



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

CRIMINAL APPEAL NO.936 OF 2018

- 1) Prakash s/o. Harichandra Bhujang,
Age 32 years, Occ. Labour,
r/o. Nandalgaon, Tq. Paithan,
Dist. Aurangabad
- 2) Amol s/o. Raghunath Chabukswar (Deleted - appellant no.2 has
Age 32 years, Occ. Labour, filed separate appeal)
r/o. Nandalgaon, Tq. Paithan,
Aurangabad

..Appellants

Vs.

- 1) The State of Maharashtra,
Through Police Inspector,
Bidkin Police Station,
Tq. Paithan, Dist.Aurangabad
- 2) Radhabai Annasaheb Bansode,
Age:41 years, Occ. Agri.,
r/o. Village Nandalgaon,
Tq. Paithan, Dist. Aurangabad

..Respondents

AND

CRIMINAL APPEAL NO.626 OF 2023

Amol s/o. Raghunath Chabukswar,
Age : 35 years, Occ. Labour,
r/o. Nandalgaon, Tq. Paithan,
Dist. Aurangabad

At Present : Mahatma Phule Nagar,
Bhavsinghpura, Aurangabad

..Appellant

Vs.

- 1) The State of Maharashtra,
Through Police Inspector,
Bidkin Police Station,
Tq. Paithan, Dist.Aurangabad
- 2) Radhabai Annasaheb Bansode,
Age:41 years, Occ. Agri.,
r/o. Village Nandalgaon,
Tq. Paithan, Dist. Aurangabad

..Respondents

Mr.M.R.Khutwad, Advocate for appellant in Cri. Appeal No.936 of 2018

Mr.M.M.Parghane, Advocate for appellant in Cri. Appeal No.626 of 2023

Ms.V.S.Choudhary, APP for respondent no.1 in both appeals

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : MARCH 12, 2024
PRONOUNCED ON : MARCH 14, 2024**

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

Both the appeals are being decided by this common judgment and order, since the challenge therein is to the judgment of conviction and order of consequential sentence passed by learned Addl. Sessions Judge, Aurangabad, on 25.10.2018 in Sessions Case No.509 of 2011. Vide the impugned judgment and order, the appellants herein have been convicted for the offences punishable under Sections 302 and 324 read with Section 34 of Indian Penal Code. The details thereof are given below:-

Sections	Sentence	Fine
302 r/w. 34 of I.P.C.	R.I. for life	Fine of Rs.25,000/-, in default, to suffer R.I. for one year
324 r/w. 34 of I.P.C.	R.I. for one year	Fine of Rs.5,000/-, in default, to suffer R.I. for one year

The substantive sentences are directed to run concurrently. The appellants are, therefore, before us in these appeals.

2. The facts, as are disclosed from the police papers (charge sheet), are as follows.

PW 2 - Radhabai (informant) and her husband Annasaheb (deceased) would reside together along with their children at village Nandalgaon, Tq. Paithan, Dist. Aurangabad. It was 31.08.2011, the informant and her husband were on their way back home from their agricultural field on their motorbike. It was about 01.00 p.m., they were passing from in front of a grocery shop of Prabhakar Shinde. Both the appellants and Syed Nisar and Syed Habib (acquitted accused) intercepted the duo. They picked up

quarrel with the informant and her husband Annasaheb (deceased) over tap-water and agricultural field as well. The appellant – Amol assaulted husband of the informant, Annasaheb (deceased), on his head and face with fighter, while the appellant – Prakash beat up the informant's husband Annasaheb with stick. The other accused too beat up the duo with fists and kicks. The nearby residents witnessed the incident. Dhondiram, brother-in-law of the informant, first, brought them to Primary Health Centre at Bidkin. Then, they were shifted to GHATI Hospital, Aurangabad. For better treatment, Annasaheb was shifted to City Care Hospital, Aurangabad. He, unfortunately, succumbed to the injuries by 02.00 p.m. on 01.09.2011. The informant, thereafter, lodged report against the aforesaid four persons, alleging them to have committed murder of her husband and assaulted herself and her son Ganesh (PW 8).

3. The crime, vide C.R. No.I-0 of 2011 was initially registered with Osmanpura Police Station, Aurangabad. Since crime took place within the limits of Bidkin Police Station, same was transferred to it for investigation. The scene of offence panchnama was drawn. Inquest panchnama (Exh.43) too was conducted. Both injured were medically screened. Autopsy was conducted on the mortal remains of Annasaheb. The appellants were arrested.

