

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.940 OF 2023

The State of Maharashtra,
Through Police Station Officer,
Tuljapur Police Station,
Tq. Tuljapur, Dist. Osmanabad.

.. Applicant

Versus

1. Prasad @ Prashant Indurath Ghandure
Age: 26 years, Occu.: Agri.,
R/o. Amrutwadi, Tq. Tuljapur,
Dist. Osmanabad.
2. Indurath Sandipan Ghandure,
Age: 58 years, Occu.: Agri.,
R/o. Amrutwadi,
Tq. Tuljapur, Dist, Osmanabad.
3. Archana Arvind Bhosale @
Archana Indurath Ghandure,
Age: 28 years, Occu.: Labour,
R/o. Amrutwadi, Tq. Tuljapur,
Dist. Osmanabad.
4. Dipak Anurath Ghandure,
Age: 25 years, Occu.: Agri.,
R/o. Amrutwadi, Tq. Tuljapur,
Dist. Osmanabad.

.. Respondents

...

Mr. A. M. Phule, APP for the appellant – State.

...

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

DATE : 12th October, 2023

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

. The prosecution takes an exception to challenge the acquittal of the respondents by learned Special Judge, under the Atrocities Act, Osmanabad on 27.01.2020 in Atrocity Special Case No.5 of 2016 in which the respondents were charged for the offence punishable under Sections 143, 147, 302, 201 read with Section 34 of Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act").

2. Heard learned APP Mr. A. M. Phule for the appellant - State at the stage of admission.

3. The prosecution story is that informant Hanumant Dhale lodged report with Tuljapur Police Station on 25.01.2015 stating that deceased Dipak was his brother. He had an affair with accused No.3. Though the parents had asked him to sever the relationship, he had not put an end to the relationship. Even the parents of accused No.3 and brother were knowing about the said relationship. Dipak went out of the house around 5.00 p.m. on motorcycle on 24.01.2016 saying that he would be going to Tuljapur. Around 9.30 p.m. one Prakash Shinde informed to one Mahadeo Dhale that Dipak is being assaulted on Barshi road near Khandoba temple by 4-5 persons. Therefore, the informant, his father and other relatives

went to the spot. They could notice only the motorcycle of Dipak, but Dipak was not found and, therefore, the matter was informed to Tuljapur police. After arrival of police, they searched for Deepak and he was found at a distance of the road in injured condition. Blood was oozing from his mouth, head and nose, but he was not speaking anything. He was taken to Sub District Hospital, Tuljapur. After examining him, the doctor declared him dead. It is the prosecution story that as the accused persons had not approved the relationship, they have eliminated Dipak.

4. Prosecution has examined in all twenty one witnesses to bring home the guilt of the accused and voluminous documents have been proved.

5. Perusal of the record and proceedings would show that P.W.8 Dr. Makrand Barate is the autopsy doctor, who had noted eight external injuries and there were internal injuries. He has opined that the death is due to asphyxia due to throttling with head injury. Postmortem report Exhibit-78 does not mention that the death was homicidal in nature, but in his examination-in-chief he has given that opinion. However, in the cross-examination, he has admitted that if a person falls from height accidentally on muddy road, then mud would appear on his clothes. Injuries noted by him on Dipak were possible if a person falls accidentally. He also admitted that as per medical jurisprudence asphyxia due to throttling is possible by fall. Under the said circumstance, the learned Trial Judge opined that the

opinion of PW.8 Dr. Barate appears to be given under confusion and it is doubtful. The defence of the accused persons is that the death of Dipak is accidental. We do not find any perversity or illegality in respect of opinion by the learned Trial Court that the prosecution has failed to bring the conclusive evidence regarding homicidal death of Dipak.

6. No doubt, the prosecution case had rested on direct evidence and, therefore, the said confused opinion of the medical officer could not have helped accused, if the direct evidence would have been supporting the prosecution. PW.6 Amol and PW.7 Prakash are the said eye witnesses, however, unfortunately they both have turned hostile. By taking permission to put questions in the nature of cross; prosecution has conducted cross-examination of these witnesses, but nothing favourable to the prosecution has been brought on record. Though so many witnesses have been examined, there is no quality to the evidence adduced by the prosecution. Testimony of PW.2 – brother of the deceased/first informant and PW.5 Anant - cousin of the deceased is hearsay in nature. They reached to the spot after they were allegedly given information by Mahadeo, who alleged to have received information from PW.7 Prakash. Prosecution has not examined Mahadeo for the reasons best known to it.

7. PW.4 Anand Rathod is the spot panch, PW.9 Suresh and PW.10 Allauddin are the panchas to the seizure of clothes of accused persons.

Their testimony independently does not prove the guilt of the accused. PW.11 Govind is the panch to the memorandum panchanam of accused No.1 and P.W.14 Ramesh is the driver of the vehicle in which accused No.1 and other persons were taken. Even if for the sake of arguments we accept that the memorandum is proved, yet only on the basis of memorandum for discovery under Section 27 of the Indian Evidence Act, conviction cannot be awarded. The nature of evidence of other witnesses is very much formal.

8. The learned Trial Judge has therefore rightly held that ingredients of none of the offences has been proved beyond reasonable doubt. We do not find any perversity. There is absolutely no merit in the appeal. We reiterate that the prosecution or State should not waste its time in prosecuting a lost battle. The appeal stands dismissed at the threshold.

[ABHAY S. WAGHWASE]
JUDGE

scm

[SMT. VIBHA KANKANWADI]
JUDGE