
matters.

**CORAM : S.S. SHINDE &
N.R. BORKAR, JJ.**

**RESERVED ON : 14.02.2022.
PRONOUNCED ON : 17.03.2022.**

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

1] All these appeals are filed against one and the same
judgment and order dated 12.08.2015 passed by the Ad-hoc
Additional Sessions Judge, City Civil and Sessions Court at
Mumbai in Sessions Case No. 233 of 2014. All these appeals
were therefore, heard together and they are being disposed of

by this common judgment.

2] The appellants were accused Nos.1 to 3 before the trial court. By the impugned judgment and order, the trial court convicted them for the offences punishable under sections 302 and 506 (ii) read with 34 of the Indian Penal Code (for short 'IPC') and awarded life imprisonment and rigorous imprisonment for three months respectively.

3] The deceased Kamal Hanumant Mane was the mother of accused No.3 Naina. At the relevant time, the deceased was residing at Mankhurd with accused No.3, accused No.2 Atul, who is the husband of accused No.3 and son of accused No.3 namely Aakash from her first husband.

4] The incident took place in the intervening night of 29.09.2013 and 30.09.2013. According to the prosecution, there was dispute between the deceased and accused No.3 in relation to the ownership of the house in which they were residing. It is alleged that on account of the said dispute, accused Nos.2 and 3 along with accused No.1, who according to prosecution, is the friend of accused No.2 committed the murder of deceased in the intervening night of 29.09.2013 and 30.09.2013 at about 2.30 a.m. to 3.00 a.m. by smothering her.

5] The report in relation to the incident was lodged. On the basis of said report, crime vide Crime No. 279 of 2013 was

registered for the offences punishable under section 302 and 506(II) read with 34 of the against the accused. On completion of investigation, the charge-sheet was filed against the accused for the said offences.

6] The accused were charged and tried for the abovesaid offences. As stated earlier, the trial court, by the impugned judgement and order, convicted the accused for the charges framed against them.

7] We have heard Mr. Harshad Sathe, learned appointed counsel for the appellant in Appeal No. 976 of 2015, Ms Ankita Pawar, learned counsel for the appellant in Appeal No. 1167 of 2015, Ms. Janaki Ravi, learned counsel for the appellant in Appeal No.584 of 2017 and Mr. S.S. Hulke, learned APP for the respondent/State in all the appeals.

8] The learned counsel for respective appellants submit that the case of the prosecution is based on testimony of PW-1 Kranti Desai, the alleged sole eye-witness to the incident. It is submitted that the evidence of PW-1 is not consistent with medical evidence. It is submitted that there are lot of omissions and contradictions in the evidence of PW-1. It is submitted that the trial court, therefore, ought not to have relied upon the un-corroborated evidence of PW-1 to convict the accused.

9] The learned counsel for the appellants have further

submitted that the evidence on record is not sufficient to conclude that the deceased had died homicidal death. It is submitted that the postmortem was conducted on 01.10.2013, however, the opinion as to cause of death was kept pending till receipt of histopathology report. It is submitted that the opinion as to cause of death from PW-11 Dr.Sanjay D. Wathore, who conducted the postmortem, was not obtained till filing of the charge-sheet. It is submitted that opinion of PW-11 in that respect came to be obtained only two days prior to recording of his evidence, i.e., practically after 15 months from the date of postmortem examination. It is submitted that according to PW-11, the deceased had died due to asphyxia with smothering, however, there are no symptoms to that effect and therefore possibility of issuance of false opinion, just to support the prosecution case cannot be ruled out. It is submitted that the trial court lost sight of all these facts and with very cryptic findings concluded that the death of deceased was homicidal.

10] It is submitted that even as regards the alleged motive there is no evidence on record. It is submitted that the impugned judgment and order of the trial court thus needs to be set aside and the accused need to be acquitted of the charges framed against them.

11] On the other hand, the learned APP for the respondent / State, submits that the trial court on the basis of overall evidence on record was justified in holding that the death of

deceased was homicidal. It is submitted that the trial court on the basis of evidence on record was also justified in convicting the accused for the charges framed against them. It is submitted that appeal, thus, needs to be dismissed.

12] According to PW-1 Kranti Desai, the sole eye-witness to the incident, the deceased was her Aunt (sister of her mother). According to PW-1, there was a dispute between deceased and accused No.3 (the daughter of the deceased). According to her, she used to go to the house of deceased to sleep at night as their house was small.

