



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

CRIMINAL APPEAL NO.399 OF 2019

1) Siddharth s/o Dharmaji Ubale,
Age : 37 years, Occu. : Service,
R/o House No.1213,
Panchshilnagar, Bhingar,
Dist. Ahmednagar

2) Sumot s/o Dharmaji Ubale,
Age 37 years, Occu. Service,
R/o House No.1213,
Panchshilnagar, Bhingar,
Dist. Ahmednagar

... APPELLANTS

VERSUS

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

... RESPONDENT

.....
Mr. S.T. Mahajan, Advocate h/f Mr. N.C. Garud, Advocate for appellants
Ms. U.S. Bhosale, A.P.P. for respondent - State
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 04th April, 2024
PRONOUNCED ON : 12th April, 2024

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

1. The challenge in this appeal is to a judgment and order dated 13th March, 2019, passed by learned Additional Sessions Judge-1, Ahmednagar in Sessions Case No.266 of 2013. 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 pay a fine of Rs.20,000/- each. In default of

payment of fine, they were directed to undergo simple imprisonment for 6 months. The appellants have, therefore, preferred this appeal.

FACTS :-

2. The First Information Report (F.I.R.) was lodged by P.W.1 - Dipak (informant), brother of Pradip (deceased) on 01st May, 2013. It has been averred in the F.I.R. that the informant would reside at Nehrunagar Colony, Bhingar, Ahmednagar. By 10.00 p.m. on 30th April, 2013, the informant was present outside of his residence. Both the appellants (brothers inter-se), resident of Panchsheel Nagar, Bhingar came towards the informant. Appellant No.1 - Siddharth questioned the informant as to why did he abuse him. The informant tried to reason with Siddharth. He, however did not listen. Siddharth beat the informant up with fist and kick blows. The informant's brother, Pradip (deceased) came there to intervene. Appellant No.2 - Sumot assaulted on Pradip's head and legs with stick. The nearby persons intervened. Both the appellants even damaged the informant's Moped. It has further been averred in the F.I.R. that both the appellants pelted stones on the house of the informant.

3. Since Pradip suffered severe injuries, he was first rushed to Civil Hospital, Ahmednagar. Then was taken to City Care Hospital, Ahmednagar for better treatment. He was then shifted to Ruby Hall Clinic in Pune.

4. The informant lodged the F.I.R. (Exh.65) at Bhingar Camp Police Station vide C.R. No.64 of 2013 for the offences punishable under Sections

307, 337, 427, 323, 504 read with Section 34 of the Indian Penal Code ('I.P.C.'). Unfortunately, Pradip passed away on 5th May. Section 302 of the I.P.C., therefore, came to be invoked.

5. Scene of offence panchanama (Exh.125) was drawn. Clothes on the person of the deceased were seized. The appellants were arrested. Pursuant to disclosure statement made by them, a stick and base-ball bat came to be seized under the panchanama. On the demise of Pradip, inquest panchanama was drawn. His mortal remained was subjected to autopsy. All the seized articles were forwarded to F.S.L., Nasik for analysis and report. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the appellants were proceeded against by filing charge-sheet before the learned Judicial Magistrate, First Class, Court No.3, Ahmednagar. Learned Magistrate committed the case to the Court of Sessions, Ahmednagar and in turn was assigned to learned Additional Sessions Judge ('Trial Court') for trial in accordance with law. The Trial Court framed charge (Exh.34) for the offences punishable under Sections 302, 337, 323, 427 and 504 read with Section 34 of the I.P.C. The appellants pleaded not guilty. Their defence was of false implication.

6. The prosecution, to bring home the charge, examined nine witnesses and adduced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted and sentenced the

appellants as stated above. They were acquitted of the rest of the offences with which they were charged.

7. Heard. Learned counsel for the appellants took us through the evidence of so called eye witnesses namely P.W.1 - Dipak, P.W.2 - Sangita and P.W.3 - Sudhakar. According to him, three incidents took place on the given day. There were two communities. Persons with surname "Bhingardive" belong to one community. Son of the deceased had love affair with the daughter of Eknath Bhingardive. The family members of the deceased were opposed to the same. A stone pelting incident took place on the given night. Persons involved therein were not less than fifteen. According to the learned counsel, in that afternoon, a murder took place of one China in the very vicinity. The situation in the area, therefore, was tense. One of the relations of the deceased was Personal Assistant of the then Local M.L.A. The M.L.A. took extra interest in the investigation of the crime. The widow of the deceased (P.W.2 - Sangita) gave supplementary statement implicating seventeen more persons in the crime in question.

8. The learned counsel would further submit that, the evidence of the informant would indicate that he was not an witness of truth. He claimed to have suffered severe head injury. The injury was required to be stitched. No injury certificate was, however placed on record. The police station was in the nearby of the place of incident. The F.I.R. was not lodged promptly. Evidence of P.W.2 - Sangita indicates that she rushed to the crime scene

after the incident was over. She gave exaggerated version. It might be a case of simple scuffle. P.W.3 - Shankar, another so called eye witness was present while the scene of offence panchanama (Exh.125) was drawn. His evidence indicates the police visited the crime scene within 15 minutes of the incident. Had he really witnessed the incident, he would have related the same to the police then and there or at least by the time the scene of offence panchanama was drawn. Police recorded his statement on the following evening. On the question of seizure of a wooden stick and baseball bat is concerned, the learned counsel would submit that, the label pasted thereon bear the date 3rd May whereas the alleged disclosure statements, pursuant to which those came to be seized, are stated to have been made on 8th May and 11th May. According to the learned counsel, the prosecution has not come with true version of the incident. Truth and falsehood has been so intermingled as has been made difficult to disengage from each other. He, therefore, urged for allowing the appeal. In the alternative, the learned counsel would submit that, it may at the most be an offence punishable under Section 304 Part II of the I.P.C. Appellant Sumot is behind the bars for little over eleven years.

9. The learned A.P.P. would, on the other hand, submit that, P.W.1 - Dipak, P.W.2 - Sangita and P.W.3 - Sudhakar are the eye witnesses to the incident. The incident took place in front of the house of the deceased. Since the evidence was recorded three years after the incident, inconsistency in the evidence of the witnesses was bound to occur.

According to her, P.W.2 - Sangita had not given supplementary statement. She was in Ruby Hall Hospital, Pune to attend to her husband Pradip (deceased). Pursuant to the disclosure statement made by the appellant, the articles viz. stick and baseball bat came to be seized. On their arrest, their clothes were also taken charge of. C.A. reports (Exhs.43 and 44) reinforce the prosecution case. An innocent person had to lose his life. The learned A.P.P. reiterated the reasons given by the trial Court in support of the impugned order.

10. Considered the submissions advanced. Perused the evidence and the judgment impugned herein. Let us advert thereto and appreciate the same.

11. Admittedly, the incident took place little past 10.30 p.m. on 30th April, 2013 in front of the house of the informant at Nehrunagar Colony, Bhingar, Ahmednagar. The appellants are the real brothers. Pradip (deceased) was first immediately rushed to Civil Hospital, Ahmednagar. For better treatment, he was taken to City Care Hospital, Ahmednagar. As his condition worsened, he was shifted to Ruby Hall Clinic, Pune.

12. P.W.5 - Dr. Vijay conducted postmortem examination of the mortal remains of Pradip, who passed away on 4th May, 2013. He noticed 24 injuries on his person. Some of them were contused abrasions. One of the injuries was in the nature of injection mark. Dr. Vijay opined Pradip to have died of head injury.

13. True, during his cross-examination he opined that some of the injuries on the person of the deceased might have been possible by fall from a motorbike etc. Close reading of the evidence on record indicates that the incident of assault took place, wherein Pradip suffered multiple injuries including injury to his head, which proved fatal. As such, it is a case of homicide.

