

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

CRIMINAL REVISION APPLICATION NO. 181 OF 2002

Prabhakar S/o Madhavrao Thite

Age : 29 Yrs., Occ. : Agriculture,

R/o : Golegaon, Tq. : Aundha,

Dist. : Hingoli.

**..... APPLICANT/
[ORIGINAL COMPLAINANT]**

V E R S U S

1. The State of Maharashtra

..... RESPONDENT

2. Ashok S/o Ramrao Pole

Age : 22 Yrs., Occ. : Agril.,

R/o : Golegaon, Tq. :

Aundha, Dist. : Hingoli.

**..... RESPONDENT NO. 2/
[ORIGINAL ACCUSED]**

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Mr. V.M.Maney, Advocate for the Applicant.

Mr. V.P.Kadam, A.P.P. for R – 1 State.

None for R – 2.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 4th FEBRUARY, 2015

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JUDGMENT :

1. The applicant, who is the first informant, being dis-satisfied with the Judgment and Order of acquittal dated 23/04/2002 passed by the learned Additional Sessions Judge, Hingoli in Session Trial No. 33/2001 for the offences punishable u/s 302 and 201 of the Indian Penal Code, is before this Court.

2. Heard Mr. V.M.Maney, the learned counsel for the applicant and Mr. V.P.Kadam, the learned A.P.P. for respondent No. 1 – State. Though the respondent No. 2 was served, his counsel remained absent at the time of hearing.

3. The prosecution case can be narrated as under :

The first informant Prabhakar [P.W.1] is son of deceased Madhavrao Thite. A agricultural field situated at village Golegaon, Taluka Aundha, district Hingoli is owned by accused Ashok/respondent No. 2. The prosecution case further states that the land of accused was taken for cultivation by deceased Madhav on crop sharing basis [batai] and at the relevant time, Wheat crop was standing in the field. The First Information Report [hereinafter referred as

'F.I.R.' for brevity] [Exh.23] further proceeds that 1 ½ years prior to the incident, deceased Madhav gave hand loan of ₹ 5,000/- [Rupees Five Thousand only] to accused Ashok. He was avoiding to repay the said amount though it was demanded by the deceased, resulting into quarrel on 2 occasions in between them.

The F.I.R. further states that on 31/01/2001, first informant and his family members, except his deceased father, left their house for work at percolation tank of the village. The deceased proceeded towards agricultural field. First informant and his other family members returned to house at 7.00 p.m., however deceased was not noticed in the house. That time, first informant's maternal uncle Uttam Hake [P.W.5] came to his house and narrated that he saw the quarrel between deceased Madhav and accused Ashok in the field. Thereafter, first informant along with Uttam Hake and others went to the field of accused Ashok. They noticed there 'shirt' of deceased Madhav in the field and blood stains scattered at the place. Accused Ashok was present there. Upon enquiry with him, he disclosed that at 3.00 p.m., deceased left agricultural field. On such disclosure, accused Ashok left the place. Thereafter, first informant and others

returned to village and thereafter they approached to police station Aundha. There, first informant gave report [Exh. 24] on 31/01/2001.

On following day, the Assistant Police Inspector [P.W. 11] Dnyanoba Mundhe visited the spot of incidence. He found there one 'shirt' having blood stains over the dried stems of the plants adjoining to the common boundary of the fields of Sambhaji Pole and accused Ashok. He also noticed round marks of dragging on the land from that place up to the nearby canal. He also noticed blood stains at different places. He seized those dried stems of Jawar stained with blood. The other incriminating articles were also seized by him. Dnyanoba Mundhe [P.W.11] thereafter gave wireless message to different police stations requesting to give information about any body if found in the canal area.

On 08.02.2001, police officials of police station Limbgaon gave information on phone to P.W. 11 Dnyanoba Mundhe that dead body is found in the canal of village Talni. First informant Prabhakar identified the said body of his father. The inquest was done on dead body vide Inquest Panchanama [Exh. 35]. Postmortem was done on dead body. On 08/02/2001, first informant Prabhakar lodged report

against accused Ashok [Exh. 23]. On the basis of the same, offence was registered vide Crime No. 17/2001 for the offences punishable u/s 302, 201 of the Indian Penal Code. The accused was arrested on 09/02/2001. His clothes were seized on 10/02/2001 from his person vide Seizure Panchanama [Exh. 36]. His statement u/s 27 of the Indian Evidence Act, 1872 was recorded and pursuant to his disclosure statement, 'axe' was recovered from his house on 10/02/2001.

4. After completion of the other investigation, the Investigating Officer was of the opinion that sufficient material is collected during investigation against accused Ashok/respondent No. 2 for sending him for trial, hence he filed Charge Sheet in the Court of law. The learned Magistrate found that the offence is exclusively triable by the Court of Sessions, therefore, he passed necessary committal order and committed the case to the Court of Sessions.

5. The learned Additional Sessions Judge framed Charge below Exh. 10 in Session Trial No. 33/2001 against accused Ashok/respondent No. 2, who abjured his guilt and

claimed for his trial.

6. The learned trial Court, after appreciating the prosecution case, acquitted accused Ashok/respondent No. 2 on 23/04/2002. Hence, the present Revision Application.

7. From the evidence of Dr. Subhash Deshmukh [P.W.12], the injuries appearing on the dead body and other available evidence, the learned trial Court has rightly recorded finding that the dead body, which was found in the canal, was of Madhav, the father of the first informant and he met with homicidal death.

8. The learned trial Court, therefore, proceeded to scan the evidence as to whether the prosecution has successfully bring home the guilt of the accused Ashok/respondent No. 2 beyond reasonable doubt that he is responsible for death of Madhav. On appreciation of the prosecution case, the learned Additional Sessions Judge was of the opinion that the prosecution has utterly failed to bring home the guilt of the accused beyond reasonable doubt and, therefore, he acquitted the accused.

9. In view of the finding recorded by the learned trial Court that deceased Madhav met with homicidal death, the question is whether the accused Ashok/respondent No. 2 is author for the injuries, resulting into the death of Madhav.

According to the learned counsel for the applicant, the available evidence on record shows that it is only the accused Ashok/respondent No. 2 who is responsible for Madhav's death and the Court below has committed mistake in acquitting accused Ashok/respondent No. 2 from the charge, which he faced during trial.

10. There is no eye witness account in the present prosecution case. The case is based on circumstantial evidence only. How the prosecution evidence has to be appreciated when the case is solely based on circumstantial evidence, for that we have guiding lamp of pronouncement of Hon'ble Apex Court in the case of **Sharad Biridhichand Sarda Vs. The State of Maharashtra, AIR 1984 SC 1622.**

11. Before the learned trial Court and before this Court, the learned counsel for the applicant has culled out the following circumstances appearing against accused

Ashok/respondent No. 2. The circumstances are mentioned by the learned trial Court in paragraph 20 of the impugned Judgment, those are :

- (i) Last seen.
- (ii) Prior strained relations in between deceased Madhav and accused due to the payment of loan of ₹ 5,000/- by the deceased to the accused and demand of repayment made by the deceased to the accused.
- (iii) The accused was found in the field immediately prior to the incident.
- (iv) Marks of dragging were seen from the field of the accused up to the canal and blood stains were also seen at that place.
- (v) Clothes on the accused were found stained with the blood.
- (vi) Recovery of 'axe' and weapon used in commission of the crime by the accused.
- (vii) Recovery of the dead body of deceased Madhav Raghoji Thite from the canal.

12. In so far as last seen is concerned, the

prosecution relies on the evidence of Uttam Hake [P.W.5]. This witness is maternal uncle of first informant and thus closely related to the deceased. Merely because the witness is closely related to the deceased or first informant, that by itself does not render his evidence as untrustworthy. While evaluating the evidence of such closely related witness, the Court should read his evidence cautiously.

His evidence would reveal that the agricultural field of accused, which was taken on 'batai' by deceased Madhav is situated on northern side of Aundha – Jintur road, whereas the agricultural field of this witness is situated on the opposite direction of the said road. His evidence would reveal that on 31/01/2001 at 5.30 p.m., he was proceeding to his field through the road and that time he noticed altercation between deceased Madhav and accused Ashok in the field of accused Ashok. This witness went towards his own field and at 6.30 p.m., he returned to his house. His evidence would further reveal that he narrated the incidence of quarrel to Prabhakar [P.W. 1] and his mother. Thereafter, they all went to the field of accused, that time accused came from the side of canal near the hut. Upon enquiry made by Prabhakar, it was disclosed to them that deceased went to his

house at 3.00 p.m. and thereafter accused Ashok went away. Uttam Hake [P.W.5] further claims that then he took all of them to the place of quarrel. There they saw 'shirt' in the crop of 'mithi' and saw the blood stains on the northern side. Thereafter they all went to Aundha police station.