13] According to PW-1, on 29.09.2013 at about 10.00 p.m., after having dinner she went to the house of deceased. According to her, accused Nos.1 to 3 were there. Accused No.3 introduced her with accused No.1. After some time, the deceased came home. Thereafter, accused Nos.1 and 2 went out of the house and accused No.3 was only in the house.

14] According to PW-1, she slept with the deceased on the cot and accused No.3 slept on the floor beside their cot. According to PW-1, at about 2.30 a.m. in the night, she got woken up as the hand of the deceased fell on her. According to her, she saw that accused No.1 was pressing throat of the deceased. While the accused No.1 was pressing the throat, the deceased fell down from the cot and was groaning. According to PW-1, as the deceased was groaning, accused No.1 pressed the mouth of the deceased. According to PW-1,

she started shouting. At that time, according to her, the accused No.2 pressed her mouth and asked her to keep quite. According to PW-1, accused No.2 threatened her to kill, if she dares to disclose about the incident to anybody else.

15] According to PW-1, accused Nos.1 to 3 thereafter lifted the deceased and kept her on the cot. According to her, accused No.1 cleaned the neck of deceased.

16] According to PW-1, accused No.3 asked her to swear that she would not disclose about the incident to anybody else. Accused No.3 further told her that if she dares to disclose about the incident to anybody else, accused No.2 would kill her.

17] According to PW-1, in the morning at about 6.30 a.m., accused No.3 told her to go home and inform to her mother that they tried to wake up the deceased however, she is not responding. According to PW-1, thereafter she went to her house and told her mother accordingly. According to her, her mother (PW-4) came to the house of the deceased and found that the body of the deceased was hard and she was dead. According to PW-1, she could not disclose the incident to her mother as accused No.3 was there.

18] According to PW-1, at about 4.00 p.m., she and her mother went to their house and then she narrated the incident to her mother. Her mother informed about the

incident to her maternal uncle. Thereafter, they went to the police station.

19] In the cross-examination, PW-1 has admitted that copy of FIR was not given immediately to her relative and it was given after 2-3 days. She has admitted that her maternal uncle and mother gave information of the incident to the police.

20] PW-1 has admitted that the deceased was suffering from diabetes and B.P. and daily she used to take medicines. She has further admitted that prior to the incident, the deceased had not filed any complaint against the accused.

21] PW-1 has admitted that the deceased and their family were not happy with second marriage of accused No.3. She has further admitted that she did not disclose about the incident to anybody else till 4.10 p.m.. She has further admitted initially her mother and maternal uncle went to the police station and after some time they came back and told her that they have informed the police and thereafter, her maternal uncle took her to the police station. She has admitted that on her own, she had not gone to the police station. She has admitted that accused No.3 is the only legal heir to the deceased.

22] According to the defense, the evidence of PW-1 is not consistent with the medical evidence. It would be therefore,

appropriate at this stage to refer to the medical evidence.

23] According to PW-11 Dr. Sanjay Wathore, on 01.10.2013, he was working as Medical Officer at Rajawadi Hospital. On that day, the dead body of Kamal H. Mane was brought for postmortem examination and he conducted the postmortem in between 11.00 a.m. and 12.00 noon.

24] On external examination, he found the following injuries:

- i] Marbling seen on chest upper part and on shoulders.
- ii] Features natural, eyes closed congenital haemorrhage present. Face cynosed, mouth open, tongue caught between the teeth bitten, blood oozing through nostists and mouth. Teeth loosed. Saliva rebelling from right side.
- iii] contusion on the back side at lumber region in area of 13 cm x 20 cm on right side.
- iv] Loose teeth. Right lower incisor missing.

25] According to PW-11, all the injuries were ante-mortem. According to him, on internal examination, he found that there was contusion under scalp on occipital region 16 cm x 9 cm. Meninges were congested. Larynx, Trachea and Bronchi contains bloodstained froth. Both lungs having pneumonic consolidation. Hearth contains patechial heamorrhages. Bucal cavity teeth, tongue and pharynix - teeth loosed and lost lower right incisor. Tongue bitten between teeth. Stomach contains 100 ml of semi digested semi solid, unidentifiable food material. Mucosa normal. He preserved Viscera for histopathology. According to him, the cause of death was due

to asphyxia with smothering.

