

MHKO010001342018



Presented on : 05/01/2018
Registered on : 09/01/2018
Decided on : 28/01/2020
Duration : 02Y 00M 23D

IN THE COURT OF ADDL. SESSIONS JUDGE, KOLHAPUR
AT : KOLHAPUR.

(Presided over by A. V. Choudhari- Inamdar)

SESSIONS CASE NO.1/2018
EXH.NO.30/A.

State of Maharashtra,
(Through Murgud Police Station)

... *Prosecution*

Versus

Mahadev Maruti Parit
Age 35 Yrs. Occ.Agriculture,
R/o:-Madhyal, Tq-Kagal,
Dist-Kolhapur.

... **Accused.**

Appearances :

A.P.P. Smt.P.J.Jadhav for the State
Adv. Shri.S.R.Shinde for the accused.

JUDGMENT

(Delivered on this 28th day of January, 2020)

1] The accused is facing trial for having committed offence punishable under section 307 of Indian Penal Code.

2] It is alleged by prosecution that, the informant Lata along with her son, parents, brother and his wife resides at Madhyal, Tq-Kagal, Dist-Kolhapur. She does labour work in agricultural field to maintain herself and her son. The accused Mahadev, son of informant's cousin brother is her next door neighbour. He is alcoholic and quarrels with the people in vicinity. On 24/9/2007 at about 1.00 p.m, the informant was proceeding to the house of Yashoda Pandurang Rajgire. At that time, Mahadev Parit suddenly came from backside with Shovel in his hand and gave blow on the informant's neck and back side of her head. Due to said blow the informant fall down. While leaving the spot, the accused Mahadev Parit gave Shovel blow on the informant's feet and ran away. The informant raised hue and cry due to which her brother Prakash Parit, daughter-in-law Meenakashi and neighbours Yashoda Rajgire and others gathered there. They took informant to Rural Hospital, Gadhinglaj for first aid and admitted her to Hathargi Hospital for further treatment.

3] On basis of FIR, crime was registered at Crime No. 56/2017 for offence punishable under section 307 of Indian Penal Code. During investigation, the police has drawn spot

panchanama, memorandum panchnama cum seizure panchnama, recorded statement of witnesses and secured photographs of spot of incident, extract of log-book, house tax assessment list and collected medical certificate of informant. After investigation charge-sheet was filed against the accused.

4] The charge at Exh.10 was framed against accused for offence punishable under section 307 of Indian Penal Code. The contents of charge were read over and explained to the accused in vernacular to which he pleaded not guilty and claimed trial.

5] In order to discharge the burden to prove its case, the prosecution has examined in all four witnesses viz. informant Lata Balkrishna Parit at Exh.14, panch witness Dattatraya Ramchandra Lokhade at Exh.21, informant's brother Prakash Rajaram Parit at Exh.23 and investigating officer Rakesh Hande at Exh.26. Apart from the said oral evidence, the prosecution has relied on FIR Exh.15, spot panchnama Exh.16, clothes seizure panchnama Exhs.17 and 18, memorandum cum seizure panchnama at Exh.22, medical certificate at Exh.19, statement of informant at Exh.27, extract of log book entry in regard to use of Govt. vehicle at Exh.28. Thereafter, the prosecution has closed its evidence vide pursis Exh.28.

6] As transpired from cross-examination of prosecution witnesses and statement of accused u/s. 313 of the Code of Criminal Procedure, the defence of accused appears to be of

total denial and false implication.

7] Heard the Learned A.P.P Smt.Jadhav for State and Adv. Shri. Shinde for the accused.

8] The points for determination along with my findings for the reasons recorded are as under :

POINTS	FINDINGS
1. Whether the prosecution proves that on 24.9.2017 at about 13.00 hours in front of informant's house situated at village Mandhyal, Tal-Kagal, Dist.Kolhapur, the accused assaulted informant Lata Balkrishna Parit, by means of shovel and thereby attempted to commit her murder, with such intention or knowledge and under such circumstances that if, by that act, he had caused the death of informant would have been guilty of murder and thereby committed an offence punishable u/s. 307 of the Indian Penal Code?	.. No.
2] What order?	..Accused is acquitted.

-: REASONS :-

As to point No. 1 : -

9] As per the evidence of informant Lata and informant's brother Prakash, accused is son of their cousin brother and is residing in their neighbour. They stated that, on

24/9/2017, informant was taking shovel kept on the loft of their house. Further, the informant has testified that while taking Shovel kept on the loft, she got hurt on her neck and fell unconscious and do not know as to what happened thereafter. Moreover, the informant Lata and PW-3 Prakash denied the case of prosecution by contending that, it did not happen that on the said day, informant was proceeding to the house of Yashoda Rajgire and at that time accused Mahadev Parit assaulted her by means of Shovel. Thus, the informant herself and the so called eye witness have not supported case of prosecution.

10] The informant Lata and her brother Prakash were cross examined by the prosecution as they resiled from their earlier statements. But, they denied the prosecution's case putforth to them in form of suggestion that, informant was proceeding to the house of Yashoda Rajgire and at that time, the accused assaulted her by means of Shovel, due to which the informant sustained bleeding injury on her neck, back side of her head and on the feet. It is also denied that informant was taken to the Rural Hospital, Gadhinglaj in the vehicle of Tanaji Sutar and thereafter was admitted at Hathargi Hospital. Thus, attempt of prosecution to secure evidence against accused proved to be futile.

11] The investigating officer Hande stated that on 24/5/2016, police station received information that, one woman at Madhyal is assaulted by means of Shovel and so he went to Hathargi hospital and recorded statement of said woman by

name Lata Parit. He stated that she has been assaulted by means of Shovel on her neck, head and foot by her cousin brother's son Mahadev Parit. Accordingly, the statement was recorded as per her say. Here, it is to be noted that, the informant though admitted her thumb impression Exh.15 on the statement, but has denied the contents therein to be as per her say. Therefore, the version of investigating officer about statement by informant in regard to assault to her and recording her statement as per her say is not sufficient to prove the said fact. Thus, the prosecution could not prove the FIR.

12] The investigating officer admitted in his cross examination that, the statement of patient is not recorded, unless and until the doctor confirms that the patient is in state to give the statement. As stated by investigating officer, the endorsement of doctor do appear on informant's statement Exh.27 that she is fully conscious, orientated and in position to give statement. But, as per version of the investigating officer the endorsement of the doctor on Exh.27 was recorded subsequent to the recording of informant's statement. Therefore, no importance can be attached to the endorsement by the medical officer on the informant's statement Exh.27.

13] The investigating officer admitted that, it was transpired in the investigation that, informant Lata Parit took first aid at Primary Health Centre, Gadhinglaj and was thereafter admitted at Hathargi Hospital, Gadhinglaj. However, as stated by the investigating officer, police station did not receive any

information from Primary Health Centre, Gadhinglaj about Lata Parit. If, as per the doctor's endorsement on informant's statement Exh.27, the informant's wound was sutured at Primary Health Centre, Gadhinglaj then, the informant's medical record at Primary Health Centre, Gadhinglaj proves to be material piece of evidence. However, as stated by the investigating officer, he did not visit the Primary Health Center, Gadhinglaj to enquire as to what history was narrated by the patient. This shows the lacunae in the investigation.

14] To prove the recovery of the alleged weapon used in commission of offence, the prosecution has examined panch witness to the memorandum cum seizure panchanama. PW-2 Dattatraya stated that, he is working as a teacher at Shivraj Vidhyalaya, Murgud. On 27/9/2017 his principal received phone call from police station with request to provide two teachers as panch witness. As per the directions of the principal, he and another teacher Sandip Musale went to Murgud police station. They were enquired as to whether they were ready to act as a panch witness and they agreed to it.

15] Here, it is to be noted that, as per the evidence in cross examination the school hours are since 11.00 a.m to 5.00 p.m. As stated the witness was teaching in the class when alleged phone was received by the school principal and thus the witness do not have personal knowledge about the phone call from the police station. There is no record to support that, the principal allegedly directed the witness to attend the police

station. So also, the witness stated that he did not seek any leave on the said day. In said facts and circumstances, doubt arise about the presence of panch witness at the police station when the alleged memorandum was given by the accused. Moreover, in view of the version that he is acquainted with the police officer Hande i.e. investigating officer prior to panchnama, the panch witness cannot be said to be an independent witness. Accordingly, his testimony needs to be minutely scrutinized.

