



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1251 OF 2019

Sukhram Jyotiram Bhil

Age: 38 years, Occu.: Labour,

R/o Titwi, Tq. Parola, Dist. Jalgaon

..APPELLANT

VERSUS

1. State of Maharashtra

2. Bhavadu Gulab Bhil

Age: 33 years, Occu.: Labour,

R/o Titwi, Tq. Parola, Dist. Jalgaon

..RESPONDENTS

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Mrs. V.S. Shinde-More, Advocate for appellant

Mr. S.D. Ghayal, A.P.P. for respondent no.1 – State

Mr. S.G. Bobade, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT AND

NEERAJ P. DHOTE, JJ

DATE : 01st FEBRUARY, 2024

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

1. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, and therefore, sentenced to suffer life imprisonment and pay fine of Rs.5,000/- with default stipulation, vide order dated 04th May, 2017 passed by Additional Sessions Judge, Amalner in Sessions Case No. 16 of 2016. The appellant is, therefore, before this Court in appeal.

2. Facts giving rise to the present appeal are as follows :-

First Information Report ('F.I.R.') (Exh.8) was lodged by P.W.1 – Dhanraj. It is his case that his agricultural land at village Titwi is adjacent to the land of one Sahadu Bhil. Sumanbai (deceased) would cultivate Sahadu's land. It was 02:30 p.m. of 25th November, 2015. He was working in his field. Sumanbai was in the field of Sahadu. He saw the appellant proceeding towards Sumanbai. The appellant was armed with a wooden bed leg. He heard shouts of Sumanbai. He, therefore, looked in that direction to see the appellant to have been assaulting Sumanbai with the wooden bed leg. The appellant had mounted on her person. The appellant then throttled Sumanbai. Having realised P.W.1 – Dhanraj to have been approaching towards him, the appellant fled. P.W.1 – Dhanraj immediately informed the same to P.W.3 - Raju Patil on phone. He came. Sumanbai was rushed to the hospital, where she was declared dead.

3. Based on the F.I.R. lodged by P.W.1 – Dhanraj, crime was registered, vide C.R. No. 185 of 2015 against the appellant. On completion of investigation, the appellant was proceeded against by filing the charge-sheet.

4. The Court of Judicial Magistrate First Class, Parola committed the case to the Court of Additional Sessions Judge, Amalner ('trial Court'). Trial Court framed the charge (Exh.3). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined eight witnesses and produced in evidence certain documents, to bring home the charge. Trial Court, on appreciation of evidence in the case, convicted the appellant and consequently sentenced as stated above.

6. Learned counsel for the appellant would submit that it is a case based on sole eye witness. The appellant was inimical with the informant. No blood was found on the clothes of the appellant. The victim too, did not suffer any bleeding injury. P.W.1 – Dhanraj, informant had an axe to grind against the appellant. He, therefore, urged for not relying on the evidence of the sole eye witness. Learned counsel ultimately urged for allowing the appeal.

7. Learned A.P.P. and learned counsel representing Respondent No.2 would, on the other hand, submit that it is an open and shut case. The appellant was seen committing murder of Sumanbai. The informant did not have any reason to falsely implicate him. The informant's presence has been admitted in view of evidence of P.W.3 – Raju. Both the learned counsel, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence relied on.

9. Postmortem report (Exh.17) indicates the deceased died of cardio-pulmonary arrest due to asphyxia due to throttling of neck. As such, its a case of homicide. It is undisputed that land of P.W.1 – Dhanraj is situated at village Titwi. Adjacent to the said land, was the land of one Sahadu. Sumanbai (deceased) would cultivate Sahadu's land. It was about 02:30 p.m. on 25th November, 2015. P.W.1 – Dhanraj, being agriculturist, was naturally present at his field. Same is the case of deceased – Sumanbai. P.W.1 – Dhanraj testified to have had seen the appellant assaulted Sumanbai with a wooden bed leg. He had also seen the appellant throttling Sumanbai. Having realised to have been seen by P.W.1 – Dhanraj, the appellant left the place. It was suggested that P.W.1 – Dhanraj had lend some money to the appellant and the same was not returned. He had, therefore, grudge against him (appellant).

10. True, it is a case based on sole eye witness account. Evidence of P.W.1 – Dhanraj gets reinforced by evidence of P.W.3 – Raju, who testified that P.W.1 – Dhanraj informed him on phone that the appellant committed murder of Sumanbai. He, therefore, rushed to the field to find Sumanbai dead. In the cross-examination of P.W.3 – Raju it was suggested that when he reached the field, except P.W.1 – Dhanraj no one was present. Same suggests the appellant to have admitted presence of P.W.1 – Dhanraj at the scene of offence. Nothing has been brought on record to disbelieve the

evidence of both these witnesses. We, therefore, do not find any reason to interfere with the impugned order and consequential sentence.

11. In view of above, appeal fails. Same is dismissed. Fees of Mrs. V.S. Shinde-More, learned counsel, appointed to represent the appellant through Legal Aid, is quantified to Rs.10,000/- (Rupees Ten Thousand). Also, fees of Mr. S.G. Bobade, learned counsel appointed to represent Respondent No.2, is quantified to Rs.5,000/- (Rupees Five Thousand).

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)