



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

CRIMINAL APPEAL NO.650 OF 2019

- 1) Digambar s/o Rama Achalkhambe
Age 61 years, Occu. Labour
- 2) Shivaji s/o Digambar Achalkhambe
Age 26 years, Occu. Labour

Both R/o Chinchgavan,
Tq. Hadgaon, Dist. Nanded

(At present both the appellants
are in Aurangabad Central Prison,
District Aurangabad)

... **APPELLANTS**
(Orig. Accused nos.1 & 2)

VERSUS

The State of Maharashtra
through Police Station Mantha,
Tq. Hadgaon, Dist. Nanded

(Notice to the respondent to be served
through the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad)

... **RESPONDENT**

.....
Mr. Vishal Chavan, Advocate holding for
Mr. Devang Deshmukh, Advocate for appellant
Mr. V.K. Kotecha, A.P.P. for respondent
.....

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

Date of reserving judgment : 8th August 2024

Date of pronouncing judgment : 19th August 2024

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 27/2/2019, passed by learned Additional Sessions Judge-3, Nanded in Sessions Case, No.17/2016. 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 fine with default stipulation. Along with the appellants, there was one more accused before the Trial Court. She was Panchphulabai, wife of appellant No.1 Digambar Achalkhambe. Although she was charged with the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, the Trial Court acquitted her of the said charge. She was, however, convicted for the offence punishable under Section 323 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 2 months and fine with default stipulation. She did not prefer appeal against her conviction, nor the State has preferred appeal against her acquittal of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. In short, the case of the prosecution was as under :-

Appellant No.1 Digambar is the father of appellant No.2 Shivaji. They were residing at village Chinchgavan, Taluka Hugaon, District Nanded. Smt. Panchphulabai (wife of appellant Digambar) had contested Grampanchayat election unsuccessfully. Raghoji (deceased) was a brother of appellant Digambar. He was residing in the neighbourhood of the appellants along with his wife Sarjabai (P.W.6).

3. It so happened that, on 26/11/2015, at 7.00 p.m., Smt. Panchphulabai went to the house of her brother-in-law Raghoji (deceased). She picked up quarrel with her co-sister-Sarjabai (P.W.6) on account of both of them to have been responsible for her defeat. Panchphulabai called the appellants to the house of the deceased. She gave two sharp weapons (one each) to the appellants, who, in turn, assaulted Raghoji (deceased). Then they left the place. Sarjabai (P.W.6) informed her son, P.W.4 Haridas on phone. He rushed to his house. He talked to his father who told him the appellants to have picked up quarrel over election issue. He also told him the appellants to have assaulted him with sharp weapons like sickle and Katti. He further told him that, Panchphulabai assaulted Sarjabai (P.W.6) with fist and kick blows. He too was assaulted by her.

4. P.W.4 Haridas first took his father to Primary Health Centre at Baradshevala on his motorbike. One Bandu Gavale (P.W.5) had accompanied him. His father then was shifted to Civil Hospital, Hadgaon. Then on the advice of doctor, his father was admitted to Civil Hospital, Nanded. Raghoji, however, succumbed to the injuries by 3.30 p.m. on 30/11/2015.

5. Inquest (Exh.32) and autopsy (Exh.51) were conducted on the mortal remains of Raghoji. The mortal remains were then consigned to flames (funeral) on 1/12/2015. P.W.4 Haridas then approached Manatha Police Station and lodged F.I.R. (Exh.43).

6. Based on the said F.I.R., a crime vide C.R. No.55/2015 was registered against the appellants and Panchphulabai for offence punishable under Section 302 read with Section 34 of the Indian Penal Code. A crime scene panchanama (Exh.30) was drawn. The appellants were arrested. Clothes on the person of the deceased were seized. The appellants too delivered their clothes. Both the appellants made disclosure statements, pursuant to which a sickle and Katti came to be recovered from their residence. Seizure

panchanamas to that effect were drawn in presence of panchas. Statements of persons acquainted with the facts and circumstances of the case were recorded. All the seized articles and blood sample of the deceased were sent to Forensic Science Laboratory, Nanded for analysis and report. Upon completion of the investigation, charge sheet was filed before the Court of learned Judicial Magistrate, First Class, Hadgaon. The case, in turn, was committed to the court of Sessions. It was assigned to the Court of learned additional Sessions Judge-3, Nanded (Trial Court) for trial in accordance with law.