A fighter and a stick came to be recovered pursuant to the disclosure statements made by both the appellants, respectively. The statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, charge sheet was laid. The Judicial Magistrate, First Class, Court No.2, Paithan, committed the case the Court of Sessions. It was, in turn, assigned to the court of learned Addl. Sessions Judge, Aurangabad (trial court) for trial in accordance with law.

4. The trial court framed Charge (Exh.9) against all four accused persons. They pleaded not guilty. Their defence was of false implication.

5. To establish the charge, the prosecution examined fourteen witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial court acquitted original accused nos.1 and 4 namely, Syed Nisar and Syed Habib. It convicted the appellants herein, as stated above. Neither the State nor the victim preferred appeal against the acquittal.

6. Heard learned counsel for the respective parties.

7. Learned counsel for the appellants would submit that there is delay of over 18 hours in lodging of the FIR. The informant

and her son Ganesh were conscious oriented all along. One of them could have lodged the FIR at the earliest. Prabhakar Shinde, in front of whose shop, the incident took place, has not been examined. The deceased was alcoholic. He and his wife were proceeding on motorbike. The motorbike met with an accident (slipped), as a result of which, they suffered injuries. Our attention was adverted to the oral evidence of the witnesses *vis-a-vis* the FIR and the police statements, to bring on record the material omissions, amounting to contradictions. According to learned counsel, the fighter recovered pursuant to the disclosure statement, did not bear blood stains. Although a blood stained stick was recovered, the the C.A. report in that regard is inconclusive. Both learned counsel would submit that the evidence of the prosecution inspire no confidence to sustain the conviction of the appellants. They, therefore, urged for allowing the appeals.

8. Learned APP, would, on the other hand, submit that the FIR has been lodged promptly. The husband of the informant suffered serious injuries. It was her duty first to attend her husband. She was a rustic woman. Her evidence is consistent with the averments in the FIR. After having realised the mistake, she immediately gave a supplementary statement. The eye witnesses are none other than

the injured witnesses. Their evidence stands on higher pedestal. Pursuant to the disclosure statements made by both the appellants, a fighter and a stick came to be recovered. The C.A. report indicates the stick to have borne human blood. According to learned APP, it is duty of the Court to sift grain from the chaff. She relied on the Apex Court judgment in the case of **Mani @ Udattu Man & ors. Vs. State Rep. by Inspector of Police, 2009 GoJuris (SC) 305**, wherein, it has been observed as under :-

“Criminal Trial – Rule of evidence – Doctrine of falsus in uno falsus in omnibus – Charges of murder -- Appreciation of evidence – Duty of Court – It has to separate grain from the chaff – If it can be done, an accused can be convicted notwithstanding that the evidence has been found to be deficient, or to be not wholly credible – Falsity of material particular would not ruin it from beginning to end – Said doctrine has no application in India – It is merely a rule of caution – All that it amounts to, is that in such case testimony may be disregarded, not that it must be disregarded – It merely involves question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence.”

9. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

10. The deceased – Annasaheb was first rushed to Bidkin Rural Hospital. He was then shifted to City Care Hospital,

Aurangabad. PW 5 – Dr. Yogesh had attended the deceased in City Care Hospital. He tendered in evidence Medico-Legal Certificate (MLC) (Exh.65) and Registration cum Administration Form (Exh.67). The history given in MLC (Exh.65), is assault by two persons in the village. Annasaheb succumbed to the injuries. He was shifted to GHATI Hospital. PW 9 – Dr. Nitin conducted autopsy on his person. He noticed following injuries on the person of the deceased:-

“Clause No.17 E/o. Stitched wound over left side of forehead of size 3.5 c.m. with 6 stitches, obliquely placed.

2) E/o. Contusion over left eye on upper eyelid and periorbital area with bluish purple discoloration.

3) E/o. Stitched wound over left lower eyelid of size 3 x 0.2 c.m. with 4 stitches, horizontally placed and bluish purple discoloration.

4) E/o. Stitched wound over left cheek, 2 c.m. below left eye lid, of size 3 c.m. horizontally placed with 4 stitches.

5) E/o. Stitched wound below left nostril of size 3.5 c.m. with 7 stitches, horizontally placed.

6) E/o. Contusion over left angle of mouth with blackish purple discoloration.