16] As per the contention of PW-2 Dattatraya and investigating officer Hande, the accused gave memorandum and in furtherance of it, at the instance of accused the weapon used in commission of offence is recovered from the house of accused at village Madhyal. It is to be noted that, the panch witness has stated in his cross examination, that it was the investigating officer Hande who narrated him that the accused had hidden the weapon in his house and after narrating it, the police officer Hande shown them the memorandum. There was no conversation between police officer Hande and accused in his presence. In view of said evidence, the alleged memorandum cannot be said to be given by the accused and recorded in presence of the panch witness. As admitted by the panch witness, the accused was not asked as to whether he is voluntarily giving the memorandum. In such circumstances, even for sake of consideration, it is held that alleged memorandum was given by accused, it cannot be accepted as voluntary.

17] The recovery of weapon used in commission of offence is alleged to be from the house of accused at Madhyal village. As per the evidence in cross examination of panch witness, the doors of house where the accused allegedly led them were open and no one was present in the house. This shows that, any one could have easy access to the house. Therefore, the weapon cannot be said to be within exclusive knowledge of the accused. Moreover, it has come in the cross examination of investigating officer that the alleged house was of a farmer and so agricultural equipments were in the house. It is also admitted that in the house of farmer, the Shovel is usually found. Accordingly, the recovery of alleged weapon from such place cannot be taken otherwise.

18] As per the version of investigating officer that, if family members were also residing in the alleged house of accused, then recording of statements of alleged family members was expected. However, as stated by the investigating officer, he has not recorded statement of any family members of the accused. Moreover, as stated by the investigating officer, there is no documentary evidence to show that the house from where the alleged weapon was recovered belongs to accused. Accordingly, accused cannot be related to the weapons recovered from alleged house.

19] Further, the panch witness has stated that, prior to them police entered in the house. They did not take personal

search of police before they entered the alleged house. When they saw Shovel for the first time, it was in the hands of police. This again raises doubt about prosecution case that the alleged recovery of weapon was at the instance of accused.

20] The above discussed evidence on record shows that, informant herself has not supported the case of prosecution. The so called eye witness has also denied the case of prosecution in toto. The evidence in the cross examination of panch witness and investigating officer raises doubt about the recovery of alleged weapon at the instance of accused. Thus, the prosecution failed to establish that accused assaulted informant Lata by means of Shovel and thereby attempted to commit her murder, with such intention or knowledge and under such circumstances that if, by that act, accused had caused the death of informant, the accused would have been guilty of murder and thereby committed an offence punishable u/s. 307 of the Indian Penal Code. Hence, I answer point No. 1 in the negative.

As to point No.2 :-

21] In view of finding to point No. 1, I hold that, the prosecution has failed to prove the charge against the accused. Therefore, the accused is entitled for acquittal. The muddemal i.e. clothes at Articles 'B' and 'C' described in chargesheet being unclaimed and worthless be destroyed after appeal period and if appeal is not preferred. Considering nature of the article

namely one Shovel Article 'A', it will be just and proper to send it to District Magistrate for its disposal according to law after appeal period is over and if appeal is not preferred. Hence, I proceed to pass the following order :

ORDER

- 1] Accused is acquitted u/s. 235(1) of the Code of Criminal Procedure of the offence punishable under section 307 of Indian Penal Code.
- 2] The bail bonds of accused stands cancelled.
- 3] Accused to furnish P.B & S.B of Rs.15,000/- in compliance of Section 437-A of Cr.P.C.
- 4] The Muddemal i.e. one Shovel Article 'A' be sent to District Magistrate for its disposal according to law after appeal period is over and if appeal is not preferred.
- 5] The muddemal i.e. clothes Article 'B' and 'C' described in chargesheet be destroyed after appeal period is over and if appeal is not preferred.

(Pronounced in open court.)

sd/-

Kolhapur.
Date : 28/1/2020

(Smt.A. V. Choudhari-Inamdar)
Additional Sessions Judge, Kolhapur.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	Sou.S.R.Tambvekar
Name of Court	Smt.A.V.Choudhari-Inamdar Addl. Sessions Judge, Kolhapur.
Date of Dictation	28/01/2020
Order signed by the P.O. on	03/03/2020
Order uploaded on	03/03/2020