7. The Trial Court framed the Charge (Exh.16). The appellants pleaded not guilty. Their defence was of false implication. According to them, the deceased had criminal antecedents. Number of crimes were registered against him. The deceased was addicted to alcohol. He came drunk to the village and abused the villagers. Some of the villagers, therefore, assaulted him. He thereby died.

8. To bring home the charge, the prosecution examined 12 witnesses and produced in evidence certain documents. On appreciation of the evidence adduced in the case, the Trial Court convicted the appellants and

Panchphulabai as stated above.

9. Heard. Learned Advocate for the appellants submitted that, the F.I.R. was lodged 6 days after the incident. There was Police Outpost at village Baradshevala and Police Station at Hadgaon as well. He would further submit that, there was Police Chowki at Civil Hospital, Nanded. A police officer happened to be there on duty round the clock, still the matter was not reported to police for 6 days. The F.I.R. is based on hearsay. The case is based on sole eye witness account of Sarjabai. Her statement was recorded 9 days after the incident and 2-3 days after registration of the crime. The C.A. reports do not further the prosecution case. The learned Advocate took us through the evidence of each and every witness to submit that the prosecution evidence fell short to bring home the charge beyond reasonable doubt. He, therefore, urged for allowing the appeal.

10. The learned A.P.P. would, on the other hand, submit that, the appellant Digambar was real brother of the deceased. The incident took place between the family members. The priority was to give medical assistance and best treatment to the injured. The F.I.R. was lodged within 24 hours of passing away of Raghoji. P.W.4 Haridas and P.W.6

Sarjabai have no reason to falsely implicate the appellants and save real culprits. He would further submit that, pursuant to the disclosure statement made by both the appellants, weapons used in commission of the crime have been seized. One of the weapons seized borne blood stains. The same corroborates the prosecution case. The learned A.P.P. then took us through the entire evidence on record and the reasons given by the Trial Court to ultimately urge for dismissal of the appeal.

11. Considered the submissions advanced. Perused the evidence on record. Let us appreciate the same.

12. P.W.1 Sandeep, then Talathi of the village Chinchgavan is a witness to the crime scene panchanama (Exh.30). It was drawn on 2/12/2015. it is in his evidence that the police seized the blood stained soil and simple soil from the crime scene in his presence.

13. P.W.2 Ashok is a witness to the inquest panchanama (Exh.32). His evidence indicates that, deceased Raghoji had suffered injuries to his head, chest and left side ribs. P.W.3 Vishal is a panch witness to seizure panchanama of seizure of Katti.

14. P.W.4 Haridas (informant), son of the deceased testified that, at 8.45 p.m. on 26/11/2015, he was at village Pardi Makta. He received a phone call, informing him the quarrel to have taken place between the appellants and his parents. He was further informed that, his father was injured. He then made a phone call at his residence. The call was received by his mother. She informed him the father to have suffered grievous injury. He, therefore, immediately rushed to his house at Chinchgavan. He saw his father lying in a serious condition. He talked to his father. Thereupon, father told him that by 7.00 in the evening, he was sitting in the courtyard. The appellants and Panchphulabai came there and questioned him as to why he did not vote in the Grampanchayat elections. On that count, the appellants and Panchphulabai assaulted him. He further informed that, the appellant Digambar assaulted on his head with a sickle and appellant Shivaji assaulted on his stomach with Katti. While Panchphulabai assaulted him with fist and kick blows. He also informed him that, Panchphulabai instigated the appellants to assault him and not to keep him alive. He was further informed that, his mother had intervened to rescue him. Bandu Gavale (P.W.5) was present in his house.

