IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.811 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

1) MURLIDHAR BABURAO CHAVAN)
Age 68 years, Occupation – Agriculture)
R/o. Dongaon, Taluka North Solapur)
)
2) PRAKASH MURLIDHAR CHAVAN)
Age 68 years, Occupation – Agriculture)
R/o. Dongaon, Taluka North Solapur)
)
3) RAJENDRA MURLIDHAR CHAVAN)
Age 68 years, Occupation – Agriculture)
R/o. Dongaon, Taluka North Solapur)
)
4) DATTATRAY MURLIDHAR CHAVAN)
Age 68 years, Occupation – Agriculture)
R/o. Dongaon, Taluka North Solapur)...RESPONDENTS

Mr.A.R.Patil, APP for the Appellant – State.

None for the Respondents.

CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.

DATE : 29th OCTOBER, 2020

JUDGMENT : (PER : V. G. BISHT, J.)

1 This appeal is filed by the State challenging the judgment and order of acquittal dated 28th March 2002 passed in Sessions Case No.23 of 2002 by learned 1st Ad-hoc Additional Sessions Judge, Solapur, for the offences punishable under Section 302 read with 34 of the Indian Penal Code (IPC).

2 Narrated in nutshell, informant is resident of Mouze Dongaon, Taluka Uttar Solapur and owns agricultural lands. Her brother-in-law viz. Murlidhar Baburao Chavan (A-1) also owns agricultural land on the northern side of the land of the informant. A-1 and his sons viz. Prakash (A-2), Rajendra (A-3) and Dattatraya (A-4) along with daughter-in-law reside in their field only. Civil dispute in respect of partition of the lands was going on in the civil court and came to be decreed in her (informant's) favour. As the informant's land earlier was jeerayit (un-irrigated land) the respondents-accused used to approach their land through the footway passing through the land of informant and on

that count also, there used to be quarrels between them. Even the dispute which had gone up to the Collector regarding the said vahivat resulted in favour of the informant and therefore the husband of the informant and her son used to oppose the use of said vahivat by the respondents-accused. The respondents-accused on their part used to threaten to kill the informant's son viz. Madan @ Madhukar (deceased for short).

3 According to the prosecution, on 19th October 2001, the informant's husband viz. Chandrakant and the deceased had been to their field. However, informant's husband alone returned in the evening and informed the informant that the deceased would come later on but the deceased did not return. In the past, since A-3 used to drop the deceased at home and also used to give deceased monies for liquor, for these reasons the informant and family members did not take search of the deceased.

4 On 20th October 2001, at about 8.00 a.m., the informant's husband went to field and immediately returned

crying and told the informant that their son is dead and lying in the field. The informant and others then rushed to the field and saw the dead body of the deceased having serious injuries on head, neck, cheeks and on legs.

5 The informant, accordingly, lodged the report against all the respondents-accused alleging therein that all the respondents-accused committed murder of the deceased by means of a sharp weapon on account of a dispute over vahivat (footway). The Salgar vasti police station on the basis of her report registered Crime No.105 of 2001 under Section 302 read with 34 of the IPC.

6 PW7 Gajanan Rajaram Huddedar, Investigating Officer, started investigation on receipt of First Information Report (FIR). He drew Inquest Panchnama of the dead body of the deceased in the presence of panch witnesses, visited place of occurrence and prepared Spot Panchnama and as also seized various articles found thereabout, recorded statements of prosecution witnesses,

seized clothes of A-2 at his instance and also a koyta under Section 27 of the Indian Evidence Act, seized an iron bar at the instance of A-3 under Section 27 of the Indian Evidence Act, forwarded all the incriminating articles to the office of the Chemical Analyzer and after receipt of the report and as also completion of investigation, forwarded the charge-sheet against the respondents-accused.

7 Record shows that to bring home the charge, the prosecution examined seven witnesses and exhibited number of documents. The respondents-accused were questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.) about the incriminating evidence and circumstances and they denied all of them as false. It is their further defence that witnesses are the relatives of the informant and PW4 is their political rival. At the relevant time, A-1 had undergone cardiac surgery and at that time they were residing at Hatture vasti and not in the vasti. According to them a false case is filed by the police with the help of related witnesses.

8 Mr.Patil, learned APP for the appellant-state, submitted that admittedly the deceased and the respondents-accused were on cross terms on account of use of footway from the land belonging to the informant. There were litigations also in the past and thus there was a motive on the part of respondents-accused to commit the crime. According to the learned APP, despite there being evidence of eye witnesses, the learned trial Court wrongly disbelieved the ocular evidence and because of erroneous appreciation of evidence reached wrong conclusion of failure of prosecution case. The finding so arrived by the learned trial Court is totally perverse in the light of evidence adduced by the prosecution. Not only the circumstances leading to the guilt of the respondents-accused are duly proved but at the same time, there is on record recovery evidence which also connects the respondents-accused with alleged offence. Since the conclusion of innocence of respondents-accused is derived by the learned trial Court on surmises and conjectures, the said findings are liable to be set aside vide the present appeal.

