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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.133 OF 1997

The State of Maharashtra.

....Appellant.
(Ori. Complainant)

Versus

1. Maroti Dhondiba Landage, age 65 Yrs.
2. Vijaykumar Maroti Landage, age 35 Yrs.
3. Jagu Maroti Landage, age 22 Yrs.
4. Mohan Maroti Landage, age 28Yrs.
5. Digamber Sambhaji Landage, age 45 Yrs.

All r/o Bombali, Tq. Udgir, Dist. Latur.

....Respondents.
(Ori. Accused)

.....
Shri B.L. Dhas, APP for appellant.
None present for respondents.
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CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.

DATE: 08.10.2015

ORAL JUDGMENT (Per A.B. Chaudhari, J.) :

1] Being aggrieved by the judgment and order dated 13.12.1996 passed by the IIIrd Additional Sessions Judge, Latur, in Sessions Case No.86/1995, by which the learned trial Judge acquitted all the accused nos.1 to 5 for the offence punishable u/s.302, 147, 148 and 149 of the Indian Penal Code, the present appeal was filed by the

State of Maharashtra.

2] In support of the appeal, the learned APP vehemently contended that the learned trial Judge committed an error in recording the order of acquittal when as a matter of fact there was evidence of blood stains on the clothes of the accused persons, a lacerated wound on right hand of Vijaykumar was found by the doctor, which was not explained by accused Vijaykumar. He then submitted that though the prosecution had examined eye witnesses because the incident had taken place at public place namely Bus Station where hundreds of people had gathered to see the incident, but unfortunately the eye witnesses became hostile in the Court. Nevertheless, the trial Judge could have recorded the order of conviction.

3] None present for the respondents.

4] We have perused the impugned judgment and order and the reasons recorded by the learned trial Judge. It is an admitted position that the eye witnesses, who were examined by the prosecution, did not support the prosecution case at all and they turned hostile. Therefore, there was no direct evidence tendered before the learned trial Judge by the prosecution. The

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prosecution then tendered the scientific evidence before the Court about the blood stained clothes, discovery etc., but as fairly stated by the learned APP, the panch witnesses thereon turned hostile. Be that as it may. Merely on the discovery of clothes no conviction can be recorded in the absence of any other evidence when the serious offence of murder is charged. In any case in paragraph no.34 of the judgment, the learned Judge has given detailed reasons for not accepting the scientific evidence. We quote relevant portion from paragraph no.34 of the judgment as under:-

"34. Now, only the circumstance that remained is about the blood stains. In this case, during the course of investigation, the blood of accused persons were sent to C.A. Examination alongwith blood of deceased. As per the C.A. Report, the blood group of deceased is O and blood group of deceased is found on the clothings of Maroti and Vijaykumar. However, the blood group of Vijaykumar is not detected. An incriminating article axe was also sent to C.A. And also as per C.A. Report, on blood group is detected on that axe. So also, on Katti no blood group is detected. Therefore, considering report of C.A. The blood group of Vijaykumar is not detected. So, when blood group of Vijaykumar is not

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detected, the only circumstance that blood group O is detected on the clothings of accused Vi0jaykumar and Maroti, is not at all sufficient to warrant conviction. Further, during the course of investigation, it is revealed that at the time of arrest of accused Vijaykumar, Vijaykumar was having injury to his right hand and he has been examined by the concerned Doctor and his statement is recorded by prosecution at Exh.24. Injury certificate Exh.26 shows that P.W.3 Dr.Mithare noticed a contused lacerated wound on right hand of accused Vijaykumar. It is the case of prosecution that accused Vijaykumar and Maroti both have been caught on the Wlandi to Bombli road just after commission of the offence. Thereafter, it may be possible that the blood of Vijaykumar may come on the clothing of Maroti. Therefore, as the blood group of Vijaykumar is not detected, this only solitary circumstance is not sufficient to hold the accused guilty for the offence."

We then further quote following part of paragraph no.34 of the judgment about the discussion made by the learned trial Judge that the investigating machinery had failed to bring other witnesses since lot of people had gathered on the spot when the murder took place in the open public place :-

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"Further, it must be noted that the incident in question took place at about 5-00 to 6-00 p.m. And at the time there was crowd and the spot where the offence is alleged to have been committed, is situated in a dense locality surrounded by hospital, bus-stand etc. Therefore, police could have collected some more cogent evidence about the incident. But, the police persons have not collected the entire evidence though available. So, whatever evidence that has been adduced by prosecution before me, unfortunately it is not sufficient to hold the accused guilty for the offences with which they have been charged. Therefore, accused deserves to be acquitted."

Be that as it may. We are satisfied that in the absence of sufficient evidence, the trial Judge did not make any error in making the order of acquittal.

5] In the result, we find no merit in the instant appeal. Hence, we pass the following order.

ORDER

Criminal Appeal No.133/1997 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)