

Jaising Waman Patil

Vs

State of Maharashtra

Criminal Appeal No. 324 of 1981

(K. Jayachandra Reddy, N. P. Singh JJ)

07.08.1992

### JUDGMENT

1. This is an appeal under S. 379, Cr. P.C. read with S. 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The appellant along with three others were tried for offences punishable u / S. 302 read with S. 34, IPC. The appellant was also charged u/S. 302 simpliciter. The trial court acquitted all the accused rejecting the testimony of the sole eye-witness, P.W. 7, who is widow of the deceased. The State preferred an appeal to the High Court. The learned Judge of the High Court while confirming the acquittal of A-2 to A-4 convicted the appellant (A-1) under S. 302, IPC and sentenced him to undergo imprisonment for life. Mr. P.H. Parekh, learned counsel for the appellant submits that the evidence of P.W. 7 suffers from serious infirmities and she could not have witnessed the occurrence as she was sleeping. At any rate the version given by her is highly unreliable and that her conduct subsequent to the occurrence is highly unnatural. His further submission is that the view taken by the trial court is reasonable one and the High Court has grossly erred in interfering with the matter.

2. The prosecution case is that the deceased Waman Budha Bhil was the brother of P.W. 5 and husband of P.W. 7. The husband and wife were living in a hut in the field. It appears that there was enmity between A-1 and the deceased and his wife on the ground that A-1 had illicit sexual relations with Meerabai, P.W. 9, the sister of P.W. 7. There were some disputes. On the date in question i.e. 24-6-1975 at about 8.30 p.m. P.W. 7 and deceased were sleeping. P.W. 7 woke up for urination and again was lying down. At that juncture, it is alleged that A-1 to A-4 entered the hut. There was a kerosene lamp burning in the wall pocket in the hut and that P.W. 7 identified that A-1 had the big stone, A-2 had an axe and the other two accused had small stones with them. They went round the deceased and A-2 threatened P.W.7 and made her known to raise no cries. It is further alleged that the A-1 threw the stone on the head of the sleeping deceased as a result of which he died subsequently and all the accused left the place. Thereafter P.W. 7 raised cries and hearing the same P.W. 5 and others came there. P.W. 10 also came there. But no report was given to him. However, P.W. 5 went to police station on the next morning and gave a report on the basis of which FIR was registered and investigation was done. The dead body was sent for postmortem. The doctor P.W. 8 conducted the post-mortem. He noticed a vertical contused lacerated wound on the right frontal region above the right eye-brow extending all over the right frontal region and extending up to the right parietal region of the dead body. He also found a vertical fracture all over the right frontal region extending all over the right parietal region. He found that the injuries could have been caused by blunt objects and they were sufficient to cause death in the ordinary course of nature. After completion of the investigation a charge-sheet was filed.

3. The prosecution mainly relied on the evidence of P.W. 7 and some corroborating: evidence of

P.W. 9. The learned Sessions Judge pointed out several discrepancies in the evidence and held that it is highly unsafe to rely and ultimately acquitted the accused.

4. From the High Court judgment we find that the P.W.7's evidence is accepted only to the overt act attributed to the appellant. It may not be necessary for us to examine her evidence in detail for the reason that the evidence of P.W. 5 completely demolishes P.W. 7's evidence. P.W. 5 is no other than the brother of the deceased. He also lives in the same vicinity. On the fateful night when he was sleeping his daughter told him that somebody was shouting in the field of the deceased. P.W. 5 also heard the shouts. His father told him that somebody had beaten the deceased. Thereupon P.W. 5 went to the hut of the deceased and saw that P.W. 7 was there. He found the deceased lying on the bed and there was a head injury. He immediately asked P.W. 7 as to what had happened. She did not say anything. P.W. 5 thereafter went to police patel and he was not in the house. Next morning he went to the police station and gave the report. The witness, however, in the examination itself stated that the whole of the report is not correct. In the cross-examination by the accused it is clearly stated that P.W. 7 did not tell anything to the police patel in the presence of P.W. 5. This is a serious infirmity regarding the present version that has been put forward. If P. W. 7 told P. W. 5 that she was fast asleep and somebody had beaten the deceased then the present version of P.W. 7 becomes highly unreliable. This and many other infirmities had been pointed out by the trial court. In such a situation we are of the view that the High Court ought not to have interfered in the matter. The appeal is allowed. The conviction and the sentences of the appellant are set aside. He is on ball. His bail bond shall stand cancelled. The appeal is accordingly allowed. Appeal allowed.

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