

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.111 OF 2017

Datta s/o Sopan Pawar
Age: 35 years, Occu.: Agri.,
R/o. Karadkhel, A/p: Shiv Nagar,
S. T. Colony Udgir, Tq. Udgir,
Dist. Latur.

.. Appellant

Versus

The State of Maharashtra
Through its police officers,
Udgir Police Station,
Tq. Udgir, Dist. Latur.

.. Respondent

...

Mr. S. G. Jadhavar, Advocate for the appellant.
Mr. S. J. Salgare, APP for the respondent – State.

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

DATE : 14th September, 2023.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Present appeal has been filed by the original accused challenging his conviction by learned Additional Sessions Judge, Udgir, District Latur on 18.02.2017, thereby holding him guilty of committing offence punishable under Sections 302, 201, 176, 504, 506 of Indian Penal Code.

2. The prosecution story in short is that PW.1 Rukhminbai Mahadu Devnale resident of Shiv Nagar, S. T. Colony, Udgir lodged report with Udgir Rural Police Station on 12.05.2014. She informed that she has two daughters and no son. Both the daughters are married and since she has no son her daughter Sangita resides with her husband and two sons and two daughters with herself and her husband Mahadu. Her husband Mahadu, son-in-law i.e. appellant and daughter Sangita were at home on 10.05.2014, which was Saturday. Her husband had returned after labour work around 8.00 p.m. After taking tea, he was chewing tobacco and chitchatting. Mahadu was telling Rukhminbai where she had gone in the morning and she had not given him tiffin. He was required to starve and rather was required to go to hotel to take lunch. Sangita was preparing food in the kitchen. Accused came around 10.00 p.m. in the house where Rukhminbai and Mahadu were sitting. He started saying Mahadu that he is sitting idle and whether he was bringing minimum ten rupees in the house (आयते बसुन खायला बापाची पेंड आहे का कोटुन दहा रुपये कमवुन आणलास का) by abusing so, accused slapped Mahadu. At that time, Mahadu told accused that whether the house belongs to his father and by staying in his house, why he is slapping him. Thereupon, accused abused Mahadu and by holding Mahadu's shoulders with his both hands banged him on the wall, as a result of which, Mahadu sustained severe injury to his head, which was

bleeding. He fell down and at that time accused caught hold of his both legs and pulled and then kicked on his chest. Blood was oozing out of the nose and mouth of Mahadu. When Rukhminbai tried to separate, she was pushed. When Mahadu became unconscious, accused started saying as to why he is making drama and then brought water in a big pot and poured it on Mahadu's face, at that time, Rukhminbai called Sangita by saying that her husband has assaulted the old man. Sangita came running from kitchen and started calling deceased. They tried to wake him up, but he was unconscious. As the blood was oozing out of the head, they filled the injury with turmeric. Accused was then asked to bring auto rickshaw. After he brought auto rickshaw, Rukhminbai took Mahadu to Government Hospital, however, when they were in front of the hospital, Mahadu expired and as she had no desire to have a postmortem, she brought the dead body back to house. They kept the dead body in the house for whole night, at that time, accused threatened Rukhminbai as well as Sangita that they should not disclose the incident to anybody otherwise they would be stabbed and done to death. They got frightened and therefore told that Mahadu expired due to fall from the wall. Their relatives gathered on 11.05.2014. To them also, the same reason was conveyed and then the funeral was performed at Malkapur cemetery around 11.00 a.m. on 11.05.2014. But then as aforesaid, she lodged the FIR on 12.05.2014.

3. After the FIR was lodged spot panchanama was carried out, statements of witnesses were recorded. Accused came to be arrested. After the investigation, charge-sheet was filed.

4. After the committal of the case, charge was framed. Prosecution has examined in all five witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Trial Judge has hold the accused guilty and sentenced him to imprisonment for life and to pay fine of Rs.10,000/- in default to suffer rigorous imprisonment for six months for committing offence punishable under Section 302 of Indian Penal Code. Further, he has been sentenced to suffer rigorous imprisonment for one month and fine of Rs.500/- in default to suffer simple imprisonment for one month for committing offence punishable under Section 201 of Indian Penal Code. Further, he has been sentenced to suffer simple imprisonment for one month and fine of Rs.500/- in default to suffer simple imprisonment for one month for committing offence punishable under Section 176 of Indian Penal Code. Further, he has been sentenced to suffer simple imprisonment for six months and fine of Rs.1,000/- in default to suffer simple imprisonment for three months for committing offence punishable under Section 504 of Indian Penal Code. Further, he has been sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/- in default

rigorous imprisonment for three months for committing offence punishable under Section 506 of Indian Penal Code.

5. Heard learned Advocate Mr. S. G. Jadhavar for the appellant and learned APP Mr. S. J. Salgare for the respondent – State.

