

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

908 CRIMINAL APPEAL NO.408 OF 2019

KADU KHANDU THAKRE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Y.H. Jadhav, Advocate h/f Mr. Girish Nagori, Advocate for appellant

Mr. R.V. Dasalkar, APP for respondent No.1

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

DATE : 20th JANUARY, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed under Section 372 proviso of the Code of Criminal Procedure Code, 1973 by the original informant challenging the acquittal of respondent Nos.2 and 3 (original accused Nos.1 and 2) by learned Additional Sessions Judge, Jalgaon on 31.10.2018 from Sessions Case No.133/2014 for the offence punishable under Section 302, 341, 323, 504 read with Section 34 of the Indian Penal Code, 1960.

2 Heard learned Advocate Mr. Y.H. Jadhav holding for learned Advocate Mr. Girish Nagori for appellant and learned APP Mr. R.V. Dasalkar

for respondent No.1, at the stage of admission.

3 With the able assistance of the learned Advocate for the appellant as well as learned APP for respondent No.1 we have gone through the Record and Proceedings.

4 The main point on which the learned Advocate for the appellant harps upon is that the learned Trial Judge has not appreciated the evidence properly. When there were eye witnesses; yet they have been disbelieved. The memorandum, discovery panchnama Exh.76 showed that accused Kailash had admitted that he has assaulted the deceased with wooden stick; yet, that admission has not been considered. The approach of the learned Trial Judge was too technical and casual. The inquest panchnama and the postmortem report Exhs.32 and 53 respectively clearly showed head injury to deceased Suman, who was the wife of present appellant. The minor discrepancies have been given importance. There was definitely intention to kill. The accused persons had actually came to assault the appellant and when his wife intervened, the nearby wooden planks was picked up by Kailash and blow thereof was given on her head. Therefore, the matter requires re-appreciation of evidence. Hence, required to be admitted.

5 It is to be noted from the Record and Proceedings that the spot

panchnama has been proved through PW 1 Vinod and it is at Exh.14. The spot panchnama and the testimony of this witness does not say that any blood stains were found on the road, rather it is specifically stated that there were no signs of scuffle or blood stains (सदर ठिकाणी रवंदळ झालेच्या निशाण्या अगर रक्ताचे डाग वगैरे काही एक मिळून आले नाही.) Here itself, if we consider the testimony of PW 7, the Medical Officer Dr. Ajay Sonawane, who has conducted the autopsy, it is stated that he had noted oozing of blood from both ears, and he had also seen CLW over occipital region of size 5 cm X 3 cm deep to the bone. Therefore, the question arises that - When the blood was oozing from both ears how there were no stains on the earth at the spot ? Further, at this stage itself, if we consider a fact that as per the testimony of the present appellant and his First Information Report, the incident had taken place on 15.05.2014 around 2.00 to 2.30 p.m. and after the alleged assault deceased Suman was taken to Rural Hospital, Dharangaon and then shifted to Government Hospital, Jalgaon. She expired around 7.00 p.m. Neither the Medical Officer from Rural Hospital, Dharangaon nor the Doctor who gave treatment at Civil Hospital, Jalgaon have been examined by the prosecution. The documents with the said hospital appears to have not been collected at all. The panchnama of the seizure of clothes got proved through Police Head Constable Mr. Kailas Patil and it is at Exh.63, which shows that the nine yard sari and blouse, which was on the person of the deceased at the time of

incident, was having blood stains. PW 4 Rajendra Borse, who was the panch to the memorandum panchnama, has turned hostile and another panch to the said panchnama viz. Jagannath Budha Patil has not been examined. However, the memorandum panchnama came to be exhibited through the Investigating Officer and it is at Exh.26 (also at Exh.76). Even if we consider the contents thereof for the sake of argument, the description of the weapon i.e. wooden plank given in the said panchnama does not say that it had blood stains on it. Therefore, it cannot be stated that the prosecution has proved that the incident had taken place at the said place near DP, which the present appellant wants to convey.

6 Now, turning towards the testimony PW 2 Kadu, he has admitted that his son Kailash was married to one Alka, who is stated to be the daughter of original accused No.1 Prakash. Kailash and Alka got married about 20 years prior to the testimony of the informant. They had two sons and two daughters, however, their marital life became constrained. Alka had lodged offence under Section 498-A of the Indian Penal Code in Erandol Court against Kailash and others and that case was pending. She was residing with accused persons for about two years, but thereafter just prior to one year prior to the incident she had resumed the cohabitation with Kailash. According to the informant, there was quarrel between his son Kailash and

daughter-in-law Alka around 10.00 to 11.00 a.m. His son was asking Alka to withdraw the case and he was also giving threat and if she does not withdraw, she should go back to parental home. Then, it is stated that when he was proceeding to attend a marriage in the village around 2.00 to 2.30 p.m., both the accused came, abused him and beaten him by kicks and fist blows. At that time, when Suman came to help him, accused No.2 had given blow of the said wooden baton/plank, which was lying at the spot, on the head of his wife. She fell down and thereafter three sons of the appellant came and took Suman to Rural Hospital, Dharangaon. Important point to be noted is that the prosecution has not come with a case that Alka had informed about the dispute between herself and her husband to the accused persons and as a result of which they had come to ask anything to the victim. In his cross-examination he has stated that there was no dispute between him and the accused prior to the incident. There were no quarrel or talking terms of the accused persons with him and his wife. He also admits that on the day of incident also there was no dispute between him, Suman and Alka. Under this circumstance, why the accused persons would think about eliminating Suman, is a question and the prosecution has not answered it. No doubt, there is some support to his testimony in the testimony of PW 6 Meerabai, but it is to be noted that she is the sister of deceased Suman. The cross-examination destroys her contention in chief. In her examination-in-chief she

states that she was sitting beneath the tree around 2.00 to 2.30 p.m. and then the incident had occurred. Presence of Meerabai is not told by PW 2 Kadu and in the cross-examination she states that there is no tree near DP. There is no such space near the DP to sit as such. Therefore, her presence itself is made doubtful.

7 Another glaring fact is that though the Medical Officer had seen two external injuries and corresponding internal injuries and also given the opinion that those injuries are possible by wooden plank, but in the cross-examination he has categorically admitted that all the injuries mentioned in the Postmortem Notes are possible if a person falls on hard and sharp object. Secondly, he has not mentioned the age of the injury in the Postmortem Report. Thus, it cannot be stated that the prosecution was able to rule out the possibility of accidental injuries and the evidence had shown that it was only the homicidal death of Suman. The evidence was doubtful and untrustworthy, therefore, the conclusion reached by the learned Additional Sessions Judge was correct and legal. It requires no interference. There is no merit in the appeal. It deserves to be dismissed at the threshold. Accordingly, it is dismissed at the admission stage.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)