

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.455 OF 2022

Shankar Kondiba Chavan,
Age 31 yrs., Occ. Agri.,
R/o Laxmipur, Tq. Wadwani,
Dist. Beed.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra
- 2 Sukhdeo @ Balu Prabhakar Thorat,
Age 30 yrs., Occ. Agri.,
R/o Kanhapur, Tq. Wadwani,
Dist. Beed.

... Respondents

...

Mr. P.A. Bharat, Advocate for appellant
Mr. S.J. Salgare, APP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 27th JUNE, 2023

PRONOUNCED ON : 05th JULY, 2023

ORDER :

- 1 Present appeal has been filed by the original informant under

Section 372 of the Code of Criminal Procedure and under Section 378(4) of the Code of Criminal Procedure to challenge the acquittal of respondent No.2 – original accused by learned Special Judge under the Atrocities Act/Additional Sessions Judge, Majalgaon, Dist. Beed on 30.12.2021 in Atrocity Special Case No.10/2018. Before we proceed, we would like to say that the Sections appears to have been wrongly mentioned under which the appeal has been preferred. There is a specific provision under the Atrocities Act i.e. Section 14-A which provides for filing of appeal to challenge any order, judgment passed under the said Act. Therefore, the present appeal ought to have been filed under the said Section. Mentioning of wrong Section does not affect the right of the appellant and, therefore, the appeal is considered under the said provisions.

2 Heard learned Advocate Mr. P.A. Bharat for appellant and learned APP Mr. S.J. Salgare for respondent No.1, at the stage of admission and perused the evidence which was before the learned Trial Judge.

3 The prosecution story, in short, is that the informant Shankar Kondiba Chavan is the brother of deceased Shahadeo. Informant lodged First Information Report with Wadwani Police Station stating that around 9.00 a.m. of 20.07.2018 he had received phone call from one Rama Tangde of

Kanhapur informing that somebody has assaulted Shahadeo and he is lying near the bridge. Therefore, Shankar went to the said bridge and saw his brother. He asked his brother as to what has happened, then, Shahadeo told him that he was beaten by Balu Prabhakar Thorat i.e. original accused, who hails from their village, around 9.30 p.m. on 19.07.2018 on the said bridge as he had refused to give money to accused for drinking liquor. It was told that the accused has assaulted him by means of stone on his chest and head. Shahadeo was lying at the said spot whole night. Informant thereafter called his brother-in-law and they took Shahadeo to Government Hospital, Wadwani. After examining him Doctor told that he should be taken to Government Hospital, Beed. Accordingly, they had taken at that hospital, where Shahadeo was admitted in ICU. However, around 11.15 p.m. on 20.07.2018 Doctor declared him dead.

4 On the basis of said First Information Report offence vide Crime No.138/2018 came to be registered under Section 302 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

5 During the course of the investigation statements of witnesses were recorded, panchnama of the spot was done, after drawing inquest

panchnama the dead body was sent for postmortem, certain articles were seized and were sent for chemical analysis, accused came to be arrested and after the completion of the investigation charge sheet was filed before the learned Special Judge.

6 Charge was framed and trial was conducted. Prosecution has examined in all 11 witnesses to bring home the guilt of the accused and after considering the evidence on record and hearing both sides the learned Trial Judge has acquitted the accused. Hence, the present appeal by original informant.

7 The tenor of the submissions on behalf of appellant is that the learned Trial Judge has not appreciated the evidence properly. The oral Dying Declaration was given by Shahadeo to PW 1 Shankar, PW 2 Shantabai – mother of the deceased, PW 4 Sanjay Shankar Dongre – brother-in-law of deceased, PW 5 Arjun Kale, in whose Indica car Shahadeo was taken to hospital and PW 6 Murli Chavan. These oral Dying Declarations have been discarded on the ground that those are the weak kind of evidence. Testimony of PW 10 Dr. Abhinav Jadhav, who conducted the autopsy, would show that deceased Shahadeo had sustained about 12 external injuries and the probable cause of death is given as - “due to to hemorrhagic shock and due to

injuries to vital organ”. Re-appreciation of the evidence is required taking into consideration the fact that many witnesses have supported the prosecution story.

