

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 CRIMINAL APPEAL NO.862 OF 2022

ANJALI ANGAD KHOSE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. P.P. More, 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 : 13th FEBRUARY, 2023

ORDER :

1 Original informant has challenged the acquittal of respondent No.2 – original accused No.2 by learned Additional Sessions Judge, Osmanabad on 16.09.2022 in Sessions Case No.46/2018 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860. It will not be out of place to mention here that the respondent No.2 faced trial along with her husband (original accused No.1), however, during the pendency of the trial itself original accused No.1 expired and, therefore, the case abated against him.

2 Heard learned Advocate Mr. P.P. More for the appellant and learned APP Mr. R.V. Dasalkar for respondent No.1.

3 It has been vehemently submitted on behalf of the appellant that the learned Trial Judge has not appreciated the evidence properly in respect of the role attributed to the present appellant. Informant was not the eye witness but PW 6 Rajabhau is the eye witness. Deceased was the paternal uncle of PW 6 Rajabhau, even the original accused No.1 was the brother of the deceased and, therefore, it cannot be said that PW 6 was the interested witness. He has deposed that he had gone to his field around 2.00 p.m. on 16.03.2018 and even prior to that he had heard accused No.1 talking to deceased stating that there would be measurement of land and he is unable to extend the procedure and, therefore, he should help him. Then, he saw around 2.00 p.m. that deceased was walking in front and accused No.1 was walking behind and behind accused No.1 accused No.2 was walking. After a while, PW 6 Rajabhau heard the voice of deceased and, therefore, he immediately rushed there. Deceased was lying on the bandh and he saw that the respondent No.2 – original accused No.2 was sitting on the legs of deceased and accused No.1 was assaulting deceased with axe. When Rajabhau tried to intervene, accused No.1 was moving the axe and, therefore, Rajabhau raised voice and called his brother Balasaheb. When Balasaheb,

Shrimant and Sachin came, accused No.1 left axe there and he as well as Kamalbai fled from the spot. Taking into consideration the said evidence of the eye witness the learned Trial Judge ought to have held accused No.2 guilty under Section 302 read with Section 34 of the Indian Penal Code. The death of deceased Angad is homicidal in nature and, therefore, the appeal deserves to be admitted.

4 We do not want to reproduce what the eye witness has stated, as it has already come in the aforesaid para, however, it is to be noted that eye witness has not stated exactly where on the legs of deceased the accused No.2 was sitting and where the accused No.1 was standing. This position is important, as when the husband was giving blow of axe on the body of the deceased, whether the wife would sit in such a position, where she would also receive the blow. Just to show the involvement of the respondent No.2, it cannot be said that some facts should be stated. Admittedly, she has not used any weapon. Prosecution wanted to say that she facilitated accused No.1 to give the blows by axe. Then, that act should be specifically stated. The learned Trial Judge has taken note of a fact that the clothes of accused No.2 were seized in the matter and sent for chemical analysis, but no blood stains were found on the same. Why Rajabhau had not lodged the report immediately, has not been explained. It appears that initially accidental

death under Section 174 of the Code of Criminal Procedure was registered but on the next date the First Information Report has been registered. These are the facts which have been considered by the learned Trial Judge. The probable cause of death as per the Postmortem Report Exh.76 is - "death is due to shock due to head injury". The investigation appears to be mainly against the accused No.1, as his clothes were found to be stained with blood, which were recovered and to prove the said recovery PW 3 Anant Kamble has been examined. As per the testimony of Rajabhau, deceased was lying on the ground and accused No.2 was sitting on his legs. That means, the accused No.1 was standing while giving blow, but his clothes have been stained with blood and not that of the accused No.2, is a doubtful fact. PW 2 Sachin is the witness who appears to have reached the spot after Rajabhau had raised voice for help. He has stated that when he reached at the spot, Dattatraya was waving Axe and deceased Angad was lying in a pool of blood. Clothes of accused No.1 and deceased were stained with blood, but he says that accused No.2 was present there. After PW 2 Sachin went there, accused No.1 threw axe in the sugarcane crop and thereafter he and accused No.2 went from the said place. Neither Rajabhau nor Sachin have stated as to why they had not caught hold of both the accused persons at the spot, is a question. Therefore, taking into consideration all these aspects which have been considered, no second opinion can arrive at, as the evidence collected and adduced by the

prosecution is not beyond reasonable doubt against the respondent No.2. The learned Trial Judge has rightly acquitted her. There is no merit in the appeal. It deserves to be dismissed at this admission stage itself. Accordingly, it is dismissed.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)

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