



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 74 OF 2018
WITH
CRIMINAL APPLICATION NO. 1923 OF 2023

1. Sheshrao S/o. Nivrutti Dhok,
Age : 45 years, Occu. : Agri.,
2. Mandabai W/o. Sheshrao Dhok,
Age : 40 lyears, Occu. : Agri.,

Both R/o. Samdarga,
Tq. Ausa, Dist. Latur.

... Appellants.

Versus

The State of Maharashtra

... Respondent.

...
Mr. Sachin S. Panale, Advocate for Appellant.
Mrs. Uma Bhosale, APP for Respondent - State.
...

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

RESERVED ON : 4th DECEMBER, 2023
PRONOUNCED ON : 13th DECEMBER, 2023

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

1. Getting dissatisfied by the judgment and order of conviction passed by learned Sessions Judge, Latur in Sessions Case No. 100 of 2015, thereby convicting both appellants for offence punishable under section 302 read with section 34 of Indian Penal Code (IPC), instant appeal has been preferred by invoking section 374 of the Code of Criminal Procedure (Cr.P.C.).

2. To put it in brief, in trial court prosecution was launched against present appellants on the premise that, on 07.08.2015, around 3:00 to 3:30 p.m., they assaulted deceased Yuvraj with iron rod/stick causing him several injuries. On being shifted and admitted to the hospital at AUSA, while undergoing treatment, he expired in the evening around 7:00 p.m. and therefore his son PW1 Samadhan, after funeral, lodged crime against appellants at Bhada Police Station.

Investigation was carried out and appellants were charge-sheeted and on denial of charge were tried. On conclusion of trial, after hearing both sides and on appreciating the evidence on record, learned Sessions Judge held charges proved and awarded life imprisonment to both appellants, which is now assailed before us.

3. In support of its case, prosecution seems to have adduced evidence of in all 10 witnesses and documentary evidence like FIR, inquest, PM and spot panchanama etc.

On re-appreciating and re-evaluating the evidence by prosecution in trial court, it is revealed that, FIR is by son, but he is

not a witness. After interacting with his father i.e. on receipt of oral dying declaration, crime was registered. However, prosecution claims that, there are two witnesses, who had allegedly seen the occurrence i.e. PW2 Lalasaheb and PW7 Jagannath. Rest are medical expert, panchas and Investigating Officer etc. Therefore, we propose to visit, analyze and discuss so called direct eye witnesses.

4. **PW2** Lalasaheb in his evidence at Exh.39 testified that, he own agricultural field and field of appellant are near each other, whereas field of deceased Yuvraj is at some distance from his land. Regarding occurrence he deposed that, on 07.08.2015, while he was sitting in cattle shed near his field, PW7 Jagannath was also available in his field and appellant Sheshrao was sitting near his cattle shed. Around 3:00 p.m., when deceased was coming from his village, witness deposed that, appellant pulled his legs and made him fall down, thereafter called accused appellant no.2 Mandabai and they both assaulted Yuvraj with iron rod. Witness claims that he tried to intervene, but they prevented him. According to him, PW7 Jagannath was also watching the occurrence from his agricultural field. Witness claims that, he went near deceased, gave him water and even placed jute gunny bag on the person of deceased as it was raining and thereafter he called Narsing Dhok,

who further gave call to some other. Samadhan came to the spot and called for a rickshaw and injured was taken to village. He identified Article-1 with the same Article which was used in assault.

He is subjected to extensive cross, but we will only deal with the relevant part. It has come in his cross that, his cattle shed is facing towards north. At that time, no agricultural activity was going on. He admitted that, he did not narrate the occurrence to police at the time of drawing spot panchanama. He denied about accompanying PW1 Samadhan to the court. He admitted that, when he informed Narsing about occurrence, Samadhan came to the spot after 15 minutes. He denied that, he gave statement after discussion with villagers. He further admitted that, Datta Dhok had beaten accused and had pushed him into the well and since then he became differently abled and was required to use walking stick. He admitted that injured was made to stand and then lie down in the rickshaw. He is questioned about field of Jagannath and its surroundings. Omissions are brought regarding receiving call from Samadhan. He stated about his statement was recorded in the AUSA Court also. Rest is all denial.

5. The other eye witness is **PW7** Jagannath and his evidence is at Exh.52. It has come in his evidence that, occurrence

took place at 3:00 p.m. on 07.08.2015 and at such time he was present in the field. Field of accused is at the western side of his field. He claims that, he saw deceased going to the agricultural land from village and further saw appellants assaulting deceased. He is unable to give the nature of object. According to him, assault was made by stick. He further claims that as it was raining, he went inside the cattle shed. That, Lalasaheb gave call to Samadhan and took Yuvraj in auto-rickshaw. He further claims that when he was returned to his house, appellant said to him that "*Waghala Marle*".

While under cross, initially questions are regarding locations and surroundings of the field about land holdings of this witness. He is unable to state whether there was dispute between Madhav Dhok and appellant on account of cutting tree. He admitted that he was taking rest in the cattle shed from 3:00 to 4:00 p.m. Rest is all denial. Omission is brought about saying that he killed "*Waghala*".

6. Admittedly, PW1 Samadhan son of deceased has reached the spot after occurrence and had shifted injured to the hospital. Informant son Samadhan claims that after getting telephonic call about assault from Lalasaheb, he walked to the field and there he found his father lying with injuries. He claims that,

his father told about Sheshrao and Mandabai assaulted him with iron rod and his father being shifted to Government hospital, AUSA but he expired.

7. PW2 Lalasaheb and PW7 Jagannath, who claim to have seen the assault, are consistent about the occurrence taking place between 3:00 to 3:30 p.m. They are at their respective fields in the very vicinity and their such evidence has remained unshaken. Therefore, they are natural witnesses. PW2 Lalasaheb attributed assault by use of iron rod after deceased made to fall by appellant after pulling his legs. PW7 Jagannath also claims about seeing assault on deceased, but by a stick.

8. PW6 Dr. Radhey Khetre, autopsy doctor who has stepped into witness box, claims to have gone through the inquest and thereafter conducted autopsy on 07.08.2015 itself and he claims to have noticed 29 injuries comprising of abrasions, lacerated wound, tram-track contusions and multiple contusions. According to medico legal expert, injury nos.22 and 23 along with internal injuries are sufficient to cause death individually in ordinary course of nature and rest of the injuries collectively can cause death in the ordinary course of nature. He further opined that, injuries are defence injuries in assault and are possible by stick like object.

9. Learned counsel for appellant has pointed out that appellant Sheshrao was differently abled and he used walking stick, which is said to be made by aluminum/iron. Said article is shown to be seized in presence of PW4 Ratnakar from appellant on 08.08.2015 i.e. the day after the occurrence. PW4 Ratnakar has testified that police seized walking stick from appellant in his presence vide panchana (Exh.43). Only cross to this witness by defence is that it is the police, who told him that, accused has produced stick and that walking stick is easily available in the market. He admitted that, accused was disabled, but he is unable to state whether another stick was provided to him for walking. He further answered that the stick is of aluminum metal and it is hollow.

10. Resultantly, defence also by putting such suggestion does not seem to be seriously disputed about walking aluminum stick being seized from Appellant Sheshrao.

11. Learned counsel for appellant would submit that, going by the story of prosecution and even taking into account of evidence of PW2 Lalasaheb and PW7 Jagannath, without admitting its contents, he would emphatically submit that it is not an offence

attracting section 302 of IPC as there is no premeditation, motive or intention to kill. According to him, at the most the occurrence would invite offence of culpable homicide not amounting to murder.

Per contra, learned APP would point out that, deceased had suffered around 29 injuries and therefore offence is nothing short of murder.

12. On above issue, if we carefully evaluate the evidence, it is emerging that while deceased Yuvraj was proceeding towards his own field, PW2 Lalasaheb claims that, he pulled legs of deceased, made him fall and after calling appellant no.2, assault by use of walking stick was carried out. Some previous occurrence by another person rendering appellant disabled after making him fall in the well was said to be the motive. However, there is no evidence in that direction and therefore it is not open for us to assume and presume regarding existence of motive, but here, there is eye witness account of not one witness, but of two witnesses. Seizure of a walking stick is also caused, which was in fact a means for appellant Sheshrao to walk, but what actually triggered the occurrence has not come on record.

13. PW2 Lalasaheb and PW7 Jagannath are available in their own respective fields and they merely speak about seeing beating. What conversation triggered the incident, has unfortunately not come on record.

Be it so, deceased had suffered as many as 29 injuries and therefore, in our considered opinion, offence of culpable homicide not amounting to murder attracting offence of section 304 Part I of IPC definitely appears to have been committed. We draw such inference on the basis of circumstances, in which occurrence has taken place, the nature of article used and the impact caused due to the assault.

14. However, it is pertinent to note that, there is only use of one aluminum walking stick that too by appellant Sheshrao according to both eye witnesses. No role whatsoever is attributed to appellant Mandabai. Consequently, there being nothing on record to show common intention, her implication seems to be apparently unwarranted.

15. We have gone through the impugned judgment under challenge. We have also examined the findings and reasons assigned by learned trial Judge, in our opinion, implication of appellant No.2 Mandabai is without any evidence and therefore

interference to that extent becomes necessary. Even there is no evidence suggesting intentionally and knowingly committing murder. Therefore even the findings of learned trial Judge regarding prosecution proving offence of section 302 of IPC is required to be set aside. Accordingly, we interfere to the extent of conviction and sentence and modify it as under :

ORDER

(I) Criminal Appeal is partly allowed.

(II) The conviction and sentence awarded to the appellant No.1 Sheshrao S/o. Nivrutti Dhok by learned Sessions Judge, Latur in Sessions Case No.100 of 2015 on 09.01.2018 is altered from Section 302 of IPC to Section 304 Part I of the IPC and he is sentenced to suffer imprisonment already undergone by him.

(III) The conviction awarded to the appellant no.2- Mandabai W/o. Sheshrao Dhok in Sessions Case No.100 of 2015 by learned Sessions Judge, Latur on 09.01.2018 for the offence punishable under Sections 302 read with section 34 of Indian Penal Code stands quashed and set aside.

(IV) The appellant no.2 - Mandabai W/o. Sheshrao Dhok stands acquitted of the offence punishable under Sections 302 read with section 34 of Indian Penal Code.

(V) Appellant no.1 be set at liberty, if not required in any other case.

(VI) The fine amount deposited by appellant no.2, if any, be refunded to her after the statutory period.

(VII) Bail bond of appellant no.2 stands cancelled.

(VIII) We clarify that there is no change in rest of the order of the Sessions Judge, Latur.

(IX) The Sessions Judge, Latur as well as the Jail authority, to take note of this judgment.

(X) In view of disposal of the appeal itself, Criminal Application No.1923 of 2023 does not survive and it is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)