

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 18 OF 2023

Sangita Prakash Pawar
Age : 37 Years, Occu. : Household and Labour,
R/o. Warudkazi,
Tq. & Dist. Aurangabad

... **Appellant**
(Orig. Informant)

Versus

1. The State of Maharashtra,
Through Police Inspector,
Chikalthana (Rural) Police Station,
Tq. & Dist. Aurangabad.
2. Ajinath Devrao Bansode,
Age ; 26 Years, Occ. : Agri.,
3. Achal Suresh Dandge,
Age : 37 Years, Occ. : Agri.,
Respondent Nos.2 and 3 are
R/o. Warudkazi, Tq. & Dist. Aurangabad

... **Respondents**
(Resp. Nos.2 and 3 are orig.
Accused)

.....
Mr. Ishwar K. Wagh, Advocate for Appellant.
Mr. R. D. Sanap, APP for Respondent No.1 – State
.....

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

DATED : 1st FEBRUARY 2023

ORDER (SMT. VIBHA KANKANWADI, J.) :

1. Present appeal has been filed under section 372 of the Code of Criminal Procedure by the original informant challenging the acquittal of respondent Nos.2 and 3 in Sessions Case No. 43 of 2016 by the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Aurangabad on 11.10.2022. The present respondent Nos.2 and 3 faced the said trial for allegedly compensation under sections 302, 338, 120-B read with 34 of Indian Penal Code and under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Mr. Wagh, learned advocate for appellant and Mr. Sanap, learned APP for Respondent – State.

3. With the able assistance of the learned advocate for the appellant, we have gone through the record that has been produced as well as the judgment and order delivered by the trial Court.

4. The prosecution story is that, the husband of the informant – appellant was served with accused No.2. He was doing the work of grazing and keeping the she goats in the field of accused No.2 Achal. On 06.03.2015, at about 6.00 a.m. the deceased had gone to the field of accused No.2 Achal. At around 5.45 p.m., accused No.2 gave a phone call to her informing that her

husband was wrestling with accused No.1 and then she stated in the FIR that even accused No.2 had informed her that accused No.1 had picked up the deceased and dropped him on the ground, as a result of which deceased sustained injuries to his spine. Thereafter, the informant reached to the field on the motorcycle of her relatives. She saw her husband was lying on ground in supine condition. She made inquiry with him and deceased had then disclosed that accused No.1 forced him to play wrestling and in that process he was picked up and dropped him with jerk on the ground by accused No.1, it had resulted in injury to the neck and spine of the deceased. It is further prosecution story that the accused No.2 had then made arrangement for vehicle and brought deceased to MGM Hospital, Aurangabad. Treatment was given and it appears that initially the offence was registered bearing C.R. No.57 of 2015 under section 338 of Indian Penal Code.

5. Deceased expired on 20.03.2015 in the hospital while undergoing treatment. Thereafter supplementary statements were recorded and then other sections came to be added.

6. After the investigation was completed, the charge-sheet was filed. The charge was framed and prosecution has led evidence. It appears that, prosecution has examined in all 7 witnesses to bring home the guilt of the accused. After considering the evidence and hearing both the parties, the learned Special Judge has acquitted both the accused.

7. Perusal of the evidence would show that PW-1 Sangita informant – appellant is not the eye witness, but then she contends that she had received a phone call from accused No.2 who had then informed that deceased has fallen down in wrestling when he was playing wrestling with accused No.1. She has also stated that when she went to the field and saw her husband in injured conditions lying in supine condition, she asked her husband who told her that both the accused had assaulted him. Accused No.1 forced him to play wrestling and as he was dropped down forcibly on the ground, his neck bone had received injury. However, in her cross-examination, she had admitted that when she went to the spot, her husband was not in a position to speak. If the witnesses has challenged her version in her cross-examination then it can not be said that the witness is trustworthy. Further, in the cross-examination the improvement has been brought on record at the time of her supplementary statement. She had not disclosed that husband had told her that both the accused had assaulted him. She also admits that after the accused persons were released on bail, later on they had made agitation in front of police station, thereby insisting the police to register an offence of murder against accused the persons. All these aspects will have to be considered. Further, PW-7 Dr. Poonam Agrawal from MGM hospital has stated that at the time of admission of deceased Prakash on 06.03.2015, the history was given that he has fallen down in wrestling. In the cross-examination of the Investigating

Officer PW-6 Kalpana Rathod, it has come on record that there was no eye witness to the incident.

8. PW-4 Sunil Lanjewar, Assistant Police Commissioner, who was then Sub Divisional Police Officer, Aurangabad Rural was the Investigating officer and he had taking over investigation in July 2015. He has given account of investigation yet carried out, but the fact remains is that initially offence was only under the Indian Penal Code and at later stage the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been added. He ought to have conducted the investigation since beginning.

9. PW-1 Sangita - informant has stated that she had gone along with PW-3 Santosh to the field of accused. PW-3 Santosh in his examination-in-chief has stated that at around 6.00 p.m. Sangita Pawar came to him and told that a quarrel has taken place and therefore she should be taken on motorcycle to the field. When they went there, they saw deceased Prakash in supine condition. She also states that 2 to 3 person were present there. He then states that Sangita asked Prakash as to what has happened, but the persons who were present told that Prakash has been fallen down in playing wrestling. He specifically states that he was not informed as to who had caused falling down of the deceased, but thereafter he had taken Prakash to

hospital. When it was found by the prosecution that the witnesses not supporting his statement under section 161 of Cr.P.C., permission has been sought to put questions in the nature of cross. Accordingly those questions have been put and thereafter he has given certain admissions.

10. It is to be noted that in her cross-examination, PW-1 Sangita has denied the suggestion that the Prakash has consumed liquor, but in the cross-examination taken by the prosecution of PW-3 Santosh there is a suggestion that Sangita got annoyed with accused No.1 Ajinath by saying that why he has met Prakash to consume liquor and then play wrestling with him. Thus, the prosecution story itself is not consistent so also the testimony of the prosecution witnesses. Admittedly, even PW-3 Santosh is not eye witness to the incident.

11. Testimony of PW-2 Dr. Sachin Darandale would show that while conducting autopsy, he had noted four external injuries, two of them were surgical and sutured wound , third is pinpoint puncture mark and fourth is bed sore. Definitely, the injury No.4 cannot lead us to conclude that it is homicidal death. The examination of the Medical Officer would further show that cause of death as “septicemia as a complication of cervical cord injury.” The postmortem report per se so also the testimony of PW-2 Dr. Sachin per se will not conclude the death of Prakash as homicidal in nature, as there should

be evidence to connect the injury to the spine to the fact of the case that who had caused the said injury. Taking into consideration the evidence abovesaid we are of the opinion that the learned Special Judge justified in arriving at the conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. No perversity has been pointed out and therefore the appeal deserves to be dismissed. Accordingly it is dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

Tandale/-