14. The question is, whether the appellants have committed murder of Pradip. The prosecution is relying on the eye witness account of three witnesses. The P.W.1 – Dipak, informant is a real brother of the deceased. He lodged the F.I.R. (Exh.65). What has been averred in the F.I.R. is that, the informant would reside at Nehrunagar Colony, Bhingar, Ahmednagar. By 10.00 p.m. on 30th April, 2013, the informant was present outside of his residence. Both the appellants (brothers inter-se), resident of Panchsheel Nagar, Bhingar came towards the informant. Appellant - Siddharth questioned the informant as to why did he abuse him. The informant tried to reason with Siddharth. He, however did not listen. Siddharth beat the informant up with fist and kick blows. The informant's brother, Pradip (deceased) came there to intervene. Appellant - Sumot assaulted on Pradip's head and legs with stick. The nearby persons intervened. Both the appellants even damaged the informant's Moped. It is further averred in the F.I.R. that, both the appellants pelted stones on the house of the informant.

15. The informant, in his oral evidence recorded in the Court, testified that he was present at his house. It was little past 10.00 p.m. of 30th April,

2013. Both the appellants came there. Appellant - Siddharth started abusing him. He (Dipak) tried to reason with him. He (Siddharth) did not listen. Appellant - Siddharth beat him up with fist and kick blows. He even fallen him down. Pradip (deceased) came to his rescue. Appellant - Siddharth assaulted on the head and leg of Pradip with wooden log.

16. We find to this extent, P.W.1 - Dipak to be consistent with the F.I.R. The informant, however went on to state that both the appellants assaulted him and Pradip with wooden log. The assault was with an intention to commit their murder. Persons from the nearby vicinity pacified the quarrel. The appellants even pelted stones on their house and caused damage to their Moped. His evidence further indicates that since Pradip suffered severe injuries, he was first rushed to Civil Hospital, Ahmednagar. Then was taken to City Care Hospital, Ahmednagar for better treatment. He was then shifted to Ruby Hall Clinic in Pune. He then lodged the F.I.R. He identified the wooden logs (Articles 9 and 10), baseball bat and cricket stump respectively as the weapons of assault mounted on both of them by the appellants. His evidence would further indicate that, on the following day, he took treatment at Civil Hospital, Ahmednagar. The doctor there sutured his head injury with six stitches.

17. The informant was subjected to a searching and lengthy cross-examination. He admitted that the police had never summoned him to the police station for identification of the seized articles viz. cricket stump and

baseball bat. He might have visited the police station on two/three occasions after lodging of the F.I.R. The scene of offence was located in a thickly populated area. On the way to Civil Hospital, there were other hospitals as well. He took medical treatment on the next day of the incident. He was shown a label pasted on the baseball bat, whereon the date of its seizure is shown to be 03/05/2013. His evidence further indicates that he did not lodge report at the police chowki at Civil Hospital, Ahmednagar. It is further in his evidence that on the way to City Care Hospital, there is Tophkhana Police Station. He even did not approach the said police station. It is further in his evidence that Eknath Bhingardive, Sudarshan Bhingardive and Ajay Bhingardive were working in Police Department. He denied that on the following day P.W.2 - Sangita, widow of Pradip and he himself made an application to the Superintendent of Police, Ahmednagar for taking action against Bhingardives. He also denied to have averred in the said application that if no action was taken against them, they would proceed on hunger strike. He has, however admitted that Ashitosh (son of deceased – Pradip) has married the daughter of Eknath Bhingardive a year after death of Pradip. It was a lover marriage. The evidence indicates that family members of both of them were opposed to their love affair.

18. It is further in his evidence that when he was present at the police station, women members of the family of appellants had come to Bhingar Camp Police Station. He, however denied that they had come to lodge report against him. His evidence further indicates that he had engaged an advocate

to represent him in a proceeding before the trial Court. He even received a copy of the charge-sheet. He went through his F.I.R. and then gave his evidence before the Court.

19. It is further in his evidence that on the very day some boys from his community had been to the house of the appellant for assaulting them. It was about 04:30 p.m. It was he, who gave those boys understanding and sent them back. According to him, the appellants misunderstood him to have instigated those boys. His evidence further indicates that on the very day and in the very vicinity of the incident, a murder of one Chintu Allhat took place. Even after the incident of assault on the informant and deceased – Pradip, there was an incident of stone pelting. It is further in his evidence that he sustained bleeding injuries as a result of assault made by the appellants. His vest was smeared with blood. He, however did not hand it over to the police. It is further in his evidence that his mother was sitting just outside the house. She witnessed the entire incident. (Mother has not been examined as a witness). His evidence further indicates that son of deceased – Pradip was with him to take Pradip to the hospital. Sangita, widow of Pradip, accompanied them to the City Care Hospital. After Pradip was shifted to Ruby Hall Clinic, Pune, he took Sangita back to the house at Ahmednagar. He denied to have never been assaulted by any of the appellants.

20. P.W.2 – Sangita, widow of deceased – Pradip is another eye witness. It is in her evidence that she was present at her residence. It was

little past 10:00 p.m. Both the appellants started abusing her brother-in-law – Dipak (P.W.1). Dipak, in turn, tried to reason with them. Appellant – Siddharth started assaulting Dipak with fist and kick blows. Her husband, Pradip (deceased), therefore, went to rescue Dipak. It is further in her evidence that appellant – Sumot assaulted on the head of Pradip with a wooden rod. Both the appellants assaulted P.W.1 – Dipak as well. Her evidence further indicates that her husband was first rushed to Civil Hospital, Ahmednagar. He was then shifted to City Care Hospital, Ahmednagar and then taken to Ruby Hall Clinic, Pune for better treatment. In short, she claimed to have witnessed the incident of assault made by both the appellants, as a result whereof her husband (Pradip) died.

21. During her cross-examination, it has been brought on record that while her husband was being taken to the hospital, she did not approach Bhingar Camp Police Station to lodge the report of the incident. For the first time at Ruby Hall Clinic, Pune she saw her husband to have suffered head injury. She denied to have had given supplementary statement to the police. She was confronted with her supplementary statement wherein it has been appearing that she made a grievance against seventeen other persons, almost all of whom have surname Bhingardive. In her supplementary statement, she alleged them to have been involved in the incident of assault on her husband and P.W.1 – Dipak. Although she denied to have made such a statement to the police, the same has been brought on record through the evidence of P.W.7 - Deshmukh, Investigating Officer, who recorded her

statement. She has, however admitted in her cross-examination that since after the incident, the aforesaid Bhingardive had fled and were not traceable for about two months.

22. It is further in her evidence that at the relevant time she was engaged in cooking. She rushed outside the house on hearing of up-roar and alarm raised by her mother-in-law. Her evidence further indicates that when she came out of the house, the incident had already occurred. The same suggests that she has not witnessed the incident.

23. P.W.3 – Sudhakar is stated to be another eye witness. We do not propose to dilate his evidence appearing in examination-in-chief. Suffice it to say that his evidence is consistent with the evidence of P.W.1 and P.W.2, appearing in their examination-in-chief. It has been brought on record in his cross-examination that the police officer had visited the scene of offence within half an hour of the incident. He (P.W.3) was very much present thereat. He did not report police anything about the incident. On the following day, the scene of offence panchanama (Exh.125) was drawn by police. He is a witness to the same. Even at that time he did not relate the police that he had witnessed the incident, nor did he himself approach the police to lodge report of the incident. It is further in his evidence that he went to the spot of incident after having heard cries of mother of the informant. The same suggests that he if at all reached the scene of offence, he was there post incident. He did not accompany P.W.1 – Dipak to take Pradip to

the hospital. His evidence further indicates that he perused his police statement immediately before he gave his evidence before the Court. He went on to state that only after reading his police statement, he realised what he should depose before the Court. He acted as a witness to the scene of offence panchanama (Exh. 125) in response to the police call in that regard.

24. P.W.4 – Anil is a witness to the disclosure statement made by both the appellants, pursuant to which a wooden baton i.e. baseball bat came to be seized under the panchanama. Those statements and panchanama found place at Exhibit 115 and 116 respectively (Appellant No.1). These exercises were done on 08th and 11th May, 2013.

25. He was again summoned by police on 11th May, 2013. According to him appellant – Sumot made a disclosure statement that he would take out the wooden stump. He then took all of them near to his house and produced the wooden stump from the slab of toilet. It was seized under panchanama (Exh.117). He was confronted with a label appearing on Articles A and B (which were shown to have been seized under panchanamas). He admitted that label bears date 03/05/2013.

26. P.W.5 – Vijay was a doctor serving at Ruby Hall Clinic, Pune at the relevant time, who had treated Pradip (deceased). He tendered in evidence all the medical papers relating to Pradip. Our attention was drawn to some entries, wherein initial history of assault was given. Then there is

entry relating it to be a case of Road Traffic Accident ('R.T.A.'). According to him, the said entry was made by his assistant doctor. P.W.7 – Deshmukh was the police officer, who drew the scene of offence panchanama (Exh.141) and seized blood stained clothes of the deceased. P.W.8 – Tukaram was another police officer, who had played a little role in the investigation in the crime in question. He invoked Section 302 of the I.P.C. on the demise of Pradip, while P.W.9 – Rahulkumar was the police officer, who did substantive investigation. Considering the nature of evidence appearing in the case, we do not propose to refer to his evidence in extenso.

Appreciation :-

27. The incident of assault did take place at 30th April, 2013 by little past 10:00 p.m. In the said assault, Pradip (deceased) suffered some injuries including head injury. He was, therefore, rushed to Civil Hospital, Ahmednagar first, then taken to City Care Hospital, Ahmednagar. He was thereafter shifted to Ruby Hall Clinic, Pune for better treatment. He, however succumbed to the head injuries on 05th May, 2013. From the suggestions given by P.W.1 to P.W.3, the defence admitted the incident. The entry of R.T.A. appearing in the medical papers of Ruby Hall Clinic, Pune is, therefore, of little consequence as of no assistance to the appellants. Cross-examination of P.W.2 – Sangita (widow of the deceased) indicates that she came out of the house after the incident was over. Same suggests she was not an eye witness to the incident. She has categorically admitted that she came out of the house in response to the cries of her mother-in-law. Her

mother-in-law has raised up-roar/cries after the incident. Admittedly, her son was in love with daughter of Eknath Bhingardive since before the incident. He has now even married with the daughter of Eknath Bhingardive. The marriage took place a year after demise of Pradip. It appears that she was opposed to the love affair of her son with the daughter of Eknath Bhingardive. Although she had denied to have given a supplementary statement to the police, the Investigating Officer has categorically stated in his evidence that P.W.2 – Sangita, in her supplementary statement dated 04th May, 2013, implicated seventeen more persons in the incident in question. P.W.2 – Sangita herself had even admitted that these sixteen persons were absconding for about two months from the said incident. Same suggests that they might have approached the Court of law for obtaining anticipatory bail. Admittedly, after the investigation was over, those who were additionally roped in by P.W.2 – Sangita in the serious offence of murder, have not been sent for prosecution with the report under Section 173 of the Code of Criminal Procedure (charge-sheet). Same suggests intention of P.W.2 – Sangita even to implicate not less than seventeen persons in an offence of murder, who were in fact in no way involved therein. It is reiterated that she herself has admitted to have arrived at the scene of offence after the incident was over. Whatever she has deposed in her examination-in-chief that the appellants to have assaulted her husband-Pradip and P.W.1 – Dipak, brother-in-law is, therefore, found to be afterthought and therefore, unreliable.

28. Admittedly, mother of the deceased has not been examined. P.W.3 – Sudhakar, who claimed to have had witnessed the incident, did not report to the police on his own. His conduct is unnatural. According to him, the police arrived at the scene of offence within an hour. He was present there. He did not report the police anything about the incident, nor he accompanied P.W.1 – Dipak to take Pradip to the hospital. Even on the following day he acted as panch witness to the scene of offence panchanama. At the time of said panchanama also, he kept mum about the incident. The same suggests him to be an unreliable witness.

