

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

Criminal Revision Application No. 148 of 2003

Premnath s/o. Madhav Jadhav,
Age : 32 years,
Occupation : Agriculture,
R/o. Shirdhon, Taluka : Nilanga,
District : Latur.

.. Revision Applicant
(Original first informant)

versus

1. Baburao s/o. Mahada Sangave,
Age : 53 years,
Occupation : - .
2. Kamlakar s/o. Suryabhan Sangave,
Age : 41 years,
Occupation : - .

Both R/o. Shirdhon,
Taluka : Nilanga,
District : Latur.

3. Babu s/o. Tulshiram Jawale,
Age : 43 years,
Occupation : - ,
R/o. Badur, Taluka : Nilanga,
District : Latur.
4. Chandrakant s/o. Hanmanta Birajdar,
Age : 40 years,
Occupation : - ,
R/o. Takli, Taluka : Nilanga,
District : Latur.
5. Madhav @ Mahadu s/o. Tulsiram Jawale,
Age : 48 years,
Occupation : - ,
R/o. Badur, Taluka : Nilanga,
District : Latur.

6. The State of Maharashtra,
Through S.H.O., Police Station,
Kasawr-Shirshi,
Taluka : Nilanga,
District : Latur.

.. Respondents
(Nos.1 to 5 - Original accused
No.6 - Original complainant)

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Mr. A.M. Gholap, Advocate, for the revision applicant.

Mr. S.S. Choudhari, Advocate, for respondent nos.1 to 4.

Respondent no.5 served (Absent).

*Mr. S.D. Kaldate, Additional Public Prosecutor, for
respondent no.6 - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 20TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. A.M. Gholap for the revision applicant, Adv. Mr. S.S. Choudhari for respondent nos.1 to 4 and the learned APP for respondent no.6 - State. None for respondent no.5 though served.

2. The applicant herein happens to be the original complainant in Sessions Case No. 6 of 2002. The respondent nos.1 to 5 herein were charged for the offence punishable under Section 120B, 302, read with Section 34, of the Indian Penal Code, for causing homicidal death of Keshav s/o. Madhavrao Jadhav. The learned Ad hoc Additional Sessions

Judge, Nilanga, vide judgment and order dated 10th January 2003, was pleased to acquit all the accused of the charges levelled against them. Hence, this revision by the original complainant.

3. Such of the facts necessary for the decision of this revision application are as follows :

That, on 19th October 1999, deceased Keshav had gone to his field for sleeping in the night. On 20th October 1999, at 6.00 a.m., Keshav was found dead in his agricultural land, by his brother Govind. On the same day at about 9.30 p.m., Premnath Jadhav had lodged a report at Kasar-Shirshi Police Station, on the basis of which Crime No. 114/1999 was registered. It was alleged in the complaint, that on the eve of Pola festival of 1999, there was a quarrel between deceased Keshav and Baburao Sangave as well as other accused persons. On 14-10-1999, a quarrel had taken place between Madhav Jawale and Keshav on account of grazing of cattle. At that juncture, accused Madhav is said to have threatened Keshav of dire consequences. Hence, the complainant had expressed suspicion against accused nos.1, 2 and 5, namely, Baburao, Kamlakar and Madhav @ Mahadu. In the course of investigation, present respondent nos.1 to 5 were arrested. After completion of investigation, charge sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No. 6/2002.

4. The prosecution has examined in all 17 witnesses to bring home the guilt of the accused. Upon perusal of the evidence adduced by the prosecution, the learned Ad hoc Additional Sessions Judge had arrived

at a conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The authorship of the injuries sustained by Keshav was not established. In the course of investigation, the weapon with which Keshav was assaulted, was not seized at the instance of the accused persons under Section 27 of the Evidence Act. Hence, the learned Ad hoc Additional Sessions Judge has acquitted all the accused persons for want of substantive evidence.

5. The learned Sessions Court has rightly relied upon the judgment of Hon'ble Apex Court in the case of ***Bodh Raj Vs. State of Jammu & Kashmir***, reported in ***AIR 2002 SC 3164***, thereby laying down the principle, that if two views are possible, one in favour of the accused and another in favour of the prosecution, the view in favour of the accused has to be accepted. Present case rest upon circumstantial evidence. The learned Sessions Court has rightly arrived at a conclusion that chain of circumstances has not been established against the accused by the prosecution.

6. The learned Counsel for the applicant has drawn attention of this court, to the observation of the learned Additional Sessions Judge, holding that the prosecution has failed to prove that the death of Keshav is homicidal. It is true, that this observation was unwarranted and it prima facie appears from the perusal of the post mortem notes and the evidence of PW 10 Dr. Jyoti Agroya, that Keshav had died homicidal death. It is a matter of record, that the authorship of the injuries sustained by the deceased has not been proved. Hence, apart from the stray observation of the learned Additional Sessions Judge, the conclusion drawn by the

learned Additional Sessions Judge, that the authorship of the injuries has not been proved and that the prosecution has failed to prove the guilt of the accused / respondents herein, beyond reasonable doubt, does not call for any interference as he has assigned sound and justifiable reasons for recording the finding of acquittal.

7. In the result, the Revision Application is dismissed. Rule is discharged.

(SMT. SADHANA S. JADHAV)
JUDGE

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