6. It has been vehemently submitted on behalf of the appellant that the learned Trial Judge has totally failed to consider the evidence in proper perspective. Here, there was no postmortem, still the learned Trial Judge has come to the conclusion that the death of Mahadu was homicidal in nature. Only the oral evidence of the informant and PW.2 Sangita, who is the wife of the appellant, has been considered. No doubt, in the normal course, the wife would not have deposed against the husband, but here the circumstances have been put to her as to why she is deposing against the husband and that point has not been considered by the learned Trial Judge. It has come on record that Sangita got married to accused more than 13 years ago prior to the incident. Her eldest daughter was aged 12 years, second daughter is 9 years old and, thereafter twin sons were born aged 7 years. There was absolutely no quarrel between accused and deceased at any earlier point of time. It has also come on record that deceased was not doing any work for livelihood, but the accused, who was *Ghar Javai* was maintaining Rukhminbai as well as Mahadu. Under the said circumstance, why he would commit murder of the accused. The delay in lodging the FIR

has not been considered. There is no evidence to show that there was threat by the accused to the informant and P.W.2 Sangita. There was no reason then to both of them to give a false account of the reason of death of Mahadu. Where the children of accused and P.W.2 Sangita were at night time has not been stated by them. They have not been examined. In his statement under Section 313 of the Code of Criminal Procedure, the accused has clearly stated that he had raised the construction of the house from his earnings on the plot belonging to P.W.1 Rukhminbai, but Rukhminbai was insisting him that he should give two rooms to his sister-in-law i.e. another daughter of P.W.1 Rukhminbai, which he refused. Rukhminbai quarreled with him and threatened him that she would file false case against him. Mahadu died due to fall from staircase. He had maintained father-in-law, as his father for last ten years. This aspect has not been considered at all by the learned Trial Judge. It ought to have been held that the prosecution has totally failed in proving the guilt of the accused. The accused ought to have been acquitted and, therefore, the learned Advocate for the appellant urged for allowing the appeal.

7. Per contra, the learned APP supported the reasons given by the learned Trial Judge and submitted that there was no reason to disbelieve the testimony of P.W.1 Rukhminbai and P.W.2 Sangita. Sangita had no reason to speak false against the husband. When they are the eye witnesses

to the incident, then even if postmortem was not done, yet the fact has been rightly believed. There were blood stains on the spot when the inquest panchanama was made. It was for the accused to prove as to how his father-in-law died, when he alleges that he was also inside the house. The quarrel was started by the accused and it appears that it was his premeditated attack on Mahadu. There is no merit in the present appeal. It deserves to be dismissed.

8. At the outset, here in this case, there is no inquest panchanama and there is no postmortem report. Therefore, what kind of injuries Mahadu had sustained is not coming forward from any independent source. The prosecution as well as learned Trial Judge relied on the testimony of P.W.1 Rukhminbai and P.W.2 Sangita on that account. They both are corroborating to the fact that Mahadu had sustained head injury which was bleeding, however, strictly speaking P.W.2 Sangita cannot be said to be an eye witness. Though she is saying that there were exchange of dialogues between her father and accused and tried to pose herself as an eye witness, yet it can be seen from the FIR that after allegedly head of the deceased was banged by the accused on the wall, he had pulled his legs and kicked on the chest, poured water on the face of deceased, then she had called Sangita and then Sangita arrived. Till then, Sangita was in the kitchen. It is not the case of the prosecution and it is not visible in the spot

panchanama that from the kitchen, the place of incident or where the alleged banging of the head of Mahadu took place is visible. If we consider the examination-in-chief of P.W.1 Rukhminbai, it is at verbatim of the FIR and she has clearly stated that Sangita was in the inner room and on her commotion, she came out. By that time, the alleged acts were done by the accused. Therefore, the inference drawn by the Trial Court that P.W.1 Sangita is an eye witness is totally wrong.

9. In her examination-in-chief P.W.1 Rukhminbai has stated that around 8.00 to 9.00 p.m., her husband came to house. After becoming fresh, he was chewing tobacco and then when he was chitchatting with Rukhminbai, accused came and started abusing or went into altercation with the deceased. Thus, the time of incident as per the examination-in-chief is around 8.00 to 9.00 p.m., whereas as per her own FIR, her husband had come around 8.00 p.m. They were chitchatting and accused came around 10.00 p.m. In her statement under Section 161 of the Code of Criminal Procedure also, she says that around 10.00 p.m. when the husband was taking dinner and they both were talking, accused asked as to whether he has earned ten rupees, but now he is eating. So the initial story has been changed by her in her statement under Section 164 of the Code of Criminal Procedure. P.W.2 Sangita in her examination-in-chief says that in the evening she was in the house and cooking, when father came and he was

chewing tobacco and immediately her husband came and the incident took place. She has not given the time. Interesting point to be noted is that her statement under Section 164 of the Code of Criminal Procedure is totally on a different footing, which she has not supported in her substantial evidence.

