



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 173 OF 2003

1. Govardhan s/o Bhagwan Daund,
Age 50 years, Occu. Agriculture,
R/o Sawaleshwar, Taluka Kaij,
District Beed.
2. Pintu s/o Govardhan Daund,
Age 25 years, Occu. Agriculture,
R/o Sawaleshwar, Taluka Kaij,
District Beed.
3. Bandu s/o Bhagwan Daund,
32 years, Occu. Agriculture,
R/o Sawaleshwar, Taluka Kaij,
District Beed.

... Appellants
[ori. accused nos.1, 3 & 7]

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Yusuf Wadgaon,
Taluka Kaij, District Beed.
2. Parvatibai w/o Jagan Daund,
Age major, Occu. Household and
Agriculture, R/o Sawaleshwar - Paithan,
Taluka Kaij. District Beed.

... Respondent

.....
Mr. Satej S. Jadhav, Advocate for the Appellants.
Mr. S. M. Ganachari, APP for Respondent No.1-State.
Mr. A. S. Kadam, Advocate for Respondent No.2.
.....

**AND
CRIMINAL APPEAL NO. 201 OF 2003**

1. Babasaheb s/o Bapurao Daund,
Age 55 years, Occu. Agriculture,
R/o Sawaleshwar - Paithan,
Taluka Kaij, District Beed.
**[Appeal abated against appellant no.1
vide order dated 27.09.2022]**

2. Vijaykumar s/o Babasaheb Daund,
Age 25 years, Occu. Agriculture,
R/o Sawaleshwar - Paithan,
Taluka Kaij, District Beed.

... Appellants
[Orig. Accused Nos. 2 & 5]

Versus

1. The State of Maharashtra,
Through the Police Station Officer,
Police Station Yusuf Wadgaon,
Taluka Kaij, District Beed.
2. Parwatibai w/o Jagan Daund,
Age major, Occu. Household and Agriculture,
R/o Sawaleshwar - Paithan,
Taluka Kaij, District Beed.

... Respondents

.....

Ms. Rekha Mohale Choudhari, Advocate for the Appellants.
Mr. S. M. Ganachari, APP for Respondent No.1-State.
Mr. A. S. Kadam, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.11.2024

Pronounced on : 14.12.2024

JUDGMENT :

1. In both these appeals, there is challenge to the judgment and order dated 17.02.2003 passed by learned Additional Sessions Judge, Ambajogai in Sessions Case No. 77 of 1998 recording guilt of the appellants for offence punishable under Section 304 Part-II of the Indian Penal Code [IPC].

CASE OF PROSECUTION

2. In nutshell, the incident in question dated 20.02.1998 happened in the backdrop of event of deceased Jagannath urinating in the graveyard and being beaten for the same by accused Babasaheb, Vijaykumar and one Abhiman. Therefore, deceased had lodged report and case was pending in court. Accused were insisting withdrawal of the case. In such backdrop, on 20.02.1998, deceased Jagannath, while his son PW3 Rajabhau and mother PW5 Subhadrabai were put up in agricultural field, around 8.00 p.m., present appellants went and questioned deceased Jagannath for incident of fire and thereafter, he was beaten by means of stick, axe and whip/hunter. He was dragged to the village, tied to a tree, stripped and again beaten. The beating resulted into his death, after which his wife PW4 Parvatibai set law into motion by registering

crime for offence punishable under Sections 147, 148, 149, 342, 302 r/w 34 of IPC. Investigation was carried out by PW7 PSI Bhoi, who after gathering evidence, chargesheeted in all 7 accused persons and they were made to face trial vide Sessions Case No. 77 of 1998.

3. On appreciating the evidence of prosecution, learned trial Judge, vide judgment dated 17.02.2003, recorded conviction of appellants original accused nos. 1, 2, 3, 5 and 7 for offence punishable under Section 304 Part II of IPC and sentenced them to suffer imprisonment for five years and to pay fine, which is now the subject matter of challenge in the instant appeals.

SUBMISSIONS

On behalf of the appellants :

4. Mr. Jadhav, learned counsel for the appellants in Criminal Appeal No. 173 of 2003 submitted that there is false implication. That, deceased was reported to be mentally retarded. Taking the court through the evidence, it is submitted that case has not been proved beyond reasonable doubt. Learned counsel pointed out that incident is alleged to have taken place in presence of PW3 son and PW5 mother, but they went to summon wife of deceased while incident was taking place and therefore, they cannot be said to be eye

witnesses. It is further submitted that recovery pancha has not supported. That, the episode in question has previous history and deceased had lodged complaint against accused and therefore, out of annoyance, there is further false implication by filing instant complaint by the informant, who has mere hearsay information. It is his alternative submission that, considering the fact that occurrence is of decades back, sentence awarded by the trial court be altered and be brought to imprisonment already undergone and fine amount awarded by learned trial court be at the most enhanced.

5. Ms. Choudhari, learned counsel for appellants in Criminal Appeal No. 201 of 2003 also adopts the above submissions and submits that there is no convincing and reliable evidence. That, case has not been proved beyond reasonable doubt and she too prays for reducing the sentence or enhancing the compensation awarded by learned trial court.

On behalf of the respondent State :

6. In answer to above, learned APP pointed out that in the backdrop of previous enmity and complaint, deceased was mercilessly beaten, that too in presence of his own mother and son. They are direct eye witnesses. That, second part of the episode which took

place in the village after tying deceased, he was also seen by informant wife. After death of her husband, she has promptly lodged report. That, there is clinching and overwhelming evidence. Evidence of wife, mother and son of deceased has remained intact and unshaken. From the manner of cross, it is clear that there is no denial of occurrence, and therefore, according to learned APP, no fault can be found in the appreciation and conclusion drawn by the trial court and hence he prays to not to interfere.

EVIDENCE BEFORE THE TRIAL COURT

7. In support of its case, prosecution has examined in all 7 witnesses. Their role and status and the relevant portion of their evidence regarding the occurrence in question is as under:

PW1 Sheshrao acted as pancha to recovery of axe and hunter at the instance of accused no.1 Govardhan vide panchanama Exhibit 50. He however denied about accused Babasaheb making any disclosure statement leading to recovery of bamboo stick and rope. He was therefore declared hostile and was cross-examined by learned APP.

PW2 Arun was another pancha. However, he did not support prosecution.

PW3 Rajabhau is the son of deceased Jagan. Relevant portion of his evidence at Exhibit 53 is as under :

“1. I was studying in the 7th standard at the time of the incident, which occurred about 4 years and 8 months ago

2. My deceased father, grand mother and myself were residing over the field, whereas the rest of the family members were staying in the village. I was halting in the cattle shed over the field after school hours. On the day of the incident my grant mother namely Subabai and myself were with our father over the field, whereas my mother and brothers were at the village. I had gone over the field since returning from the school.

3. On the day of the incident, my father and myself since taking the dinner went to sleep over the field known as “Khalalakadche Wavar” whereas my grand mother slept in the cattle shed. To warm up, the fire was prepared with the wood fuel and thereafter I brought the gram nuts and put on the fire for preparing the food. At about 8.00 p.m., my father and myself were eating the said gram nuts. While eating the gram nuts, Pintu and Bandu – accused nos. 3 and 7 came from village and just arrived on the spot where we were warming. They then both asked with my father what he was doing since breaking the fire, to which my father told that he has no concern and the fire has been broke out for preparing the gram nuts. Pintu and Bandu then raised shouts that they have been beaten up by my father and run to their rescue. In response of

the shouts raised by Pintu and Bandu, the accused Babasaheb, Vijay, Laxman, Shamrao Govardhan rushed there. Accused Babasaheb was armed with a stick and the rope used for controlling the bullock cart, Govardhan was armed with a whip and axe. Then accused Babasaheb caught hold of my father. Rest of the accused started assaulting. Accused Pintu was assaulting by means of whip. Accused Govardhan started assaulting by means of axe below over the right knee of my father and the back portion of the right shoulder. Accused Babasaheb gave a stick blow over the back of my father and rest of the accused gave fist and kick blows over neck, abdomen, chest. On account of the assault at the hands of accused on the person of my father, he started shouting calling to my grand mother as "Akka". I have also raised an alram. Since hearing the shouts of my father and myself, my grand mother rushed to the spot. My grant mother then fell on the person of my father to save the assault on his person at the hands of the accused. Accused Babasaheb then dealt a stick blow over his right thigh. I was also intervening and rescuing my father, but accused Pintu and Bandu pulled me. They both have slapped me over my cheek. Accused then tied the hands of my father by means of rope (Kasra) and was carrying towards village. While carrying my father towards the village the neighbours and the adjoining land owners gathered. Firstly my father has been brought in front of the primary school. All the accused then tied my father with a Babhul tree. Accused have also removed the clothes from the person of my father while carrying from the field towards the village.

4. *Thereafter my grand mother and myself were proceeding towards village to inform the rest of the family members. My grand mother was taken with me due to fear. We then informed to my mother and brothers who had slept. We then disclosed the entire incident of the assault with them. Thereafter, my mother and brothers returned towards the school. My mother then offered the clothes to my father for wearing. A tractor belonging to Bhagwat Solanke has been brought and then my father was removed to Yusuf Wadgaon Police Station through a tractor. My grand mother was with my father while carrying him to Yusuf Wadgaon. My mother, brothers and myself then remained at my house. Thereafter about 1½ hours, Gangubai (Mami) informed us that my father has been brought back and kept in the varanda of school. Then we all the family members went towards school. My grand mother was attending my father. My father was telling to my grand mother not to weep. However, my father took last breath thereafter about 1½ hours. We then kept weeping in the varanda of school.*

5. *On the next day, village police patil has taken my grand mother to Yusuf Wadgaon police station. Police arrive and took the dead body of my father to Bansarola, where the post mortem was conducted and the dead body was again brought to Sawaleshwar Paithan. Then the dead body was cremated. Accused only caused the death of my father. Accused before the court are the same. The whip and the rope (Kasra) now*

before the court are the same used by the accused in the commission of the offence. About two years prior to the incident, accused Babasaheb, Vijaykumar and Abhimanyu had assaulted my father by means of stone over his head on account of urinating in the premises of graveyard. My father had lodged the complaint against accused and pending in the Kaij court, and therefore, the accused were abusing and threatening to withdraw the said case from the court of law....

PW4 Parvatibai, wife of deceased, is examined at Exhibit 54. Her evidence about the occurrence is as under :

“1. On the day of incident, all accused had assaulted my husband over our field known as “Khalakadche Wawar”. At the time of the assault, my mother-in-law Subabai, son Rajabhau were also over the field. Accused have assaulted my husband over the field at about 8.00 p.m.

2. At the time of the incident, my husband, son and mother-in-law were residing in the cattle shed over the field. Whereas my rest of the two sons, myself were residing in the village house. My son Rajabhau used to halt during the night hours in the field as he used to return to the field after school hours and also coming to the village in the morning. Since tying of the arms of my husband, accused have brought my husband in the school premises at village. My husband was then tied up with a babhul tree in front of the school. Subabai and Rajabhau then came to our house and informed about the incident of the assault on the person of my husband.

Thereafter, my both the sons and myself immediately went to the school. Even my mother-in-law and Rajabhau were also with us. I then witnesses my husband without having any wearing clothes on his person and being tied up with a babhul tree. I then offered the clothes to my husband. Thereafter, my husband was removed in a tractor to Yusuf Wadgaon. Subabai and Sanjay had gone with my husband while removing my husband. Some of the villagers were also in the said tractor. I then returned to the house.

3. *Within a hour, I learnt that the tractor has been arrived at village from one Nagnath Swami, who then disclosed that my husband has been kept in the school premises and Subabai was also attending him. I therefore alongwith Balu and Sanjay went towards my husband. Since our arrival in the school premises, my husband took last breath. ...*

4. *Prior to the incident, accused have also assaulted my husband in the graveyard on the cause of urinating in the premises of graveyard. My husband therefore had lodged police report against the accused and also filed the private complaint. All accused were abusing to my husband and the son for the purpose of withdrawing the complaint by my husband from the court of law. Even the accused have also abused on the previous day of the incident. On the third day, I then went to Yusuf Wadgaon police station and lodged the report that the accused has caused the death of my husband. I then narrated the entire incident of the assault. Report was reduced into writing and then it was read over to me, and after*

admitting the same, I put my signature. The FIR now shown to me is same. The contents therein are true and correct. The FIR is marked at Ex.55.”

PW5 Subhadrabai, mother of deceased, at Exhibit 56, deposed as under :

“1. Deceased Jagan was my alone son. Jagan is no more. He died about 4 years ago. At the time of incident, Jagan, myself and Rajabhau were staying in the field, whereas rest of the family members were staying in the house. Rajabhau, Jagan and myself were present over the field at the time of the incident. Incident occurred after taking the dinner during the night hours. I was in front of the door of the cattle shed, whereas Jagan and Rajabhau were at the corner of the field where the vegetables have been grown up. They were boiling the grams on the fire.

2. Jagan then called as “Aaka, Aaka”. Since hearing the call, I went to the spot where Jagan and Rajabhau were. At that time, I witnessed that accused Pintu was armed with a whip, whereas Govardhan with an axe, and accused Bandu was having a rope (Kasra), accused Babasaheb was armed with a stick. Vijaykumar and Shamsunder were also there. The above said accused were assaulting Jagan, who was fallen down and his clothes have been removed from his person. I then fell on the person of Jagan, to save the assault at the hands of accused. At that time accused Babasaheb inflicted stick blows, one over thigh and another over the waist. I then raised an

alarm. Even Rajabhau has been also slapped while rescuing both of us. Since hearing the commotion, all the neighbours rushed towards the scene. Our field is about two miles away from village. Accused then tied up both hands of Jagan. Jagan was then carried by accused towards the village, and thereafter Jagan was tied with a babhul tree in front of the school in the village. None of the wearing clothes were on the parson of Jagan at that time. I then directed Rajabhau to go to the house, but due to the fear, he has not gone. I, therefore, alongwith Rajabhau went to the house to inform Parvatibai, Sanjay and Balu and also to bring the clothes for Jagan. I then informed about incident with Parvatibai, Sanjay and Balu. Since bringing the clothes, have been given to Jagan who then wore. Then Jagan was removed through a tractor to Yusuf Wadgaon. Tractor belongs to one Salunke. Bibishan Maske was the driver on the said tractor. However, PSO Pawar told that, they had no time for two days on account of the election. Therefore, the tractor was brought back to village. Pawar has also advised to take Jagan to Kaij, I then requested to issue the requisition, to which he has refused and therefore, Jagan was brought to village through tractor. Jagan was kept in the school premises. I then waited to attend him. One Gangubai arrived there. Parvatibai, Sanjay, Balu then arrived in the school premises at about dawn. After some period, he succumbed to his injury, Jagan died due to the assault.

3. *Then in the morning, I alongwith police patil went to Yusuf Wadgaon. PSO told to give the consent for P.M. of the dead body. Accordingly, I put my T.I. on the paper. Noting was*

reduced into writing in my presence and read over to me also. We then returned back to village. Thereafter the dead body was removed to Bansarola since recording the inquest by PSO Pawar who arrived at Sawleshwar. Immediately last rites were performed on the dead body of Jagan. Police interrogated me on the third day thereafter.

4. Babasaheb, Abhiman and Vijaykumar had assaulted Jagan in the graveyard on account of urinating in the premises of graveyard.

PW6 Dr. Deshmukh - autopsy surgeon, at Exhibit 58 deposed that he conducted postmortem on 21.02.1998 between 2.30 to 4.00 p.m. After deposing about external and internal injuries noticed by him, he gave opinion that the cause of death is hemorrhagic shock due to rupture of portal vein, due to pathology of liver, spleen lead to internal bleeding. He identified the cause of death certificate as well as the postmortem report to be at Exhibits 59 and 60 respectively.

In para 4, this medical expert deposed about examining Subhadrabai (PW5) on being referred by Yosuf Wadgaon police two days after. He claims to have noticed three contusion injuries, i.e. on right upper arm, left thigh and left foot dorsal surface respectively. According to him, injuries were within 36 to 48 hours and simple in nature, caused by hard and blunt object like stick. He accordingly issued injury certificate Exhibit 61.

He further deposed about possibility of rupture of spleen on account of fist and kick blows over the abdomen. According to him, the *ante mortem* injuries received by deceased resulted in rupture of spleen and ultimately into death. According to him, the injuries were possible by stick blows, fist blows and by blunt object of axe.

PW7 PSI Bhoi is the Investigating Officer.

ANALYSIS

8. Out of above 7 witnesses, obviously the crucial evidence is of son and mother of deceased because they were put up with deceased at the time of the incident. Informant wife, after receiving information of the incident, had reached at the second spot and thereafter, after her husband breathed his last, she set law into motion. Therefore, it has to be seen whether, as argued before this Court, there is no convincing, reliable and consistent eye witness account. On complete re-appreciation of the entire evidence, it is emerging that PW3 and PW5, i.e. son and mother of deceased, were in his company on the fateful night.

9. On carefully going through the evidence of son PW3 Rajabhau, who was reported to be in his teenage at the time of incident, it seems that he was in direct company of his father and they both were

warming themselves by putting gram-nuts on fire at around 8.00 p.m. PW3 in his evidence at Exhibit 53 has stated that around 8.00 p.m., initially accused Bandu and Pintu approached them. This child witness stated that they questioned his father regarding the fire and thereafter they themselves raised alarm that they were beaten. Responding to the alarm, it is alleged that Babasaheb, Vijaykumar, Laxman, Govardhan and Sham rushed. Child has named Babasaheb to be armed with stick and Govardhan to be armed with whip/hunter and axe. The child has specifically stated that Babasaheb facilitated rest of the appellants to beat his father. Role of using whip and axe are attributed to Pintu and Govardhan respectively. He has also quoted the sites of blows inflicted on his father. He has also attributed allegation of showering fist and kick blows on his father. He has specifically stated that he as well as deceased father raised shouts, as a result of which, grandmother rushed to the spot. Child stated that his grandmother fell on the person of his father to save him from being beaten and Babasaheb allegedly dealt a stick blow over her thigh. Child was dragged and even slapped by accused Pintu and Bandu. Thereafter, child stated that his father was taken towards village and while doing so, clothes of his father were also removed by accused. At village, his father was tied to a babul tree. Then child stated that he and his grandmother ran home to inform his mother

