



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.492 OF 2004

1. Kashinath s/o Shankar Pandit
Age : 50 years, Occ : Labour,
R/o Zanjawadi, Tq.Gangapur,
Dist. Aurangabad.
2. Mattu s/o Kashinath Pandit,
Age : 24 years, Occ : Labour,
R/o as above.
3. Vitthal s/o Kashinath Pandit,
Age : 22 years, Occ : Agril,
R/o as above.

...Appellants/ accused

- *Versus* -

The State of Maharashtra.

...Respondents/ State.

...
Shri S.G. Ladda, Advocate for the appellants/ accused.
Shri Sunil B. Jadhav, APP for the respondent/ State.
...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 08 October 2025

ORAL JUDGMENT :-

1. By this appeal filed under Section 374(2) of the
Code of Criminal Procedure (for short, 'the CrPC'), the

appellants/ accused challenge the judgment and order dated 28.07.2004 passed by learned 2nd Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.215/2003 by which, they have been convicted for offences punishable under Sections 304 Part-II r/w Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC') and each of them is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.1000/- (Rupees One Thousand) each, in default of payment of fine, each of them is to suffer further rigorous imprisonment for 15 days. They have been acquitted for offences punishable under Sections 302, 325 and 324 of the Indian Penal Code.

2. The brief facts leading to filing of the present appeal are as under:

The prosecution case is that on 21.07.2003 Crime No.97/2003 was registered with Gangapur Police Station, District Aurangabad, for offences punishable under Sections 302, 325, 324, 323 r/w Section 34 of the Indian Penal Code against the appellants/ accused. The said FIR was registered on the basis of complaint (exhibit 16) lodged by Kadubal Honaji Rodge (PW-1), who is son of the deceased Honaji. As per the said complaint,

one year prior to 21.07.2003, quarrel had taken place between PW-1 Kadubal Honaji Rodge and Kadubal s/o Raosaheb Pandit, who is nephew of appellant No.1 Kashinath on account of grazing sheep. When Kadubal Pandit informed about this quarrel to his uncle appellant No.1 Kashinath, again quarrel took place between appellant No.1 and deceased Honaji Khandu Rodge and both of them had abused each other. On 20.07.2003 at about 07:00 to 07:30 pm, PW-1 Kadubal Rodge as usual left his sheep in his threshing floor and came to his house. In the way his father deceased Honaji met him and told to go home and take meal. When PW-1 Kadubal Rodge was sitting after taking meal, his father Honaji came there at about 08:00 to 08:30 pm and told him that when Honaji was passing in front of the house of appellant No.1, at that time, exchange of words and scuffle took place between him and appellant Nos.1 to 3 and they had beaten him. Thereafter, the deceased Honaji took his meal and at about 10:00 PM left his house towards threshing floor where his sheep were kept. Immediately thereafter, PW-1 Kadubal Rodge heard commotion and his father was shouting saying 'dead dead'. Therefore, PW-1 Kadubal Rodge reached on the spot and found that appellant Nos.1 to 3/ accused were beating his father Honaji

with sticks in front of their house. As per the prosecution, appellant No.2 (Mattu) gave stick blow on the head of deceased Honaji. When PW-1 Kadubal tried to rescue his father Honaji, appellant Nos.1 and 3 caught hold of his hands and appellant No.2 gave stick blow on his head. Meanwhile, villagers gathered on the spot and rescued him and his father. Raghu Jagannath Rodge (PW-6) and Appasaheb Gangadhar Rodge (PW-7) lifted Honaji, who had bleeding injuries on his head, and took him to his house. Sahebrao Govindrao Rodge and Abaji Govindrao Rodge took PW-1 Kadubal Rodge to his house. PW-1 Kadubal had dislocation of his right hand and he had bleeding injuries on his head on account of assault caused by accused No.2 with stick. PW-1 Kadubal was taken by Bhausahab Bobade, Raghunath Rodge and Appasaheb Rodge in a jeep to village Saundgaon, Taluka Vaijapur, District Aurangabad where dislocation of bone was set right. They left the house of PW-1 Kadubal at about 12 midnight. On 21.07.2003 at about 10:00 am in morning, when PW-1 Kadubal came to his house from Saundgaon, he found number of persons gathered in front of his house. He found his father Honaji was dead. Accordingly, PW-1 Kadubal Rodge lodged the complaint (exhibit 16) with Gangapur Police Station.

The Investigating Officer Santosh Patil (PW-13) recorded the complaint (exhibit 16) and took up investigation.

3. After completion of investigation, the charge-sheet was filed on 01.09.2003. Since offences were triable by the Sessions Court, the case was committed to the Sessions Court at Aurangabad. The learned Additional Sessions Judge framed charge (exhibit 3) against the appellants/ accused for offences punishable under Sections 302 r/w 34, 325 r/w 34 and 324 r/w 34 of the Indian Penal Code. The appellants/ accused pleaded not guilty and claimed to be tried. The prosecution has examined in all 13 witnesses as under:-

PW No.	Name of witness	Their role
PW-1	Kadubal Honaji Rodge	Son of deceased Eyewitness Complainant lodged FIR
PW-2	Navnath Rodge	Panch to inquest panchanma
PW-3	Ramdas Lande	Panch to seizure panchanama of clothes
PW-4	Muktabai Rodge	Wife of deceased Eyewitness
PW-5	Baban Rodge	Son of deceased Eyewitness
PW-6	Raghunath Rodge	Eyewitness
PW-7	Appasaheb Rodge	Eyewitness
PW-8	Dr.Gajanan Tarpe	Medical Officer

PW-9	Laxman Balaji Kolse	Panch to memorandum of panchanama
PW-10	Govindrao Gaikwad	Circle Revenue Inspector who drew the map.
PW-11	Syed Ismail	Panch for memorandum panchanama
PW-12	Govind Rodge	Brother of deceased Eyewitness
PW-13	Santosh Patil	Investigating Officer

4. Out of the aforesaid 13 witnesses, PW-1, PW-4, PW-5, PW-6, PW-7 and PW-12 are eyewitnesses. After recording evidence and hearing the appellants and prosecution side, the learned 2nd Ad-hoc Additional Sessions Judge, Aurangabad, was pleased to pass the impugned judgment.

5. Learned advocate Shri Ladda appearing for the appellants submitted that the learned Sessions Judge committed grave error by convicting the appellants under Section 304 Part II of the IPC as it has not properly appreciated evidence brought on record. The prosecution has failed to prove guilt of the appellants beyond reasonable doubt and as such, they cannot be convicted for said offence. Learned advocate submitted that the learned Sessions Judge, while acquitting the appellants for offence punishable under Sections 302, 325 and 324 of the IPC, was

pleased to consider that there is no evidence of alleged dislocation of hand of PW-1 (Kadubal Rodge) and there is total absence of medical evidence about said dislocation. Though the Medical Officer PW-8 in his deposition stated that PW-1 Kadubal had complained about said dislocation, however, his certificate does not show grievous hurt injury. On the said point of dislocation of hand due to assault made by the appellants, learned Sessions Judge disbelieved all eyewitnesses. Therefore, according to Shri Ladda, learned Sessions Judge ought to have disbelieved entire testimony of all eyewitnesses as the prosecution case proved to be shaky and unreliable. The conviction of appellants under Section 304 Part II cannot be sustained on the basis of statements of eyewitnesses, which are disbelieved by the Trial Court while acquitting them for charges under Sections 302, 325 and 324.

6. As regards alleged recovery of the weapon/ stick, which is alleged to have caused death of deceased and recovered at the instance of accused No.2, learned advocate Shri Ladda submitted that the learned Sessions Judge has specifically arrived at a finding that the prosecution has failed to prove that the

alleged stick recovered at the instance of accused No.2, was the weapon which is likely to cause death of the deceased. Moreover, the said recovered stick has not been shown to the Medical Officer and there were no blood stains on the stick. Learned advocate Shri Ladda further submitted that as the prosecution has failed to prove that the accused persons voluntarily caused hurt to PW-4 Muktabai Rodge, wife of deceased, by sticks allegedly recovered, therefore, it was not appropriate for learned Sessions Judge to convict the appellants/ accused particularly when alleged injuries to the victims have not been proved to have been caused by sticks. Learned advocate also submitted that there are lot of discrepancies in evidence of PW-1, PW-4 and PW-5, who are family members of the deceased Honaji. According to him, PW-1 (Kadubal Rodge) stated that accused Nos.1 and 3 caught hold hands of deceased Honaji. However, PW-5 Baban Rodge stated that the accused were holding sticks in their hands. PW-4 Muktabai did not disclose specific role attributed to the accused. Therefore, there is no evidence in entire testimony of PW-1, PW-4 and PW-5 regarding the blow given by accused Nos.1 and 3. As such, learned Sessions Judge has rightly disbelieved evidence of PW-4 Muktabai on this count. Evidence of PW-5 Baban does

not disclose that he had actually seen assault to his father Honaji. Thus, according to learned advocate, there is no consistency in evidence of alleged eyewitnesses.

7. Learned advocate for the appellants further submitted that medical evidence also does not support the prosecution case. There are lot of omissions, which have been kept by the prosecution. Said omissions ought to have been taken into account by learned Sessions Judge while convicting the appellants. The incident has taken place in front of house of the accused, therefore, they cannot be said to be aggressors or provokers. Another eyewitness PW-12 Govind Rode, who is elder brother of deceased Honaji, in his entire evidence nowhere stated as to who had assaulted Honaji. Learned advocate submitted that the accused persons had also suffered injuries. There is medical evidence pertaining to said injuries, however, the prosecution has thrown no light on same. There is no explanation offered by the prosecution as to how these injuries caused to the accused persons. The accused persons had also gone to the Police Station, which has come on record from testimony of PW-4 Muktabai. However, the police, for reasons

best known to them, did not take cognizance. Therefore, the genesis of alleged incident is suppressed. In such circumstances, benefit is, therefore, required to be given to the appellants/accused. Learned advocate Shri Ladda, therefore, submitted that considering entire evidence on record, the appeal needs to be allowed and the appellants be acquitted.

8. *Per contra*, learned APP Shri Jadhav strongly opposed the submissions of Shri Ladda. According to learned APP, there are eyewitnesses to the incident, who have proved the assault on deceased Honaji beyond all doubts and therefore, their evidence cannot be discarded. Merely because eyewitnesses are family members of deceased Honaji, they cannot be termed as interested witnesses and, therefore, their evidence cannot be thrown aside particularly when nothing adverse has been pointed out by the defence as regards rivalry or interest of these eyewitnesses. Learned Sessions Judge has rightly considered evidence of eyewitnesses and rightly convicted the appellants for offence punishable under Section 304 Part II. Learned APP, therefore, prayed for dismissal of the appeal.

9. After in-depth hearing the submissions of learned

advocates and with their assistance, after going through evidence on record carefully, it is clear that there is no consistency in evidence of claimed eyewitnesses. The fact remains that eyewitnesses are disbelieved by learned Sessions Judge while acquitting the accused for offences punishable under Sections 325 and 324 in relation to injuries caused to PW-1 (Kadubal Rodge), however, on the basis of same testimony, the appellants are convicted for offence punishable under Section 304 Part II. It has been rightly pointed out by learned advocate Shri Ladd that there are lot of discrepancies in evidence of eyewitnesses and nobody has firmly stated about author of alleged injury caused to the deceased Honaji on his head. The postmortem report (exhibit 31) of deceased Honaji discloses that he had received three surface wounds and injuries as are mentioned in paragraph 17 of postmortem report, namely, (1) he had received Contused Lacerated Wound (CLW) over right parietal region (admeasuring 6x2x2 cms) extending from mid parietal region towards right ear; (2) Abrasion over right thigh lower 1/3 region 3x3x1/2 cms; and (3) Abrasion over left thigh admeasuring 3x2.5 cms lateral aspect. On internal examination of dead body, the postmortem report reveals hematoma under scalp from right zygomatic

region root of right ear and no evidence of skull abnormalities. It further discloses brain oedema present. There is evidence of cranial injury over right parietal to be of brain laceration 3x2x2 cms and hematoma present over there of size 6x4 cms. Finally, the probable cause of death was stated to be due to head injury. In this context, it was necessary for the prosecution to prove the assault caused by a particular accused person on the head of deceased Honaji, who could have been said to be author of head injury. However, despite there being six eyewitnesses, nobody has corroborated evidence of another witness. It was duty of the prosecution to prove the case beyond all reasonable doubts. If evidence of all six eyewitnesses is perused, it would reveal that PW-1 (Kadubal) says that the accused were beating deceased Honaji with sticks; PW-4 (Muktabai) deposed that only accused No.2 (Mattu) hit stick on head of deceased; PW-5 (Baban) stated that accused No.3 Vitthal hit stick on the head of deceased Honaji; PW-6 (Raghunath) stated that accused No.2 (Mattu) and accused No.3(Vitthal) were beating deceased Honaji; PW-7 (Appasaheb) stated that all accused were beating deceased Honaji; and PW-12 (Govind) merely said that deceased Honaji was beaten, however, he does not say who had given stick blow

over head of deceased Honaji. In such circumstances, it becomes impossible to ascertain conclusively as to who is author of injury on head of deceased Honaji.

10. To attract Section 304 Part II, the prosecution must establish that the accused had knowledge that his act was likely to cause death. The evidence on record neither proves such knowledge nor a specific overt act attributable to any of the accused. In absence of cogent medical and ocular correlation, conviction under Section 304 Part II cannot be sustained. Insofar as Section 34 of IPC is concerned, common intention is not proved because no consistent role or pre-planning is attributed to the accused persons. It is also undisputed that the accused persons had sustained injuries in the same transaction. The prosecution has failed to explain these injuries, which creates a doubt about its version and strengthens the defence plea that the prosecution suppressed the true genesis of the incident.

11. Having carefully considered the testimony of six alleged eyewitnesses, this Court finds substantial contradictions regarding the participation and overt acts of each accused. The prosecution has failed to establish a consistent and trustworthy

version. Medical evidence does not conclusively connect the head injury of the deceased with any particular accused or with the weapon allegedly seized. The unexplained injuries on the accused further create reasonable doubt about the prosecution case. Hence, benefit of doubt must go to the appellants. It is well settled principle of law that when two views are possible, the one favourable to the accused must be adopted (see *Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622*).

12. In the above facts and circumstances of the case, the appellants/ accused cannot be held guilty for offence punishable under Section 304 Part II read with Section 34 of Indian Penal Code. **Hence, this Criminal Appeal is allowed and the impugned judgment and order is quashed and set aside.** The appellants/ accused are acquitted for offence punishable under Section 304 Part II read with Section 34 of the IPC. The appellants be released forthwith, if not required in any other case. Fine amount, if deposited, be refunded.