7) E/o. Contused swelling over left forehead of size 8 x 6 c.m. with blackish purple discoloration.

Clause No.18 – E/o. Fracture at nasal septum and multiple facial bones.

Clause 19 – E/o. Scalp hematoma on left front-temporal region of size 15 x 10 c.m., dark red in colour.

2) E/o. Contusion over right frontal region of size 8 x 6 c.m. dark red in colour.

3) E/o. Multiple fracture of facial bones fracture margins irregular and blood infiltrated.

4) Meninges – Intact,

5) Brain – Pale and edematous.

6) E/o. Subarachnoid hemorrhage over left cerebral hemisphere.

In his opinion, Annasaheb died of “*shock and hemorrhage due to multiple injuries*”. The post mortem report to that effect is at Exh.130.

11. Then, we have evidence of PW 6 – Dr. Sanjay, Medical Officer, Rural Hospital, Beed. He had examined PW 2 – Radhabai (informant). He noticed following injuries on her person:-

“I) Contusion over left forearm size 2 c.m. x 3 c.m. weapon used hard and blunt. Probable age of injury within 24 hours. Nature of injury simple.

II) Contusion over left leg posterior aspect size 2 c.m. x 3 c.m., weapon used hard and blunt. Probable age of injury within 24 hours. Nature of injury simple.

Her injury certificate (Exh.77) suggests her to have suffered two contusions, simple in nature. Those injuries were said to have been caused by a hard and blunt object within 24 hours before examination.

12. Then, there is evidence of PW 11 – Dr. Archana. She had examined Ganesh (PW 8). The injury certificate (Exh.145) indicates him to have suffered two contusions, simple in nature. He had given history of assault on his hand with wooden stick.

13. Now, the question is, whether the appellants herein are the authors of death of Annasaheb and injuries of the informant – Radhabai and Ganesh.

14. PW 1 – Bharat was Home Guard engaged in maintenance of law and order on account of the festivals, like *Pola* and *Ramjan Eid*. His evidence indicates that on 31.08.2011, he was attached to Bidkin Police Station. Annasaheb (deceased), his wife Radhabai and their son Ganesh had come to the police station. All of them were injured. On the direction of the police station officer, he took them to Bidkin Rural Hospital. The Medical Officer there, referred them to GHATI Hospital Aurangabad. This witness was not cross-examined.

15. PW 2 – Radhabai, widow of deceased, testified that by 01.00 p.m., on 31.08.2011, she along with her husband (deceased Annasaheb) were returning home on their motorbike. While they were passing from in front of grocery shop of one Prabhakar Shinde, the appellants herein intercepted them. The appellant Prakash assaulted Annasaheb on his face and head with fighter. The appellant Amol assaulted her with stick. Appellant Prakash assaulted Ganesh with stick. On hearing cries, her nephew Bhimrao (PW 3) arrived. He took them first to Bidkin Rural Hospital. They were shifted to GHATI Hospital, Aurangabd. It is further in her evidence that Annasaheb's health was critical and therefore, he was rushed to City Care Hospital, Aurangabad. Unfortunately, Annasaheb breathed his last after about 15 hours of the incident. There was, therefore, delay in lodging of the FIR. We do not find the delay to have been used to lodge an afterthought FIR.

16. On the same lines, there is evidence of PW 3 – Bhimrao and PW 8 – Ganesh. Admittedly, Ganesh reached the scene of offence after the appellants were allegedly assaulted.

17. These three witnesses were subjected to cross-examination by learned APP in-charge of the case. They were confronted to their police statements. The reason is obvious. In the

FIR and in their police statements, all these three witnesses had implicated original accused nos.1 and 4 namely, Syed Nisar and Syed Habib to be the assailants along with the appellants before this court. These three witnesses, however, in their substantive evidence, testified that both of them (original accused nos. 1 and 4) were not at all present at the crime scene. Moreover, in the FIR, PW 2 – Radhabai attributed Amol to have assaulted with fighter, whereas, in her substantive evidence before the court, she attributed him assault with stick. In the FIR, she had attributed Prakash to have assaulted with stick but in her substantive evidence, he is alleged to have assaulted with fighter. Learned APP adverted our attention to the informant's supplementary statement, correcting her mistake in the FIR. It is not known, was it really a mistake or intentional, attributing respective appellants with assault by weapons like fighter and stick. Admittedly, the incident took place in front of the grocery shop of Prabhakar Shinde. He has not been examined in the case.

