



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

CRIMINAL APPEAL NO.431 OF 2020

Bhaskar s/o. Tarachand Pawar,
Age : 36 years, Occ. Nil,
r/o. Mhasane, Tq.Parner,
Dist. Ahmednagar

..Appellant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Police Station, Supa,
Dist.Ahmednagar

..Respondent

Mr.S.S.Thombre, Advocate for appellant
Mrs.S.N.Deshmukh, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : JUNE 12, 2024
PRONOUNCED ON : JULY 09, 2024

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

The challenge in this appeal is to the judgment and order of conviction and consequential sentence dated 06.03.2020, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.359 of 2016. Vide the impugned order, the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/- with default stipulation.

02. The facts, giving rise to the present appeal, are as follows:-

PW 1 - Dilip (informant) was resident of village Mhasane, Tq.Parner, Dist. Ahmednagar. He was residing along with his parents, wife and three daughters. His brother - Dattatraya along with his family, would reside with him. The appellant with his father and sibling would also reside at the very village. On 11.05.2016, children of the appellant and his sibling had pranked with the father of the informant, pelting stones at him. There was no flare up of the matter. On the following day, Vishwanath (deceased), father of the informant, was proceeding down side on the road from infront of the appellant's house. The appellant along with his father, brother Nana, sister Aruna and son-in-law Santosh came together. The appellant assaulted Vishwanath on his head with axe; Nana assaulted him with stick; Aruna assaulted on the face of Vishwanath with stone; while Santosh gave him (Vishwanath) fisticuffs. The incident was witnessed by Ku. Mayuri, daughter of the informant. She was just 10 years of age that time. Her father - informant had gone to the field of one Shankar Zarekar for laying of pipeline. She went to the said field to inform about the said incident. He rushed to the crime scene along with his daughter Mayuri. Within minutes of his reaching, Vishwanath breathed his last.

03. Mortal remains of Vishwanath was removed to hospital. Inquest (Exh.65) and autopsy were conducted. Clothes on his person were seized (Exh.69). The informant lodged First Information Report (FIR)(Exh.44) at Supa Police Station by 10.30 p.m. on the given day. Crime vide C.R. No.I-65 of 2016 came to be registered for the offences punishable under Sections 302, 143, 147 and 148 r/w. 149 of Indian Penal Code. Crime-scene panchnama was drawn (Exh.68). Statements of the persons acquainted with the facts and circumstances of the case were recorded. The accused were arrested. Clothes on their persons were seized under panchnama (Exhs.70 and 75). The appellant made disclosure statement (Exh.57), pursuant to which an axe and a stick came to be seized from the godown of one Sk. Irfan. On completion of investigation, charge sheet was filed before the court of Judicial Magistrate, First Class, Parner. The case was committed to Court of Session. The case, in turn, came to be assigned to the court of learned Addl. Sessions Judge, Ahmednagar (trial court), for trial in accordance with law.

04. The trial Court framed Charge (Exh.32) for the offences punishable under Sections 302 r/w. 149, 143, 147 and 148 of Indian Penal Code. The the accused pleaded not guilty. Their defence was of false implication. To establish the Charge, the prosecution

examined five witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted the appellant, as stated above and acquitted rest of the accused. Neither the State nor the victim preferred appeal against acquittal.

05. Heard learned counsel for the parties.

06. Learned counsel for the appellant would submit that the case is based on the sole eye-witness account. There is nothing to indicate that PW 2 – Ku. Mayuri had really witnessed the incident. The incident took place at a crowded place. The work of laying of concrete road was in progress. None of the independent witnesses has been examined. The informant was habitual to alcohol consumption. Even, when he gave evidence before the Court, he was under influence of liquor. Based on the vary evidence, i.e. of PW 2 – Ku. Mayuri, co-accused have been acquitted. There is no additional evidence so as to connect the appellant with the crime in question. The alleged disclosure statement and recovery of axe and stick pursuant thereto, is false and fabricated evidence. He, therefore, urged for allowing of the appeal.