29. Then remains the sole testimony of P.W.1 – Dipak (informant), who claimed to be a victim of the assault alongwith his brother Pradip (deceased). It is true that Pradip had received severe injuries. It was, therefore, P.W.1 – Dipak's priority to take Pradip to the hospital for emergency medical treatment. A delay of two/three hours in lodging of F.I.R. would, therefore, be of little consequence. The question is whether evidence of P.W.1 – Dipak is fit to be acted upon. His evidence indicates that appellant – Siddharth started abusing him. He (Siddharth) assaulted him with fist and kick blows. When Pradip (deceased) intervened, appellant – Sumot assaulted him with a wooden rod. P.W.1 – Dipak meant to say that appellant – Siddharth was even not armed with any weapon i.e. a baseball bat or cricket stump. He, however then went on to state that he too was assaulted on the head with a wooden rod. It is further in this evidence that he received

severe head injury which requires six stitches. Evidence of the informant thus indicates that he appears to have given exaggerated version and even tried to implicate one of the two appellants in a serious offence of murder, warranting minimum punishment of life imprisonment. According to him, the appellants pelted so many stones on his house and moped as well. Admittedly, the incident took place at a populated area. Persons residing in the neighbourhood were present. None of the independent witnesses has been examined. Seventeen others, who were not at all involved in the crime, were roped in, for which there might have been tacit consent of P.W.1 – Dipak. Had P.W.1 – Dipak really been a victim of assault, his injury certificate indicating him suffered even severe injury, at least blunt trauma, would have been placed on record. When P.W.1 – Dipak himself claimed to have received a severe head injury and beating all over his body and the same being not supported by any medical evidence, even his presence at the scene of offence appears to be doubtful or at least whatever he has deposed in his examination-in-chief is found to be an evidence of a witness, who is not wholly reliable. There is no corroborative evidence.

30. So far as regards recovery of baseball bat and cricket stump pursuant to the disclosure statements made by both the appellants are concerned, the same is found to be unreliable since the label pasted thereon indicates the date of seizure thereof is 03/05/2013, while those articles shown to have been recovered pursuant to the disclosure statements made on 08th and 11th May respectively. Same suggests investigation of the crime

has also been tainted with. Since Pradip died due to head injury, it is but natural that clothes on his person to have stained with blood.

31. In short, P.W.2 and P.W.3 are found to have not witnessed the incident. Evidence of P.W.1 is unreliable. The circumstantial evidence, particularly recovery of seizure of baseball bat and cricket stump allegedly used in the crime in question is concerned, the same too is unreliable since those articles bear label indicating them to have been seized on 03/05/2013 i.e. long before those to have been shown to have been seized pursuant to the disclosure statements made by both the appellants. The Investigating Officer needs to be blamed and condemned for such misconduct. Thus, the evidence on record inspires no confidence to sustain conviction of both the appellants for the offence punishable under Section 302 read with Section 34 of the I.P.C. One of the appellant has been behind the bars since day one of his arrest i.e. close to eleven years. The trial Court ought not to have relied on prosecution evidence and sentence the appellants for serious offence of murder. We are, therefore, not in agreement with the impugned order of conviction and consequential sentence. Interference therewith is, therefore, warranted.

32. In the result, we pass the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Impugned judgment and order dated 13th March, 2019 passed by Additional Sessions Judge-1, Ahmednagar in

Sessions Case No. 266 of 2013 thereby convicting the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, is hereby set aside.

- (III) The appellants stand acquitted of the said offence.
- (IV) Since appellant – Siddharth Dharmaji Ubale is on bail, his bail bonds stand cancelled.
- (V) Appellant – Sumot Dharmaji Ubale be released forthwith, if not required in any other case.
- (VI) Fine amount paid, if any, be refunded to the appellants.

SSD

(NEERAJ P. DHOTE, J.)**(R.G. AVACHAT, J.)**