

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
AURANGABAD BENCH, AURANGABAD

**CRIMINAL APPEAL NO. 22 OF 1997**

The State of Maharashtra,  
through police station Shirur

...Appellant

VERSUS

1] Ramnath s/o Sahebrao Shelke,  
age 35 years, occ. Service,  
r/o Talathi Sajja Parner,  
Taluka Patoda, Dist. Beed,

2] Ram s/o Maroti Warkate,  
age 30 years, occ. Agril.,  
r/o Malewadi, Tq. Patoda,  
District Beed

...Respondents  
(Orig.Accused)

.....  
Shri A.S.Shinde, A.P.P. for appellant  
Shri B.B.Dahiphale, advocate h/f  
Shri N.P.Patil Jamalpurkar, advocate for respondents  
.....

**WITH**

**CRIMINAL REVISION APPLICATION NO. 212 OF 1996**

Bhimrao s/o Natha Warkate,  
age 45 years, occ. Agril.,  
r/o Malewadi, Tq.Patoda,  
Dist. Beed

...Applicant  
[Brother of deceased]

VERSUS

- 1] Ramnath s/o Sahebrao Shelke,  
age 35 years, occ. Service (Talathi),  
r/o Nandewali,  
Taluka Patoda, Dist. Beed,
- 2] Ram s/o Maroti Warkate,  
age 30 years, occ. Agril.,  
r/o Malewadi, Tq. Patoda,  
District Beed
- 3] The State of Maharashtra ...Respondents  
( Nos. 1 and 2 Orig.Accused)

.....  
Shri B.B.Dahiphale, advocate h/f  
Shri N.P.Patil Jamalpurkar, advocate for respondent nos.1 and 2  
Shri A.S.Shinde, A.P.P. for respondent no.3  
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**CORAM : A.B.CHAUDHARI  
AND  
INDIRA K. JAIN, JJ.**

**DATED : 1st October, 2015**

**J U D G M E N T : (Per A.B.Chaudhari, J.)**

1] Both, the appeal by the State and the Revision by the victim, are directed against the judgment and order, dated 27.3.1996, passed by the 1st Additional Sessions Judge, Beed, in Sessions Case No. 153 of 1995 recording the order of acquittal for the offences punishable under Section 302 r/w 34 of the Indian Penal Code.

2] PW 14 by name Vikram Shelke was examined by the prosecution as eye witness. We have seen his evidence, so also his cross-examination. The evidence shows that he is eye witness to the incident of murder, but then the learned trial Judge, and in our opinion rightly, applied the yard stick in relation to Marshalling and appreciation of evidence in so far as the evidence of this witness is concerned. The trial court has carefully examined the reasons given by him for not reporting the serious incident of murder from 27.7.1994 to 3.8.1994. We are aware that if a person is in fear, he may take time to lodge the report to the police station, but then the reason given by the learned trial Judge about his conduct subsequent to the incident of murder, had he really been the eye witness, is such that no reasonable and prudent person would accept his testimony. The trial court exactly did the same thing, that is to be found in para 22 of the judgment of the trial court. We quote extracted portion from para 22 of the judgment, which reads thus : -

“ 22) Most important point which which further casts doubt regarding evidence of Vikram is the fact that, there has been substantial delay on his part in informing the police that, he had seen the accused committing the said crime. This witness had stated that, as he was very disturbed he did not inform police immediately. His deposition discloses that, he informed the police he had seen accused committing crime about 5 or 6 days after the incident and for this 4 or 6 days he was at his house and was not well. This witness was confronted in the cross-examination by the counsel for accused and was questioned whether he had taken any help of doctor reply to which was in the negative. None of other prosecution witnesses closely related to Vikram are stating that, they

had seen Vikram in mental ill state for 5-6 days. Therefore, we have the sole testimony of Vikram alone, who states that, he was mentally ill for 5-6 days and therefore, he did not disclose the fact to the police immediately.

Another important factor that further dislodges evidence of this Vikram is the fact that, he was present for the funeral ceremony of Bhagwat Vikram had stated that, after seeing incident he was mentally ill and therefore, did not go out of house for about 5-6 days. While on the other hand deposition of PW 10 Bhujang Khatal discloses that, Vikram had also come to see dead body. So also PW 1 Police Patil Arjun Thite had also stated that, in the crowd he had seen Vikram was also present to see dead body. Therefore, version of Vikram that he never went out of the house, as he was mentally ill appears to be false. Fact that Vikram was present on the next day to see dead body, clearly goes to show that, he had opportunity and also time to tell the truth, if at all he had seen incident one night earlier. Therefore, fact that, there has been substantial delay in informing police, also taking into consideration conduct of Vikram through out, clearly casts doubt regarding truthness of his story that, he had seen incident.”

3] Having examined the above reasons by the learned trial Judge rejecting his testimony on the ground of delay and his conduct in attending the funeral of the deceased moving here and there and still not disclosing that he was an eye witness, has been rightly found to be of suspicious nature. We do not find any perversity on the part of the learned trial Judge, keeping in mind the settled parameters for examining a case in respect of order of acquittal. Consequently, we find, no merit in the appeal as well as the Revision.

4] In the result, Criminal Appeal No. 22 of 1997 and Criminal Revision Application No. 212 of 1996 are dismissed.

**[INDIRA K. JAIN, J.]**

**[A.B.CHAUDHARI, J.]**

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