



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 306 OF 2003

1. Shri Sanjay s/o Bhausahab Wahul
Age: 20 yers, Occu.: Labour,
R/o.Mandki, Tq.Vaijapur,
Dist.Aurangabad at present
Phulenagar, Pandharpur,
Tq. & Dist.Aurangabad.
2. Shri Sandeep s/o Sudhakar Adhav
Age : 20 years, Occu.: Pvt. Service,
R/o. Dattanagar, Shrirampur,
Dist.Ahmednagar at present
Phulenagar, Pandharpur, Tq & Dist.
Aurangabad.

....Appellants
(Orig. Accused
Nos.2 and 4 only)

Versus

- . State of Maharashtra
Through Police Station,
M.I.D.C., Waluj, Aurangabad.

.....Respondent

.....
Advocate for Appellants : Mr. D.K. Dagadkhair
APP for Respondent : Mrs.Uma S.Bhosale

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 02 JULY, 2024

PRONOUNCED ON : 09 JULY, 2024

JUDGMENT :-

1. Convicts for offence under Sections 147, 323 read with 149,
304 (II) read with 149 are hereby assailing judgment and order

dated 29-03-2003 passed by III Adhoc Additional Sessions Judge, Aurangabad.

FACTS LEADING TO THE TRIAL

2. On 26-04-2002 at around 09:30 p.m. informant PW3 Ravi was sitting and chatting with his friend PW5 Surendra. Accused no.1 Pappu came there and said that he would like to kiss Deepa to which PW3 Ravi objected saying that she is from his native and is like a sister to him. Accused Pappu slapped PW3 Ravi and parted saying that he would return with his friends and show him. At around 09:30 p.m., accused Pappu came alongwith his friends Sanjay Bhausahab Wahul, Ravindra Damodhar Motikar, Sandeep Sudhakar Adhav, Sachin Pralhad Narwade, i.e. accused 2, 3, 4 and 5 to the room of PW3 informant and beat him by fist and kick blows. PW5 Surendra as well as deceased Vijay came to his rescue. All accused showered fist and kick blows on Vijay, who fell unconscious and was taken to hospital but declared dead. Therefore, PW3 Ravi lodged report exh.32, on the strength of which crime was registered and finally investigated by PW8 Kadari, Investigating Officer and after gathering evidence he chargesheeted accused.

Accused no.5 namely Sachin Pralhad Narwade being a juvenile

offender, the Police has proceeded against him before the Juvenile Court, Aurangabad.

All other accused including appellants, except accused no.1, who was absconding, were made to face trial vide Sessions Case No.255 of 2002, which ended up into conviction for offence under Sections 147, 323 r/w 149, 304 (Part II) r/w 149 of the IPC. Hence, the instant appeal by appellant nos.2 and 4.

SUBMISSIONS

On behalf of appellants :

3. Questioning the above conviction, learned Counsel for appellants would submit that prosecution failed to prove the charges beyond reasonable doubt. He took this court through the testimony of PW3 Ravi and PW5 Surendra and also took this Court through cross-examination and would submit that their testimonies are not worthy of credence. He emphatically and strenuously submitted that there are mere allegations of kick and fist blows and roles of accused are not clearly defined. That there are general allegations. That there was no common intention or common object.

4. He further submitted that there was no enmity between

appellants and deceased Vijay. That he had not suffered any external injury. That PW2 Dr.Jinturkar, Autopsy Doctor agreed that death was due to internal injury and the same to be possible due to fall from height.

Learned Counsel invited attention of the Court to paragraph nos.8 and 9 of the cross-examination faced by PW2 Dr.Jinturkar, Autopsy Doctor. Thus, according to him, possibility of deceased Vijay falling and suffering internal injury cannot be ruled out. That such death cannot take place due to kick and fist blows.

5. He would next submit that testimonies of PW2 Ravi and PW5 Surendra, which are heavily relied by trial Judge are full of material omissions and contradictions. He pointed out that PW5 Surendra merely stated that accused no.1 came accompanied by his friends but he did not name them. Therefore, trial Court ought not to have accepted such version and therefore, learned Counsel questions the legality and maintainability of the impugned judgment and prays to set aside the same by allowing the appeal.

In support of his submissions, learned Counsel for appellants relied on the following citations :

- (i) *Laxman Chandar Jadhav v. State of Maharashtra, 2016 (5) LJSOFT 98.*

- (ii) *State of Maharashtra v. Ramrao s/o Manjaajirao Mhaske & Ors., 2016 (3) LJSOFT 62.*
- (iii) *State of Maharashtra v. Shripati Rama Kanase, (2016) 08 Bom. CK 0141.*

On behalf of State :

6. Learned APP pointed out that PW3 Ravi and PW5 Surendra are direct eye witnesses. That PW3 Ravi himself is victim of assault. That testimonies of both witnesses are clear, cogent and convincing. That they both are consistent about deceased Vijay being mercilessly beaten till he fell unconscious. That he suffered internal hemorrhage. That Autopsy Doctor attributed death to hemorrhage. That five persons have, at a time, showered multiple kick and fist blows and are thereby solely responsible for the death of Vijay and injury PW3 Ravi. That therefore, learned trial Court has correctly appreciated the direct eye witness account, which is supported by medical evidence and as such she prays not to disturb above judgment.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

7. In support of its case, prosecution has adduced evidence of eight witnesses. Sum and substance of their evidence is as under :

PW1 Gopinath Kachru Tigote is spot pancha. His evidence is at exh.20. Spot panchanama is at exh.21.

PW2 Dr.Anil Digambarrao Jinturkar, Autopsy Doctor attributed death due to internal injury noted in column no.19.

PW3 Ravi Shrigoverdhan Bharatwaj, informant deposed at exh.31 that while he and PW5 Surendra were sitting, absconding accused Pappu came and said that he would kiss a girl namely Deepa. That when this witness objected, initially he was slapped and at around 9.30 p.m. main accused returned with present appellants and they gave kick and fist blows to him and when deceased Vijay came to his rescue, they all beat him, as a result of which, he fell unconscious and consequently, he died.

PW4 Rajashri Ramprasad Rai, mother of deceased, stated that after hearing quarrel, hue and cry, she reached the spot and found her son lying on the street and she saw absconding accused and present appellants fleeing away. Her son died due to head injury. Her evidence is at exh.39.

PW5 Surendra Ramratan Bin also deposed at exh.40 that when he and PW3 Ravi were sitting, accused came and said that he would kiss Vijay's sister Deepa. When PW3 Ravi objected saying that she is like his sister, accused belaboured with him and parted saying that he would return in a short while. That at around 09:00 p.m., he came back accompanied by his friends and they attacked PW3 Ravi. That deceased Vijay came to separate the quarrel and at that time, all accused delivered hand and leg blows to Vijay, who collapsed due to impact of blows. That in hospital, he was declared dead.

PW6 Shivaji Sajan Chavan, resident of same locality, stated that he saw Vijay lying on the road and being taken to the Doctor. His evidence is at exh.42.

PW7 Housabai Pandurang Ramani is hearsay witness. Her evidence is at exh.43.

PW8 Syed Abdulla Abdul Rahemen Kadari is the Investigating Officer. His evidence is at exh.44.

ANALYSIS

8. Re-appreciated the entire evidence. From the testimony of PW3 Ravi, informant and PW5 Surendra, it is emerging that, that night, absconding accused no.1 came and sat while PW3 and PW5 were chatting. Both PW3 and PW5, in their testimonies, are consistent that accused no.1 stated that he would like to kiss Deepa. This girl seems to be sister of deceased Vijay.

PW3 Ravi in his testimony has stated that he objected to said utterance of accused no.1 saying that she is like his sister and he should not say such thing about her, upon which absconding accused no.1 slapped him and parted saying that he would return with his friends and then show him. He deposed that at around 09:30 p.m., accused came with his four friends. Witness has given their names as Sanjay, Ravindra, Sandeep (accused nos.2, 3 and 4). He stated that they attacked him with kick and fist blows. According to him, when PW5 Surendra tried to intervene, at that time, deceased Vijay came there and when he tried to separate, witness stated that all accused started beating Vijay with kick and fist blows, as a result of which Vijay fell losing his sense.

While under **cross-examination**, in paragraph no.6, it has been brought from his testimony that when he was being abused and

slapped by accused no.1, none of the neighbours got attracted to the place of incident. He is asked for how long the incident lasted and witness answered that first incident lasted for 2-3 minutes. In paragraph no.7, he seems to be asked for how long second incident lasted and witness answered that he was assaulted for five minutes.

Such manner of cross-examination categorically shows that occurrence is admitted and even assault is not disputed..

Again in cross-examination in paragraph no.8 when being cross-examined by learned Counsel, who appeared for accused nos.2 and 4, only omission brought is that “after deceased was beaten, he fell unconscious” and that “he had seen accused nos.2 and 4 with accused no.1”. No material contradiction or omission is brought about actual assault. Infact in cross-examination in paragraph no.6 and 7 shows that incident is admitted.

9. **PW5** Surendra, whose testimony is also of relevance shows that this witness is also corroborated evidence of PW3 Ravi and lend support by stating that he and PW3 were sitting. That at around 08:30 p.m. absconding accused came there and said that he would kiss Deepa, upon which PW3 Ravi said that she is like his sister and he should not dare to say so, upon which accused no.1 said that he

would do so and both accused no.1 and PW3 Ravi belaboured each other. This witness claims that he intervened. Thereafter, accused no.1 went challenging PW3 Ravi to stay there if he has guts and absconding accused no.1 returned with four friends. Witness in examination-in-chief itself stated that he did not know their names but he identified them in the Court. Even he has corroborated PW3 informant's testimony about attack on PW3 by all accused by means of kick and fist blows. That at such time, deceased Vijay came to separate the quarrel, but all four accused delivered hand and leg blows on him and as a result of which, he collapsed.

In **cross-examination** in paragraph no.4, occurrence is acknowledged and admitted as witness is asked how long the incident lasted. He admitted in cross-examination that he did not give names of accused to the Police in his statement. He answered that he had seen accused in the Police Station and further answered that even prior to that at the spot of incident.

10. The cumulative effect of testimony of PW3 Ravi and PW5 Surendra shows that, that night absconding accused no.1 came and said that he would like to kiss Deepa, which was objected by PW3 Ravi and therefore, he was slapped and thereafter, absconding

accused no.1 left challenging PW3 to remain there, if he has guts and he returned with co-accused and they beat PW3. Deceased Vijay came to separate and accused persons showered fist and kick blows on him also as a result of which Vijay collapsed. Therefore, there is convincing, cogent, reliable eye witness account.

11. Deceased Vijay reportedly died and according to *post mortem* report, cause of death is “Head injury in the form of contusion of brain with intracranial hemorrhage”. Autopsy Doctor PW2 Dr.Jinturkar, in cross-examination, has expressed opinion that if a person falls from height, such head injury is possible. He also agreed that concussion of brain is possible due to sudden acceleration or deceleration of the head and even by unwarranted fall. He also stated that there can be injury to nerve cells on account of concussion. He further stated that such injury is not apparent by gross examination. He flatly denied that hemorrhage can be caused by spontaneous hemorrhage in the brain. Doctor has admitted that there was no external injury to head.

Thus, medical evidence is about intracranial hemorrhage, which is internal injury. Both PW3 Ravi and PW5 Surendra are categorical and consistent that because of showering of kick and fist

blows, Vijay collapsed and lost his sense and on being taken to hospital, he was declared dead. Therefore, apparently death has occurred in consequence to beating.

12. Learned Counsel for the appellants strenuously submitted that there were no external injury and therefore, death cannot be attributed to said kick and fist blows.

Obviously, even PW2 Dr.Jinturkar, Autopsy Doctor, in his testimony, stated that he did not notice external injury, but he is also categorical about his opinion about intracranial hemorrhage. Deceased Vijay has died after he were assaulted and he fell down. Therefore, though it is true as submitted that accused persons had not targeted or planned to assault Vijay, however, PW3 Ravi and PW5 Surendra, as stated above, are consistent that all accused including absconding accused no.1 together showered kick and fist blows on Vijay. Occurrence is erupted all of sudden. Therefore, even learned trial Court brought down the offence to Section 304 (II) of the IPC.

In the light of above discussion, testimony of PW3 Ravi and PW5 Surendra itself is sufficient to connect accused to the death of deceased Vijay.

Not only PW3 Ravi and PW5 Surendra but even PW6 Shivaji ,

a resident of same locality, confirms the occurrence and he has also participated in shifting deceased to the hospital. Likewise occurrence is also confirmed through PW7 Hausabai, though she denied seeing actual incident. Therefore, apart from direct eye witness account, there is other supportive independent evidence on the point of occurrence.

13. I have gone through the citations relied by the learned Counsel for the appellants. The facts in those cases are quite distinguishable and cannot be made applicable to the case in hand.

CONCLUSION

14. Perused the judgment under challenge. Learned trial Judge has appreciated entire evidence properly and has committed no error in accepting prosecution version. The circumstances, in which incident took place, are also considered by recording the finding that offence of Section 304 (II) is attracted. There is no infirmity, perversity in the findings and conclusion reached at by the learned trial Court. Hence, no case being made out on merits, I proceed to pass following order :

ORDER

Criminal Appeal No.306 of 2003 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE

SPT