

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

14 CRIMINAL APPEAL NO.577 OF 2022

TARABAI W/O BHAUSAHEB WAGHMARE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. K.P. Rodge, 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 : 23rd JANUARY, 2023

ORDER :

1 Present appeal has been filed by the mother of the deceased challenging the acquittal of respondents-original accused Nos.1 to 4 in Sessions Case No.53/2020 on 26.11.2021 by learned Additional Sessions Judge, Shrigonda, Dist. Ahmednagar from the offences punishable under Sections 143, 147, 148, 307, 302, 324, 323, 504, 506, 188, 269, 270 read with Section 149 of the Indian Penal Code and under Sections 2, 3 and 4 of the Epidemic Diseases Act.

2 Heard learned Advocate Mr. K.P. Rodge for the appellant and

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

3 Learned Advocate appearing for appellant has placed on record the copies of depositions. Important point to be noted is that the appellant was never examined before the Trial Court. Her name is not appearing at any place. However, since she is mother of the deceased, she has filed the present appeal under Section 372 of the Code of Criminal Procedure.

4 The prosecution story is that one Onkar Dadabhau Waghmare had given statement to police when he was admitted in Vedant Hospital, Shirur disclosing that he and his friend Sumit were together at about 6.00 p.m. on 03.07.2020 in Shirur. He called one Sagar Bankar on the phone of his friend Sumit, however, Sagar did not pick up the call. Therefore, Sumit gave phone call from the mobile of Onkar to Sagar, which was picked up by Sagar. Sumit asked Sagar to pay his dues of Rs.1,500/-. It is then stated that Sagar promised to pay the dues but got annoyed with the fact that why Sumit is calling from others phone and then abused the informant. It is then stated that Onkar and Sumit went to Devdaithan and at that time Sagar had given phone call on the mobile of the informant. Informant told him that he is at the said village and if he wants to meet him he should come there. It is then stated that around 9.00 p.m. informant, his friend Sumit and one Santosh

Waghmare were chitchatting, at that time the accused persons went there on motorcycle, who were possessing wooden logs and iron rod, glass bottles etc. and then Sagar Bankar, by asking informant why he had given phone call, started beating him with iron rod and other accused persons also assaulted the three persons. It is then stated that Sumit, one Saurabh Korke, Dadabhau Wakhare took him to Vedant Hospital. Sumit had sustained serious injuries and, therefore, he was shifted to Colombia Asia Hospital, Pune. During the pendency of the investigation Sumit expired and, therefore, Section 302 of the Indian Penal Code came to be added.

5 From the evidence that has been produced as well as impugned Judgment it is to be noted that five witnesses were examined on behalf of the prosecution. The star witness Onkar as well as injured witnesses have not supported the prosecution. It can be so seen from the testimony of those persons. After the learned APP had sought permission to cross-examine those witnesses, nothing contrary has been transpired. Under such circumstance, on the basis of available evidence it can be said that the learned Trial Judge has not erred in acquitting the accused persons. There is no perversity in arriving at the conclusion.

6 It is unfortunate that the son of the appellant has expired due to

the injuries sustained, however, now, she wants to blame the prosecution for not even bothering to examine the panch witnesses in respect of recovering the weapons from the accused persons, examining the Doctor to prove whether the death is homicidal in nature or not and she wants to point out the defects in the investigation. In respect of this point, it can be certainly said that the prosecution witnesses i.e. the informant and the injured are not denying the incident but they have resiled from the fact that the accused were the author of the crime. According to them, the electricity went off and then some persons on two motorcycles had come, who had started beating all of them. Possibility of winning over them by the accused persons could not have been ruled out. But examining the panch witnesses who led to the discovery of the alleged weapons could not have resulted in conviction. Unfortunately the mother is required to pay for the dishonesty and untrustworthiness of the friends of her deceased son. Unless the informant or the victim shows perversity, the appeal could not have been admitted. Therefore, when we do not find any perversity, taking into consideration the evidence that has been led, the present appeal stands dismissed.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)