and when they all reached the spot in the village, he deposed that his mother offered clothes to his father. Deceased Jagannath was then shifted in a tractor and thereafter PW4 wife of deceased seems to have lodged report.

On visiting his cross, above testimony has not been disturbed or shaken. Omissions are brought in para 7, but to the extent of questioning by accused Pintu and Bandu on the point of putting fire and accused removed clothes on the person of his father while taking him towards village. Rest all are denials.

10. Another star witness for prosecution is mother of deceased, i.e. PW5 Subhadrabai. On meticulously going through her evidence at Exhibit 56, it is found that she has stated about she, her son (deceased) and grandson Rajabhau (PW3) to be staying in the field, whereas rest of the family members staying in the village. She deposed that at the time of incident, she was on the door of cattle shed, whereas her deceased son Jagan and grandson Rajabhau were at one corner of the field where vegetables were growing. She further deposed that hearing Jagan calling her by name, when she went to the spot, she claims to have witnessed accused Pintu, Govardhan, Bandu, Babasaheb, Vijaykumar and Sham assaulting her son Jagan

who had fallen. She claims that his clothes were removed. She fell on his person to save him from assault. She also stated, as like her grandson, that accused Babasaheb inflicted blow of stick on thigh and waist and even her grandson being slapped. She further stated that her son was taken towards village and thereafter she and PW3 went to inform PW4 wife of deceased and they all came back towards village. She also claims that after taking deceased to village, he was tied to a babul tree and that time, there were no clothes on the person of her son Jagan. She further deposed that Jagan was shifted in a tractor, initially to police station and thereafter to the hospital, where he succumbed to the injuries.

Even on visiting her cross, her above testimony has remained intact and she has virtually denied all suggestions put to her by defence counsel.

11. PW4 Parvatibai, wife of deceased, deposed that at the time of incident, her husband, son and mother-in-law were residing in the field. That, on the day of incident, accused persons assaulted her husband when he, her son Rajabhau and mother-in-law were staying in the field. She has stated that assault was made at around 8.00 p.m. She deposed about she and her both sons witnessing her husband

without clothes and being tied to the babul tree, she offering him clothes and shifting him in a tractor and her husband breathing his last.

Even there is no cross of this witness on the actual occurrence taking place at the field at 8.00 p.m.

12. Therefore, from the evidence of PW3 son, PW4 wife and PW5 mother of deceased, prosecution has established the occurrence. PW3 and PW5 are eye witnesses. Their evidence is direct eye witness account. In spite of facing cross, nothing adverse has been brought by defence on the point of assault by means of stick, whip/hunter and axe.

13. This Court has already reproduced the medico-legal expert's evidence who is examined as PW6 and who conducted postmortem. Doctor has reproduced internal as well as external injuries noticed by him during postmortem. He has also examined PW5 mother of deceased. He has also noted the nature and size of injuries, which are 11 in number, as well as internal impact. He finally issued opinion about cause of death to be due to hemorrhagic shock due to rupture of portal vein due to pathology of liver, spleen leading to internal bleeding. Therefore, considering the direct eye witness account, injured witness account of PW5 mother of deceased, coupled with the

medical evidence, prosecution has proved death of Jagan to be result of assault at the hands of appellants.

14. Learned trial court has, after complete appreciation, brought down offence from Section 302 to Section 304 Part II of IPC. The view taken by the trial court is the possible view, in view of the backdrop in which the incident took place and manner and cause of death. Submissions advanced by both learned counsel for the appellants that sentence be brought down to imprisonment already undergone and that the appellants are ready to pay compensation at enhanced rate, does not seem to be convincing and genuine. Merely because decades have lapsed since the occurrence, that itself is not a reason for bringing down the sentence to imprisonment already undergone. Therefore, prayers to the above extent are turned down. Accordingly, following order is passed:

ORDER

Both the appeals are dismissed.

[ABHAY S. WAGHWASE, J.]

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

16. Learned APP strongly opposes the same.

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

[ABHAY S. WAGHWASE, J.]

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