

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 31 OF 2018
WITH
CRIMINAL APPEAL NO. 35 OF 2023

The State of Maharashtra,
Through the Police Inspector,
Police Station, Mudkhed,
Tq. Mudkhed, Dist. Nanded.

... **Applicant/Appellant**
(Orig. Complainant)

Versus

1. Keshav S/o. Ganpati Shinde,
Age : 26 Years, Occ. : Agril.,
R/o. Takli, Tq. Mudkhed,
Dist. Nanded.
2. Laxman @ Shakti S/o. Purbhaji
Shinde, Age : 33 Years, Occ. : Agril.,
R/o. Takli, Tq. Mudkhed, Dist. Nanded.
3. Shivaji S/o. Shankar Shinde,
Age : 28 Years, Occ. : Agril.,
R/o Takli, Tq. Mudkhed, Dist. : Nanded.
4. Lalji S/o. Kondiba Shinde,
Age : 46 Years, Occ. : Agril.,
R/o. Takli, Tq. Mudkhed, Dist. Nanded.
5. Madhav S/o Pandhari Panchal,
Age : 36 Years, Occ. : Labour,
R/o. Takli, Tq. Mudkhed, Dist. Nanded.

... **Respondents**
(Orig. Accused)

...

Mr. R. D. Sanap, APP for Applicant/Appellant – State.
Mr. N. S. Ghanekar, Advocate for Respondent Nos.1 to 5

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 30th JANUARY 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Both above proceedings are at the instance of State. It seems that vide Criminal Appeal No.35 of 2023, State is aggrieved on account of awarding inadequate sentence to the present respondents and vide Criminal Application No.31 of 2018 State is aggrieved by order of acquittal of respondents passed by the learned Additional Sessions Judge, Nanded in Sessions Case No.6 of 2016 i.e. from charge under Section 302 read with Section 149 of the IPC and so prayed for quashing the order of convicting the accused only for commission of offence under Section 304 Part II read with Section 149 of IPC.

2. We have heard learned APP for considerable time. He has taken us through the FIR, the depositions of witnesses, answers given by them in cross-examination and even took us through the findings, reasons and conclusion reached at by the learned trial Judge while passing the impugned Judgment.

3. It seems that prosecution was launched against present respondents on a report at the instance of Madhav Balaji Shinde, who had set law into motion alleging that deceased Pundlik Ganpati Shinde was his neighbour. That on 16-10-2015 at around 07:00 p.m. Pundlik had come to his house and while he was about to unlock the door of his house, at such time accused Keshav Ganpati Shinde, Shivai Shankar Shinde, Laxman Purbhaji Shinde, Madhav Pandhari Panchal and Lalji Kondiba Shinde came near Pundlik. Accused

Keshav questioned Pundlik that inspite of request being made to join his panel and cast his vote, he did not join his panel and further did not cast his vote and thereafter, abused him. Informant has alleged that thereafter accused Keshav pushed Pundlik. Accused Shivaji nabbed Pundlik, accused Laxman instigated others to beat Pundlik by stones while accused Madhav Panchal picked up a stone and hit Pundlik by stone on his head due to which Pundlik fell down and suffered bleeding injury. Thereafter, accused Lalji said that Pundlik is not dead and he too picked up a stone and hit on the head of Pundlik. Hearing shouts, **PW4** Balaji Shinde came there. Seeing him coming, accused persons took to heels. Injured Pundlik was taken to the hospital in a Tempo brought by **PW4** Balaji and at that time, informant, Vithal Prabhu Shinde, Balaji Prabhu Shinde, Balu Ananda Shinde and Ganpati Nagu Shinde accompanied Pundlik. Pundlik was taken to the Rural Hospital, Mudkhed. However, on examining him, he was declared brought dead and thereafter, informant approached Mudkhed Police Station and set law into motion by filing report on the strength of which Crime No.93 of 2015 came to be registered.

4. After investigation, accused came to be charge-sheeted and case was taken up for trial before the learned Additional Sessions Judge-1, Nanded, who after permitting both the sides to adduce evidence, heard the parties, appreciated the evidence and passed the following order :

“ORDER

- 01] The accused Nos.
 (01) Keshav S/o Ganpati Shinde,
 (02) Laxman @ Shakti S/o Purbhaji Shinde
 (03) Shivaji S/o Shankar Shinde
 (04) Lalji S/o Kondiba Shinde and
 (05) Madhav S/o Pandhari Panchal, are convicted under section 235 (2) of the Code of Criminal Procedure for an offences punishable under Sections 304-II, 143, 148, 447 and 506 of Indian Penal Code, arising out of crime No.93/2015 registered with Mudkhed Police Station.
- 02] The aforementioned accused Nos.1 to 5 are sentenced to suffer rigorous imprisonment for Seven years and to pay fine of Rs.2,000/- each (Rs.Two Thousand) and in default of payment of fine, they shall suffer rigorous imprisonment for one month for an offence punishable under section 304 II read with section 149 of Indian Penal Code.
- 03] The aforementioned accused Nos.1 to 5 are sentenced to suffer rigorous imprisonment for Six months and to pay fine of Rs.200/- each (Rs.Two Hundred) and in default of payment of fine, they shall suffer rigorous imprisonment for 15 days for an offence punishable under section 143 read with section 149 of Indian Penal Code.
- 04] The aforementioned accused Nos.1 to 5 are sentenced to suffer rigorous imprisonment for One year and to pay fine of Rs.200/- each (Rs.Two Hundred) and in default of payment of fine, they shall suffer rigorous imprisonment for 15 days for an offence punishable under section 148 read with section 149 of Indian Penal Code.
- 05] The aforementioned accused Nos.1 to 5 are sentenced to suffer rigorous imprisonment for Three months and to pay fine of Rs.100/- each (Rs.Two Hundred) and in default of payment of fine, they shall suffer rigorous imprisonment for 5 days for an offence punishable under section 447 read with section 149 of Indian Penal Code.
- 06] The aforementioned accused Nos.1 to 5 are sentenced to suffer rigorous imprisonment for Two years and to pay fine of Rs.200/- each (Rs.Two Hundred) and in default of payment of fine, they shall suffer rigorous imprisonment for 15 days for an offence punishable under section 506 read with section 149 of Indian Penal Code.

- 07] All substantive sentences are to run concurrently.
- 08] The period of detention undergone by the accused persons during the investigation, inquiry or trial shall be set-off against the terms of imprisonment imposed on them.
- 09] Accused Nos.1 to 3 are to surrender their bail bonds.
- 10] Seized muddemal property being worthless be destroyed, after appeal period is over.
- 11] A copy of judgment be given to accused free of costs under section 363(1) of the Code of Criminal Procedure.”

5. Precisely the above order is now questioned by the State in the form of above two proceedings.

With able assistance of learned APP, we have also visited the oral and documentary evidence adduced by prosecution in the trial Court. We have also considered the evidence of defence witnesses examined by the accused. It transpires that, prosecution case was rested on testimonies of eight witnesses comprising of informant, three eye witnesses, Pancha witness, Doctor and Investigating Officer, whereas defence took support of DW1 Jijabai and DW2 Dhondiba. There being charge under Section 302 of IPC, as usual there is burden on prosecution to, at the threshold establish that, death was homicidal. It seems that the learned trial Judge has taken recourse to evidence of informant, inquest Pancha, autopsy Doctor and relied on post mortem report and after comprehensive discussion on such evidence, has reached to a conclusion that prosecution has proved beyond reasonable doubt that death of Pundlik was homicidal one. We too have gone through the evidence of

autopsy Doctor, whose evidence is crucial to ascertain the mode of death. We have also visited post mortem report. There is no hesitation to hold that deceased Pundlik had suffered homicidal injuries.