9 When the matter was called out, none appeared for the respondents-accused.

10 In case of murder, fact of homicidal death assumes significance and needs to be established beyond reasonable doubt by the prosecution. In order to prove that death of Madan @ Madhukar Chandrakant Chavan was homicidal, the prosecution has relied on evidence of PW1 Dr.Suryakant Baburao Kamble (Exh. 15). It may be noted here that PW1 conducted postmortem on the dead body of the deceased.

11 PW1 Dr.Kamble states in his evidence (Exh. 15) that at the relevant time he was attached to Civil Hospital Solapur as a Medical Officer. On 20th October 2001 dead body of Madan @ Madhukar Chandrakant Chavan of Dongaon was brought for postmortem. Accordingly, he conducted an autopsy. On external examination, following eleven injuries on the dead body were found :

"(i) Incised chop wound 3" x 12" behind right ear bone deep

(ii) Incised chop wound 3 x 1 inch over temporal region on right side bone deep

(iii) Incised chop wound over right parietal region 3 x 1 inch bone deep.

(iv) Incised chop wound left mandibular region extending upto left ear 6 x 2 inch bone deep exposing muscles, tendons and blood vessels with dried blood dots

(v) Incised wound over right wrist 2 x 2 inch muscle deep

(vi) Incised wound over left wrist 2 x ½ inch muscle deep

(vii) Incised wound over the neck below left ear 6 x 2 ' muscle deep exposing muscle, tendons, blood and vessels

(viii) Incised wound over neck 6 " x 2 " exposing muscles, bones and blood vessels

(ix) Incised chop wounds over occipital region extending upto left mastoid region 7 " x 1½ bone deep

(x) 2 incised wound over left feet 5 x ½ " muscle deep

(xi) C.L.W. over right leg near ankle region 2 x ½ " muscle deep

According to this witness all injuries were antimortem injuries.

12 His evidence further shows that the injuries described in Column No.19(1) are corresponding to external injuries described as Injuries Nos.1 to 9 against Column No.17. The Injuries Nos.1 to 3 and 7 to 9 mentioned against Column No.17 were on the vital part of the body and all those injuries were sufficient in ordinary course of nature to cause death. According to him, cause of death was haemorrhage, shock due to multiple chop wounds with skull and subdural haemorrhage.

13 According to this witness all wounds described as incised chop wounds were possible by blows of koyta. The Injury No.10 and 11 were possible by blows of iron bar. He then proved the postmortem report at Exh. 16.

14 It is clear from the evidence of this witness that the injuries noted by him were sufficient in ordinary course of nature

to cause death. The external injuries found on person of the dead body were also correspondent to the internal injuries. The injuries were possible by blows of koyta and as also by an iron bar. The cause of death essentially was haemorrhage, shock due to multiple chop wounds with skull and subdural haemorrhage. There is nothing significant in the cross-examination. Even otherwise, the homicidal death of the deceased is not seriously questioned. In the light of findings of the Autopsy Surgeon and as also his opinion flowing therefrom, we have no difficulty in holding that the victim died of homicidal death. This takes us to the case of prosecution.

15 The case of prosecution is totally based on circumstantial evidence. The learned trial Court found that the prosecution has failed to establish the circumstances relied on and accordingly acquitted the accused.

16 In **Syed Hakkim and Others vs. State represented by Deputy Superintendent of Police, Karur District, Tamilnadu**[1] while

1 2009 Cri.L.J. 1891 (SC)

discussing the scope of Section 3 of the Indian Evidence Act, more particularly circumstantial evidence held that, in a case of murder when the prosecution relies on circumstantial evidence, it is for the prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with the innocence of accused to draw an inference of guilt. Such evidence should be tested by the touchstone of law relating to circumstantial evidence.

17 The Hon'ble Supreme Court in **Trimukh Maroti Kirkan vs. State of Maharashtra**[2] held as follows :

> "In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that

2 (2006) 10 SCC 681

there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

18 The Hon'ble Apex Court in the case of **Sattatiya vs. State of Maharashtra, (2008) 3 SCC 210**, held as under:

"10 We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. This Court further observed in the aforesaid decision that:

> "17 At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court – Bharat v. State of M.P. (2003) 3 SCC 106. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime."

19 In G. Parshwanath vs. State of Karnataka (2010) 8 SCC 593, the Hon'ble Apex Court elaborately dealt with the subject and held as under :

> "23 In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the

first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts."

20 In the case of **Rajendra Pralhadrao Wasnik vs. State of Maharashtra (2012) 4 SCC 37** the Hon'ble Court observed as under:

> "12 There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstance from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to have any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime."

> "13 To put it simply, the circumstance forming the chain of events should be proved and they should cumulatively point towards the guilt of the

> accused alone. In such circumstance, the inference of guilt can be justified only when all the incriminating facts and circumstance are found to be incompatible with the innocence of the accused or the guilt of any other person."

21 Keeping in view the law laid down by the Hon'ble Apex Court referred hereinabove, it is the duty of the court to re-appreciate the entire evidence afresh to come to an independent conclusion uninfluenced by the findings arrived at by the learned trial Court. We, therefore, propose to examine the evidence led by the prosecution.

22 PW5 Muktabai Chandrakant Chavan – informant in her substantive evidence (Exh. 27) has almost reiterated the contents of the FIR which we have at the very beginning already narrated. She has also proved her FIR at Exh. 28. It is quite obvious from the FIR that neither the informant nor her husband had any occasion to see the incident. Merely because there were strained relations between her family and the family of the

respondents-accused and the fact that there was dispute over the vahivat through her field, which earlier used to be enjoyed by the respondents-accused, the informant thought that it were the respondents-accused behind the death of the deceased, who mercilessly killed her son by a sharp weapon and harbouring the suspicion she filed FIR against the respondents-accused. However, in her substantive evidence, she has nowhere aired her suspicion and about the complicity of the respondents-accused in the alleged offence.

23 Her cross-examination, on the other hand, shows that the respondents-accused were having friendship with her son (deceased) since last two years. If there was friendship between her son and the respondents-accused, there was no reason for the respondents-accused to commit the murder of the deceased. The evidence is totally silent as to the motive behind the crime. Moreover, admittedly, she had not witnessed the incident.

24 In her further cross-examination she admits that the FIR was given to police by her husband. This being so, it does not need much prescience to note that the contents of the FIR were dictated by the husband of informant either in deliberation with his wife-informant or of his own or in consultation with PW4 Dilip Nana Amle, who according to the defence of the respondents-accused is their political rival. In these obtaining situation, to what extent and how much evidentiary value should be attached to the value of FIR vis-a-vis the testimony of this witness is certainly a moot question.

25 Assuming for the sake of argument that the FIR was lodged by the informant herself, we also note here that the prosecution could avail services of two witnesses that strengthened its case and they are PW2 Chandramauli Ramchandra Gurav (Exh. 18) and PW3 Chandrakant Nagnath Hambe (Exh. 20). Lets go through their evidence.

26 PW2 states in his evidence that his one of the sisters is married and given at Village Dongaon. He used to go to his sister. The sister of Bhimrao Mahadeo Bhakare of Boramani viz. Muktabai also resides at Dongaon. It is his further evidence that on the day of the incident he was going to Dongaon by a cycle. At about 8.00 to 8.30 p.m., Bhimrao had sent a message to his sister that mother of Muktabai was sick. It is his further evidence that he went to the mala (field) of Muktabai Chavan (informant). There was a fight in the vasti and commotion was going on in the mala (field). According to him, he could not see who was there and even he did not go there and went back to Boramani. There was no light and therefore he could not identify the persons. He told this fact to Bhimrao accordingly. It is his further evidence that he had not seen the respondents-accused beating the deceased.

27 From the evidence of PW2 we find that although this witness had seen the quarrel going on in vasti and also heard

some commotion because of that quarrel but he was not able to identify the persons who were quarreling, apparently, as there was no light. He makes himself more categorically clear by deposing that he had not seen the accused beating the deceased. Since this witness was found wanting and forthcoming and failed to take further the case of prosecution, naturally, with the permission of the court, he came to be treated hostile. From his cross-examination two important aspects emerge. One, according to him, the land of informant is adjoining to Laman Tanda and there may be 100 to 150 houses in Laman Tanda. We are here to point it out that not a single witness from that locality has been examined by the prosecution, for the reasons best known to it.

28 Two, PW2 admits in his cross-examination that he had not seen the light on the vasti and incident of shouting. If the cross-examination of PW7 Investigating Officer is read carefully, then it would be seen that during the course of investigation, he did not collect information or ascertain from MSEB Officers in order to satisfy himself whether at the relevant time the light was

in working condition or not. There is no dispute on the count that the incident took place in the night hours. It was duty of the Investigating Officer to verify whether there was proper supply of electricity or not at the relevant time. But it seems he neglected and overlooked this important aspect of the case.

29 In view of above, we do not find the utility of this witness to the cause of prosecution and rather it shows that there was no supply of electricity and the incident took place in darkness.

30 PW3 Chandrakant Nagnath Hambe states in his evidence that he deals in business of clothes by moving village to village by his bicycle. He had been to Telegaon which is at a distance of six miles from Dongaon. After doing the business, he came to Dongaon at about 7 to 7.30 p.m. He stopped near State Transport (S.T.) bus stop for sometime for tobacco and tea and then started towards Solapur. While he had travelled a distance of one to two kilometers towards Solapur, he heard shouting from

vasti of Chavan and stopped there. It was night time and there was darkness but there was electric light in vasti. He heard the shouts as “vachva vachva.” He kept his cycle beside and rushed and went to see what is happening in the vasti.

31 It is his further evidence that he saw A-1 was shouting as “dhara dhara, khallas kara” and the person lying down was shouting “vachva vachva.” A-1 was saying so to his sons A-2 to A-4. There was one iron bar in the hand of one person and one sugarcane cutting sickle in the hand of another. There was a stick in the hand of third person and they were beating to the person lying down. Being afraid, he took his cycle and went to his house. He did not tell the incident even to his wife. On the next day, he read the news in newspaper in Vijapur as he had been there to sell the clothes. It is his further evidence that he was thinking for four to five days whether to inform the police or not. He then again went to Dongaon and on one day police of Salgar vasti were seen. He told them about the incident. His statement was recorded in Salgar Vasti police station. This witness is absolutely not reliable

and trustworthy for more than one reasons and he appears to be a planted or got up witness. We qualify this statement with reasons.

32 His cross-examination shows that his wife has a sister by name Shantabai who is married to Bhima Bhagare of Boramani. Muktabai is sister of Bhima Bhagare. He then admits that he, therefore, is a relative of the deceased. Despite this witness being closely related to the deceased, he exhibited abnormality through his conduct when he neither told the incident to his own wife or for that matter to the informant or her family members. On the contrary, he was ruminating for about four to five days whether he should inform the incident to the police or not. This is something which is not palatable. It is also not his evidence that either he was threatened by the respondents-accused not to disclose the incident to anybody or he was so terrified that he could not come out of the shock of the incident and therefore laid idle.

33 His evidence also shows that A-1 was exhorting to his sons accused by shouting “dhara dhara, khallas kara.” But since it was missing from his statement recorded under Section 161 of the Cr.P.C. during the course of investigation, he was confronted by the defence but he insisted on having said so before the police. But this material omission is duly proved by PW7 Investigating Officer in his cross-examination by stating that this witness had not stated before him that A-1 was exhorting the remaining accused sons by shouting as “dhara dhara, khallas kara.”

34 The examination-in-chief of this witness also shows that at the time of incident there was electric light in the vasti and in that light he saw the incident. We have already pointed out from the evidence of PW1 and as also from the evidence of PW7 Investigating Officer that at the relevant time, there was total darkness and PW7 Investigating Officer failed to look into this aspect and neglected in ascertaining from the MSEB Officers whether at the relevant time there was uninterrupted supply of

electricity or not in the vasti. Therefore, on this count also there is no corroboration.

35 What is most disturbing aspect of the evidence of this witness is that his statement came to be recorded on 2nd November 2001 i.e. after thirteen days of the alleged incident. No explanation is offered by the prosecution for such a huge delay. The delay so caused is definitely detrimental to the cause of prosecution and in the circumstances, we hold that PW3 is not a truthful witness. It would be unsafe and unreasonable to place any kind of reliance on his testimony.

36 The learned trial Court has assigned proper and cogent reasons while rejecting the testimony of this material witness and we do not find any fault in the approach of the learned trial Court.

37 On an overall consideration of the entire material evidence on record, we find absolutely no evidence to prove the

complicity of respondents-accused in the alleged murder of deceased. The ocular testimony is simply failing on all fronts.

38 This brings us to the remaining evidence on record. The prosecution has also placed reliance on various recoveries at the instance of respondents-accused and as also reports issued by Chemical Analyzer. However, in view of several loopholes as noted hereinabove and the failure of main circumstances finding its way to connect respondents-accused cogently and conveniently with the crime, the recoveries and Chemical Analyzers Reports lose their worth and force.

39 For the aforesaid reasons, we are of the considered view that the trial court was perfectly right in acquitting the accused. There is no perversity or illegality in the order of acquittal.

40 We, therefore, do not find any merit in this appeal and hereby dismiss the same.

(V. G. BISHT, J.) **(PRASANNA B. VARALE, J.)**