

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.253 OF 2012

- 1) Vilas s/o Bapurao Bhavre,
Age-40 years, Occu:Agril. & Driver,
R/o-Bondgavan (Chofuli),
Tq-Mahur, Dist-Nanded,
- 2) Pramod s/o Bapurao Bhavre,
Age-37 years, Occu:Agril.,
R/o-As Above.

...APPELLANTS

VERSUS

The State of Maharashtra,

...RESPONDENT

...

Mr. S.G. Ladda Advocate for Appellants.
Mr. K.S. Patil, A.P.P. for Respondent - State.

...

**CORAM: A.B. CHAUDHARI AND
INDIRA K. JAIN, JJ.**

DATE OF RESERVING JUDGMENT : 7TH OCTOBER, 2015

DATE OF PRONOUNCING JUDGMENT : 21ST OCTOBER, 2015

JUDGMENT [PER A.B. CHAUDHARI, J]:-

1. Being aggrieved by the Judgment and order dated 27th February 2012 passed by the Extra Joint Ad-hoc Additional Sessions Judge, Nanded in Sessions Case No.143 of 2010, by which the Appellant Nos.1 and 2 i.e. original Accused No.1 - Vilas s/o Bapurao Bhavre and original Accused No.2 - Pramod s/o Bapurao Bhavre, respectively, were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and were sentenced to suffer Rigorous Imprisonment for life with fine of Rs.5000/- (Rupees Five Thousand only) each, and in default to suffer further Simple Imprisonment for six months, and for offence punishable under Section 201 read with Section 34 of Indian Penal Code and were sentenced to suffer Rigorous Imprisonment for Five years and fine of Rs.2000/- (Rupees Two Thousand only) each, and in default to suffer further Simple Imprisonment for three months, the

present Appeal was filed by them in this Court.

FACTS:-

2. In brief, it is the case of the prosecution that complainant Udhav Sarpe lodged report in the Police Station on 21st January 2010 that in the night between 19th and 20th January 2010 at about 10.30 p.m. accused Vilas Bhavre and his three friends took his son Milind Sarpe from Vilas Bar at unknown place and since then he did not return back and could not be traced out, despite search. The complainant then collected information and contacted relatives of accused Vilas but he got evasive answers. Therefore, he expressed apprehension about untoward incident. Offence was registered by Shivaji Nagar Police Station at Crime No.18 of 2010. The investigation was undertaken and thereafter, during investigation, statements of various witnesses were recorded, including the labourers Anirudh, Ashok and Anil

who were working in the field of Vilas, the main accused, who disclosed information incriminating against the accused persons. In accordance with the information received during interrogation, the police visited the field of accused Vilas, where the pit was filled up by earth and they witnessed the abnormal level in the earth near the spot. As such, Medical Officer, Tahsildar were called and video shooting of the entire operation was taken. Panchnama of the spot was prepared and in the presence of witnesses, earth was removed from the pit. Photographer took photographs of digging and Compact Disc was prepared and police found dead body in the pit, which was taken out and Inquest Panchnama was undertaken. The clothes of deceased were seized. The provisional death certificate was obtained. Thereafter the postmortem was conducted on the spot. Charge-sheet was filed after completion of investigation and the accused were arrested. The accused who were taken in custody, gave statements about production of articles,

which were ultimately seized by the police. Discovery statements were recorded. The weapons were seized. The spot where the throat of the deceased was cut by knife was shown. Grass and earth from the spot was seized. C.A. Report was obtained. After filing charge-sheet in the trial Court, the trial Judge framed charges which were denied by the Accused Nos. 1 to 5. The trial Judge thereafter heard the evidence of the witnesses and convicted only two accused i.e. Appellant Nos.1 and 2 herein and acquitted other persons. There is no State Appeal against the Appellants and acquitted persons. Thus, this Appeal was filed by two Appellants i.e. Accused No.1 – Vilas s/o Bapurao Bhavre and Accused No.2 – Pramod s/o Bapurao Bhavre.