6. Now let us proceed to re-appreciate and re-analyze evidence of oral account on behalf of prosecution. On doing so, we came across that informant **PW2** Madhav has stuck up to his version which is stated by him in witness box on the point of accused visiting deceased Pundlik in the backdrop of Gram Panchayat election and questioned him and thereafter, accused persons jointly mounting attack. It is pertinent to note that informant is a neighbour and in his evidence he stated that at the time of arrival of accused persons, his family members were dining in the house and he was sitting on a cot outside his house. Therefore, it can be safely stated that informant had an occasion to see and hear whatever happened with his neighbour.

7. Another witness, who is lending support to **PW2** Madhav, is **PW4** Balaji. He too has reiterated that in the evening the incident took place and after hearing hue and cry, he found Pundilik lying in injured condition. Two stones were lying there. Then he claims to have seen accused on the spot and thereafter they ran away. Therefore, testimony of informant **PW2** Madhav is finding support from **PW4** Balaji. This witness was seen coming and therefore was named by PW2 Madhav.

On going through the cross-examination, it is evident that there are no

material contradictions or omissions and discrepancies so as to doubt his version in the witness box.

8. Though accused have taken defence in the trial Court that Pundlik and his son Kailash Shinde were addicted to liquor and after getting drunk, there was bickering between them and in that backdrop Kailash had committed murder of Pundlik, this defence has not been probalilized as no believable or acceptable evidence in that direction had brought before the learned trial Judge.

9. Panch witness on the point of seizure of clothes was shaky and therefore, the learned trial Court rightly discriminated such testimony.

10. As regards motive is concerned, on going through the testimony of **PW5** Raosaheb and **PW6** Udhav, it is emerging that aspect of motive had been brought on record by prosecution. Motive seems to be election of Gram Panchayat level and accused Keshav seems to be interested in said election and deceased does not seem to have obliged him inspite of request to that extent. Therefore, there are reasons to believe that accused Keshav and his associates were harbouring ill intention and entertained motive against him.

11. Therefore, here in the form of testimonies of informant **PW2** Madhav and **PW4** Balaji, occurrence has been fairly established by prosecution i.e. through eye witness. Medical evidence suggests death to be homicidal one.

Therefore, ocular account and medical account are both successfully brought on record.

12. Learned APP would strenuously canvass before us that inspite of medical evidence and ocular evidence being held to be cogently proved by the prosecution, however, learned trial Judge has acquitted accused from the charge of commission of offence under Section 302 of IPC and therefore, State is taking exception to that extent.

In the light of above objection, we propose to express our views on this point. Admittedly, accused persons had grudge against deceased for not supporting them in the Gram Panchayat election. **PW2** Madhav in his evidence, as already discussed by us, stated that he saw accused visiting house of deceased in unarmed condition. That there was questioning followed by quarrel and instigation. **PW2** Madhav has categorically stated that accused persons lifted stones lying on the spot and mounted assault with it on deceased. This suggest that accused had not come there with plan to commit murder of Pundlik. Therefore, it is not premeditated act. Articles available at the spot i.e. stones were put to use and therefore, when there is no premeditation, obviously case can only be brought in the ambit under Section 304 Part II of IPC. The incident appears to have fall out of sudden quarrel between accused and deceased.

13. Therefore, in our opinion under such circumstances, learned trial Court

has rightly acquitted accused persons from charge under Section 302 of IPC, and rather stood convicted them for charge under Section 304 Part II of IPC. We do not find any error on the part of learned trial Judge for acquitting accused from charge under Section 302 of IPC and sentencing them for charge under Section 304 Part II. Sentence awarded by learned trial Judge for commission of above offence is in consonance with sentencing policy for the offence that is attracted. Resultantly, we are not convinced with the submissions of learned APP. We reiterate that there is no error on the part of learned trial Judge in acquitting accused persons from charge under Section 302 of IPC and the sentence awarded by learned trial Judge for the offence under Section 304 Part II would sub serve the purpose. In the light of incident that is taken place, we are also not convinced for holding sentence awarded to be inadequate.

14. In the light of above discussion, both the Criminal Appeal as well Criminal Application at the instance of State deserve to be rejected. Accordingly, Criminal Appeal No.35 of 2023 and Criminal Application 31 of 2018 stand rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)