

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.2038-2039 OF 2010

Vasant Shriram Jadhav

... Appellant

versus

State of Maharashtra & Ors.

... Respondents

O R D E R

Respondent Nos.2 to 4 herein faced trial before the Additional Sessions Court, Ambajogai in Sessions Case No. 35 of 1991 for the offence under Section 302 of the Indian Penal Code (IPC) and other offences. The trial Court, relying upon the evidence of PW-9 (Girijabai), mother of the deceased, convicted all the three respondents (accused) for the offence under Section 304 Part II, IPC and sentenced them to undergo imprisonment for a period of three years. The State filed Criminal Appeal No.141 of 1996 praying for conviction of the accused persons for the offence under Section 302, IPC, whereas the accused persons filed Criminal Appeal No.62 of 1996 praying for acquittal. Both the appeals were heard together before the High Court of Judicature at Bombay, Bench at Aurangabad and were decided by the common judgment which is impugned in this appeal.

The High Court modified the judgment of conviction passed by the trial Court to one under Section 326, IPC. However, it retained the sentence of three years. Respondent No.4 herein,

namely Haridas, was acquitted by the High Court. However, the conviction of Shivram and Baliram (Respondent Nos. 2 and 3 herein) was maintained as mentioned supra.

This appeal is filed by the complainant, who is none other than the son of the deceased, to set aside the judgments of the Trial Court and the High Court, and to convict the accused for the offence under Section 302, IPC.

Mr. Sudhanshu S. Choudhari, learned counsel for the appellant vehemently contended that accused Haridas could not have been acquitted by the High Court inasmuch as he had assaulted the deceased with a sharp-edged weapon, and one of the injuries suffered by the deceased was an incised wound which could have been caused by a sharp-edged weapon. He further argued that the Courts were also not justified in acquitting the other accused for the offence under Section 302, IPC inasmuch as the intention of the said accused was clearly to do away with the life of the deceased.

Per contra, learned counsel for the Respondent Nos.2 and 3, drawing the attention of the Court to the evidence of PW-9, argued that the evidence of PW-9 was not believable inasmuch as her evidence was riddled with contradictions and omissions. He also submitted that the dying declaration could not have been relied upon by the High Court.

The case of the prosecution mainly hinges upon the evidence of PW-9 and the dying declaration, Exhibit No.44 recorded by the police while the deceased was undergoing treatment in the hospital.

The High Court relied upon the dying declaration while coming to its conclusion. The trial Court as well as the High Court consistently held that the evidence of PW-9 was reliable and trustworthy.

We too find her evidence to be natural and reliable, and do not find any ground to discard the same. This is because her presence on the scene of offence cannot be doubted, since PW-9 being the mother of the deceased had accompanied her thereto, i.e. to the disputed agricultural field, to oppose cultivation by the accused on such land. The deceased perhaps genuinely felt that she continued to be the owner of the property, though her husband had sold the same about one month prior to the incident in favour of the accused. PW-9 was also injured in the incident in question.

It may be noted that the convicted accused have not filed any appeal before this Court questioning their conviction and sentence. We also find that valid reasons were assigned by the High Court while acquitting Haridas. The view taken while acquitting the said accused cannot be said to be perverse. It can be safely said that the High Court has taken one of two possible views and acquitted Haridas. We hasten to add here itself that though there are certain variations and minor omissions in the evidence of PW-9, her evidence cannot be disbelieved in toto, particularly when she has withstood her cross examination in respect of the main factor, i.e. the assault on the deceased by the convicted accused. In view of the same, the contentions raised by the Learned Advocate on those aspects cannot be accepted.

Having gone through the material on record, more particularly, the evidence of PW-9 and the other evidence, we are of the conclusion that the Trial Court was justified in convicting the accused persons for the offence under Section 304 Part II, IPC as there was no intention on the part of the accused to commit the murder of the deceased. The accused persons caused fourteen injuries out of which seven were fractures. The deceased died within three-four days of the incident in question due to the injuries suffered therein. Therefore, in our considered opinion, the High Court was not justified in convicting the accused persons for the offence under Section 326, IPC and should have maintained the conviction for the offence under Section 304 Part II, IPC. We also find that the sentence imposed by the High Court, in and of itself, is too meagre under the facts and circumstances of the case. However, notably, the incident is of the year 1991 and the impugned judgment is of the year 2008. The accused have already undergone the imprisonment imposed upon them about 10 years prior to this date, and have resumed living in society. We also find that the accused are aged about 70 years and 65 years respectively. Hence, we deem it proper not to send the appellants back to prison at this age and stage. The interest of justice would be served if the family members of the deceased were sufficiently compensated in terms of money. Hence, we pass the following order:-

Respondent Nos.2 and 3 herein are convicted for the offence under Section 304 Part II, IPC and are sentenced to undergo imprisonment for three years, which they have already undergone. A fine of Rs.3,00,000/- (Rupees three lac only) each is also imposed

on them, to be deposited before the Trial Court within three months from this day. In case of default in deposit of the fine, they shall undergo further imprisonment for a period of three years. In case the entire amount is deposited, the same shall be disbursed in favour of the petitioner-complainant, Shri Vasant Shriram Jadhav. The said amount shall also enure to the benefit of other children, if any, of the deceased.

The appeals are accordingly disposed of.

....., J.
(Mohan M. Shantanagoudar)

....., J.
(Indu Malhotra)

New Delhi;
April 04, 2019.

ITEM NO.103

COURT NO.13

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2038-2039/2010

VASANT SHRIRAM JADHAV

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

Date : 04-04-2019 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MS. JUSTICE INDU MALHOTRAFor Appellant(s) Mr. Sudhanshu S. Choudhari, AOR
Ms. Surabhi Gulena, Adv.
Mr. Yogesh Kolte, Adv.
Ms. Nandini Singla, Adv.For Respondent(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Anoop Kandari, Adv.
Ms. Deepa M. Kulkarni, Adv.Mr. Makarand D. Adkar, Adv.
Mr. Pravin Satale, Adv.
Mr. Vijay Kumar, Adv.
Mr. Rajiv Shankar Dvivedi, AOR
Mr. Mustafa A. Khan, Adv.

Mr. Uday B. Dube, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

(GULSHAN KUMAR ARORA)
COURT MASTER (SH)(SUNIL KUMAR RAJVANSHI)
COURT MASTER

(Signed order is placed on the file)