07. Learned APP would, on the other hand, submit that no particular number of witnesses are required to bring home the charge. PW 2 – Ku. Mayuri was innocent 10 years old school-going girl. Those were days of summer vacation. She was home. At the relevant time, she was present just outside of the house of Sk. Irfan. She saw the appellant to have assaulted her grandfather with axe. Her mother was not home. Being a ten years old girl, it was but natural for her to go to her father and inform the incident. There is nothing unnatural about she did not raise hue and cry and seek assistance of the persons present around. Our attention was invited to the defences raised by the appellant. The first defence is that the deceased died in a motor vehicle accident. The tempo involved in the alleged accident was very much stationary there. According to learned APP, a person would not file a case of murder, if it was a case of accident because legal representatives of the deceased were going to miss the claim for compensation on account of death occurred in the motor vehicle accident. The another defence was that the informant had borrowed a sum of Rs.50,000/- from the father of the appellant and with a view to avoid repayment, a false case was filed. On the same lines, suggestion was given to another witness but it pertains to Rs.25,000/- only. According to learned APP, a false defence gives a missing link. She reiterated the reasons

given by the trial court and ultimately, urged for dismissal of the appeal.

08. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

09. PW 4 – Dr. Manisha conducted autopsy on the mortal remains of deceased Vishwanath. The post mortem examination report (Exh.62) submitted by her indicates the deceased died of “*cardio-respiratory arrest due to head injury*”. The deceased had suffered single injury as under:-

*C.L. wound at right side skull -
frontal and parietal region*

According to PW 4 – Dr. Manisha, said injury was possible with a blow of axe. It is further in her evidence that had the deceased been assaulted with stick, stone and fisticuffs, other injuries might have been noticed on his person. Although the defence of death in motor vehicle accident has been raised, we find nothing to infer the same. Based on the evidence of PW 4 – Dr. Manisha, we conclude the deceased to have met with homicidal death. The question is, whether the appellant is author thereof.

10. The informant (PW 1 – Dilip) lodged the FIR (Exh.44). He is not an eye-witness to the accident. On the fateful day, i.e. on 12.05.2016, he had been to the field of Shankar Zarekar for laying of pipeline. It is in his evidence that his daughter, PW 2 – Ku.Mayuri came to him and informed the appellant and four others (since acquitted) to have assaulted his father Vishwanath (deceased) with axe, stick and fisticuffs. He, therefore, rushed to the crime scene. Either before his reaching or soon after he reached the crime scene, his father breathed his last. It was about 05.00 p.m. It is very unfortunate that a person assaulted with axe in the morning, was allowed to be at the crime scene itself for hours. The neighbors and villagers need to be blamed. Be that as it may.

11. The informant (PW 1 – Dilip) being not an eye-witness to the incident, his evidence would only be relevant so as to set the criminal law into motion by filing FIR. His evidence is nothing but what was related to him by his daughter (PW 2 - Mayuri). He admitted in his cross-examination that he daily consume alcohol. Even, when he gave evidence before the Court, he was under influence of liquor. According to him, unless he consume alcohol everyday, he was unable to carry his daily pursuits. As per his evidence, on the previous day, the grandchildren of original accused

no.1 had pranked his father (deceased Vishwanath). Quarrel was subsided on the day itself. Said incident is stated to be the motive for committing murder of his father. His father was little over 60 years of age. He would wander in the village. He would do no work. He would sleep under any of the trees in the village. What has been stated by the informant in his examination-in-chief about the assault made by the appellant and acquitted four accused, was related to him by his daughter - Ku.Mayuri.

12. We, therefore, need to advert to the evidence of PW 2 - Ku.Mayuri. She was just 10 years of age when the incident took place. She was in 6th standard. Since it was the month of May, she had summer vacation. It is in her evidence that while she was present adjacent the house of Irfan Shaikh, the appellant assaulted her grandfather with axe. Others namely, Aruna, Santosh, Nana and Tarachand (since acquitted) assaulted her grandfather with kick and fist blows. Her grandfather fell down. She was frightened and went to tell her father, who was away in the field of Shankar Zarekar for laying of pipeline. She related him the incident. Both of them returned to the crime scene. Her grandfather had passed away before they reached.

