

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 33 OF 2020

Sow. Savitri W/o Prabhakar Mudholkar
Age : 40 Years, Occu. : Household,
R/o Vijapur Road, Aditinagar, Sai Home,
Solapur, Tq. and Dist. Solapur

... Appellant
(Daughter of Orig.
deceased informant)

Versus

1. The State of Maharashtra,
Through Asstt. Police Inspector,
Police Station, Murud,
Tq. & Dist. Latur.
2. Nagnath S/o Rambhau Devkar,
Age : 63 Years, Occu. Agriculture.
3. Babasaheb S/o Nagnath Devkar,
Age : 35 Years, Occu. : Agriculture.
4. Durgappa S/o Laxman Chavan,
Age : 72 Years, Occu. Agriculture.
5. Dharmaraj S/o Durgappa Chavan,
Age : 34 Years, Occu. Agriculture.
6. Dattu S/o Durgappa Chavan,
Age : 43 Years, Occu. Agriculture.
7. Navnath S/o Shivram Chaugule,
Age : 33 Years, Occu. : Agriculture.
8. Shivaji S/o Chimaji Chavan,
Age : 65 Years, Occu. : Agriculture.
9. Abhayshinha S/o Shivaji Chavan,
Age : 32 Years, Occu. : Agriculture.

10. Mahesh @ Dada S/o Dattu Chavan,
Age : 21 Years, Occu. : Agriculture.
11. Sidram S/o Durgappa Chavan,
Age : 45 Years, Occu. : Agriculture.
12. Somnath S/o. Shivram Chaugule,
Age : 42 Years, Occu. : Agriculture,
Respondent Nos. 2 to 12 are Bhosa,
Tq. & Dist. Latur.

... Respondents.
*(Resp. Nos.2 to 12
are Orig. accused)*

.....
Mr. S. J. Salunke, Advocate h/f Mr. D. V. Tele, Advocate for the Appellant.
Mr. R. D. Sanap, APP for Respondent No.1-State.
.....

WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 156 OF 2019

The State of Maharashtra,
Through Asstt. Police Inspector,
Police Station, Murud,
Tq. & Dist. Latur.

... Applicant

Versus

1. Nagnath S/o Rambhau Devkar,
Age : Major, Occu. Agriculture.
2. Babasaheb S/o Nagnath Devkar,
Age : Major, Occu. : Agriculture.
3. Durgappa S/o Laxman Chavan,
Age : Major, Occu. Agriculture.
4. Dharmaraj S/o Durgappa Chavan,
Age : Major, Occu. Agriculture.
5. Dattu S/o Durgappa Chavan,
Age : Major, Occu. Agriculture.

6. Navnath S/o Shivram Chaugule,
Age : Major, Occu. : Agriculture.
7. Shivaji S/o Chimaji Chavan,
Age : Major, Occu. : Agriculture.
8. Abhayshinha S/o Shivaji Chavan,
Age : Major, Occu. : Agriculture.
9. Mahesh @ Dada S/o Shivaji Chavan,
Age : Major, Occu. : Agriculture.
10. Sidram S/o Durgappa Chavan,
Age : Major, Occu. : Agriculture.
11. Somnath S/o. Shivram Chaugule,
Age : Major, Occu. : Agriculture,

All R/o. Bhosa, Tq. & Dist. Latur.

... Respondents.
(Orig. accused)

.....
Mr. R. D. Sanap, APP for Applicant-State.
.....

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

DATE : 19th JANUARY 2023.

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Daughter of original informant has invoked provisions under section 372 of the Code of Criminal Procedure, praying to quash and set aside the judgment and order passed by the learned Sessions Judge, Latur in Sessions Case No.73 of 2016, by which all accused - respondents came to be acquitted from charge under sections 143, 147, 148, 452, 302, 307, 323, 504,

120-B read with 34 and 149 of Indian Penal code. State also intends to challenge the same judgment and order in application to seek leave to appeal.

2. Present appellant (daughter of original deceased informant) set law in motion alleging that on 22.04.2016, all accused - respondents entered the house of the first informant. Mother of informant, namely Tanibai and his sister were assaulted by accused persons by means of iron rod and wooden sticks. Because of the said assault Tanibai expired and hence the report.

3. It is submitted by learned counsel for appellant that prosecution had examined in all 12 witnesses and had strongly established the occurrence. That, there were several eye witnesses who had deposed about the seeing occurrence and assault on Tanibai. There was sufficient corroboration from each other and therefore the only conclusion that can be drawn is that charge was proved. However, the learned trial court failed to appreciate the oral and documentary evidence in its proper perspective and acquitted all accused.

4. Learned counsel for appellant pointed out that in a serious case like murder, delay has been unduly considered by the learned trial Judge. Further reasons for delay have not been properly considered. Secondly, case was proved beyond reasonable doubt against accused persons. Thirdly, there was recovery from all accused persons, but the same has not been correctly appreciated. Fourthly, medical evidence has not been appreciated on the point

of assault with rod. Fifthly, there was strong medical evidence suggesting homicide, but unfortunately learned trial Judge has not accepted the said evidence. That, infact occurrence was seen by witnesses, but they are surprisingly disbelieved. Role of each of the accused was spelt out in the FIR and in the evidence adduced before the court, but the same has not been correctly appreciated and hence learned counsel for the appellant would submit that the findings and reasons assigned by the trial court not being in consonance with evidence on record and legal position, appeal is sought to be admitted.

5. After hearing submissions of learned counsel for appellant as well as learned APP for State, we have carefully gone through the record before the trial court, i.e. oral and documentary evidence and we have also examined the judgment and order passed by the trial court.

6. On appreciating the same, it seems that informant's mother Tanibai was admitted with grievous head injury. After the occurrence, report seems to have been lodged same day i.e. on 22.04.2016. It is emerging that to prove the guilt of the accused in the trial court, prosecution had examined in all 12 witnesses. That apart, documentary evidence like spot panchanama, recovery panchanama, inquest panchanama, postmortem report etc. were gathered by investigating machinery.

7. Charge being under section 302 along with other sections of Indian Penal Code, it was incumbent upon prosecution at the threshold to establish death of Tanibai to be homicidal one. Record shows that, **PW-8** Dr. Nazmeen Abdul Rauf Shaikh who was examined by prosecution had occasion to examine deceased. According to this witness, Tanibai was profusely bleeding and therefore she was further referred to G.M.C., Latur after giving primary aid. But, this witness while under cross-examination seems to have clearly admitted that injuries noted by her are also possible on account of vehicular accident. Similar answer was given by autopsy doctor **PW-7** Deepak Ram Hugge and he, in his evidence, stated that at the time of postmortem, he came across following injuries :-

1. Stitched wound on bilateral partial region extending up to occipital region. It was stitched. 11 stitches were there.
2. Contusion to left upper arm of size 25 cm x 17 cm x 0.5 cm. It was of blueish black colour.
3. Laceration on right hand, dorsal aspect of 4 cm x 2 cm, reddish in colour, directed laterally.
4. Abrasion of 1.5 cm lateral to left eyelid of size 3 cm x 0.2 cm. It was reddish colour.

Though he admitted that the cause of death was head injury, however, in his cross-examination, he has stated that fracture of ribs is possible by vehicular accident and the same are not possible on account of assault by

rod. That apart, it seems that defence has also brought to the notice of the learned Sessions Judge the A.D. report which indicated accidental injuries. Therefore, as *prima facie* ocular evidence was not found to be trustworthy and as prosecution appears to have failed in establishing death of Tanibai to be homicidal one, learned trial Judge answered issue No.1 pertaining to homicide in negative.

8. As regards other injuries are concerned, it seems that evidence of **PW-2** Shalu, **PW-9** Durgadas and **PW-3** Azar Siddique Shaikh was material, but on going through their evidence, it is doubtful whether they had any occasion to witness the occurrence. Their testimonies are found to be full of improvements. Testimonies of recovery panchas **PW-4** Vaijnath, **PW-5** Balaji and **PW-6** Prashant also does not inspire confidence and therefore aspect of recovery of stick was also rendered doubtful. There are major lacunas while causing recovery and discovery.

9. Similarly, prosecution seems to have failed in proving charge under section 307 of IPC. **PW-2** Shalu and **PW-9** Durgadas also seem to be got up witnesses. Therefore, in the totality of circumstances and considering the rulings relied by each of the side, learned trial court seems to have acquitted the accused persons. Apart from serious lapses in the investigation, the evidence of prosecution failed to inspire confidence of learned Sessions Judge.

In spite of assertion that there were several injuries and CA report was not placed before the trial Judge. In our considered view, with such quality of evidence, learned trial Judge committed no error whatsoever in acquitting the accused.

Therefore, on scrutinizing and reanalyzing the evidence adduced by prosecution in trial court, no other view would emerge than the one that is taken by learned Sessions Judge. Findings are supported by reasons. Therefore, in our opinion, it is not a fit case for granting relief as prayed. Therefore, both, appeal and application for leave to appeal by State stand rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)