10. Neither P.W.1 Rukhminbai nor P.W.2 Sangita have stated reason as to why Mahadu was not taken inside the hospital and why they had not allowed the postmortem. Rather they took the dead body back to the house and kept in the house whole night. Merely by saying at a subsequent stage that due to fear and alleged threats they cannot escape from their liability to inform the commission of a cognizable offence to the police. Both of them have not stated where the children were at night time. Why prosecution has not examined the children is a mystery. We are not even required to go to the cross-examination to arrive at a conclusion that these two witnesses are totally untrustworthy. Here, in the cross-examination of P.W.2 Sangita, it has come on record that one Manohar Devnale, who is her nephew i.e. son of her cousin brother, was there with them while putting Mahadu in the auto rickshaw, however, prosecution has conveniently not examined Manohar, who appears to have gone to the place immediately after the incident. Why Sangita had not accompanied mother to hospital is also a question. Only Rukhminbai had gone with deceased in auto rickshaw

to the hospital. Sangita has denied the suggestion that Manohar and accused had also gone to hospital. It is rather unbelievable that PW.1 Rukhminbai, who was aged 66 years in 2014 as per the FIR and aged 70 years as per her deposition on 03.12.2015 (only a gap of one and a half years) would have taken her husband in that condition to hospital. Thus, there is total suppression of evidence by the prosecution. It is unfortunate that the learned Trial Judge has not appreciated the evidence properly and has not considered all these lacunas. Giving unnecessary importance to the testimony of P.W.1 Rukhminbai and P.W.2 Sangita has prejudiced the accused, as his vital years of life were required to be spent in jail and thereby his family members i.e. P.W.2 Sangita also appears to have enjoyed the act of sending him to jail for ultimate reasons.

11. Both the witnesses have admitted that they had disclosed to the relatives that deceased expired due to fall from the staircase. The spot panchanama shows there is a staircase. Interestingly, P.W.6 then P.I. Uttam Ghule, who has conducted the investigation, in his cross-examination, has admitted that the clothes of the accused were seized in the police station prior to his arrest and the accused came to be arrested around 20.10 hours on the day of FIR. There are no blood stains on his clothes. Neither P.W.1 Rukhminbai nor P.W.2 Sangita say that the accused had changed his clothes. They have not even taken pains to handover the clothes of the accused,

which were on his person at the time of incident. It would have been in fact easier for them to produce those clothes before the police. The auto rickshaw driver Baldev was not relative of the deceased, P.W.1 and P.W.2. Interesting point to be noted is that P.W.3 Baldev the auto rickshaw driver says that accused was standing on the road and by showing hand stopped the auto rickshaw and told that a patient is required to be taken at the hospital. The patient was a male person and patient's wife was with him. He took them to government hospital and after reaching hospital, he says Madam was called and Madam says that patient has expired. Thereafter, he left the patient along with his wife to the house. In his cross-examination he says that the talk between the doctor and the patient's wife have taken place. The doctor told patient's wife that postmortem was required to be done and at that time patient's wife says that patient had fallen in the house and sustained head injury and therefore, postmortem need not be done. She also told doctor that she has no complaint about his death. Interesting point therefore is that if we consider the suggestion that was denied by P.W.2 Sangita that her nephew and accused had not gone along with the deceased to the hospital, then till then there was no threat given by the accused to Rukhminbai and still Rukhminbai told the doctor as per the cross-examination of P.W.3 Baldev that her husband had sustained injury due to fall from staircase and she has no complaint against anybody. There is total suppression by the prosecution by not examining the said

medical officer, who was on duty on that night. When a patient is brought, he is checked and declared dead, still how the medical officer can allow the patient/dead body to be taken by the relatives in such a manner is a mystery. Again, at the cost of repetition therefore we say that it was unfortunate that all these aspects were not considered by the learned Trial Judge. The conviction awarded to the appellant is perverse, not to be sustained even for a moment. The prosecution has totally failed to prove that it was a homicidal death. Appeal therefore deserves to be allowed.

12. Another unfortunate fact is in spite of such suppression of evidence and there should not have been a clear finding that accused has committed murder of Mahadu, yet the learned Trial Judge perversely granted compensation to P.W.1 and P.W.2. In fact, the basic parameters of laying the compensation have not been followed and therefore the said order also deserves to be set aside. Hence, the following order :-

ORDER

- I) The appeal stands allowed.
- II) The conviction awarded to the appellant Datta s/o Sopan Pawar by learned Additional Sessions Judge, Udgir, District Latur in Sessions Case No.20 of 2014 after holding him guilty of committing offences punishable under Sections 302, 201, 176, 504, 506 of the

Indian Penal Code on 18.02.2017, is hereby set aside.

III) The appellant stands acquitted of the offences punishable under Sections 302, 201, 176, 504, 506 of the Indian Penal Code.

IV) The appellant be set at liberty, if not required in any other case.

V) We make it clear that there is no change in the order as regards disposal of muddemal.

VI) We also make it clear that the order regarding payment of compensation to P.W.1 Rukhminbai and P.W.2 Sangita also stands set aside.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm