

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

CRIMINAL REVISION APPLICATION NO. 89 OF 2002

Satyabhama W/o Sambhaji Bamanwad

Age : 50 Yrs., Occ.: Household,

R/o : Risangaon, Tq. Loha,

Dist. : Nanded.

..... PETITIONER/

[ORIGINAL COMPLAINANT]

V E R S U S

1. Santram S/o Narayan Bamanwad

Age : 39 Yrs., Occ. Labour,

R/o : Risangaon, Tq. Loha,

Dist. : Nanded.

2. Munja S/o Narayan Bamanwad

Age : 34 Yrs., Occ. Labour,

R/o : Risangaon, Tq. Loha,

Dist. : Nanded.

3. Shivaji S/o Narayan Bamanwad

Age : 36 Yrs., Occ. Labour,

R/o : Risangaon, Tq. Loha,

Dist. : Nanded.

4. Matori S/o Narayan Bamanwad

Age : 32 Yrs., Occ. Labour,

R/o : Risangaon, Tq. Loha,

Dist. : Nanded.

5. Tukaram S/o Munjappa Bamanwad

Age : 69 Yrs., Occ. Labour,

R/o : Risangaon, Tq. Loha,
Dist. : Nanded.

..... RESPONDENTS/
[ORIGINAL ACCUSED]

6. The State of Maharashtra

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Mr. Amol Gandhi, Advocate for the Petitioner.

Mr. P.B.Rakhunde h/f Mr. S.B.Bhapkar,
Advocate for R – 1 to 5.

Mr. S.A.Ambad, A.P.P. for R – 6 State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 15th JANUARY, 2015

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ORAL JUDGMENT :

1. The present Criminal Revision Application is carried to this Court by a wife of deceased Sambhaji against the Judgment and Order of acquittal dated 31/12/2001 passed by the learned 2nd Adhoc Additional Sessions Judge, Nanded in Sessions Case No. 48/1997, by which the learned Sessions Judge acquitted the present respondent Nos. 1 to 5 from the offences punishable u/ss 302, 306 and 201 read with 34 of the Indian Penal Code.

2. Heard Mr. Amol Gandhi, the learned counsel for the applicant, Mr. P.B.Rakhunde holding for Mr. S.B.Bhapkar,

the learned counsel for respondent Nos. 1 to 5 and Mr. S.A.Ambad, the learned A.P.P. for respondent No. 6 – State.

3. Initially, the present respondents/original accused were charged by the learned trial Court for the offence punishable u/s 306 of the Indian Penal Code only. The present respondents denied the charge and claimed for their trial. During the course of the trial, the present applicant Satyabhamabai, the wife of the deceased, was examined as prosecution witness No. 1. During her Examination-in-Chief, which was recorded on 14/08/2001, it was noticed by the learned A.P.P., who was in-charge of the brief and who was conducting the trial that her evidence discloses the commission of the offence punishable u/s 302 of the Indian Penal Code. In that view of the matter, on 08/11/2001, Charge was framed against the present respondent Nos. 1 to 5 for the offence punishable u/s 302 read with 34 of the Indian Penal Code and also u/s 201 read with 34 of the Indian penal Code. In order to bring home the guilt of the accused persons, the prosecution examined nine witnesses and also relied upon various documents which were proved during the course of the trial.

4. It is to be noted here that there is no eye witness in the prosecution case. The case is based on circumstantial evidence. According to the learned counsel for the applicant, following is the only circumstance that was appearing against the present respondent Nos. 1 to 5 viz. the enmity between them and the deceased in respect of right of way to approach their respective houses. Except this, there is no circumstance, is the submission on the part of the learned counsel for the applicant.

5. The Constitutional Bench of the Apex Court in case of Sharad Biridhichand Sarda Vs. The State of Maharashtra, AIR 1984 Supreme Court 1622, the Apex Court has set guidelines for evaluation of prosecution case which is based on circumstantial evidence only.

6. In the present prosecution case only circumstance is enmity, thus only on suspicion the applicant want to secure conviction.

In one of the recent decisions of the Apex Court in the case of Sujit Biswas Vs. State of Asam, (2013) 12 Supreme Court Cases 406, the Apex Court has ruled that

suspicion however strong it may, it can not take place of proof. The Criminal case can not be decided only on the ground of suspicion.

7. The present prosecution case does not travel beyond the suspicion. The learned Court below has correctly assessed the evaluation of the evidence of the prosecution and has rightly reached the conclusion that the prosecution was unable to bring home the guilt of respondent Nos. 1 to 5 resulting their acquittal.

8. I see no reason to interfere with the well reasoned Judgment of the learned Court below, since there appears no perversity in the impugned Judgment.

9. With the above observations, the present Criminal Revision Application is dismissed.

[V.M.DESHPANDE, J.]

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