13. PW 2 – Ku.Mayuri was subjected to searching cross-examination. Her school hours were brought on record. However, since the day of incident was 12th May, being summer vacation, necessarily, she was in the village. Her evidence is, however, silent to state, as to her reason to be present outside the house of Irfan Shaikh. She even did not give time of the incident. We can understand her plight. She did not raise cries or urge for help nor did she rush to her grandfather who fell down due to blow on his head. The question is, whether, based on the sole evidence of PW 2 – Ku.Mayuri, the conviction can be sustained.

14. Admittedly, the incident took place during day-time (morning) at a crowded place. A tempo was stationary at the crime scene. It is also in the evidence of Ku.Mayuri that the work of laying of concrete road was in progress, meaning thereby, the workers engaged in the said work were very much present there. PW 5 - Siddheshwar was the Investigating Officer. He admitted that except Mayuri, no person came forward claiming to have had witnessed the incident. True, in view of Section 134 of the Indian Evidence Act, no particular number of witnesses are required to prove a fact.

15. As such, the case is based on the evidence of the only witness Ku. Mayuri (PW 2). According to her evidence before the trial

court, the deceased was assaulted by the appellant and four of his family members. The Medical Officer, who conducted autopsy, noticed only head injury on the person of the deceased. The Medical Officer was categorical to state that had the deceased been assaulted with stick or any other article, injury marks thereof might have noticed. When the informant testified that Aruna assaulted on the face of the deceased with stone and Nana with stick, there would have been more than one injury on the person of the deceased. The trial court based on the very evidence, acquitted four others. Same suggests, it did not rely fully on the evidence of Ku. Mayuri.

16. Learned APP adverted our attention to the evidence of PW 5 - Siddheshwar, Investigating Officer, and PW 3 - Mohan, in whose presence, the appellant allegedly made disclosure statement (Exh.56) and then led all of them to a godown near the house of Irfan Shaikh. He took out therefrom an axe and a stick. According to learned APP, this is the corroborative evidence. The alleged disclosure statement and recovery of those two articles is dated 17.05.2016. There is evidence to indicate that the Investigating Officer (PW 5) wrote a letter to the Medical Officer (PW 4 - Dr.Manisha) on 14.05.2016 itself, informing that the axe used for committing the crime was seized. He forwarded the letter to the

Medical Officer to solicit her opinion, as to whether the injury suffered by the deceased was possible with said axe. This evidence indicates that the Investigating Officer was not true to his oath. He fabricated the evidence. We, therefore, do not propose to rely on the disclosure statement, allegedly made by the appellant and recovery of articles- Axe and stick. Even, the so called eye witness, PW 2 – Ku. Mayuri, do not state whether the accused have had wielded stick.

17. The prosecution failed to make out that Ku. Mayuri was really present just outside the house of Sk. Irfan and witnessed the incident. The medical evidence does not corroborate her oral evidence about the assault to have been mounted by five accused. Based on her very evidence, four others have been acquitted. As such, the evidence of Ku. Mayuri could not be said to be that of a sterling quality to rely on it, to sustain the conviction of life imprisonment for offence under Section 302 of Indian Penal Code.

18. It is reiterated that the incident took place at a crowded place. It took place in the morning. Independent witnesses were very much available. No one has been examined. The evidence of Ku. Mayuri might be true but for sustaining conviction, we must observe that her evidence must be true. On appreciation of the entire evidence on record, we are unable to observe accordingly. As

such, the prosecution could be said to have failed to bring home the charge beyond reasonable doubt. Needless to mention, a false defence, in the facts and circumstances of the case, would not come to the help of the prosecution.

19. In the result, the appeal succeeds. Hence, the following order:-

(i) The Criminal Appeal is allowed.

(ii) The order of conviction and consequential sentence dated 06.03.2020, passed by learned Addl. Sessions Judge, Ahmednagar, in Sessions Case No.359 of 2016, for the offence punishable under Section 302 of Indian Penal Code, is set aside. The appellant is acquitted of the said offence.

(iii) The appellant be released forthwith, if not required in any other case.

(iv) Fine amount deposited by the appellant, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP