
Tukaram Tulsiram Pawar Vs The State of Maharashtra

Criminal Appeal No. 210 of 2014 in Sessions Case No. 227 of 2007

Court: Bombay High Court

Date of Decision: March 20, 2014

Acts Referred:

Penal Code, 1860 (IPC) " Section 302, 34

Citation: (2014) 3 BomCR(Cri) 209

Hon'ble Judges: P.V. Hardas, J; A.S. Gadkari, J

Bench: Division Bench

Advocate: Rohini Dandekar, Advocate for the Appellant; F.R. Shaikh, Addl. P.P, Advocate for the Respondent

Final Decision: Allowed

Judgement

P.V. Hardas, J.

This Appeal has been filed after a delay of four years and 329 days challenging the judgment of the Ad Hoc Additional

Sessions Judge-1, Nashik dated 2 February 2009 convicting the Appellant/original accused No. 1 for offence punishable u/s 302 read with 34 of

the Indian Penal Code. We therefore admit the Appeal and hear the Appeal forthwith.

2. It appears that original accused No. 2 Tulshiram, father of the Appellant had filed Criminal Appeal 777 of 2011 challenging his conviction and

sentence. The Division Bench of this Court by judgment dated 7 January 2014 allowed the Appeal. The Appellant had not filed an Appeal and the

Appeal of the Appellant was filed after the judgment in Criminal Appeal 777 of 2011. In that light of the matter therefore, since the co-accused has

been acquitted on the basis of the same evidence, as the evidence against the Appellant, we consider it appropriate to decide this Appeal at this

stage. The record and proceedings of Criminal Appeal 777 of 2011 have been made available for our perusal. Since the evidence against the

Appellant and the co-accused is common, we can usefully refer to the record of Criminal Appeal 777 of 2011

3. The evidence against the Appellant comprises of the two dying declarations at Exhibit 18 and Exhibit 26. The Division Bench in its judgment

dated 7 January 2014 declined to place any reliance on the said two dying declarations on the ground that (i) P.W. 5 Sushilabai, mother of

deceased Sarika had admitted that deceased Sarika could talk only in Vadari language while the dying declarations were recorded in Marathi. The

Division Bench therefore came to the conclusion that there was no evidence that the contents of the dying declaration had been explained to Sarika

in Vadari. (ii) The Division Bench found that Sarika had claimed that she was six months pregnant, while the postmortem report indicated that she

was not pregnant and the Court therefore came to the conclusion that Sarika was not mentally fit when her dying declarations were recorded. (iii)

The Division Bench further found that in view of Exhibit 17 which is letter written by constable of the Nashik Police Station to the Special

Executive Magistrate and Exhibit 33 which is an extract of station diary, history of Sarika committing suicide was recorded. Sarika had been

admitted in the hospital by her maternal cousin and consequently the Court placed the said disclosure on a very high pedestal. The disclosure of

suicide therefore falsified the contents of the dying declarations.

4. The Division Bench therefore concluded that in the absence of any other reliable evidence, conviction of the Appellant before it i.e. original

accused No. 2, could not be sustained and therefore acquitted original accused No. 2.

5. The evidence against the Appellant is identical in nature to the evidence which was available against accused No. 2. Since the Division Bench

has appreciated the evidence and acquitted original accused No. 2, we also accept the findings recorded by this Court in Criminal Appeal 777 of

2011 and in the light of the findings recorded therein, allow this Appeal and acquit the Appellant.

6. We accordingly allow Criminal Appeal 210 of 2014 and quash and set aside the conviction and sentence of the Appellant and acquit him of the

offence with which he was charged and convicted. Fine, if any, paid by the Appellant be refunded to him. Since the Appellant is in jail, he be

released forthwith, if not required in any other case.

Fees payable to the learned counsel appointed for the Appellant are quantified at Rs. 3,000/-.