The evidence would reveal that on 31/01/2001 itself, in the evening, Prabhakar [P.W.1] lodged report [Exh. 24]. At the time when Prabhakar went to the police station, Uttam Hake [P.W. 5] was with him.

In the cross examination, Uttam Hake [P.W. 5] has admitted following, :

“ On 31/01/2001 in the evening, I along with Prabhakar had gone to the police station. The application given by Prabhakar was written by me in my hand writing. I wrote that application in the police station ”.

13. Thus, it is clear that Uttam Hake [P.W. 5] not only accompanied first informant Prabhakar in the police station, but he also wrote Complaint [Exh. 24] in the police station. Thus, Exh. 24 was first in time about the narration

of the incident to the police. The scribe Uttam Hake [P.W. 5] wrote the same in the police station itself. Perusal of Exh. 24 would reveal that the said most important contemporary document is completely silent about the quarrel which Uttam Hake [P.W. 5] claimed to have witnessed at 5.30 p.m. in the agricultural field in between deceased Madhav and accused Ashok.

Not mentioning such an important piece of information in Complaint [Exh. 24], assumes importance and it really creates doubt about the claim of Uttam Hake [P.W. 5] that really he has seen deceased Madhav lastly in the company of accused Ashok in quarreling state.

Further, we can not forget the closeness of this witness with deceased being the brother of his wife. In spite of such closeness, his reluctance to intervene in the altercation, that was going on between deceased Madhav and accused Ashok, appears to be most unnatural and it only tends to show that he has not witnessed such quarrel. Further, in his evidence, he has tried to give an explanation for not intervening in the altercation on the ground that deceased Madhav had consumed liquor, therefore, he had not gone to him. From where this witness is stating that

deceased Madhav was under influence of liquor, remains in the dark cloud of mistry. There is nothing on record to show that deceased Madhav had consumed liquor. There is no evidence that deceased Madhav was habituated to drinking liquor.

14. In that view of the matter, there is no option but to discard the evidence of Uttam Hake [P.W. 5]. In order to substantiate the charge to propagate the theory of last seen, except the evidence of Uttam Hake [P.W. 5], there is no evidence available in the prosecution case. Further, it is to be noted that the statement of Uttam Hake [P.W. 5] was recorded by police after 12 days of the incidence. Therefore, the said circumstance can not be used against accused Ashok/respondent No. 2.

15. In so far as second circumstance is concerned, different story is being put-forth in Exh. 24. It reveals that some amount was outstanding with accused Ashok in respect of fertilizers and seeds. In the said report, there is no mention that deceased Madhav has given hand loan of ₹ 5,000/- to accused Ashok/respondent No. 2. In that view

of the matter, the learned trial Court has rightly recorded finding that Complaint [Exh. 24] contradicts the version of Prabhakar [P.W.1] in respect of the genesis of the crime. The learned trial Court has rightly disbelieved the other circumstances. The view taken by the learned trial Court in rejecting the other circumstances is based on the evidence. The view is not such that it is really impermissible to take the said view.

Further, 'shirt' which was found in the agricultural field, alleged to have been of deceased Madhav, was not shown to Prabhakar [P.W.1], his mother Darubai [P.W. 2] and Uttam Hake [P.W. 5] for identification. Therefore, there was no proper identification that the said 'shirt' was of deceased Madhav.

16. The Chemical Analyser's report is at Exh. 48. The clothes of the accused alleged to have been stained with blood and the 'axe' recovered at his instance was sent to Chemical Analyser. The Chemical Analyser's report shows that no blood was noticed on the clothes of the accused or on the 'axe'. Therefore, the said can not be treated as incriminating circumstance against accused

Ashok/respondent No. 2.

17. The learned trial Court, in my view, has correctly assessed the prosecution case. The learned trial Court's view of acquittal is justified as the reasons supplemented by the learned trial Court for such acquittal do not suffer from any perversity.

18. In that view of the matter, I see no reason to upset the well reasoned Judgment of the learned trial Court for acquitting accused Ashok/respondent No. 2, as the prosecution failed to bring home the guilt of accused Ashok/respondent No. 2 beyond reasonable doubt.

19. Hence, the present Revision Application is dismissed.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 181.2002 - [J]
