



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.132 OF 2019

- 1) Bansilal Supadu More,
Age 19 years, Occu. Labour
R/o Nimkheda, Tal. Dharangaon,
District Jalgaon
- 2) Supadu Abhiman More,
Age 45 years, Occu. Labour,
R/o Nimkheda, Tal. Dharangaon,
District Jalgaon

... APPELLANTS
(Orig. Accused)

VERSUS

The State of Maharashtra
(Copy to be served on P.P.,
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. N.K. Tungar, Advocate for appellant (appointed)
Mr. S.D. Ghayal, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 8th March, 2024

Date of pronouncing judgment : 13th March, 2024

JUDGMENT (PER R.G. AVACHAT, J.)

The challenge in this appeal is to a judgment of conviction and order of sentence, dated 20/12/2018, passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.121/2016. Vide impugned judgment and order, the appellants were convicted for the offence punishable under Section 302 read

with Section 34 of the Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- each with default stipulation. They are, therefore, in this appeal before us.

2. Facts giving rise to the present appeal are as follows :-

The First Information Report (F.I.R.-Exh.23) was lodged by P.W.3 Arun, father of Ravindra (deceased). The case of the prosecution, as is disclosed from the police papers and the evidence before the Trial Court, is that, the appellants are son and father duo. They were residents of village Tarkhede, Taluka Dharangaon, District Jalgaon. The deceased was also residing in the same village. There is "Maruti Temple" in the village. The deceased had asked Supadu @ Subhash (appellant No.2) not to enter the temple with footwear on. Bansilal (Accused No.1), son of accused No.2 was with him (A/2). It appears that, the appellants got annoyed. A/1 Bansilal pushed Ravindra down. He sat on his chest. A/1 picked up a stone (about 7 Kgs. in weight) lying in the nearby and threw it on the stomach of Ravindra. The incident was witnessed by Manoj (P.W.6) and some other villagers. Manoj (P.W.6) immediately rushed to the house of Ravindra and informed it to his father, P.W.4 Arun. The informant immediately rushed to the scene. He secured a four-wheeler. Some of the villagers,

P.W.6 Manoj, P.W.10 Bhoma and P.W.11 Samadhan accompanied him to take Ravindra to Dipika Hospital, Jalgaon for better treatment. The Medical officer there told that it would cost Rs.80,000/- for treatment. The informant did not have money with him. They, therefore, took Ravindra to Dhule. The Medical Officer at Dhule extended some treatment. Ravindra was, however, then shifted to Dharangaon Government hospital, whereat he breathed his last on the following morning.

3. P.W.4 Arun lodged the F.I.R. (Exh.23) against the appellants. A crime vide C.R. No.115/2016 for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code was registered. Scene of offence panchanama (Exh.28) was drawn. The appellants were arrested. Mortal remains of the deceased were subject to autopsy. Clothes on the person of the appellants and the deceased were seized. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellants were proceeded against by filing a charge sheet before the learned Judicial Magistrate, First Class, Dharangaon. The learned Judicial Magistrate, First Class, Dharangaon committed the case to the Court of Sessions, Jalgaon for trial in accordance with law. The case in turn was assigned to the Court of learned Additional Sessions Judge (Trial Court). The Trial Court framed

Charge (Exh.03). The appellants pleaded not guilty. Their defence was of false implication.

4. To bring home the charge, the prosecution examined 16 witnesses and produced in evidence number of documents. The Trial Court, on appreciation of the evidence, convicted both the appellants and consequently sentenced them as stated above.

5. Heard. Learned counsel for the appellants appointed through Legal Aid would submit that, even if we accept the prosecution evidence as it is, it is not an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. A lot of time was spent in securing medical treatment to the deceased. The appellants did not have intention to commit murder. Even there is nothing to indicate the appellants to have prior meeting of mind. Learned counsel ultimately urged for allowing the appeal, at least partly.

6. The learned A.P.P. would, on the other hand, submit that, both the appellants were equally guilty of the offence of murder. The appellant No.1 sat on the person of the deceased. Same time appellant No.2 threw a heavy stone on the person of the deceased. The same caused rupture of spleen The intention to eliminate the deceased was writ large. Learned A.P.P. ultimately

urged for dismissal of the appeal.

7. We have considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

8. P.W.16 Dr. Dinesh conducted the autopsy. He noticed following injury on the person of the deceased :

(1) Contusion seen over abdomen from umbilicus to left hypogastrium.

9. In the opinion of P.W.16 Dr. Dinesh, the probable cause of death was – due to cardio respiratory arrest due to haemorrhagic shock due to rupture of spleen because of blunt trauma over abdomen. In his opinion, the death was possible because of the assault with a stone shown to him.

10. It, however, appears that, opinion of P.W.16 Dr. Dinesh was not solicited as to whether the said injury was sufficient in the ordinary course of nature to cause the death of the victim Ravindra.

11. The evidence of P.W.1 Onkar, P.W.2 Pramod, P.W.3 Murlidhar and P.W.5 Nilesh is not adverted to in extenso since the

same relate to the panchanamas relating to seizure of clothes of the appellants and the deceased (P.W.1 and P.W.3). P.W.2 Pramod is a witness to inquest panchanama (Exh.19). While evidence of P.W.5 Nilesh is in proof of panchanama as to the crime scene (Exh.28). Same is the case about the evidence of P.W.7 Bapu, who was present while the F.I.R. was recorded.

12. P.W.4 Arun (informant), father of the deceased lodged the F.I.R. His evidence on the point of incident is hear-say since according to him, it was P.W.6 Manoj who came to his residence by little past 8.00 p.m. and informed the appellant to have assaulted Ravindra (deceased). Evidence of P.W.4 Arun indicates that, he, therefore, rushed to the scene of offence. He saw Ravindra was wailing. He and some other villagers secured a four-wheeler and then took the injured first to Jalgaon.

13. P.W.6 Manoj, P.W.10 Bhoma and P.W.11 Samadhan are the eye witnesses to the incident. Their evidence indicate that the quarrel between Ravindra on one hand and the appellants on the other ensued just outside Maruti Temple. The reason behind the quarrel was Ravindra to have asked appellant Bansilal not to enter the temple with footwear on. The evidence of these three witnesses is consistent with each other to state that the appellant Bansilal pushed Ravindra down. He sat on his person. The

appellant Subhash picked up a stone lying nearby and threw it on the stomach of the deceased. During cross-examination of these three witnesses, nothing could be elicited to doubt veracity of their evidence. As such, the evidence of these 3 witnesses lead us to conclude that A/1 pushed Ravindra down. He sat on his person. A/2 then picked up a stone (7 Kgs. in weight) and dropped on the stomach of Ravindra.

14. The question is, whether these proved facts constitute an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Although the appellants are father – son duo, there is nothing to indicate them to have any prior enmity with the deceased or his family members. It was a sudden quarrel over deceased asking one of the appellants not to enter the temple with footwear on. It took about 50 minutes to inform father of the deceased about the incident. There is further evidence to indicate that about 20 minutes were required to secure a four-wheeler. Thereafter the injured was rushed to Jalgaon, a long distance from the place of incident. He was taken to Dipika Hospital, Jalgaon. It is in the evidence of the informant and P.W.6 Manoj, P.W.10 Bhoma and P.W.11 Samadhan that the Medical Officer there told the informant that he would be required to pay Rs.80,000/- towards medical expenditure. The informant did not have money. It is very unfortunate. It even pains us. Ravindra was then taken to

Sonography Centre for Sonography. P.W.12 Dr. Sanjay and P.W.13 Dr. Sunil are the Medical Officers on this point. Since the informant did not have funds to incur medical expenditure, they brought the injured first to Dhule, again a long distance, from Dhule to Jalgaon, he was brought to Dharangaon Government Hospital, whereat he breathed his last on the following morning. In our view, the delay in extending treatment to the injured might have accelerated his death.

15. It has already been observed above that there was no evidence to indicate the appellants to have prior concert (meeting of mind). The incident took place all of a sudden. The overt act attributed to appellant No.1 is that he pushed Ravindra down and sat on his person. He is not attributed with any overt act like an assault. Thereafter appellant No.2 picked up a stone lying nearby and hit on the stomach of the deceased. It is even difficult to attribute A/2 knowledge that because of throwing a stone on the stomach of the injured he may succumb. In our view, therefore, first it is not a case of invoking Section 34 of the Indian Penal Code. Both the appellants acted in a spur of moment. True, the common intention can be developed in the spot itself. It's a case under Section 35 of the Indian Penal Code. A/1 could be said to have committed an offence punishable under Section 323 of the Indian Penal Code. A/2 could be inferred to have intended to cause a

grievous hurt with a dangerous weapon i.e. a stone of 7 Kgs. in weight. In our view, therefore, the appellant No.1 should have been convicted for the offence punishable under Section 323 of the Indian Penal Code and the appellant No.2 should have been convicted for the offence punishable under Section 326 of the Indian Penal Code. For all these reasons, we find interference with the impugned order of conviction and sentence is warranted.

16. In the result, the appeal partly succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The order of conviction and consequential sentence for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.121/2016, dated 21/12/2018 is hereby set aside. The appellants stand acquitted thereof.
- (iii) Instead, the appellant No.1 is convicted for the offence punishable under Section 323 of the Indian Penal code and therefore sentenced to suffer rigorous imprisonment for one (1) year and to pay fine of Rs.1000/- (Rupees one thousand),

in default of payment of fine, he shall undergo R.I. for three months.

- (iv) The appellant No.2 is convicted for the offence punishable under Section 326 of the Indian Penal Code and therefore sentenced to suffer rigorous imprisonment for seven (7) years and to pay fine of Rs.3000/- (Rupees three thousand), in default of payment of fine, he shall undergo R.I. for three months.
- (v) If the appellants have served out the sentence which they are directed to undergo by this order, they be set at liberty forthwith if not required in any other case.
- (vi) The Criminal Appeal stands disposed of.
- (vii) Fees of learned Advocate Mr. Tungar, appointed for the appellants is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-