



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 581 OF 2002

1. Ramesh s/o Nana Mali,
Age : 38 years, Occ: Agri.,
R/o. More Chinchore,
Taluka Newasa, District Ahmednagar.
2. Sambha s/o Nana Mali,
Age : 34 years, Occ: Agri.,
R/o. More Chinchore,
Taluka Newasa, District Ahmednagar.
3. Popat s/o Nana Mali,
Age : 29 years, Occ: Agri.,
R/o. More Chinchore,
Taluka Newasa, District Ahmednagar.

... Appellants
[Orig. Accused]

Versus

The State of Maharashtra
Through Police Inspector,
Sonai Police Station, Taluka Newasa,
District Ahmednagar.

... Respondent

.....
Mr. V. P. Golewar, Advocate for Appellant No.1
Mr. R. S. Shinde, Advocate h/f Mr. V. P. Latange, Advocate for
Appellant Nos. 2 and 3.
Mr. N. D. Batule, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 06.03.2024

Pronounced on : 18.03.2024

JUDGMENT :

1. Judgment and order of conviction dated 30.09.2002 passed in Sessions Case No. 45 of 2000 for offence punishable under Section 304 Part II r/w 34 of the Indian Penal Code [IPC], is taken exception to by way of instant appeal.

FACTS LEADING TO TRIAL ARE AS UNDER

2. Informant and accused are brothers. Their father, i.e. deceased Nana owned 22 acres of land, out of which 7 acres came to be acquired for dam purpose and remaining 15 acres was in possession of deceased. The said land was partitioned by father in favour of sons. Accused wanted share in the land which was towards east-west direction and on that background, they used to raise quarrel.

3. On 22.05.2000, all accused persons came in a tractor and started ploughing the land towards east-west direction. PW3 informant Suresh objected. At that time, accused Sambha hit him with bamboo on the backside, accused Ramesh hit him with a stick causing him fracture injury. Accused persons chased informant Suresh towards his house and on reaching there they pushed deceased Nana

with stick. When informant Suresh and deceased Nana started proceeding towards police station for giving complaint, accused persons beat deceased Nana with stick. As a result of which, he became unconscious. PW3 approached police and took an ambulance to shift father to the hospital, but on reaching hospital, his father was examined and declared dead. Therefore, he lodged complaint Exhibit 27.

4. PW9 API Milind Khodve, who was entrusted with the investigation, carried out investigation and on its completion, chargesheeted accused, who were tried by learned IInd Additional Sessions Judge, Shrirampur, who, on appreciating evidence, acquitted accused nos. 1 to 3 from charge under Sections 302, 324 and 504 r/w 34 of IPC, however, they were held guilty of committing offence punishable under Section 304 Part II r/w 34 of IPC and sentenced to suffer five years' rigorous imprisonment and to pay fine. Hence the appeal.

SUBMISSIONS

On behalf of appellant no.1:

5. In brief, learned counsel Mr. Golewar for appellant/accused no.1 Ramesh would submit that there is false implication. Secondly, there is no independent witness and only interested witnesses are

examined. He pointed out that no role is attributed to accused no.1 and he is not shown to be armed with any article. He pointed out that even otherwise deceased had suffered injury on the back. According to him, PW8 Asha (daughter of deceased) and PW2 Nabaji (pancha to spot panchanama) did not support prosecution. Seizure is not proved. Therefore, conclusion of guilt arrived at by learned trial Judge is in absence of any cogent, reliable evidence. Therefore, he prays to allow the appeal by setting aside the impugned judgment.

On behalf of appellant nos. 2 and 3 :

6. Learned counsel for appellants/accused nos. 2 and 3 has also criticized the prosecution case as well as the judgment under challenge submitting that PW2 Nabaji, PW4 Namdeo and PW6 Sanjay have not supported prosecution. Seizure is not proved. There is no independent evidence. That, there is erroneous appreciation as, at some point, learned trial court has doubted prosecution version, but on the other hand, accepted the same. Therefore, such judgment cannot be allowed to be sustained and hence he prays to allow the appeal by setting aside the impugned judgment.

On behalf of the State :

7. Per contra, learned APP submits that evidence of prosecution is clear, cogent and firm about very sons of deceased insisting for particular side of agricultural land. On that count, they initially assaulted Suresh, i.e. their own brother, and later on they chased him towards house and there they beat other brother Vishwas as well as their father. That, father died because of assault by sticks. Medical evidence supports the same. There is injured witness account which has remained unshaken. Accused had come with particular intention of carrying out assault. Therefore, they are all responsible under Section 34 of IPC. That, learned trial court has correctly appreciated the evidence and no fault can be found in the appreciation and hence, he prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

8. Following witness are examined by prosecution :

PW1 Ramdasm has acted as pancha to inquest panchanama Exhibit 24.

PW2 Nabaji is pancha to spot panchanama, but he has not supported prosecution.

PW3 Suresh, son of deceased, stated that he and accused are real brothers. His father had two brothers, namely Bhoru and Anshoba. He deposed about his father owing 22 acres land, out of which 7 acres being acquired for dam, compensation being received, remaining 15 acres land being partitioned amongst five brothers and accused brothers living separately, but they were insisting for land towards east-west direction upon partition. Regarding the incident, he stated that on 22.05.2000 around 10.00 a.m., all accused came in a tractor and started ploughing land from east-west direction. He requested them not to plough. That time, he was beaten by accused Sambha with bamboo and accused Ramesh hit him with stick. Thereafter, when he ran home, he deposed that, accused chased him towards his house. They pushed his father on his stomach. While he and his father were proceeding towards police station for lodging complaint, they were chased and intercepted by accused by holding sticks in their hand. Accused Sambha beat his father by stick, upon which father sat on the ground and became unconscious. He approached police, who arranged for ambulance and his father was taken to Rural Hospital, Newasa, but was declared dead on reaching hospital. Therefore, he lodged complaint.

PW4 Namdeo, pancha to seizure of clothes, did not support prosecution.

PW5 Vishwas, another son of deceased Nana, deposed that incident took place on 22.05.2000. He also deposed about accused

coming in tractor, his brother when inquired with accused as to why they brought tractor, he was beaten. Accused chased his brother towards home. All accused beat this witness, his wife, his father, brother Suresh and sister by sticks. Thereafter, when this witness, brother Suresh and father Nana were proceeding towards police station, all accused came from backside and them. Due to beating, his father fell down on the ground and he had suffered injuries on stomach, neck, legs. On examination in rural hospital, his father was declared dead.

PW6 Sanjay, pancha to memorandum of disclosure, but he did not support prosecution.

PW7 Manoj Ghuge is the doctor who conducted postmortem on deceased and issued report and opined that death was due to spinal shock due to fracture of cervical spine.

PW8 Asha, sister of informant and daughter of deceased Nana, did not support as she claimed that out of fear, she kept herself hiding in the house.

PW9 API Milind Khodve is the Investigating Officer.

ANALYSIS

9. Though 9 witnesses were examined by prosecution, going by the story, evidence of PW3 informant Suresh and his brother PW5

Vishwas is of significance. They both claim to be victims of assault. Evidence of Suresh shows that he was alone in the field when accused persons allegedly came in a tractor. When he objected, he has attributed assault to Ramesha and Sambha for beating him with bamboo and stick. When he ran home, he claims that accused chased him. According to him, his father was pushed at his stomach by use of stick, and thereafter, when he, brother Vishwas and father were proceeding towards police station, his father, who was behind them, was beaten by accused persons. His evidence finds support from the testimony of Vishwas. They both are speaking about all accused mounting assault. They are alleging beating given to them also. Therefore, they are injured eye witnesses. The incident had taken place in the broad day light. Accused persons had entered into that part of the land regarding which there was dispute and they had come there armed with sticks. The very act of chasing Suresh towards house after beating him in the field and thereafter again beating father and these two witnesses clearly show that they were determined and they had carried common intention. Therefore, by invoking Section 34 of IPC, they all can be tied down. Taking into consideration the backdrop in which the incident took place, it being not a case of homicide, they are rightly held guilty for offence under Section 304 Part II of IPC. Participation of all has already come on

record in the testimony of both, Suresh and Vishwas. Their evidence to that extent has remained unshaken and is not rendered doubtful in spite of cross-examination. Therefore, offence under Section 304 Part II of IPC is made out by prosecution against appellants.

10. PW7 doctor, who had conducted postmortem, has opined death to be due to spinal shock due to fracture of cervical spine. Therefore, death is the consequence of the assault at the hands of accused.

11. Perused the judgment under challenge. Learned trial court has correctly appreciated both, oral and documentary evidence. No illegality or perversity is brought to the notice so as to cause interference. Hence, there being no merit in the appeal, I proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

12. On pronouncement of this judgment, both learned counsel for the respective appellants pray for four weeks time to surrender so as to enable them to approach the Hon'ble Apex Court.

13. Learned APP strongly opposes the same.

14. Considering the above request made by learned counsel for the appellants, four weeks time is granted for the appellants to surrender.

[ABHAY S. WAGHWASE, J.]

vre