ARGUMENTS:-

3. In support of the Appeal, Mr. Ladda, the learned counsel for the Appellants vehemently

contended that there is no direct evidence in the instant case about the commission of murder by the Appellants and the learned trial Judge recorded finding of conviction on mere surmises and conjectures. Even the fact that the dead body was found in the field of the Appellant No.1 Vilas was not proved by the prosecution beyond any doubt. On the contrary, the record shows that the Survey Number of the field where the dead body said to have been buried, is totally different and prosecution thus failed to prove that the Appellants were the offenders. He then submitted that the evidence of the prosecution witnesses i.e. two labourers who were examined, is not trustworthy and should not have been relied by the trial Judge. At any rate, those two witnesses examined, who were the labourers, had not seen the alleged incident of either assault on the deceased or burying the dead body in the pit in the field, as alleged. Therefore to draw conclusions only on the basis of finding of dead body in the pit, that

too in the field of somebody else and to find the Appellants guilty of the offence of murder, has resulted into miscarriage of justice. The learned counsel for the Appellants then contended that the theory of burning of some body of the deceased by petrol, is again unbelievable since in that event the entire body could have been burnt and at any rate the prosecution story is highly unbelievable and benefit of doubt should be given to the Appellants. He then contended that even the medical evidence about the cut injury to the throat is unbelievable, as the nature of injury described does not show that the cut throat injury was caused to the deceased. The learned counsel then contended that the evidence of two labourers, on whose testimony reliance was placed by the trial Judge, is bad, infirm and contains material omissions and for that reason also the trial Judge ought to have rejected the testimony of those two witnesses. Finally, Mr. Ladda, the learned counsel submitted that the trial Judge ought to have given

benefit of doubt to the Appellants and ought to have acquitted them.

4. Per contra, the learned A.P.P. supported the impugned Judgment and order and submitted that there is strong evidence against the Appellants, since the Appellants had taken away the deceased Milind with them in the Bar and not only that the prosecution has also brought the motive on record, namely, that Appellant No.1 Vilas had made misappropriation of the amount, about which the deceased Milind had full knowledge and therefore in order to remove the evidence in the form of deceased Milind, his murder was committed by making his kidnapping first and then murder. He, therefore, submitted that the Appeal should be dismissed.

CONSIDERATION:

5. We have heard learned counsel for the

rival parties at length. We have perused entire evidence tendered by the prosecution before the trial Judge. We have seen the reasons recorded by the trial Judge for making the order of conviction. At the out-set, we find that there is evidence of PW-8 Ashok Khandu Agirkar. He was working in the field of Accused Vilas, Pramod and Bharat. In his evidence, in examination-in-chief, he stated thus in Para Nos. 1 and 2:

"1. I know accused Vilas, Pramod and Bharat sitting before the Court. He has having agricultural land at Bond Gavan. Myself, Anirudh and Anil were working in the field of accused on daily wages. On 22.1.2010 myself, Anil and Anirudh were working in the field of accused Vilas, Pramod and Bharat. Accused No. 1 to 3 Pramod, Vilas and Bharat came to field at 10 A.M. Accused Pramod and Vilas asked me to bring the Tikas and spade as they have to repair the leakage of pipe line. Accused Vilas and Pramod have sent me and another labour Anirudh to bring Tikas and spade from the house. Thereafter myself and

Anirudh brought Tikas and spade from the house to the field. Accused Vilas and Pramod were repairing leakage of water of pipe line meanwhile we went to the house for taking meal. Thereafter we return to the field after taking meal at 4 PM. We have seen the ditch in cotton field. Myself, Anirudh and Anil have seen the ditch, at that time accused Pramod, Vilas and Bharat were seen. On the same day accused Bharat has threatened us to kill by knife if we disclosed this fact to anyone else. Thereafter we have not disclosed this fact to anybody.

2. Myself, other witness Anirudh and Anil were supplying water to the crop. We saw that the above ditch was completely closed. Myself, Anil and Anirudh have seen said ditch which was closed. After completing work we returned back to our houses. Thereafter 4-5 days Nanded police came to village Bond-Gavan. Police inquired with us about the ditch at that time we have shown to police the spot in night at about 10 PM. Thereafter on next day Nanded Police came to village Bond-Gavan. Tahsildar and doctor also came in the field of accused on next day. Myself, Anil and Anirudh have removed the earth from ditch and there was dead

body of a person in the ditch. We have removed the said dead body. Thereafter police prepared the panchnama of spot and inquest panchnama, then doctor has conducted postmortem of dead body on the spot. The spot is situated in the field of accused Vilas and Pramod Bhavare. Police was telling that the dead body was of person who is resident of Nanded. Police recorded my statement as per my say. The accused Vilas, Pramod and Bharat sitting before the Court are same. I have also brought fiber pot. Witness is shown spade, Tikas and fiber pot. He identified the same, which are Article Tikas D-2, Spade D-1, Fiber pot D-3."

6. We have seen the cross-examination of this witness and find that on the material particulars regarding digging of a ditch and threat imparted to them not to disclose the said fact, has gone practically unchallenged. The omission that is brought on record in Para 5 is not about the incident of digging but the omission that is brought is about this witness accompanying the police and then removing the earth from the

pit as per the directions given by the police. We do not think that this can be omission because the removal of earth from the pit as per the directions of the police, cannot be the omission as that was done upon police officers having come to know about burial of the dead body in the pit. The alleged omission regarding Appellants Vilas and Pramod asking him to bring spade, tikas and tokra was not put to him from the police statement, meaning thereby there was no omission.

7. Similar is the evidence of other witness, who is again the labourer, PW-9 Anirudh Subhash Mujmule. We quote his evidence in Para 1 and 3 of his examination-in-chief, which reads thus:-

"1. I used to work as labour. In the last year I was working in the field of Pramod and Vilas as labour in their field. One Ashok and Anil were also working with me. On 22.01.2010 as usual I went to the field of accused Vilas Bhavare and Pramod Bhavare at about 8.30 a.m. with Anil and Ashok. Accused

Vilas, Pramod Bhavre and Bharat Punatkar came to field at 8.30 a.m. Accused asked me to bring spade and Tikas from the house and fiber pot (Tople) as they have to repair pipe line which was damaged. Thereafter I went to the house of accused Pramod and Vilas and bring the spade, Tikas and fiber pot and kept near the bore well. Thereafter I was sent to other field to bring the cattle. Thereafter at about 4 p.m. I again came to field of accused. I was verifying the leakage of pipe line and saw that there was one pit in the cotton field. Said pit was big. Thereafter I returned back to my house. On next day as usual I came to the field of accused Vilas and Pramod for work. I started the electric motor and supplied water to the crop. I went near the pit and saw that said pit was covered with earth.

3. Thereafter on next day Nanded Police came to village Bond-Gavan and they were inquiring about accused Vilas Bhavare and Pramod Bhavare. Thereafter I came to know about something has been happened. Thereafter on 28.1.2010 police came to my house and inquired me and I have narrated entire incident to police. Thereafter I have shown the spot to the police. Thereafter on 29.1.2010 Tahsildar Mahur, Doctor and police

came to field of accused Vilas and police asked me to remove the earth from pit. After digging the pit one dead body of male person found in the pit. Police recorded my statement as per my say. Police also taken photo of the spot and of me while I was digging pit and removing dead body from pit. Witness is shown photo. He identified his own photo filed along with charge sheet which is Article 'A'. Witness is shown spade, Tikas and Fiber pot. He identified the Articles D-1 to D-3 as same. The accused sitting before the Court are same."

8. We have perused cross-examination of this witness and again we find that fact of removing of dead body after digging the pit has been brought as omission, which we do not think that the said is omission. Except this, there is no infirmity in his evidence and on the contrary, it has remained consistent and corroborative with the evidence of PW-8 Ashok. Trial Judge believed both these witnesses and in our opinion rightly, so also the evidence of PW-10 Tahsildar Rahul Gaikwad. In this background, the reasons given by the trial Court

having seen by us. Instead of repeating the reasons, we think it would be appropriate to quote Paras 30 and 31 from the Judgment, which reads thus:

"30. Prosecution has examined PW-8 Ashok Angirkar, who was working as labour in the field of accused Vilas and Pramod. He is independent witness and he has fully supported prosecution case. With his evidence prosecution proved recovery of dead body of deceased Milind from field of accused Vilas. In his evidence he consistently speaks that he was working in the field of accused Vilas and Pramod and Bharat and he was working in their field situated at village Bond-Gavan along with Anirudh and Anil on daily wages. On 22.1.2010 while he himself, Anil and Anirudh were working in field of accused Vilas, Pramod and Bharat asked him to bring pickax and spade from their house to repair leakage of pipe line and as per say of accused Vilas, Pramod, he himself and other labours Anirudh went to house of accused Vilas and brought pickax and spade in field of Vilas and thereafter he himself and other witness

Anirudh returned back to other field for work and after taking meal, they returned to field of accused and they have seen, there is ditch in cotton field. He himself and witness Anirudh and Anil also seen said ditch and accused have also seen them. Meanwhile on the same day accused Bharat has given threat to kill by knife if they disclose this fact to any other person, therefore, they have not disclosed this fact to any other person and they started working in field of accused as usual.

31. Further it is in his evidence that he himself and other witness Anirudh and Anil were supplying water to crop in the field of accused Vilas and Pramod and they have seen ditch was completely closed. Thereafter, he himself, Anil and Anirudh have seen said ditch which was closed and after completing their work, they returned back to their houses and thereafter 4 to 5 days Nanded police came to village Bond-Gavan and inquired about ditch. At that time, he has shown said spot to police in the night at about 10.00 p.m. Further it is in his evidence that on next day police came to village Bond-Gavan and called Tahsildar, Medical Officer in field of accused Vilas and then he himself, Anil and Anirudh have

removed earth from ditch and found there was dead body in the said ditch and they have removed the said dead body. Then police prepared spot panchnama, inquest panchnama and doctor has conducted postmortem on dead body and further deposed that said spot is situated in the field of accused Vilas and Pramod Bhavre. Police were telling that dead body is of person from Nanded. He has identified accused Vilas, Pramod and Bharat sitting before the Court are same with whom he was working in their field and who had asked him to bring pickax, spade and fiber pot from their house to field. He has also identified articles Pickax, spade and fiber pot, which were shown to him during evidence before the Court are the same articles which are marked Article No. D-1 to D-3. Evidence of PW-8 Ashok Angirkar is consistent and supported by evidence of Subhash Sarpe and also supported by evidence of Tahsildar, Medical Officer, who were present in the field at the time of recovery of dead body in the field of accused Vilas and preparation of inquest panchnama."

9. The trial Judge then discussed the evidence of PW-9 Anirudh on the incident. We quote

para 34 and 35 from the Judgment, which reads thus:

"34. PW-9 Anirudh in his evidence consistently speaks that he was working in the field of accused Vilas and Pramod as labour at village Bond-Gavan and witness Ashok and Anil were also working with him. On 22.1.2010 as usual he went to field of accused Vilas and Pramod Bhavre at 8.30 a.m. Witness Anil and Ashok were along with him and further he deposed that accused Vilas, Pramod and Bharat came to field at 8.30 a.m. and asked him to bring spade, pickax from the house of Vilas and also asked to bring fiber pot as they have to repair pipe line which was damaged. As per say of his master, he went to the house of accused Pramod and Vilas and brought above articles in field of accused Pramod and Vilas and kept it near bore well. Thereafter he went to other field to bring cattle at 4.00 p.m. he returned back to same field and verified leakage of pipe line and saw that there was pit in cotton field and said pit was big. Further it is in his evidence that on that day he returned back to his house after completing work and on next day morning he came to

field of accused Vilas and Pramod for work and he started electric motor for supplying water to crop and again he went near pit and saw that said pit was closed with earth. Further it is in his evidence accused Bharat has called him and threatened him not to disclose fact to anybody otherwise he will kill him. He has also put knife on his stomach, therefore, he was afraid of and due to this reason he did not disclose this fact to anybody. Further it is in his evidence that on next day morning police came to his village Bond-Gavan and they were inquiring about Vilas and Pramod Bhavre. Thereafter, he came to know something has been happened. Then on 28.1.2010 police came to his house and inquired him and he has narrated entire incident to police and shown spot in the field of accused.

35. Further it is in his evidence that on 29.1.2010 police has called Tahsildar, Medical Officer in the field of accused Vilas and police asked him to remove earth from pit. After digging pit, dead body of male person was found in pit. Police recorded statement as per his say. Police also taken photo of the spot and of him while he was digging pit and removing dead body from pit. Witness is shown photo. He

identified his own photos filed along with charge sheet which is Article 'A'. Witness is shown spade, pickax and fiber pot. He identified the Articles D-1 to D-3 as same."

10. Looking to the above evidence and reasons recorded by the trial Court, which we have discussed above, we find that the entire evidence of these two witnesses is fully trustworthy, without any infirmity and must be accepted and was rightly accepted by the learned trial Judge. These witnesses were the labourers working in the field of accused Vilas and therefore they are independent witnesses with no enmity or ill-will against the Appellants. We then find that the evidence of PW-1 Dr. Prashant Baliram Sonkamble, who had gone to the spot to conduct the postmortem and found injuries on the person of the deceased, which has been discussed by the learned trial Judge in Para 39 and 40 of the Judgment. We quote Para 39 and 40 from the Judgment as under:-

"39. Prosecution examined PW-1 Dr. Prashant Sonkamble, who is Medical Officer, P.H.C. Mahur. He has fully supported prosecution case. In his evidence, he consistently speaks that he has received request letter from P.S. Shivaji Nagar on 29.1.2010 for conducting postmortem on dead body of deceased, which was found in the field of Vilas S/o Bapurao Bhavre. He has brought said request letter with him which is Exh.36. After receipt of said letter he went to field of Pramod Bhavre at Bond Gavan for conducting postmortem and saw that Taluka Magistrate was also present in said field and dead body of Milind was removed from ditch and police has prepared panchnama in presence of panchas, of the dead body and at that time Taluka Magistrate, Panch witnesses and he himself were present. After completing inquest panchnama he had started postmortem at 3.10 p.m. and completed at 4.00 p.m. and during postmortem, he has found clothes of the deceased were mixed with mud and body was covered in blanket. There was shirt of silver colour on the body of the deceased and on banyan of white sando was on the person of deceased. Banyan was stained with blood whereas shirt and pant were stained with mud. The body was decomposed, therefore, no scar or tattoo

mark can be seen.

40. Further it is in his evidence that during postmortem he found external injuries which are mentioned in column No.17. Whereas he has noticed incised wound at the level of thyroid cartilage of size 12 cm. X 4 cm. and also found one Ligature marks - prominent, seen around neck below the level of thyroid cartilage having size of ligature is 4 X 2 cm. and also noticed Ligature knot was present on left lateral aspect of neck. He has also noticed bruises over chest of irregular size around 8 cm. in between left nipple and left sternal area. No other injuries were found. All these injuries were ante mortem. No internal injuries were seen. Viscera was preserved for chemical analysis in three bottles. One bottle contains stomach and its contents and small intestine with contents and large intestine with contents and second bottle consist, heart, lung, spleen, liver, kidney and third bottle consists blood sample. The cause of death is syncope due to excessive hemorrhage. He has also noticed injury to cut throat. Doctor has preserved Viscera for C.A. examination and accordingly he has prepared the postmortem report, which bears his signature and same is at Exh.37. Doctor

has also issued the short opinion about the cause of death. He has issued the short opinion about the cause of death due to syncope due to excessive hemorrhage and accordingly issued post mortem report as well as provisional death certificate vide Exh.38 and 39. Witness has also perused the C.A. Reports Exh. 40 to 42. During evidence witness who was shown weapon dagger and he deposed that injury No.1 shown in column No.17 of post mortem report can be possible by the weapon dagger (knife) which is Article 'A'. Witness was also shown handkerchief i.e. scarf and he has admitted that injury No.2 mentioned in post mortem in column No.17 can be possible by the said handkerchief (scarf) which is Article 'B'. Witness was also shown pant and shirt of deceased which were on the person of deceased at the time of post mortem as well as banyan was also shown to him. He has identified the said pant, shirt and banyan and he has admitted same which are Article C-1 to C-4."

11. We then find that there is scientific evidence also produced by the prosecution, which is of high incriminating nature against the

Appellants. The scientific evidence in the form of C.A. Reports Exh. 40 and 41 shows the blood group of the deceased on the dagger that was discovered during investigation apart from clothes etc. We quote Para 45 of the Judgment of the trial Judge, which reads thus:-

"45. From perusal of C.A. report Exh.40, which is in respect of earth and it discloses that Exh.10 there is detection of residue of petrol on Exh.10 is positive, whereas residue to petrol on Exh.9 and 11 is negative. On perusal of C.A. Report Exh.41 which is in respect of clothes of deceased, dagger sent to C.A. for examination, reveal that Article no.1 to 6 and 7 found blood stains and decompose and Exh.8 which is a dagger found stain of blood, Exh.9 and 10 are earth and grass and these articles were also found stains of blood, whereas no blood was detected on Article Exh.11, which is earth. It is further mentioned that blood group is detected on the property Articles Exh.1 to 10 is of group 'A' and Exh.1 to 7 are clothes of deceased i.e. full manila, full pant, pair of socks, nicker, handkerchief, sando banyan, cloth piece. On

perusal of C.A. Report Exh.41 further it reveal that sealed clothes parcels were in tact as per copy sent by I.O. to C.A. for examination. I.O. has also sent sample of blood of deceased for C.A. examination but no blood group was detected vide Exh.42. I.O. has also produced C.A. Report Article 'A' in respect of viscera and in said report, it is mentioned that Exh.3 which is blood in plastic bottle contain 170 mg. and 166 mg. of ethyl alcohol per 100 gram. From C.A. Report, it is clear that blood is detected on the clothes of deceased is of human and its group is 'A' and same blood is also found on dagger, which was seized by I.O. during investigation."

12. As to the submissions regarding the spot or the field survey number about which Mr. Ladda made strenuous submissions, we find that the defence did not seriously dispute the spot where the dead body was found buried in the pit. We can understand such defence being taken, provided some other spot is brought by the defence to show that the dead body was not found in the pit alleged by the prosecution but there was some other pit where

the dead body was found. That is not even the case of the defence and since prosecution has affirmatively proved its case beyond any doubt, we have no hesitation in confirming the findings of conviction recorded by the trial Judge.

13. In the result, we find no merit in the Appeal. Hence we make the following order:-

O R D E R

(I) Criminal Appeal No.253 of 2012 is dismissed.

[INDIRA K. JAIN, J.]

[A.B. CHAUDHARI, J.]