26] PW-11 in his cross-examination has admitted that no final opinion as to cause of death was given on the day of postmortem examination. He has also admitted that due to sudden heart stroke, death can be caused. He also admitted that due to clot in brain death can be caused and it is called as brain haemorrhage. He also admitted that person suffering from hyper tension may suffer from brain haemorrhage. He also admitted that there were no marks on the neck of deceased and hyoid bone was not fractured. PW-11 has further admitted that if neck is pressed by force, hyoid bone gets fractured. He has further admitted that Marbling do not occur due to pressing.

27] PW-11 has admitted that he did peruse the inquest panchanama and no injuries were mentioned there. He has further admitted that the inquest panchanama is silent about oozing of blood from nostrils and mouth. PW-11, has, however, volunteered that it starts oozing when decomposition starts.

28] According to PW-1, the neck of the deceased was pressed. However, PW-11 has admitted that there were no marks on the neck of the deceased. According to PW-1, even the mouth of deceased was pressed. However, no marks or injuries were found on the face of deceased. It, thus appears that the evidence of PW-1 is not consistent with the medical

evidence.

29] PW-1 at the time of lodging of FIR has stated that there was dispute between the deceased and accused No.3 on account of ownership of the house where they were residing. PW-1 has, however, in examination-in-chief itself pleaded ignorance about the cause of dispute. Apart from it, PW-1 has admitted that the accused No.3 is the only legal heir to the deceased. If this is so then it is difficult to accept that there was dispute between the deceased and the accused No.3, on account of ownership of the house in which they were residing.

30] Apart from above, PW-4 Sulochana Desai, the mother of PW-1 has admitted in her cross-examination that she does not own any room in Mumbai. She got inducted her name in the ration card of the deceased. She has further admitted that the house owned by the deceased was covered by SRA scheme. The defense of the accused No.3 before the trial court was that she has been implicated in a false case by PW-4 and others to grab house property owned by her mother (deceased). Considering the admission of PW-4 in cross-examination the said possibility cannot be ruled out.

31] PW-4 has further admitted that prior to the incident, her daughter (PW-1) never went to reside with the deceased. Considering this admission and overall conduct of PW-1, it would not be safe to rely upon the evidence of PW-1 to

connect the accused with alleged crime.

32] Apart from above, admittedly, no opinion in relation to cause of death was given after the postmortem was conducted and it was kept pending till receipt of histopathological report. It appears that opinion of PW-11 in relation to cause of death came to be obtained only two days prior to recording of his evidence. PW-11 has admitted that he did peruse the inquest panchanama before conducting postmortem examination and no injuries were mentioned in the inquest panchanama and even it is silent with regard to oozing of blood from nostrils and mouth. PW-11 has further admitted that marbling do not occur due to pressing. The trial court has not at all considered all these facts and with cryptic finding concluded that the deceased had died homicidal death. The trial court was thus not justified in holding that the prosecution has proved its case beyond reasonable doubt. In the result, the following order is passed.

ORDER

a] All Criminal Appeals are allowed.

b] The impugned judgment and order dated 12.08.2015 passed by the Ad-hoc Additional Sessions Judge, City Civil and Sessions Court at Mumbai in Sessions Case No. 233 of 2014 convicting the **appellants viz. Mangesh Arjun Bhosale (original accused No.1), Atul Chandrakant Pawar (original accused No.2) and Naina Atul Pawar (original**

accused No.3) for the offences punishable under sections 302 and 506 (ii) read with 34 of the IPC is set aside and they are acquitted of the said offences.

c] The appellants/original accused Nos.1 to 3 are in jail, they be released forthwith unless their custody is required in connection with any other crime.

d] The appellants/original accused Nos.1 to 3 shall execute P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each and one surety of like amount in terms of section 437 of the Code of Criminal Procedure, before the concerned trial court at Mumbai.

e] Before we part with the judgment, we appreciate the able and quality assistance given by Advocate Mr.Harshad Sathe, whose services have been engaged by the High Court Legal Aid Services Committee to appear on behalf of the appellant in Appeal No. 976 of 2015. The fees of appointed counsel for the appellant is quantified at Rs.10,000/- (Rupees Ten Thousand).

f] In view of disposal of appeals, Criminal Interim Application No. 3138 of 2021 does not survive and accordingly, the same is also disposed of.

(N.R. BORKAR, J.)

(S.S. SHINDE, J.)