15. It is further in his evidence that, he and Bandu (P.W.5) took his father on the motorcycle to Baradshevala. Since the Medical Officer was not present there, he along with his maternal cousin Dilip Bhalerao took his father to Civil Hospital, Hadgaon. The Medical Officer there treated him. On the doctor's advice, his father was shifted to Civil Hospital, Nanded on the following day. He also underwent stomach operation. His father unfortunately died by 3.30 p.m. on 30, during treatment. It is further in his evidence that, on the following day, the inquest was conducted besides autopsy. He then received the dead body of his father. The last rites on the mortal remains of his father were performed. He then approached Manatha Police Station and lodged the report (Exh.43).

16. He was subjected to a searching cross-examination. It is in his evidence that, one Rafiq phoned him on 26/11/2015 little past 9.30 p.m. The distance between Pardi and Chinchgavan was 26 Kms. He directly went to Chinchgavan. None of the villagers had gathered at the place where the incident took place. Even after when he went there, no one came/ arrived thereat. While they took his father in injured condition to hospital on motorbike, clothes on his

person did not stain with blood. Police did not ask him to give his clothes or the clothes of Bandu and Dilip who had accompanied him to take father to hospital.

17. It is further in his evidence that, his father was residing at Pardi Makta. He has a house at that village. All of his family members along with him were staying thereat. He was then suggested that his father had a criminal past and many crimes were registered against him. Details of some of the alleged crimes registered against his father were put to him in his cross-examination. Neither he denied the same nor did he admit it. He claimed ignorance about each and every incident relating to which the crimes were registered against his father. It is further in his evidence that, the appellant Digambar was provided a house in a Gharkul Scheme. He constructed additional rooms to the house received in the scheme. He denied that his father, under the influence of liquor, went to village Chinchgavan and he abused to the villagers. Villagers, therefore, assaulted his father. He even denied that his mother was not at Chinchgavan. His evidence further indicates that, 15 days before the incident, Grampanchayat elections were held in the village. He did not cast vote in the election as his name was not in the voters list.

He claimed ignorance about Panchphulabai to have contested election. He could not state by what margin of votes she was defeated. The funeral took place at Pardi Makta. He even claimed ignorance about his father to have been addicted to liquor. He denied to have been angry with the appellants since they did not save his father while villagers were assaulting him. He admitted that, prior to the incident in question, no quarrel ever took place between the appellants on one hand and his father on the other. He admitted that there was a Police Chowki near the hospital at Baradshevala. He went on to admit that there is police station at Hadgaon and Police Chowki at Civil Hospital, Nanded.

18. P.W.5 Bandu, who according to to the prosecution, had accompanied P.W.4 Haridas to take his father to the hospital did not stand by the prosecution. It is in his evidence that, Sarjabai had come to his residence by 8.00 in the evening of 26/11/2015 as there was quarrel going on. According to him, Raghoji (deceased) was resting on the cot while he went to his house. In his cross-examination, he admitted to be unaware of names of persons who killed Raghoji.

19. P.W.6 Sarjabai (widow of the deceased) testified that, appellant Digambar is her brother-in-law while

Panchphulabai is wife of Digambar and appellant Shivaji is their son. She further testified that, prior to the incident, Panchphulabai was defeated in the election and on that count, she used to quarrel with them. She further stated that, on 26/11/2015, i.e. on the day of the incident, herself and her husband were at home, sitting in courtyard of their house. She stated that, the incident took place at 7.00 p.m. approximately. At that time, accused Panchphulabai came there and started abusing her and her husband due to which dispute arose between them. Thereafter Panchphulabai called her husband i.e. accused Digambar and son, accused Shivaji. Accused Panchphulabai gave dagger in the hand of Shivaji and sickle in the hand of accused Digambar and told to kill Raghoji. Thereafter all the accused assaulted her husband. She tried to rescue the quarrel, however, Panchphulabai pushed her. She further stated that, accused Digambar assaulted on the head of her husband and accused Shivaji assaulted Raghoji on his stomach. Thereafter all the accused went away from the spot. She thereafter shifted her husband on cot in her house. She received phone from her son Haridas (P.W.4). She narrated the incident to Haridas and asked him to come earliest. Thereafter, she went to the house of Bandu Gavale (P.W.5) to call him. Accordingly he came. Thereafter she informed him

about the incident. Thereafter her son came and inquired with her and Raghoji about the incident. Haridas (P.W.4) and Bandu Gavale (P.W.5) took her husband to hospital on motorbike. After 4 days of the incident, her husband Raghoji died in the hospital. Last rites on her husband took place at Pardi.

20. During her cross-examination, she could not state how many persons were there in the fray in the Grampanchayat elections. She even claimed ignorance as to who was contesting against Panchphulabai. She could not state how many votes Panchphulabai had secured and with what margin of votes she was defeated. According to her, name of Haridas (her son) was in the voters list of village Pardi. It is further in her evidence that, she was not examined in the hospital. On the following day, she went to Nanded Hospital. She did not lodge the report with the police. According to her, her Saree was not stained with blood while she put her husband on the cot. Her statement was recorded by police on 3/12/2015. She was confronted with the same. According to her, she had stated to the police that, Panchphulabai had come to her house by 7.00 p.m. and abused her and her husband. She stated to the police that,

Panchphulabai called the appellants. She, however, stated to have put her husband on the cot. She narrated the incident to Bandu. When she was confronted with her police statement, she could not assign any reason as to why these facts did not find in her statement. She denied that her husband was alcoholic. She admitted that, her brother-in-law would reside adjacent to her house. Wife of one Gangaram resides with him. She used to reside with his son at Pardi. She denied that she was not present at Chinchgavan and no incident took place in her presence.

21. P.W.7 Dr. Maroti conducted autopsy on the mortal remains of Raghoji. His evidence will be referred to a little later. According to him, the deceased died of Septicemia in an operated case of stab injury to chest and abdomen. The post mortem report is at Exh.51.

22. P.W.8 Sk. Rafiq did not stand by the prosecution. Though he was cross-examined by learned A.P.P., nothing helpful for the prosecution could be elicited. In his cross-examination by the defence advocate, he claimed to have heard that many cases were registered against the deceased. According to him, the deceased and his son were residing at village Pardi.

23. P.W.9 Ramesh was a photographer who snapped photographs of the appellants taking out the articles Katti and sickle from their residence.

24. P.W.10 Jamil was Assistant Sub Inspector of Police. He carried the muddemal articles and deposited with Forensic Science Laboratory, Nanded. He referred to the office copy of the forwarding letter (Exh.59).

25. P.W.11 Revannath was Assistant Police Inspector. He did the investigation of the crime. According to him, both the appellants produced their clothes which were on their person at the time of commission of the crime. He seized those clothes under panchanama (Exh.69). It was he who conducted inquest (Exh.32). It was he who delivered the dead body to P.R.4 Haridas. He referred to a document to that effect which is at Exh.63. It is further in his evidence that, Haridas (P.W.4) had come to the police station and lodged the report. It was recorded on Computer. He then signed the same. It is further in his evidence that, he then registered the crime.

26. During his cross-examination, he admitted to have not received a letter from the hospital. He learnt by 7.00 a.m.

about the death of Raghoji. He was present at Manatha Police Station. He rushed to the hospital. Relatives of the deceased were present in the hospital. He had a talk with the relatives. The relatives told him about the death and even took him closer to the dead body. He was at the hospital for about 2 hours. By that time, post mortem was not conducted. He did not collect medical papers relating to the treatment on Raghoji before his (Raghoji) admission to Civil Hospital, Nanded.

27. P.W.12 Mohan was successor of P.W.11 to investigate the crime. It is in his evidence that, both the appellants expressed their desire to make a disclosure statement. He, therefore, secured presence of panch witnesses. P.W.3 Vishal was one of them. According to him, appellant Digambar made a disclosure statement and thereafter appellant Shivaji gave similar statement, pursuant to which he along with panchas and the appellants went to their house. Appellant Digambar took out Katti from beneath Devghar while appellant Shivaji took out sickle from behind Television in the house. He seized those articles under the panchanama. The disclosure statement made by appellant Digambar and consequential seizure of Katti are at Exhs.37 and 38 while while the disclosure statement made by appellant

Shivaji and consequential seizure of sickle are at Exhs.39 and 40.

28. P.W.3 Vishal was a teacher serving with Adarsh Vidyalaya, Manatha. It was 5/12/2015 he went to the Police Station by 1.00 p.m. Both the appellants were present. Since the witness was not supporting the prosecution, the learned A.P.P. cross-examined him. In the cross-examination undertaken by the learned A.P.P., P.W.3 Vishal gave his evidence consistent with the prosecution case. It is in his evidence that, appellant Shivaji made a disclosure statement that he concealed Katti at his residence and he will take it out. His statement was accordingly recorded vide Exh.36. Then Shivaji took them to his residence and took out Katti. It was seized under panchanama (Exh.37). The witness referred to the same. It is further in his evidence that, appellant Digambar made a disclosure statement to have concealed sickle at his residence and he would take it out. His disclosure statement too was recorded (Exh.36). Then he took them to his residence and took out the same from behind a TV Set. Same was seized under panchanama (Exh.39).

29. In his cross-examination, he testified that at the police station the police informed him that they were to prepare

panchanamas of weapons. Both the appellants were present. It took 20 to 25 minutes to prepare the first panchanama. Equal time was required for second panchanama. He had no acquaintance with the appellants before the panchanamas were drawn. He denied to have signed the panchanamas at Police Station at the behest of police. According to him, it was a house comprising of 4 rooms. He, however, could not give the boundaries of the house he visited along with appellants and the police.

30. Aforesaid is the evidence adduced by the prosecution in the case. Let us appreciate the same to find whether the appellants are the authors of the crime.

31. P.W.7 Dr. Maroti conducted autopsy on the mortal remains of deceased Raghoji. He noticed 5 injuries on the person of the deceased. In his opinion, Raghoji died of Septicemia in an operated case of stab injury to chest and abdomen. Admittedly, the deceased suffered injuries on the evening of 26/11/2015. He breathed his last on 1/12/2015. The incident is said to have taken place in the courtyard of the house of informant, P.W.4 Haridas (son of deceased). He lodged the F.I.R. (Exh.43) by 7.00 in the evening on 1/12/2015. Admittedly, he is not an eye witness to the incident. According

to him, he rushed to the village Chinchgavhan on receipt of a phone call. He saw his father injured. He talked to him. His father related him that the appellants and Panchphulabai picked up quarrel with him over his non-voting in the election. Admittedly, the Village Panchayat elections had taken place 15 days before the alleged incident. Panchphulabai was one of the candidates in the fray. She was defeated. Both, P.W.4 Haridas and his mother P.W.6 Sarjabai even did not know who had contested against Panchphulabai in the said election and with what margin of votes she (Panchphulabai) was defeated.

32. According to P.W.4 Haridas, he took his father to the hospital first at Baradshevala. One Bandu Gavale (P.W.5) had accompanied him to take his father to the hospital on motorbike. As the doctor was not there, he along with his cousin Dilip took his father (deceased) to Civil Hospital, Hadgaon. The Medical Officer there treated his father there. On medical advice, the father was then shifted to Civil Hospital, Nanded. At all the places namely at Baradshevala, Hadgaon and even on the premises of Civil Hospital, Nanded, there are police station. P.W.4 Haridas lodged the F.I.R. 6 days after the alleged incident. Neither in the F.I.R. nor in his substantive evidence before the Court, he offered any

explanation as to delay in lodging of the F.I.R. (Exh.43). One need not state significance of lodging prompt F.I.R. The object of insisting upon prompt lodging of F.I.R. is to obtain information regarding the circumstances in which the crime was committed including the names of actual culprits and part played by them, the weapon of offence used as also the names of the witnesses.

33. At the cost of repetition, it is observed that, P.W.4 Haridas was admittedly not an eye witness to the incident. He even stated that, when he took his injured father to the hospital, clothes on his person did not get stained with blood. Be that as it may. We are conscious of the fact that medical attention to the injured has to be first priority, but once the father was admitted to the hospital, P.W.4 Haridas could have lodged the F.I.R. at the earliest i.e. on the next day of the alleged incident. When according to P.W.4 Haridas his father had related him about the incident, then it is not known as to why no efforts were made to have the father's statement recorded at the earliest through an Executive Magistrate or a police officer.

34. Delay in setting the law into motion by lodging/ registration of First Information Report is normally viewed by

Courts with suspicion because, there is possibility of concoction and embellishment of occurrence. So it becomes necessary for the prosecution to satisfactorily explain the delay. It is reiterated that, no explanation has been offered by the informant, for lodging of the F.I.R. belatedly. Admittedly, no independent witness has been examined. When P.W.4 Haridas reached his house at Chinchgavhan in response to a phone call, not a single villager was present in the courtyard of his house, whereat his father was lying in injured condition. Even after his arrival in the village, none of the villagers joined him or came to his place. P.W.5 Bandu, who allegedly accompanied him to take his father to the hospital, did not stand by the prosecution. P.W.8 Sk. Rafiq was the next door neighbour of the deceased at village Chinchgavhan. He did not support the prosecution. According to this witness, number of criminal cases were registered against the deceased. P.W.4 Haridas (informant) was suggested about number of crimes to have been registered against his father (deceased) with the names of respective informants/ victims. Instead of denying those suggestions, he simply claimed ignorance thereof.

35. Admittedly, the case is based on sole eye account of P.W.6 Sarjabai, widow of deceased Raghoji. Her evidence

has already been referred to hereinabove. According to her, both the appellants and Panchphulabai had come together to her house. They picked up quarrel with her husband. She further testified that Panchphulabai gave dagger to appellant Shivaji and handed over sickle to Digambar. She (Panchphulabai) then asked both of them to assault Raghoji. She too assaulted him. She asked both the appellants not to leave Raghoji alive. In our view, this piece of evidence suggests that P.W.6 Sarjabai had implicated all the family members of the appellants in the crime in question. True, the incident, as has been stated by her in her evidence, might have taken place. We have hesitation to observe, such incident “must” have taken place because Sarjabai did not come forward to lodge report with police. She had been to the Civil Hospital on the following day, whereat the Police Station was. It is only 2 days after her husband Raghoji breathed his last, her statement was recorded by investigating officer. As such, she reported the Police 8 days after the incident. She too did not offer any explanation of giving delayed statement. P.W.8 Sk. Rafiq since did not stand by the prosecution, was subjected to a cross-examination by learned A.P.P. in-charge of the case. It was suggested to him that, the houses of the appellants and that of the deceased were in front of his house.

He would run a Pan Stall. It was specifically suggested to him by the prosecution itself that, Panchphulabai (one of the convicts) had come to his shop running and her brother-in-law (deceased Raghoji) was following and abusing her as well. It was also suggested to him that, he had subsided the quarrel between Raghoji and Panchphulabai. The same indicates the genesis of the prosecution case to have been suppressed by P.W.6 Sarjabai. In this factual backdrop and the fact of the F.I.R. to have been lodged 6 days after the alleged incident, by an informant who was not an eye witness, and the statement of eye witness Panchphulabai to have been recorded on the 9th day of the incident, and there being no explanation in that regard, we have every reason to give the appellants benefit of doubt. It is reiterated that the genesis of the prosecution case has either been suppressed or Panchphulabai came with a concocted version, implicating father, mother and son (convicts) in the crime in question.

36. The C.A. reports (Exhs.81 to 84) pertaining to seizure of sickle and Katti pursuant to so called disclosure statement made by appellants do not further the prosecution case since no blood stain was detected on sickle. Blood grouping of stains on other articles was inconclusive. Even

blood group of the deceased could not be ascertained and the same is the case about the blood group of the appellants.

37. For all the aforesaid reasons, we find the prosecution to have failed to bring home the charge beyond reasonable doubt. In the result, benefit thereof needs to be extended to the appellants herein. The appeal, therefore, succeeds. Hence, the order :-

ORDER

(i) The Criminal Appeal is allowed.

(ii) The order dated 27/2/2019, passed by learned Additional Sessions Judge-3, Nanded in Sessions Case No.17/2016 is hereby set aside. The appellants are acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The appellants be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to them.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-