

UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPEAL NO.29 OF 1998.

The State of Maharashtra. ... Appellant.

Versus

Harishchandra Ganpati Kolhe,
Age 42 years, Occ.Agric.,
R/o Borsuri, Tq.Nilanga,
Dist.Latur. ... Respondent.

...

Ms.R.P.Gaur, A.P.P for the State.
Mr.V.R.Dhorde, advocate for the Respondent.

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**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**

Date : 05.12.2015.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.) :

1. Heard.

2. The accused-Respondent was prosecuted for an offence punishable U/s 302 of the I.P.C. The 3rd Additional Sessions Judge, Latur, acquitted

the accused. Aggrieved thereby, the State has filed the present appeal against acquittal.

3. The case of the prosecution is that the accused himself reported the crime to the Police Station suggesting that the accused killed Mangalabai his wife and Sheshrao.

4. Ms.Gaur, learned A.P.P submits that unfortunately the relevant witnesses turned hostile. However, the evidence of P.W.23 is relevant to be considered who had specifically stated that the accused killed Mangalabai. She had seen accused assaulting deceased Mangalabai by means of sickle. Learned A.P.P submits that there is no reason to disbelieve the statement of P.W.23. Learned A.P.P submits that even C.A. Report shows blood stains on the clothes of accused to be of the blood group of the deceased. This fact would sufficiently imply the guilt of the accused. The accused had made extra judicial confession before P.Ws.7 and 8. All these facts prove the guilt of the accused beyond reasonable doubt, however, the same has not been properly

construed by the Sessions Court. The blood group of accused was found to be of "O". The blood group of deceased Sheshrao was "AB" and blood group of deceased Mangalabai was of "A". The Chemical Analyser's report categorically shows that the blood stained clothes and sickle seized from the accused contained the human blood stains of "A" as well as "AB". Even if the evidence of P.W.23 is discarded, the case is proved through circumstantial evidence and the chain of circumstance is complete.

5. Mr.Dhorde, learned counsel submits that the absolute ban imposed on Section 25 of Evidence Act, on a confession made to a Police Officer is not qualified by Section 26 of the Evidence Act. If the first information report is given by the accused to Police Officer, amounts to confessional statement, proof of confession is prohibited by Section 25 of the Evidence Act. Confession includes not only admission of the offence but of other admissions of incriminating facts related to the offence contained in the confessional statement. No part of confessional

statement is receivable in evidence except to the extent that ban of Section 25 is lifted by Section 27 of the Evidence Act. The learned counsel relies on the judgment of the Apex Court in a case of **"Aghnoo Nagesia Vs. State of Bihar"** reported in **AIR 1966 Supreme Court 119"**. According to the learned counsel, P.W.23 is also a witness to the inquest panchanama. At that time she had never stated that she had seen the accused assaulting deceased Mangala. She has also admitted that for 15 days thereafter the Police were visiting their house as she was related to deceased, still, she did not give any statement to the Police. Even Investigation Officer has also accepted that the statement of Maroti was recorded but P.W.23 had not given the statement. The learned counsel submits that the clothes seized were never sealed. It has come in evidence that the accused had touched body of the deceased. The chain is not complete.

6. We have considered the submissions, judgment and the depositions. Even the father, brother of deceased Mangala, so also relatives of

Sheshrao have turned hostile. They have not supported the prosecution case. It is the accused who had lodged the FIR. In view of bar engrafted in Section 25 of the Evidence Act, the same can not be used against the accused, as has been held in the case of **"Aghnoo Nagesia Vs. State of Bihar"** referred supra.

7. P.W.23 was not called as a witness by the prosecution. She came on her own. She had also never gave statement to the Police during the investigation. She is a witness to the inquest panchanama but she had never given the statement to the Police. This witness also admits that she had never stated about seeing accused assaulting deceased Mangala to her family members. Investigation Officer also specifically deposed that she had never made any statement to the Police. The learned Judge has discussed the evidence of each and every witness. The case of the prosecution is that deceased and Sheshrao had illicit relations and as the accused saw both of them in a compromising position, accused killed both of them. The theory is not supported by the

prosecution witnesses. None of the prosecution witnesses testified about the said fact. P.W.Gopal is the brother of deceased Sheshrao. He also does not support the theory of illicit relations between both the deceased and his evidence is also hearsay. Even the evidence of P.W.5 - father of the witness Mangala does not support the prosecution case.

8. The prosecution witness has admitted that accused had touched the body of deceased and as such, clothes must have had blood stains of deceased. Moreover, the seizure has also not been carried out properly. The clothes were never sealed.

9. Considering the totality of the evidence, the Sessions Judge has arrived at a plausible conclusion. The extra judicial confession has not been proved. The witnesses before whom it is stated that extra judicial confession is made, they have not supported the prosecution. The chain of circumstances is not complete. If the case is based on circumstantial

evidence then the chain of circumstances should be so complete that there should not be a single chain missing and the chain of circumstances should lead to irresistible conclusion about the guilt of the accused leaving no room of doubt.

10. The Sessions Judge as observed above, has come to a plausible conclusion and if the conclusion arrived by the Sessions Judge in acquitting the accused is a plausible conclusion then the same need not be interfered with in Appeal. The appeal as such is dismissed.

Sd/-
(V.K.JADHAV, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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