

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.229 OF 2020

Satyabhamabai Ambadas Dhotre,
Age-65 years, Occu:Household,
R/o-Aarda-Tolaji, Taluka-Mantha,
Dist-Jalna.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Partur Police Station,
Taluka-Partur, Dist-Jalna,
- 2) Pralhad S/o Shankar Dhanwade,
Age-37 years, Occu:Not Known,
- 3) Pandit S/o Shankar Dhanwade,
Age-45 years, Occu:Not Known,
- 4) Narayan S/o Chandu Vitekar,
Age-29 years, Occu:Not Known,
- 5) Laxmibai W/o Shankar Dhanwade,
Age-65 years, Occu:Not Known,
- 6) Sushilabai W/o Pandit Dhanwade,
Age-40 years, Occu:Not Known,
- 7) Suman @ Chama Santaram Dhotre,
Age-40 years, Occu:Not Known,
- 8) Satyabhamabai W/o Chandu Vitekar,
Age-65 years, Occu:Not Known,

Resp. Nos.2 to 8 all R/o-Aarda-Tolaji,
Taluka-Mantha, Dist-Jalna.

...RESPONDENTS

...
Mr.S.V. Suryawanshi Advocate for Appellant.
Mr.R.D. Sanap, A.P.P. for Respondent No.1 – State.
...

AND

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.36 OF 2020**

The State of Maharashtra,
Through Police Partur,
Taluka-Partur, Dist-Jalna,

...APPLICANT

VERSUS

- 1) Pralhad S/o Shankar Dhanwade,
Age-32 years,
- 2) Pandit S/o Shankar Dhanwade,
Age-40 years,
- 3) Narayan S/o Chandu Vitekar,
Age-24 years,
- 4) Laxmibai W/o Shankar Dhanwade,
Age-60 years,
- 5) Sushilabai W/o Pandit Dhanwade,
Age-35 years,
- 6) Suman @ Chama Santaram Dhotre,
Age-35 years,
- 7) Satyabhamabai W/o Chandu Vitekar,
Age-48 years,

All R/o-Aarda-Tolaji, Taluka-Mantha,
Dist-Jalna.

...RESPONDENTS

...
Mr. R.D. Sanap, A.P.P. for Applicant - State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 11th APRIL, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Appeal No.229 of 2020 has been filed by the original injured - victim under Section 372 of the Code of Criminal Procedure to challenge the acquittal of respondent Nos. 2 to 8 (original accused Nos. 1 to 7), by learned Additional Sessions Judge-4, Jalna dated 26th November 2019 in Sessions Case No.77 of 2014 acquitting the accused of the offence punishable under Sections 143, 147, 148, 307, 323, 504 read with Section 149 of the Indian Penal Code.

2. Application For Leave to Appeal by State No.36 of 2020 has been filed by the prosecution seeking leave to Appeal under Section 378(1)(b) of the Code of Criminal Procedure to challenge the same Judgment and order acquitting the original accused Nos. 1 to 7. Hereinafter the respondents – original accused are

referred by their numbers before the Sessions Court for the sake of convenience.

3. Heard learned Advocate Mr. Suryawanshi for the appellant – original victim and learned APP Mr. Sanap for the State. Matters are considered for the purpose of admission and the scrutiny is made with the said limited purpose. We have considered the material which was before the learned trial Judge.

4. The prosecution story is that one Satyabhamabai Ambadas Dhotre (appellant in Criminal Appeal No.229 of 2020) resides at village Arda-Tolaji, Taluka-Mantha, District-Jalna with her two sons Himmat and Baban. Surekha is the wife of Himmat. Accused persons are their neighbours. There was a quarrel between Satyabhamabai's grandson Ganesh, who was then aged 7 years with one Abhishek Pralhad Dhanwade, aged 8 years (son of accused No.1). Satyabhamabai and her family members have tried to give understanding to the children not to quarrel and as the dispute was trifle, it was settled. However, it is stated that both the families were not on talking terms thereafter. It is the further prosecution story that Satyabhamabai was taking rest with her daughter-in-law Surekha on a cot in the courtyard of

their house around 6.00 to 7.00 p.m. on 25th May 2013. Accused No.1 started abusing Satyabhamabai on the ground of quarrel between the children. Satyabhamabai tried to give understanding to accused No.1, however, at that time other accused persons came there and started abusing Satyabhamabai. Surekha intervened the quarrel and asked all the accused to go back to their house. However, accused Nos.4 to 7 caught hold of Satyabhamabai as well as Surekha and started beating them by fists. Accused Nos.2 and 3 pushed Satyabhamabai. In the meantime accused No.1 brought axe from his house and by saying that he will not leave Satyabhamabai but kill her, he gave blow of the axe on her head. As a result of the said injury Satyabhamabai became unconscious. Some neighbouring persons informed the said fact to Baban and then with the help of neighbours, Satyabhamabai was taken to hospital. She was then shifted to Om Hospital, Jalna from Civil Hospital, Jalna on 26th May 2013. Satyabhamabai was seriously injured and therefore, was not in a position to give statement and therefore Surekha gave report on 29th May 2013.

5. The investigation was started, panchnama of the spot, seizure panchnama of clothes of Satyabhamabai were recorded,

also statements of the witnesses were recorded. Injury certificates were collected from time to time. Statement of Satyabhamabai came to be recorded on 1st August 2013. The seized articles were sent for chemical analysis. After completing investigation, charge-sheet was filed.

6. After the committal of the case, the learned Additional Sessions Judge conducted the trial. Prosecution examined in all thirteen witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both the sides, the learned Additional Sessions Judge acquitted all the accused persons. Hence, these proceedings.

7. Both the sides have vehemently submitted that the learned trial Judge has not properly appreciated the evidence and therefore, it needs to be appreciated when the injuries have been proved. The testimony of PW-8 Satyabhamabai – injured stood supported by PW-12 Surekha – informant cum eye witness, PW-11 Ganesh – eye witness and grandson of the injured, PW-6 Kailas Chavan – eye witness, PW-9 Suryabhan Gunjal – eye witness and who shifted injured to hospital, PW-10 Rukhaminibai who shifted the injured to the hospital along with

PW-9, PW-3 Jagannath Dhanwade – eye witness. There was sufficient corroboration to the said ocular evidence. The panchas to the various panchnamas have supported the prosecution story and the Investigating Officer has also been examined. Learned trial Judge ought to have convicted all the accused persons.

8. We find that the impugned Judgment is well reasoned and written after the scrutiny of each and every evidence that was produced. Following are the points which have been considered for acquitting the accused persons:-

(I) Testimony of Satyabhamabai is somersault for the prosecution story. She had not attributed any role to accused Nos.4 to 7 in her statement. So also the informant had not assigned any role to accused Nos.2 to 7, therefore not only her testimony is contradictory to the FIR but also to her own statement under Section 161 of the Code of Criminal Procedure.

(II) Testimony of Rukhminibai has been discarded on the ground that she has stated that there was quarrel between the children about six years ago, whereas

prosecution story is that the said quarrel has taken place six months prior to the incident. She has assigned different roles though managed to say that accused No.1 had assaulted Satyabhamabai with axe on her head.

(III) Statement of Ganesh Dhotre – grandson of injured has been discarded on the ground that he has denied the suggestion that there was quarrel between him and Abhishek about six months prior to the incident. In fact that itself was projected as motive for committing the crime by the prosecution.

(IV) Testimony of witness Kailas and Jagannath has been discarded on the ground that when they went to the spot, they had seen Satyabhamabai in injured condition. That means, they were not the eye witnesses.

(V) It was also considered that even if it is taken that all the eye witnesses were assigning role to accused No.1 Pralhad that he had assaulted by means of axe on

the head of Satyabhamabai, yet testimony of medical officer Dr. Yogesh Gore would show that he found two injuries i.e. (1) CLW over scalp parietal region on left side and (2) CLW frontal region of scalp. He has stated that injury No.1 was grievous, however, he says that both the injuries could have been caused by hard and blunt object. Here all the eye witnesses have stated that axe was used by accused No.1. When there was no sharp edge injury mark and the expert is saying that those injuries were possible only by hard and blunt object, then unless it would have been extracted from the witnesses, as to whether the sharp edge of the axe had come in contact with the body of Satyabhamabai or not, their testimony cannot be believed. It has been rightly stated by the learned trial Judge that in absence of any explanation from the witnesses that accused used blunt side of axe, the Court cannot presume it to be so. Rather when it comes to intention to kill and when a sharp edged weapon is in the hand, it is less likely that by keeping the sharp edge towards him any accused person would give blow to the injured.

9. One more glaring fact has been considered by the learned trial Judge that there was an inordinate delay in lodging FIR, so also an inordinate delay on the part of the Investigating Officer to take down the statement of many of the witnesses including the injured Satyabhamabai. The statement of the injured has been recorded after about two months of the incident. The treating doctor has not been examined by the prosecution and the Investigating Officer is not explaining that for throughout the period of two months Satyabhamabai was not in a position to give any statement. Statement of Rukhminibai has also been recorded after five days of the incident, so also that of Ganesh, whose statement has been recorded after about 3½ months. There has been absolutely no plausible explanation given by the Investigating Officer for the said delay.

10. It has been considered by the learned trial Judge that the testimony of the eye witnesses is full of contradictions and omissions and they are not corroborating each other on material aspects and for the above stated lacunas it cannot be stated that the prosecution has proved the offence beyond reasonable doubt. This finding does not appear to be perverse and bad in law. It is the only finding that can be arrived at and therefore,

there is no merit in the present Appeal as well as the Application for proceeding further.

11. Accordingly, Criminal Appeal as well as Application for Leave to Appeal by State, are dismissed.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR23