

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.854 OF 2023

Vijaykumar Rajmal Solanki
Age: 48 years, Occu.: Agri.,
R/o. Nagalwadi, Taluka Karjat,
District Ahmednagar

.. Appellant

VERSUS

1. The State of Maharashtra
2. Vijay Ramdas Mane
Age: 32 years, Occu.: Agri.,
R/o. Nagalwadi, Taluka Karjat,
District Ahmednagar.
3. Pandurang Machhindra Mane
Age: 28 years, Occu.: Agri.,
R/o. Nagalwadi, Taluka Karjat,
District Ahmednagar.

.. Respondents

...

WITH

CRIMINAL APPEAL NO.655 OF 2023

...

Mr. Shashikant E. Shekade, Advocate for appellant in Criminal Appeal No.854 of 2023.

Mr. V. S. Choudhari, APP for respondent – State.

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

DATE : 11th October, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present appeal has been filed by the original informant under Section 372 of the Code of Criminal Procedure to challenge the acquittal of original

accused Nos.1 and 2 from the offence punishable under Sections 302, 323, 504 read with Section 34 of Indian Penal Code in Sessions Case No.71 of 2022 on 15.07.2023 by learned Additional Sessions Judge, Shrigonda, District Ahmednagar.

2. Heard learned Advocate Mr. Shashikant E. Shekade for the appellant in Criminal Appeal No.854 of 2023 and learned APP Mrs. V. S. Choudhari for the respondent – State and perused the material which was before the learned Trial Judge.

3. The prosecution has come with the case that informant i.e. present appellant lodged FIR on 14.03.2022 in respect of an incident dated 09.03.2022. It was in respect of alleged murder of his brother Lalchand. It is stated in the FIR that there was dispute between accused No.1 and informant's wife Sunita around 6.30 to 7.00 p.m. on 08.03.2022 on the ground that accused No.1 had parked his trolley in front of the house of informant. Informant and his brother Lalchand were inside the house. They went outside and gave understanding to accused No.1. Accused No.1 got annoyed and he slapped Lalchand. Informant separated them. Around 7.00 to 8.00 a.m. on 09.03.2022, Lalchand told informant that he would ask accused No.1 as to why he had slapped him and, therefore, when he went to ask accused No.1, accused No.1 again got angry and started abusing them. Informant and his wife Sunita came outside. It was also seen

by one Pandurang Mane i.e. accused No.2. Then accused Nos.1 and 2 started abusing Lalchand. Accused No.1 took out a bamboo stick which was on the ground and by saying that he would assault him on his waist, started assaulting him. Accused No.2 was giving kicks and fists to Lalchand. Sunita and informant tried to intervene. They were also assaulted. Thereafter, both the accused left the place. In the said dispute/quarrel Lalchand received injury to his left side of the rib and, therefore, the informant took him to Dr. Shelke at Nagalwadi. Informant is handicapped and Lalchand was addicted to vices and, therefore, complaint was not lodged. Thereafter, Lalchand was in pain on 12.03.2022 as his injury to the left side of the rib was causing pains. He was taken to Shridip Hospital. The doctor asked Lalchand to be admitted, but informant was not having money. Therefore, Lalchand was taken back to house. On 14.03.2022, Lalchand was in severe pains, therefore, he was taken to Dr. Kolhe's Hospital at Mirajgaon around 11.30 a.m. When he was asked to be admitted, informant started collecting money and suddenly, he vomited blood. He was not moving and his eyes had become white. Informant realized that he has expired and, therefore, they brought his dead body to house around 1.30 p.m. Informant then informed the said fact to his brother-in-law, who came to informant's house around 4.00 p.m. and then the dead body of Lalchand was taken to Sub District Hospital and then the FIR was lodged.

4. After the investigation, prosecution has examined in all eight witnesses. Out of them P.W.1 is the informant – eye witness and P.W.7 Sunita is his wife. P.W.2 and P.W.3 are the panch witnesses to the spot panchanama and inquest panchanama. P.W.4 Dr. Shelke, P.W.5 Dr. Amit Badwe are the private medical practitioners, who had examined Lalchand on various dates. P.W.6 Dr. Mansi is the autopsy doctor and P.W.8 is the investigating officer.

5. Learned Advocate for the appellant has submitted that the learned Trial Judge has not appreciated the evidence properly and wrongly concluded that death of Lalchand is not homicidal. Evidence of P.W.6 Dr. Mansi was sufficient to arrive at the said conclusion when the injury to Lalchand was proved by P.W.1 and P.W.7. P.W.4 and P.W.5 had also supported their testimony regarding the nature of injury. Re-appreciation is therefore required, which would prove that there was nexus between the injury cause to Lalchand on 09.03.2022 and his death on 14.03.2023.

6. At the outset, the contents of the FIR which have been tried to be proved through P.W.1 were sufficient enough to attribute even negligence to informant. In spite of the said injury to Lalchand on 09.03.2023, he was taken to Dr. Shelke whose qualification was B.A.M.S. He says that Lalchand was brought to him on 13.03.2022, whereas in the FIR it is stated that Lalchand was taken to Dr. Shelke on 09.03.2022 itself. Even if it is taken

that he had examined Lalchand on 13.03.2022, the complaint that was made by the patient was nausea, vomiting, cough, anorexia, hemptis and history was chest trauma. He had given him paracetamol tablet for temporary relief and advised him to be taken to higher center for C.T. Scan. The document which he has proved bears the date 13.03.2022. That means no treatment was given to Lalchand from 09.03.2022 to 13.03.2022 by Dr. Shelke. PW.5 Dr. Amit is the medical practitioner who runs Shridip Hospital. He says that Lalchand was examined by him on 12.03.2022. He had taken X-ray and noted that there were multiple ribs fractured on the left side. He advised the patient to be admitted, but they were not willing to admit him. Here, it is also to be noted that PW.4 Dr. Shelke says that on 13.03.2022 he had given the name of Shridip Hospital, Ahmednagar on prescription Exhibit-29, which is dated 13.03.2022, but PW.5 Dr. Badwe says that he had already examined Lalchand on 12.03.2022. PW.1 Vijaykumar has not stated as to why Lalchand was not taken to Government Hospital, where free treatment would have been given to him. Testimony of PW.6 Dr. Mansi, who conducted the autopsy, would show that if timely treatment would have been given to Lalchand, then he would have survived or there were chances. Under the said circumstance, when there was no clear evidence to prove the nexus, the acquittal of the accused persons from Section 302 of Indian Penal Code by the learned Trial Judge was justified. Further, the informant himself has stated that accused No.1

had taken the bamboo stick which was lying on the ground and then started assaulting Lalchand, who had gone to his house i.e. the house of accused No.1 to ask as to why he had slapped him on the earlier day. The question of who instigated whom was also important. It will not be out of place to mention here that original accused No.1 has been convicted for the offence punishable under Section 325 of the Indian Penal Code. His appeal i.e. Criminal Appeal No.625 of 2023 is pending before this Court. By no stretch of imagination therefore it can be said that the finding of the Trial Court acquitting accused Nos.1 and 2 from the offence punishable under Sections 302, 323, 504 read with Section 34 of Indian Penal Code is perverse. No case is made out to admit the appeal under Section 372 of the Code of Criminal Procedure. Hence, the Criminal Appeal No.854 of 2023 stands dismissed.

7. We clarify that Criminal Appeal No.655 of 2023 would proceed. The said appeal be placed before the appropriate bench.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm