



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 844 OF 2004

1. Arun Tatyrao Khadsen (**Abated**)
2. Sumanbai W/o Arun Khadsen,
Age : 30 years, Occu : Labour,
R/o. Rahulnagar, (Jayakwadi),
Paithan, Dist. Aurangabad Appellants

Versus

The State of Maharashtra Respondent

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Advocate for Appellant No. 2 : Mr. Vrishab M. Patil (Appointed)
APP for Respondent-State : Mr. K. K. Naik

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 13 DECEMBER, 2024

JUDGMENT :

1. In this appeal, appellants have taken exception to the judgment and order dated 30.11.2004 passed by learned Ad-hoc Additional Sessions Judge, Aurangabad, thereby recording the guilt of the present appellants for offence under Section 324 read with Section 34 of the Indian Penal Code, 1872 (henceforth "IPC" for short).

2 At the outset, it needs to be noted that there were two appellants who instituted instant appeal. However, appellant No. 1 Arun is reported to be dead and as such by order dated 24.10.2024, appeal stands abated against him. Now, appeal to the extent of appellant No. 2, is dealt herewith.

CASE OF PROSECUTION

3. In short, it is the case of prosecution that on 15.08.2003, there was quarrel between deceased Eknath and accused Arun and it was reported to PW4 informant Prakash by his wife. Matter was settled and deceased was brought back to home. At that time, appellants Arun and Sumanbai again came and picked up quarrel and after heated exchange of words, appellants Arun and Sumanbai gave fist blows and slaps to Eknath. Arun hit heavy stick on the head and neck of the Eknath and he was also pushed by both the accused. Ekanth was brought to home but on complaint of giddiness, he was taken to hospital where he was reported to be dead. At the instance of PW4 Prakash, complaint was lodged and crime was registered by MIDC Paithan Police Station.

4. PW7 Bajirao conducted the investigation and charge-sheeted the accused for an offence under Section 302 and 323 r/w 34

of IPC. Trial was conducted by learned Ist Ad Hoc Additional Sessions Judge, Aurangabad vide Sessions Case No. 38 of 2004. On appreciating the oral and documentary evidence adduced by the prosecution, by judgment and order dated 30.11.2004, learned Trial Court acquitted both appellants from the charge under Section 302 of IPC but held them guilty for offence punishable under Section 324 r/w 34 of IPC and sentenced them to suffer 3 years imprisonment and to pay fine.

5. It is the above judgment which is now the subject matter of instant appeal.

SUBMISSIONS

On behalf of appellants :-

6. Learned counsel who is appointed, pointed out that there are false implications. There is no independent evidence of any witness. Only related witnesses are examined. They too are not consistent and supporting each other. He pointed out that during pendency of appeal, main accused against whom there are allegations of using stick, is no more. Only allegations against surviving appellant is of giving blows and slaps.

7. Learned counsel took this Court through the PM

examination report and would submit that the Autopsy Surgeon issued opinion as regards to cause of death as “due to head injury, neurogenic shock with cardio respiratory arrest”. However according to him, there are no allegations of assault on head and informant is restricting allegations to present appellant for giving fist blows and slaps and as such, she ought not to have been held guilty.

8. Lastly, learned counsel submitted that there is improper appreciation of evidence and even when there was no legally acceptable evidence and role of appellant not being substantiated beyond reasonable doubt, appellant's conviction being unjustified and is required to be interfered with by allowing the appeal.

On behalf of respondent-State :-

9. In answer to above, learned APP pointed out that two episodes took place between appellants and deceased Eknath. The first one was settled and separated but again both appellants who are husband and wife came, picked up quarrel, hurled abuses and together beat deceased Eknath. Deceased accused hit with heavy stick. There is head injury and it turned out to be fatal. However, learned APP conceded that as regards to present surviving appellant is concerned, there are allegations of giving blows on chest and giving

slaps. However, he further submitted that charge was framed for offence under Section 302 of IPC by invoking Section 34 of IPC, and as such, learned trial Court holds present surviving appellant also equally responsible and prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

10. In support of its case, prosecution has examined in all 7 witnesses. The role and status and the sum and substance of the evidence of witnesses examined can be summarized as under :

PW1 Mohan Aasaram Jankar acted as pancha to inquest panchanama vide panchanama Exhibit 14. He has admitted his signature and contents of inquest panchanama.

PW2 Subhash Mhatarba Toge acted as pancha to memorandum panchanama vide panchanama Exh. 16. He has admitted his signature and contents of panchanama Exh. 16. He has categorically stated about the recovery of stick which was allegedly used in the crime.

PW3 Dr. Gokulsingh Sardarsingh Thakur - Autopsy Surgeon, at Exh. 18 deposed that he conducted postmortem on 16.08.2003 in the between 9 am to 10 am. After deposing about external and internal injuries noticed by him, he gave opinion that the probable cause of death is due to head injury, neurogenic shock with cardio respiratory arrest.

PW4 Prakash Raosaheb Veer is the brother of deceased Ekanth. Relevant portion of his evidence at Exhibit 22 is as under :

“1. Deceased Ekanth was my younger brother. I was living in Rehulnagar with my parents and wife Ekanth and his wife were living adjacent to my house in Rahulnagar.

2. The incident occurred on 15.08.2003, at about 8.30 p.m.. At that time, I had returned to my house, after purchasing some grocery-articles, and my wife Rukhamanbai told me that, on the road, the quarrel is going on between my brother Eknath. Arun Khadsan and Sumanbai, accused Nos. 1 and 2 before the Court. So, my father, mother, so also myself, went on the road, near the bridge. On reaching to that place, I saw that, quarrel was going on between Arun, Eknath and Sumanbai. I separated that quarrel and reached Eknath to his house and returned to my own house. Thereafter, I was taking my meals and at that time, my wife had gone out of house to throw the waste-water. She returned inside the house and told me that, a quarrel is going on between Ekanth, Arun and Sumanbai, on the road, near the bridge. Again, myself, my father and mother went to that bridge. That time also, both Arun and Sumanbai were beating to my brother Eknath with fists and kick and they had pushed Eknath on the road. Accused No. 1 had a heavy-stick (Danda) with him. I again separated that quarrel and brought Eknath to his house. Eknath was lying on the road and I had lifted him from the ground. At that time, at the road only, Ekanth had told me that, Arun had beaten him with a heavy-

stick (Danda) on neck. Ekanth also told me at that place and time, that, Sumanbai had beaten him with fist and kick blows and he was pushed by both Arun and Sumanbai. He had disclosed these things to me, at the spot, before I brought Eknath to his house. On coming to the house, Ekanth told me that, he is feeling giddy. So, I had given him water for drinking. Thereafter, I went to fetch an auto rickshaw and brought it to the house of Ekanth. In that rickshaw, I took Eknath to the hospital of Dr. Gangwal, which is at Pimpalwadi fata. The distance between my house and Pimpalwadi Fata is about 1 KM. Dr. Gangwal outside his hospital had checked Ekanth and advised me to take him to Govt. Hospital. Accordingly, I had taken Ekanth to Govt. Hospital and on examining him, the M. O. declared him to be dead.

3. On coming to know that, Ekanth is dead, I came to the PS and lodged my complaint orally, which was reduced into writing by the police, as per my say. The contents of complaint are true. I identify my signature on it. It is marked at Exh. 23.....”

PW5 Raosaheb Bajirao Veer, father of deceased Eknath, is examined at Exhibit 24. His evidence is as under :

“1. The complainant Prakash is my son, so also deceased Ekanth was my son. Myself, my wife, complainant and his wife, were staying together, in Rahulnagar area of Jayakwadi. Eknath and his wife were living adjacent to us about 100 feet to my house in Rahulnagar.

2. The incident has occurred on 15.08.2003 at about 8.30 p.m. At that time, wife of complainant told him that, a quarrel is going on in between my son Ekanth and Arun and Suman-accused before the Court-on the road and, so, myself, and Prakash and my wife went to that place, on the road. On going to that place, exchange of words was going on between Arun and Suman on one hand and Eknath on the other. That quarrel was separated by Prakash and Ekanth was brought to his house. Thereafter, Prakash was taking meals, in our house. At that time, wife of Prakash had again gone out of house to throw out the waste-water and on returning to the house, she told that, a quarrel is going on the road. So, myself, my wife and Prakash again ran to that place on road. I saw that, accused No. 2 Suman was beating to Eknath with fist and kick blows and accused Arun was having, in his hand, a denda (a heavy-stick), Eknath was lying on the road. At that time, Eknath told to Praksh that, Arun had beaten him with a danda on his neck and he was pushed by both Arun and Sumanbai. Thereafter, Eknath was brought to our house. On coming to the house, Ekanth was saying that, he is feeling giddy and was asking water to drink. Eknath was given water and in an auto rickshaw, Prakash took him to the hospital of Dr. Gangwal. When I separated quarrel, on 2nd occasion, I had seen Baban Jadhav, who was going towards Rahulnagar, in his auto rickshaw.....

PW6 Baban Ramchandra Jadhav, who was rickshaw driver at the time of incident, examined at Exhibit 25, deposed as under :

“1. I know the accused before the Court, so also the complainant Prakash, his father Raosaheb and the deceased Eknath. On 15.08.2003 at about 8.30 p.m., I was going towards Rahulnagar from Paithan with my own auto rickshaw. I was carrying 2 cement bags besides 2 passengers, in my rickshaw towards Rahulnagar. When I reached near the bridge, I saw that several persons had gathered there, and amongst them were the complainant, his father Raosaheb, the deceased Eknath and accused Arun and Sumanbai. I again say, besides these 5 persons, there was no body else gathered on the road. I saw that, Prakash was separating the quarrel (Maramari) between Arun Khadsak and Ekanth. I simply say this fact, but did not step there and proceeded towards Rahulnagar.

PW7 Prosecution has examined PW7 Bajirao Baburao Joshi who had investigated the matter thoroughly and charge-sheeted both accused.

ANALYSIS

11. It is emerging that PW4 Prakash, PW5 Raosaheb and PW6 Baban are crucial witnesses. PW4 Prakash seems to be brother of deceased whereas PW5 Raosaheb seems to be his father. PW6 Baban seems to be an acquaintance who knew both deceased as well as accused persons.

12. PW4 Prakash and PW5 Raosaheb, both in their

examination-in-chief, have stated whatever they eye witnessed. Their entire testimony is already reproduced in aforesaid paragraphs. Presence of deceased appellant Arun and surviving appellant Sumanbai and they indulging in beating Eknath has remained undisturbed. Similarly, even testimony of PW5 Raosaheb and PW6 Baban regarding involvement and role of both appellants is getting corroboration. Therefore, there is convincing evidence regarding occurrence.

13. As regards to the use of heavy stick is concerned, which is said to be recovered under memorandum of panchanama through PW2 Subhash, medial expert PW3 Dr. Gokulsingh had already attributed death of Eknath due to head injury and neurogenic shock. Therefore, role of deceased appellant Arun is getting crystallised and substantiated. As regards to present surviving appellant Sumanbai is concerned, apparently there are allegations only to the extent that she giving slaps and first blows on chest of deceased. Autopsy surgeon PW3 Dr. Gokulsingh has not noticed any injury on such part of the body. Therefore, evidence as regards to present surviving appellant seems weak in nature. Therefore, she deserves benefit of doubt. Hence, for the above reasons, following order is passed:

ORDER

- I. Criminal Appeal is **allowed**.
- II. The conviction awarded to appellant Sumanbai Arun Khadsen in Sessions Case No. 38 of 2004 by the Ist Adhoc Additional Sessions Judge, Aurangabad dated 30.11.2004 for the offence punishable under Section 324 r/w 34 of IPC, stands quashed and set aside.
- III. Appellant No. 2 Sumanbai stands acquitted from the charge levelled against her for the offence punishable under Section 324 r/w 34 of IPC.
- IV. The bail-bonds of the appellant No. 2 stands cancelled.
- V. The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order in respect of disposal of muddemal.
- VII. Fees of learned Advocate, who is appointed to represent cause of appellant is to be paid by the High Court Legal Services Sub - Committee, Aurangabad as per rules.

[ABHAY S. WAGHWASE, J.]

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