8 At the outset, from the impugned judgment it appears that the learned Trial Judge has partly accepted that the death of Shahadeo is homicidal in nature. Though there are certain admissions given by PW 10, the autopsy Doctor; yet, contrary facts have not come on record that those injuries are possible due to fall. The other factors have been taken into consideration by the learned Trial Judge to cast shadow of doubt over the evidence, but we are of the opinion that unless there is positive evidence to confront the medical opinion, a contrary view should not be taken. Therefore, even if we accept that death of Shahadeo is homicidal in nature, it is required to be seen as to whether the accused is author of the crime.

9 Perusal of the evidence of PW 1 Shankar would show that he came to know about the fact that his brother has sustained injuries in assault and was lying near the bridge around 9.00 a.m. on 20.07.2018. He was so told by one Rama Tangde. Interestingly, said Rama Tangde has not been examined. However, PW 6 Murli Chavan has been examined, who says that around 7.30 a.m. on 20.07.2018 when he was proceeding for answering

nature's call, Rama Tangde was ahead of him, they found Shahadeo near the well of one Jairam Chormale. At that time, Murli and Rama asked him, as to what has happened, at that time, Shahadeo told them that they should give a call to his brother. Shahadeo had not told as to who had assaulted him, but Murli says that Rama gave phone call to Shahadeo's brother and then Shahadeo came to the spot by Indica car and thereafter PW 6 Murli went from the spot. If we consider the testimony of PW 6 Murli, then, around 7.30 a.m. even Rama had met Shahadeo and on his request Rama had given phone call to Shankar, still PW 1 Shankar says that he received phone call of Rama around 9.00 a.m. This witness has not been considered as a hostile witness and, therefore, the huge time gap creates doubt over the testimony of PW 1 Shankar. PW 4 Sanjay says that he received phone call from PW 1 Shankar at about 9.00 a.m. on 21.07.2018. It appears that there is typographical mistake in taking date. That date should have been 20.07.2018 and not 21.07.2018. Therefore, he is also not corroborated by PW 6 Murli.

10 PW 2 Shantabai says that around 9.30 a.m. when she was at home, Shankar brought Shahadeo in car. That means, she is also not supporting PW 6 Murli that Shankar had gone after 7.30 a.m. to the spot and had brought Shahadeo.

11 PW 1 Shankar, PW 2 Shantabai and PW 4 Sanjay all have stated that deceased disclosed them that incident had taken place at 9.30 p.m. on 19.07.2018. He was assaulted by accused on the count that he had not given amount to him for drinking liquor. The assault was by stone on the chest and head. The testimony of PW 1 Shankar and PW 4 Sanjay would show the contrary fact that PW 1 had stated that Shahadeo was near the bridge whereas PW 4 says that Shahadeo was adjacent to the well from the field of one Jairam Chormale. What was the distance between the bridge and the well has not been brought on record. The well cannot be on the bridge. The testimony of these three witnesses depicts that at different place and time Shahadeo alleged to have given to them the oral Dying Declaration. The position of law is very clear that the oral Dying Declaration is a very weak kind of evidence unless it inspires confidence. There cannot be a conviction based on the oral Dying Declaration. The learned Trial Judge has discarded these oral Dying Declarations on two main grounds; 1) there was ample opportunity to the police to take the oral Dying Declaration of the deceased but no such attempt was made, 2) the spot is surrounded by the houses and the traffic and to and fro of people is experienced late night also and since early morning; yet, no independent witness has been examined to show that immediate help was given to Shahadeo. The said finding is definitely supported by the testimony of PW 6 Murli as he had stated that he saw

Shahadeo at 7.30 a.m. itself and on the request of Shahadeo, Rama had given phone call to PW 1 Shankar immediately and then Shankar had come, but then Shankar says that, that phone call was received by him at 9.00 a.m. The oral Dying Declarations have been rightly discarded and, therefore, the other evidence in the nature of spot panchnama, inquest panchnama assumes no importance. There is absolutely no explanation by the prosecution as to why no attempt was made to record the Dying Declaration of Shahadeo. Interesting point to be noted is that as per the testimony of PW 4 Sanjay, when Shahadeo was taken to his house, he had taken tea and biscuits. PW 1 Shankar and PW 4 Sanjay have stated that police had come to Government Hospital, Wadwani but then question arises, as to why there was no attempt to record his Dying Declaration at that moment. The Medical Officer from Government Hospital, Wadwani has not been examined. What was the history that was taken down with the said hospital was also important. Therefore, taking into consideration the evidence, we do not find there is any illegality or perversity when the respondent No.2 – accused stood acquitted. No interference is required. Criminal Appeal stands rejected.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)