



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 473 OF 2017

Ashok @ Dilip s/o Mohan Rathod
Age 27 yrs. Occ. Agri.,
r/o Bothi Tanda, Tq. Chakur,
District Latur.

... Appellant

Versus

The State of Maharashtra,
Through Inspector Police Station,
Chakur, Tq. Chakur, Dist. Latur.

... Respondent

WITH
CRIMINAL APPEAL NO. 431 OF 2017

1. Mohan s/o Dhansing Rathod,
Age 55 yrs. Occ. Agri.,
r/o Bothi Tanda, Tq. Chakur,
Dist. Latur.

2. Anjana w/o Mohan Rathod,
Age 50 yrs. Occ. Labour,
r/o Bothi Tanda, Tq. Chakur,
Dist. Latur.

3. Chaya w/o Govind Jadhav,
Age 20 yrs. Occ. Labour,
r/o Bothi Tanda, Tq. Chakur,
Dist. Latur.

... Appellants

Versus

The State of Maharashtra
Through Inspector Police Station,
Chakur, Tq. Chakur, Dist. Latur.

... Respondent

.....

Mr. U. B. Bilolikar, Advocate h/f Mr. B. V. Patwari and Mr. S. N. Lavekar, Advocates for the Appellants in both Appeals.
Mr. S. D. Ghayal, APP for Respondent-State in both Appeals.

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

Reserved on : 12.12.2023

Pronounced on : 20.12.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Criminal Appeal No. 473 of 2017 by convict Ashok and Criminal Appeal No. 431 of 2017 by convicts Mohan, Anjana and Chaya are arising out of the judgment and order of conviction awarded by learned Additional Sessions Judge-3, Latur dated 14.08.2017 in Sessions Case no. 91 of 2015. Vide said judgment, all appellants are held guilty for charge under Sections 302, 201 r/w 34 and 203 r/w 34 of the Indian Penal Code [IPC], respectively.

2. Chakur police station charesheeted all accused, namely, Mohan, Ashok, Anjana and Chaya on the premise that deceased Govind had been to attend marriage at his in-laws' place at Bothi Tanda on 28.05.2015. There, on 03.06.2015, quarrel took place between deceased and accused persons which resulted into assault on deceased by accused no.2 Ashok by means of iron pestle and fist and kick blows by remaining accused. The occurrence was seen by PW7 Shivaji, who is neighbour of accused. Thereafter, dead body of deceased was found in a passenger train on 04.06.2015. Initially AD

was registered. PW13 Dr. Sachin Darandale, coroner/autopsy surgeon, who conducted postmortem, issued opinion regarding cause of death as “head injury associated with blunt trauma over chest” and resultantly, after being challaned, vide Exhibit 15 charge was framed and explained and the same was denied by all accused persons.

Consequently, trial was undertaken by learned Additional Sessions Judge, who examined evidence of 17 witnesses adduced by the prosecution as well as documentary evidence relied by prosecution. On appreciating the same and on hearing both sides, learned trial Judge held accused Ashok to be guilty of offence under Section 302 of IPC and all accused, including accused Ashok, to be guilty of offence under Sections 201 r/w 34 and 203 r/w 34 of IPC and awarded sentence as spelt out in the operative part of the judgment.

Now exception is taken by all convicts by filing above distinct appeals which being heard on the same day and being answered by learned APP, are decided together herewith.

3. In support of its case, prosecution seems to have adduced evidence of in all 17 witnesses. Their role and status can be summarized as under :

- PW1** Satish Mehare is the pancha to recovery of dead body vide Exhibit 32 as well as seizure of clothes of deceased vide seizure panchanama Exhibit 33.
- PW2** Informant Dagdu Jadhav is father of deceased Govind. He lodged report Exhibit 50.
- PW3** Vasant Rathod has acted as pancha to spot panchanama and seizure of iron pestle (Article A) vide Exhibit 55.
- PW4** Laxman Jadhav is brother of deceased Govind.
- PW5** Babu Jadhav allegedly heard about death of Govind and claims to have informed accordingly to PW2 Dagdu.
- PW6** Keshav Rathod is the person who telephonically informed PW5 Babu about death of Govind.
- PW7** Shivaji Jadhav is neighbour of accused persons and he claims to have witnessed quarrel between deceased and accused persons on 03.06.2015 and about Ashok assaulting deceased with iron pestle.
- PW8** Vaijinath Sanmukhrao, Police Head Constable, Chakur Police Station, who registered missing report Exhibit 67 lodged on 05.06.2015 by accused Chaya i.e. wife of deceased.

