

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 366 OF 2020

Surekha Kashinath Salunkhe)
Age: 45 years, Occu : Agri.)
Resident of Upale – Dumala,)
Taluka – Barshi, District – Solapur)Appellant/Orig.
Complainant.

V/s

1] The State of Maharashtra)
(At the instance of Vairag Police)
Station, Solapur) Notice to be served)
on APP, AS, Bombay High Court.)
)
2] Ramling Trimbak Salunkhe)
Age:64 years, Occu: Agriculture)
)
3] Dadaro Ramling Salunkhe)
Age: 39 years, Occu: Agriculture)
)
4] Dinesh @ Nitin Ramling Salunkhe)
Age: 35 years, Occu: Agriculture)
)
5] Dashrath@Bandu Ramling Salunkhe)
Age: 42 years, Occu:)
All residing at Upale – Dumala,)
Taluka – Barshi, District – Solapur) Respondents.

Mr. Hrishikesh Kale i/b Mr. Viresh V. Purwant for the Appellant.
Mr. V.B. Konde-Deshmukh, APP for the Respondent/State.

**CORAM: NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE: JANUARY 23, 2023

JUDGMENT: (*Per Nitin W. Sambre, J.*)

1] Vide judgment and order dated 4/2/2020 delivered in Sessions Case No.29 of 2016, learned Extra Joint Additional Sessions Judge, Barshi, acquitted accused persons under section 235(1) of the Criminal Procedure Code for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. As such, this appeal by the complainant under Section 372 of the Code of Criminal Procedure.

2] It is the case of the prosecution that accused No.1 is brother of deceased Kashinath and accused Nos. 2 to 4 are sons of accused No.1. There was a dispute between family members of Kashinath and accused persons over agricultural land and water to be drawn from

bore-well. It is the case of the prosecution that Appellant herein, wife of the deceased Kashinath, lodged a complaint on 29/2/2016 at about 7.45 a.m., claiming that on 28/2/2016 at about 2.00 p.m. her husband Kashinath left home on motorcycle and did not return till 11.00 p.m., though Kashinath on phone informed the complainant Surekha that he shall be returning at 5.00 p.m. Complainant called her servant Rafik and alongwith her son Kishor and Rafik discovered body of Kashinath hanging by rope to the Neem tree. Aforesaid fact has caused registration of A.D. No.12/2016. It is the case of the prosecution that FIR-Exhibit-21 alleges that accused persons committed murder of the husband of the Appellant which has resulted into registration of Crime No.55/2016. After investigation was carried out and accused persons were chargesheeted, Appellant – P.W.1 and her son Kishor – P.W.2 have deposed in support of the prosecution.

3] Sessions Court while appreciating the case of the prosecution has recorded that prosecution has failed to conclusively prove that the case was of suicidal hanging or homicidal hanging. Court below has held that deceased Kashinath was a drunkard. He was heavily indebted and because of his alcoholic habits, he has developed

quarrelsome nature and the possibility of he having committed suicide or some other inimical person might have hanged him cannot be ruled out. Court below, as such, recorded judgment of acquittal.

4] Submissions of Mr. Kale, learned Counsel appearing on behalf of the Appellant are, Court below committed an error in recording finding of acquittal. So as to substantiate his contentions, he has invited attention of this Court to the reasoning recorded by the learned Sessions Judge, evidence of P.W.1 – Surekha, complainant herein who was examined at Exhibit-19, evidence of P.W. 2 – Kishor, son of deceased Kashinath, who was examined at Exhibit-25, evidence of P.W. 3 – Shivaji who was examined at Exhibit-37 and evidence of P.W. 4 – Madhukar, Investigating Officer who was examined at Exhibit-42. According to him, aforesaid evidence has established prosecution case in its entirety and, as such, there should have been judgment of conviction.

5] Learned Public Prosecutor Mr. Konde-Deshmukh would assist the Court in drawing appropriate conclusion.

6] We have appreciated submissions in the light of the evidence placed on record. Fact remains that Sessions Court has recorded a finding that prosecution has failed to prove cause of death of Kashinath by accused persons, as has been claimed by the complainant. Fact remains that incident in question allegedly took place on 28/02/2016. P.W.3 – Shivaji alleged that he has seen the quarrel but his statement was recorded on 6/3/2016 i.e. almost after delay of six days for which no explanation is coming forward from Investigating Officer or the said witness. Investigating Officer – P.W.4 has specifically stated that during investigation, he has noticed that deceased has consumed alcohol and had knife in his pocket. C.A. Report-Exhibit-49 shows that viscera sample of the deceased contained 159 and 110 mg. of Ethyl alcohol. As such, it is established that deceased has consumed alcohol before incident of death. C.A. Report-Exhibit-50 shows that on the cotton rope, knife and full pant, blood stains of blood group 'B' were noticed. C.A. Reports-Exhibits 51 to 54 show that blood group of accused persons could not be determined.

7] In the aforesaid backdrop, Court below, in our opinion, was

justified in recording finding of acquittal of accused, as prosecution has failed to prove involvement and commission of offence by the accused beyond reasonable doubt. That being so, no case for causing interference in appellate jurisdiction is made out. Appeal accordingly fails and same stands rejected.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]