

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

CRIMINAL REVISION PETITION NO. 356 OF 2002

Ganpat s/o. Kishanrao More,
age 55 yrs., Occu. Agriculture,
R/o. Gat No. 72, Kshirsagar,
Tq. Bhokardan, Distt. Jalna.

...Applicant

Versus

1. Trimbak s/o. Kaduba Mohare,
Age : 35 yrs., R/o. Kshirsagar, Tq. Bhokardan,
Dist. Jalna.
2. Nana s/o. Manikrao More,
Age : 28 yrs, R/o. Kshirsagar, Tq. Bhokardan,
Dist. Jalna.
3. Vithal s/o. Bhaginath Jagtap,
Age : 40 yrs, R/o. Gopalwadi, Tq. Gangapur,
At present : - New Bhokardan,
Distt. Jalna.

...Respondents

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Shri. Joshi, Advocate h/f Shri. D. P. Bakshi, Advocate for the
applicants
Shri. S. M. Jadhav, APP for respondent/State
Shri. R. R. Mane, Advocate for respondents No. 2 and 3
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**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 9TH, 2015.**

ORAL JUDGMENT : -

1. Heard respective Counsel.

2. The applicant herein happens to be the original

complainant in C.R. No. 25 of 1999, registered at Bhokardan Police Station, Dist. Jalna, against the respondents for offence punishable under Sections 302, 201 read with 34 of the Indian Penal Code.

3. Such of the facts necessary for a decision of this revision petition are as under:-

Ganpatrao More i.e. the present applicant herein happens to be the brother of the deceased – Tatyarao. That, on 26th March, 1999 his brother – Tatyarao, who was residing normally at Kshirsagar, had gone to Bhokardan for some work. He did not return home at night. In the morning, the wife and son of Tatyarao informed the complainant that Tatyarao has not returned home and, therefore, they searched for him. The complainant was searching for his brother at all Dhabas on the road between Bhokardan to Jalna. He had learnt from reliable persons, that on the previous day on i.e. 26th March, 1999 he had been to a Dhaba. That, three persons had consumed alcohol along with him and that they had proceeded towards Nanja shivar after consuming alcohol. The said information was given to the complainant by a boy working at the said Dhaba. Thereafter, the complainant had moved further. He was searching for him in Nanja road. At that time, he had learnt

that, in a dilapidated well situated in the agricultural land of Pandurang Pagare, a dead body was found. He informed the same to the police station. The Police had accompanied them to the well. They had removed the body from the well. The complainant had identified the said dead body to be that of his brother. They had noticed injuries on the person of the deceased and, therefore, he had informed the police that on 26th March, 1999 the present respondents had accompanied his brother and they must have caused the homicidal death of his brother. It is pertinent to note that, on 27th March, 1999 itself initially the complainant i.e. the present applicant had informed the police that his brother was seen at the Dhaba on 26th March, 1999. That, the dead body of his brother was found in the dilapidated well of Pandurang Pagare. On the basis of the initial report, A.D. No. 6/99 was registered under Section 174 of Cr.P.C. That, the spot panchanama and inquest panchanama were conducted in A.D. Enquiry. On the same day i.e. on 26th March, 1999 at about 11.00 p.m., offence is registered against the present accused. The accused were arrested on 28-3-1999. Recovery was made pursuant to the memorandum under Section 27 of the Indian Evidence Act. After completion of investigation, charge-sheet was filed against the accused for offence punishable under Sections 302, 201 read with 34 of the

Indian Penal Code. The case was committed to the Court of Sessions and registered as Sessions Case No. 122 of 1999. The prosecution examined ten witnesses to bring home the guilt of the accused. The learned Addl. Sessions Judge, Jalna, vide judgment and order dt. 30th October, 2002 has been pleased to acquit the accused of all the charges levelled against them. It was the defence of the accused that the deceased had consumed alcohol and had accidentally fallen in the well. The learned Judge has appreciated the evidence adduced by the prosecution and has rightly come to a conclusion that the case rests upon circumstantial evidence and that the prosecution has failed to establish the incriminating circumstances against the present accused and has, therefore, acquitted the accused of all the charges levelled against them. Hence, this revision petition.

4. Learned Counsel for the applicant submits that the learned Sessions Judge has not appreciated the evidence of PW-3 in its proper perspective and the same has resulted into miscarriage of justice.

5. Perused the record. PW-3 – Raju Lokhande was working as a Waiter at the Khadekar's Dhaba. According to PW-3, 15 days prior to the incident, accused No. 2 and Sarpanch

Patil had been to his Dhaba. That, Sarpanch Patil is known as Trimbak Patil i.e. accused No. 1 and the deceased was known as Sarpanch Patil. According to him, accused No. 2 and the other persons had caught hold hands of Sarpanch Patil and taken him towards the road. On the next day, the brother of deceased had been to Dhaba and PW-3 had disclosed to him that the persons had taken Sarpanch Patil towards the road side. He has expressed his ability to identify the persons who had taken Sarpanch Patil. That, they are the same. They were three persons excluding the deceased. That, PW-3 has not specifically stated that the persons who are accused before the Court are the same persons who had taken the deceased towards the road or are the same persons who were last seen in the company of the deceased. It is pertinent to note, that was the only occasion when the witness i.e. PW-3 had seen the Sarpanch Patil as well as the accused persons at the Dhaba. The Investigating Agency had not conducted any test identification parade to verify the identity of the accused persons as the same persons who were lastly seen in the company of the deceased.

6. Upon perusal of the record it appears that, initially on the basis of the report given by the present applicant i.e. the

original complainant, A.D. No. 6/99 was registered. That, according to the complainant, he had reported that he suspects the present respondents to be the persons who had caused the homicidal death of his brother. However, it cannot be ignored that the scene of offence panchanama as well as the inquest panchanama and the post mortem were conducted in A.D. Enquiry. The learned Counsel for the respondents rightly submits that, in all probabilities this is an antedated F.I.R. or else the scene of offence panchanama and the inquest panchanama would be conducted in Crime No. 25 of 1999. It is further pertinent to note that, scene of offence panchanama was conducted on 27th March, 1999 between 6.10 and 6.30 P.M. Till then the complainant had not suspected the present accused persons. That, the inquest panchanama was also conducted in A.D. Enquiry. There is no material on record to indicate that the present respondents had caused the homicidal death of the brother of the applicant. The substantive evidence of PW-3 would not inspire the confidence of the Court. The Investigating Officer has also specifically submitted that he had known the well from where the body of the deceased was recovered.

7. Taking into consideration the evidence adduced by the prosecution and the submissions made across the bar, this

Court is of the opinion that the revision petition is *sans* merit. The learned Counsel for the respondents submits that Section 401(3) of the Code of Criminal Procedure specifically contemplates that, 'nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction' and in view of this, revision petition being *sans* merit stands rejected.

(SMT. SADHANA S. JADHAV, J.)

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