- PW9** Jeevan Rajgirwad, Police Head Constable, Chakur Police Station, who conducted inquiry about the missing report no. 19/2015.
- PW10** Sachin Rathod is relative of deceased and at Ghati Hospital, Aurangabad, he identified dead body to be of Govind.
- PW11** Syed Jafar, Police Havaladar posted at Railway Police Station, Aurangabad who inquired into the AD No. 24/2015.
- PW12** Rajkumar Chavan is relative of accused Mohan.
- PW13** Dr. Sachin Darandale is the autopsy doctor, who conducted postmortem on 05.06.2015 and issued provisional cause of death certificate Exhibit 83 and postmortem report Exhibit 84, however opinion was reserved for want of C.A. reports. On 22.09.2016, vide Exhibit 87, he issued final cause of death as “Head injury associated with blunt trauma over chest”.
- PW14** Shantaram Dambale, API, attached to Railway Police Station, Aurangabad, who registered crime by 0 number and forwarded all papers to Chakur Police Station.
- PW15** Waman Jadhav is brother of accused Anjana.
- PW16** Meerabai Jadhav is sister of accused Anjana.
- PW17** Shivdas Lahane, API, Chakur Police Station is the Investigating Officer [IO].

SUBMISSIONS

ON BEHALF OF APPELLANTS :

4. In support of relief, learned counsel for the appellants would point out that there is apparently false implication and there being no direct evidence, case is rested on circumstantial evidence. According to him, the only circumstance relied seems to be last seen together, but there is no trustworthy, reliable evidence. He brought to our notice the date of deceased Govind leaving his place Hanmantwadi Tanda, i.e. 28.05.2015, and that deceased was found dead on 04.06.2015, that too in a railway at Aurangabad Railway Station. According to him, there is no evidence even on last seen together. Further, according to him, there are no independent witnesses and only interested witnesses are examined and are also used as panchas. That, important witnesses are not examined. According to him, prosecution utterly failed to prove motive. That, learned trial Judge has not appreciated the evidence as required by law and has reached to erroneous conclusion and even findings reached at are not supported by sound reasons and so he prays for indulgence at the hands of this court by allowing the appeals.

ON BEHALF OF STATE :

5. Per contra, learned APP pointed out that here is a case of direct evidence. According to him, PW7 Shivaji, an independent witness, has been examined by prosecution and he has testified about seeing quarrel as well as assault and that this witness had also intervened to separate deceased. He has deposed to that extent. Deceased was seen taken by appellants in their house and thereafter deceased was not found alive. Therefore, accused persons being custodians of deceased who was staying with them and deceased having found met with unnatural death, they are answerable, but as no explanation is coming from their side and in the light of availability of evidence of PW7 Shivaji, learned trial Judge has rightly accepted the case of prosecution as cogently proved. There is recovery of article. Autopsy doctor has confirmed death to be homicidal one. Therefore here, there is both, direct as well as circumstantial evidence and so, it is his submission that, no fault can be found in the appreciation or findings and judgment authored by learned trial Judge and so he prays to dismiss the appeals.

6. This Court, while exercising powers under Section 374 of the Code of Criminal Procedure [Cr.P.C.], is called upon to re-appreciate,

re-analyze and re-examine entire oral and documentary evidence adduced by prosecution in trial court. In the light of charge under Section 302 of IPC, we deem it fit to first get ourselves ascertained whether death of Govind is proved to be homicidal.

7. Evidence of autopsy doctor PW13 needs to be appreciated for such ascertainment and therefore we have re-examined his evidence, who is examined at Exhibit 82. He claims that on 05.06.2015, he conducted autopsy and noted both, external as well as internal injuries which are as under :

External injury : -

Spectacle haematoma present over right eye, reddish blue in colour.

Internal injuries : -

Head :

- 1) Under scalp haematoma of size 8 cm x 8 cm, present over left posterior parietal and occipital region, reddish in colour.
- 2) Duramater was intact, congested and tense. Diffuse thin film of subarachnoid haemorrhage over left frontal temporal, parietal and occipital regions, reddish in colour.

Thorax :

- 1) Haematoma of size 11 cm x 5 cm x 1 cm spreading irregularly over midline of chest, sternum region, about 100 CC, reddish in colour.

He initially claimed that he merely issued provisional cause of death certificate and reserved his opinion till receipt of CA report. According to him, police obtained his opinion by raising query after confronting him with the article pestle and on examining the same, he claims to have issued opinion Exhibit 86. Further, according to him, injuries mentioned in column nos. 19 and 20 of the postmortem report can be caused by hard and blunt weapon and as such, injuries are possible by said weapon or similar type of weapon. He also answered that injuries noticed by him were ante-mortem in nature. He deposed about issuing final cause of death certificate to the police on request on 22.09.2016 recording cause of death as "Head injury associated with blunt trauma over chest". He identified the final cause of death certificate Exhibit 87.

Above witness in cross has answered that he is unable to state whether article weapon examined by him had any blood stains. He answered that injuries noticed on the dead body are possible by throwing or holding hard and blunt impact and that death might have

been caused due to any one of the two injuries noted by him in postmortem report. He further answered that on the basis of C.A. report, he issued final cause of death certificate.

8. Therefore, above material indicates that after dead body was brought for autopsy on 04.06.2015, initially only provisional cause of death certificate Exhibit 83 was issued by PW13 autopsy surgeon, reserving opinion and final cause of death certificate seems to be issued on 22.09.2016. However, charge is already shown to be framed on 03.08.2016 and explained to the accused persons, which is surprisingly much prior to the issuance of final cause of death certificate Exhibit 87. Be it so. Above evidence of PW13 autopsy surgeon is found to be patently silent about death to be homicidal one or injury to be sufficient in the ordinary course of nature to cause death and therefore issue of mode and nature of death has patently remained unanswered.

9. Now let us examine and analyze the other evidence i.e. oral evidence adduced by prosecution in trial court.

10. Circumstance of last seen together seems to have been pressed into service by prosecution in trial court. Therefore, we wish to

examine the prosecution evidence to ascertain whether said circumstance is cogently proved.

11. **PW1 Satish**, who has acted as pancha to spot panchanama Exhibit 32, deposed regarding he being called at Railway Station Aurangabad on 04.06.2015. He claims regarding coming across dead body in a passenger train on 04.06.2015.

12. According to the father **PW2 Dagdu**, his deceased son Govind left Hanmantwadi Tanda to attend marriage of cousin father-in-law which was fixed on 04.06.2015. He stated that his cousin brother **Babu received phone call from relative informing that Govind has been killed at his in-laws' village**. However, who was the relative who gave this information to Babu on phone has not been named by father. Who has killed Govind at his in-laws' village has also not been stated to father-informant who has apparently lodged report against accused. When Govind died is also not known to this witness. However, he stated that he and other relatives went to Bothi Tanda and approached father-in-law of Govind i.e. appellant Mohan to make inquiries about his son and thereafter, he claims that, even on search when son was not found, they approached Chakur Police Station and there they learnt from police that wife of deceased, namely, Chaya

had already filed a missing report three days back. He further deposed that Vasant Rathod, who is his brother-in-law, met him and told about receipt of phone call from Vasant's brother-in-law informing news item about a dead body found in Hyderabad-Aurangabad train and said Vasant asked this witness to send photograph of Govind to his brother-in-law, which was duly forwarded and then this witness claims that Vasant informed that the dead body was of Govind and so they all came to Aurangabad. He approached police, who took him to Ghati Hospital where he identified the body of his son and thereafter lodged report Exhibit 50 i.e. complaint against wife of Govind, his in-laws and brother-in-law.

PW2 Dagdu in his cross has answered that Govind did not return to Hanmantwadi Tanda after 28.05.2015. He is unable to give name of the relative who made phone call to Babu. He admitted that when he approached police at Chakur, that time Sopan and Vasant were with him. He admitted that dead body was found in a passenger train. Rest is all denial.

13. **PW4 Laxman** is brother of deceased and his evidence is at Exhibit 58. He also seems to be resident of Hanmantwadi Tanda i.e. where both, his father PW2 Dagdu and deceased also reside.

According to him, his deceased brother had gone to Bothi Tanda for marriage of his sister-in-law. It is pertinent to note that PW2 Dagdu had deposed about deceased going to attend marriage of his cousin father-in-law. Therefore, son is giving contrary version about the person to whose marriage deceased left the house. PW4 Laxman further deposed that there was quarrel between deceased and his father-in-law, brother-in-law and they killed Govind by assaulting him with pestle used for grinding chilly and thereafter kept his dead body in the train. He claims that Keshav, who is son of his maternal aunt, had learnt about above killing of Govind and Keshav had asked his uncle Babu as to whether Govind is at Hanmantwadi and later on, Keshav informed that he learnt that Govind has been killed and therefore, they all went to Bothi Tanda and then to police station.

Above witness is cross-examined as to how many of them searched Govind. Suggestions about dispute between deceased and father on account of partition has been denied alongwith denial of he himself threatening to kill Govind.

14. Next important witness and also star witness for prosecution is **PW7 Shivaji**. Prosecution is very emphatic that he had seen the occurrence of quarrel as well as assault and therefore there is direct

eye witness account. Resultantly, we have carefully and meticulously analyzed his evidence. This witness has deposed that he knew accused as they reside in front of his house and he also was knowing deceased who was visiting house of accused. According to him, whenever Govind came, there used to be quarrel between him and accused. Further according to him, on 03.06.2015, there was quarrel between deceased and accused and hearing hue and cry, he went to the spot and saw accused persons assaulting deceased. He is very specific that accused Ashok was holding iron pestle used for grinding chilly and was assaulting Govind with it. He further deposed that thereafter, accused Chaya called her cousin mother-in-law Meerabai who tried to rescue the quarrel, but accused Mohan told Meerabai that deceased had duped him and therefore they will show him. Thereafter, Meerabai left and accused took Govind in their house. Witness claims that thereafter he also went to his house and on the next day, he heard discussion amongst people in the village that accused killed Govind and kept dead body in Aurangabad railway.

In his cross, he has answered that he tried to rescue the quarrel. He denied deceased to be his relative. He denied about transaction of purchase of land by Mohan from him and about receiving consideration and regarding execution of sale deed. In cross, again he

answered that he has seen assault by Ashok by means of iron pestle and deceased to be hit on the right side of head.

15. On appreciating the above substantive evidence of this witness, it is emerging that he claims himself to be immediate neighbour of accused and also claims knowing both, accused as well as deceased. He specifically stated that whenever deceased used to come to the house of accused, there used to be quarrels between accused and deceased. However, PW2 Dagdu and PW4 Laxman do not support his such say. On what account there were differences between deceased and accused Chaya, i.e. his wife, is not clearly emerging. A third person/stranger is thus saying about quarrels, which cannot be accepted. Further, it is to be noted that this witness has not spoken about date of arrival of Govind and that too for marriage ceremony as is claimed by PW2 Dagdu and PW4 Laxman. His evidence suggests that he claims that on hearing hue and cry on 03.06.2015, he went to the spot. He has not described the spot. He has also not given timing at which quarrel took place between accused and deceased. According to him, accused Ashok, who was holding article pestle, used it in assaulting Govind and role attributed to appellant Mohan is merely pushing Meerabai who had come to the rescue. No role also is attributed to accused Chaya i.e. wife of deceased except she giving

call to Meerabai. Therefore, here, this witness has attributed role only to Ashok. However, as stated above, his evidence does not show at what time and at which place assault was carried out. He merely claims seeing deceased being taken inside the house on 03.06.2015.

Deceased was found dead on 04.06.2015 at Aurangabad Railway Station in a passenger train after alleged occurrence of 03.06.2015. Till 04.06.2015, where was deceased, in whose custody and where he was done to death has not come on record. Evidence of PW7 Shivaji merely shows quarrel and assault by Ashok by means of pestle. After deceased was seen by this witness being taken by accused inside the house, there ought to have been further investigation to reveal whether actually Govind has been done to death and thereafter by what mode his dead body was taken to Railway station and it being dumped after keeping it in a gunny bag. But there is no evidence in this regard. When deceased died has also not come on record.

When theory of last seen together has been taken recourse to, then it is duty of prosecution to establish time since death at least by approximation, but autopsy doctor has not opined about age of injuries and even time since death, and therefore, in our considered

opinion, it is not open for prosecution to apply the theory of last seen together. We also wish to state here that PW7 Shivaji, who claims to have eye witnessed the occurrence on 03.06.2015, seems to have given statement to police on 22.06.2015 and not promptly in spite of claiming to be an eye witness and in spite of claiming hearing discussion amongst villagers regarding deceased being done to death and body being transported in a railway in a marriage ceremony which was allegedly attended by this witness on the very next day. He has kept silence for almost three weeks.

Therefore, in the light of above discussed several ambiguities in his testimony, in our opinion, his evidence cannot be relied in a serious case of murder. In spite of claiming to have intervened in the quarrel, he is unable to elaborate the reason of quarrel or nature of quarrel. Therefore, his evidence is unworthy of credence and reliance.

16. Other witness **PW15 Waman** claims about receiving phone call regarding Govind hanging himself. His testimony is contrary to the version of prosecution.

17. **PW16 Meerabai** has not supported the prosecution.

18. Rest of the witnesses are panchas and police personnel who had registered/entertained missing report/AD, have noted FIR and carried investigation, respectively.

19. Investigating Officer PW17, in his examination-in-chief has deposed about entertaining suspicion that accused had committed crime. It is further shocking to note that in spite of FIR by PW2 Dagdu on 09.06.2015, visit has been paid to the spot on 21.06.2015 i.e. almost after two weeks and then seizure of alleged article pestle has been caused i.e. on 21.06.2015. Therefore, there are major lapses on the part of investigating machinery. IO has not clarified as to what was the motive which was revealed upon investigation. Learned APP merely argued that there was quarrel on account of purchasing gift, but there is no evidence in that regard.

20. Therefore, here, firstly, death of Govind is not proved to be only and only homicidal. Secondly, last seen together has not been proved beyond reasonable doubt. So called direct eye witness is unworthy of credence and therefore, in the totality of all circumstances and quality of evidence, we are afraid whether charges can at all be said to be proved. As observed by us and noted in the initial part of the judgment, final cause of death is received after framing of charge and

therefore, charge itself was misplaced. Unfortunately, learned trial Judge lost sight of these crucial aspects. There is no material or evidence in respect of charge under Section 203 in the entire chargesheet. However, surprisingly guilt for commission of said offence is also fastened. Therefore, there is apparently non-application of mind and failure to appreciate the available evidence in correct perspective and as required by law. Hence, it is a fit case for indulgence and accordingly we proceed to pass the following order:

ORDER

- I. Both appeals are allowed.
- II. The conviction of appellant Ashok @ Dilip s/o Mohan Rathod for the offences punishable under Sections 302, 201 r/w 34 and 203 r/w 34 of IPC as well as the conviction of appellants Mohan s/o Dhansing Rathod, Anjana w/o Mohan Rathod and Chaya w/o Govind Jadhav for the offences punishable under Sections 201 r/w 34 and 203 r/w 34 of IPC, in Sessions Case No. 91 of 2015 dated 14.08.2017 by learned Additional Sessions Judge-3, Latur, stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 302, 201 r/w 34 and 203 r/w 34, respectively.
- IV. The appellant Ashok @ Dilip s/o Mohan Rathod be set at liberty if not required in any other case.

V. The appellants in Criminal Appeal No. 431 of 2017 are on bail. Their bail bonds stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellants after the statutory period.

VI. We clarify that there is no change as regards the order in respect of *muddemal* seized in the matter.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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