

**2023 STPL(WEB) 18 SC
SUPREME COURT OF INDIA**

(ANIRUDDHA BOSE AND RAJESH BINDAL, JJ.)

AMOL BHASKARRAO WAGHMARE

Appellant

VERSUS

STATE OF MAHARASHTRA

Respondent

Criminal Appeal No. 744 of 2011-Decided on 07-06-2023

Murder – Trial Court and High Court has not found any part being played by the appellant in commission of the offences - Conviction set aside

Advocate(s): Ms. Bansuri Swaraj, Advocate, Mr. Siddhesh Kotwal, Advocate, Ms. Ana Upadhyay, Advocate, Ms. Manya Hasija, Advocate, Mr. Nihar Dharmadhikari, Advocate, Mr. Sontu Mia, Advocate, Mr. Nirnimesh Dube, Advocate, for the Appellant;
Mr. Aaditya Aniruddha Pande, Advocate, Mr. Siddharth Dharmadhikari, Advocate, Mr. Bharat Bagla, Advocate, for the Respondent.

ORDER

1. The appellant, along with three other offenders, were convicted for commission of offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') by the Court of Sessions, Akola in the State of Maharashtra. The appellant was sentenced to imprisonment for life with fine of Rs.5000/- on conviction under Section 302 of the IPC and rigorous imprisonment for seven years with fine of Rs.3000/- on conviction under Section 307, read with Section 34 of the IPC. The sentences of imprisonment were directed to run concurrently with default imprisonment stipulations. His appeal against the judgment of conviction and order of sentence was dismissed by the High Court by a judgment of the High Court of Judicature at Bombay, Nagpur Bench on 19th April 2010. In the present appeal, he assails the said judgment of the High Court.

2. Allegation against the appellant is committing murder of one Nitin Dhanurdhari (the deceased) and causing injury to another person, Santosh Adagale in the early hours of 20th April 2003 (3.30 a.m.) while the victims were sleeping on a platform of a temple in the locality of Akola. The conviction under Section 307 of IPC was for causing injury to said Santosh Adagale, who was at the same spot with the deceased victim. The latter has deposed as PW-1 in the trial. The other offenders, who were implicated in the same set of offences are Sau. Rukhmabai Shaligram Ingole, Pratima Rajesh Telgote, Shaligram Roopaji Ingole (now deceased), Sandeep Shaligram Ingole and Vikas Shaligram Ingole. The prosecution case was that the accused persons had arrived at the place of occurrence armed with sword, iron pipes etc. and had brutally assaulted the said two victims, one of whom had succumbed to injuries.

3. The Trial Court (The Court of Sessions, Akola) had acquitted the two ladies i.e., Sau. Rukhmabai Shaligram Ingole and Pratima Rajesh Telgote but convicted the other accused persons. Among the accused persons, however, was one Sachin Tayade, who was a juvenile at the material point of time and was tried under the statute applicable to juveniles.

4. As we have already indicated, the High Court, in the impugned judgment affirmed the decision of the Trial Court. The appellant's case has been argued before us, by Ms. Bansuri Swaraj, learned counsel. The State is represented by Mr. Aaditya Aniruddha Pande, learned counsel.

5. The main case of the appellant is that there was no evidence at all against him and in support of this submission, Ms. Swaraj has taken us through the copies of FIR, order of the Trial Court framing charges, evidences of four witnesses of fact as also the deposition of the Investigating Officer (PW-12). Other documents forming part of the records were also cited, but these were the key materials she relied upon. The FIR was made by Sheela Chintaman Dhanurdhari, mother of the deceased victim (PW-3) on the same day and in the statement forming basis of the FIR, the appellant was not named as an assailant or in any other capacity as a participant in the crime. The four witnesses of fact were Santosh Mahadeo Adagale, the injured eyewitness, who deposed as PW-1, Dharam Subhash Wankhede, relative of the deceased, another eye-witness (PW-2), Sheela Chintaman Dhanurdhari, another eye-witness, (PW-3) and a lady by the name of Sheela Balam Salve (PW-4). They appear to belong to the same community as that of the deceased victim and were at the spot when the incident occurred. They also did not disclose presence of the appellant at the place of occurrence in course of their depositions, barring one exception. The only reference to the appellant in the depositions of these four witnesses of fact is in cross-examination of PW-1, where he stated that he saw the appellant running in the electric light on being woken up from sleep. In his examination-in-chief, however, in the portion in which he named arrival of the accused persons at the place of occurrence with assaulting devices, the appellant was not named.

6. It has also come in the evidence of the Investigating Officer that PW-1 had not named the appellant earlier in course of investigation.

This also appears from the cross-examination of PW-1 himself, in course of which he has stated:-

'19. I had not disclosed to the Magistrate while recording my statement on 20.4.2003 and to the Police while recording my statement dt.20.4.2003 that Amol Bhaskarrao Waghmare was also one of the assailants. It is true that for the first time I had told yesterday that Amol Waghmare was one of the assailants.'

7. We have been taken through the order framing the charges and there also no specific role has been attributed to the appellant and it is a general accusation along with the other persons implicated in the subject-offences. In explaining the circumstances appearing in the evidence against the appellant in terms of the provisions of Section 313 of the Code of Criminal Procedure, 1973, there was no summing-up of any evidence specifically against the appellant by the Trial Court. No specific role was attributed to him in commission of the offence.

8. In the light of these facts, in our opinion, solely based on a stray reference to the appellant in cross-examination of the PW-1, his conviction was unwarranted. Neither the Trial Court nor the High Court has found any part being played by the appellant in commission of the offences in the respective judgments convicting him and affirming his conviction respectively. Guilt of the appellant has not been established in commission of the offences he had been charged with.

9. We accordingly allow this appeal and set aside the judgment of the High Court affirming his conviction and sustaining the order of sentence. The judgment of the Trial Court shall also stand invalidated as a consequence qua the present appellant, and his conviction and sentence shall stand set aside. We make it clear that in this judgment, we have specifically dealt with the role of the appellant sought to be attributed to him by the prosecution and we are not making any comment as regards the other accused persons, who were convicted. We are apprised by Ms. Swaraj, learned counsel that the appellant, at present, remains enlarged on bail by an order of this Court dated 15th March 2011. Hence, we acquit the appellant and direct that he shall be discharged from bail bond.
