

Appellant

Versus

The State of Maharashtra

Respondent

Mr. N. D. Kendre, Advocate holding for Mr. V. L. Momale, Advocate for appellant.

Mr. R. V. Dasalkar, APP for the State.

WITH
CRIMINAL APPEAL NO. 1051 OF 2019

1. Raju s/o Laxman Jadhav
age 38 years, occ. Labour

2. Ravi s/o Raju Jadhav
age 24 years, occ. Labour

Both r/o Tiruka, tq. Jalkot
Dist. Latur

Appellants.

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, Advocate for the appellants.

Mr. R. V. Dasalkar, APP for the State.

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.**

RESERVED ON : 22nd DECEMBER, 2022.
PRONOUNCED ON : 5th JANUARY, 2023.

JUDGMENT : (PER R. M. JOSHI, J.)

1. Being aggrieved by the impugned judgment and order dated 30th October, 2017, passed in Sessions Case No. 48/2013, appellants are challenging conviction recorded against them for the

offence punishable under Section 302 of the Indian Penal Code by preferring this appeal filed under Section 374 of the Code of Criminal Procedure.

2. As per case of prosecution, on 19th March, 2013, at about 4.30 pm, Mahendra Gaikwad gave information to Malakoli Police Station that his brother Bhimrao had love relations with Jayashree and hence they had been to Indore to the house of the informant. Thereafter father of Jayashree had called him asking him to bring her to village and therefore, he alongwith Jayashree started from Indore on 18th March, 2013 and reached Nanded at about 6.00 am. Near railway station, they were forcibly made to sit in white coloured auto rickshaw by Keshav, Prakash, Tanaji, Devidas and Raju. At about 7.30 am, when auto rickshaw came at Mangloor Ghat, those persons stopped auto and therefore, informant got down therefrom. At that time, auto driver Raju and his son caught hold, abused and manhandled informant. Keshav, Prakash, Tanaji and Devidas assaulted Bhimrao and threw him in front of the truck bearing No. AP 01 V 9772 which was coming from Nanded side. Since the truck ran over Bhimrao, he died on the spot.

3. On the basis of said information, offence came to be registered vide C.R. No. 18/2013 and API Pawar who recorded information conducted investigation into it. During the course of investigation, spot panchanama was drawn so also inquest on the dead body was done before sending corpse for post mortem. He recorded statement of witnesses and on conclusion of investigation, charge-sheet came to be filed.

4. On committal of the case, it was registered as Sessions Case No 48/2013. Charge was framed against accused vide Exhibit 25. Since they denied the charge, they were put on trial.

5. Prosecution examined in all seven witnesses in order to prove the charge against appellants. The trial is culminated into conviction of accused for the offence punishable under Section 302 of the Indian Penal Code and they were sentenced to suffer life imprisonment with fine.

6. Learned advocate for appellants contended that there is delay of around 9 hours in lodging First Information Report and from the evidence of Mahendra (PW 1) and Devidas (PW 6) it is clear that

initially information was given by Mahendra about accidental death of deceased. In this regard, attention is drawn to the testimony of Investigating Officer who admitted to have recorded statement of Mahendra on the spot at around 9.30 am but the said statement is not part of charge-sheet. Thus, according to him, the initial information given by Mahendra about accidental death of Bhimrao is suppressed and later on, offence came to be registered against the appellants. Attention of Court is also drawn to the testimony of Jayashree to submit that there is no evidence against appellants that they forcibly made deceased and informant to sit in the auto rickshaw and on the spot of the incident, deceased was thrown under a truck coming from Nanded. He placed reliance on judgments in the matter of Ramesh Waman Bodke vs. State of Maharashtra reported in **2022(5) Mh.L.J. (Cri.) 535** and Balu alias Bala Subramaniam and another vs. State of (U.T. of Pondicherry) reported in **2016 CRI.L.J. 176** to support his submissions.

7. Learned APP supported the impugned judgment and order and contended that there is enough evidence in the form of testimonies of Mahendra (PW 1), Ejaj (PW 3) and Devidas (PW 6) in order to show that being aggrieved by the affair between deceased

and Jayashree, appellants who were her brothers, have thrown the deceased under a truck and co-accused equally participated in the incident and they were sharing common intention.

8. We have carefully gone through entire evidence on record. Mahendra (PW 6) has deposed that on the fateful day, he along with Jayashree and Bhimrao came to Nanded and that appellants forcibly made them to sit in auto rickshaw and on the way at Mangloor Ghat, the auto was stopped where they were beaten by appellants and deceased was caught hold by keshav, Tanaji, Prakash and Devidas and after thrashing him, he was thrown in front of the truck. Devidas (PW 6) deposed about having received phone call about accident of Bhimrao. He went to the spot and acted as panch witness to the spot panchanama (Exhibit 51) and panchanama of seizure of clothes of deceased (Exhibit 52). In his presence, Tata Magic Tempo was seized under panchanama (Exhibit 53).

9. Prosecution seeks support from testimony of Ejaj (PW 3) who is the cleaner of the truck which ran over deceased. According to this witness, on the fateful day, when he was coming by the truck, he saw 6 to 7 persons by the side of the road having caught hold of one

person and they pushed the said person in front of the truck due to which the truck ran over him resulting into his death.

10. Though prosecution examined Jayashree, she did not support the story of prosecution and declared hostile. Her entire testimony however cannot be discarded on this ground. It is open for the Court to consider admissible and relevant part of her testimony.

11. Prosecution proved the cause of death of deceased Bhimrao through testimony of Dr. Zine (PW 4) who conducted autopsy on the dead body and opined the cause of death as "crush injury to abdomen." Evidence on record in the form of spot panchanama and evidence of Medical Officer who conducted post mortem indicates that deceased died as the truck ran over abdomen of the deceased. However, this evidence does not take case of prosecution any further.

12. Needless to emphasize importance of prompt First Information Report which rules out possibility of concoction and false implication. In the instant case, the incident in question has occurred at 7.30 am on Mangloor Ghat road. As per the evidence of

Investigating Officer, the distance between the spot and the police station is about 1.5 km. In such circumstances, there is absolutely no justification for not recording First Information Report of the incident for almost 9 hours. There is no explanation provided by the informant for giving the information to the police belatedly.

13. In the light of this fact, if testimony of Investigating Officer is considered, it reveals that police received information about the incident at around 9.00 am and immediately thereafter Investigating Officer along with other police personnel went to the spot. He reached the spot at around 9.30 am and claims to have made enquiry with Mahendra and reduced his statement in writing. He however, admits that said statement is not part of the charge-sheet. Similarly, he admits that as per the practice, in case of accidental death, inquest is conducted in the hospital. In the present case, inquest panchanama (Exhibit 37) shows that the same was conducted between 5.00 pm to 5.30 pm at Mangloor Ghat Government Hospital. As per admission given by Mahendra (PW 1) dead body of deceased is brought to hospital before lodging of First Information Report i.e. before 4.30 pm. Thus, it is clear that inquest panchanama was done not at spot but in hospital. Ordinarily, this

fact would not have been considered as material but becomes relevant in the facts and circumstances of this case where there is delay in lodging First Information Report and the statements recorded by Mahendra (PW 1) and Jayashree (PW 4) immediately at the spot by the Investigating Officer are suppressed from the Court. In this regard, testimony of Devidas (PW 6) shows that he received information telephonically about the accidental death of Bhimrao. All these facts appearing from evidence on record create possibility that initially the information given by Mahendra to police and his relatives was about accidental death of Bhimrao and hence inquest was not conducted at spot.

14. In order to appreciate truthfulness in the allegations against the appellants of throwing/pushing deceased in front of the truck, we need to consider entire evidence on record and its effect, more particularly, in the light of belated First Information Report and suppression of material statements from the Court. Mahendra in his cross-examination has clearly admitted that auto was stopped at the spot as he and Bhimrao wanted to attend nature's call. No other person from auto got down for that reason. He also accepted that Bhimrao got down from the auto and other persons remained seated

in the auto itself. He further admitted that after occurrence of the incident he raised shouts “ मेला मेला“. This version of informant gets support from evidence of Jayshree, who stated about informant and deceased getting down from auto at spot for attending nature’s call and afterword, informant shouted “accident occurred”. Question arises as to how accused who had forcibly taken them in auto allowed them to alight from auto. This further indicates that auto did not stop at any other person’s instance but informant and deceased himself.

15. It is further case of informant that after throwing deceased in front of truck, all accused ran away from spot by taking auto with them. Considering the reason for doing the said act, it does not stand to any reason how Jayshree is left at the spot itself when admittedly she did not get down from auto at time of occurrence of incident. Investigating Officer has candidly admitted about having met Jayshree at the spot and making enquiry with her. Presence of Jayshree at the spot after occurrence of incident creates doubt about she along with Bhimrao being brought to the spot by accused, who are her relatives.

16. Mahendra further admits that in hospital he met his relatives and there was discussion between him and his brother in law Sharad Shinde and thereafter it was decided to lodge complaint and thereafter First Information Report came to be registered. It does not stand to any reason as to why Mahendra who is real brother of deceased and had witnessed the incident as claimed by him, has not lodged any First Information Report for 9 hours. Admissions of Mahendra and Devidas indicate that this is a case of lodging of First Information Report with deliberation against the appellants.

17. Prosecution witness Ejaj who is claimed to be the cleaner of the truck and independent witness states about some persons pushing deceased in front of the truck. He, however, admits that immediately thereafter, he along with driver of the truck ran away from the spot and did not return to the spot on that day. This is contrary to the evidence of Mahendra who vouch presence of driver and cleaner at the spot. It is pertinent to note that statement of Ejaj is not recorded immediately but on the next day of incident. This witness though is claimed to be independent witness, however, in view of the fact that he was the cleaner of the truck, which was involved in the incident in question, there is every possibility that in

order to avoid liability of truck owner and driver, he would make statement in their interest and against the appellants who are unknown to him. His evidence, therefore, is not reliable much less conclusive in nature to prove guilt of the appellants.

18. Reading evidence on record in entirety shows that it was not possible that informant, deceased and Jayshree are taken forcibly in auto from the busy place like Nanded Railway Station. Having regard to the reason alleged by prosecution against accused for taking them, there is no incident occurred during entire period from Nanded Station to spot, in auto. The vehicle was not stopped at instance of any else than informant and deceased, who had to attend nature's call. No other person from auto alighted at that time. Mahendra shouts about occurrence of accident. Police arrives at spot records statement of Mahendra and no inquest is conducted at spot not First Information Report is lodged immediately. After due deliberation First Report comes into existence after 9 hours of incident, without any sort of explanation for delay. Jayshree is allowed to stay at spot by accused though it is alleged that out of love relations of her with Bhimrao incident in question has occurred. All these facts appearing from record make story of prosecution

extremely doubtful. The testimony of Mahendra is not free from doubt as his entire conduct is not that of a genuine person. Evidence of Ejaj is also not of convincing nature to place reliance for conviction of accused.

19. It is settled principle of law that accused can be held guilty provided there is cogent, reliable and convincing evidence and whenever even slightest genuine and reasonable doubt creeps in the case of prosecution, the benefit thereof must go to the accused. It is hazardous to rely upon the evidence on record to convict accused. In the facts of the case, it can never be said that the guilt of the accused is established satisfactorily beyond doubt. In the result, conviction recorded against appellants cannot sustain. Hence the following order :-

ORDER

- i) All the appeals are allowed.
- ii) Impugned judgment and order dated 31st October, 2017 in Sessions Case No. 48/2013 is quashed and set aside.

iii) Appellants in Criminal Appeal No. 541/2017 and Criminal Appeal No. 817/2019 be released forthwith, if not required in any other crime.

iv) Their bail bonds stand cancelled.

v) Bail before the trial Court.

vi) Appellants in Criminal Appeal No. 1051/2019 are already on bail. Their bail bonds stand cancelled.

vii) Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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