18. We are conscious of the legal position: unmerited acquittal is injustice. We are also conscious of the fact that when truth and falsity are intermingled, the same are to be disengaged from each other to ensure truth to prevail. The facts in some cases are so presented that it is just difficult to disengage grain from the

chaff. The same is the case herein. The aforesaid three witnesses, in the FIR and the police statements, attributed accused nos.1 to 4 to have been involved in such a serious offence of murder. Both of them gave them clean-chit during substantive evidence of these witnesses. It is, therefore, just difficult to rely on the testimony of these witnesses, more so, when the appellant - Prakash was attributed with a fighter-blow in the police papers and in the substantial evidence, he is attributed with assault with stick. Same is the case about appellant - Amol. He was, in fact, alleged to have assaulted with stick. Then, fighter was placed in his hands.

19. Moreover, cross-examination of PW 2 - Radhabai suggests that admittedly, they were on motorbike. It might be that as a result of accident, both of them fell from the motorbike. She admitted that they had sustained injury even after falling from bike. The deceased was trapped under the motorbike, i.e. the motorbike was on his person. PW 3 - Bhimrao stated in his cross-examination that while he reached at the crime-scene, he saw the motorbike on the person of Annasaheb. It was PW 3 - Bhimrao, who removed the motorbike. The same suggests that the deceased even might have suffered injuries as a result of fall from the motorbike.

20. While the deceased was admitted in City Care Hospital, Aurangabad, the MLC (Exh.65) records history as "assault by two

village-boys". The Medical Officer – Dr. Yogesh (PW 5) was examined in that regard. Furthermore, Ganesh (PW 8) admitted in cross-examination that after having come to the court to lead evidence, he was read over his police statement. His mother (PW 2 – Radhabai) accompanied him to the court. Before he gave evidence, it was decided between him and Radhabai that they should give evidence against two persons only (appellants herein)

21. Omissions amounting contradictions in the FIR and police statements of both these witnesses, have been brought on record through the evidence of the Investigating Officer and PW 7 - Shahaji, who recorded the FIR. True, the crime was initially registered at Osmanpura Police Station. Since it took place within the limits of Bidkin Police Station, same was transferred to it for investigation.

22. It is true that pursuant to the disclosure statements made by both the appellants, fighter and stick came to be recovered under panchnama (Exhs.160 to 163). Admittedly, the fighter did not bear blood stains. Such recovery is, therefore, of no consequence to further the case of the prosecution. So far as regards recovery of the stick is concerned, the C.A. report relating to blood stains thereon, is inconclusive as regards grouping of blood.

23. All the aforesaid three material witnesses were categorical to state that there was no prior enmity between the appellants and the deceased or any of his family members. The incident took place all of a sudden. These witnesses have consciously given clean-chit to original accused nos.1 and 4, who were said to have been involved in the crime. The evidence further indicates that both deceased and his wife fell from the motorbike. The deceased was trapped under the motorbike. The appellant - Prakash was alleged to have assaulted with fighter. However, in the substantive evidence, he is alleged to have assaulted with stick. Same is the case about appellant - Amol. It is not known as to why, Ganesh did not lodge the report of the incident immediately, when he was with his parents, although we have observed above that PW 2 - Radhabai had reason to lodge the report fifteen hours after the incident, since her husband was critical. Be that as it may.

24. Close scrutiny of the evidence on record lead us to observe that the evidence of the material witnesses namely, PW 2 - Radhabai, PW 3 - Bhimrao and PW 8 - Ganesh do not inspire confidence to sustain the conviction of the appellants for the serious offence of murder.

25. Both the appellants are, therefore, required to be extended benefit of doubt. We are, therefore, not at one with the findings recorded by the trial court. Interference with the impugned order of conviction and consequential sentence is, therefore, warranted.

26. In the result, the appeals succeed. Hence, the following order:-

(i) Both the appeals are allowed.

(ii) The order of conviction and consequential sentence dated 25.10.2018, passed by learned Addl. Sessions Judge, Aurangabad, in Sessions Case No.509 of 2011, for the offences punishable under Sections 302 and 324 read with Section 34 of Indian Penal Code, is hereby set aside. The appellants are acquitted of the said offences.

(iii) The appellants be released forthwith, if not required in any other offence.

(iv) Fine amount paid by the appellants, if any, be refunded to them.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP