

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

Criminal Application No. 5452 of 2014

The State of Maharashtra,
Through Rajur Police Station,
Taluka : Akole,
District : Ahmednagar.

.. Applicant
(Original complainant)

versus

1. Bhanudas Narayan Yadav,
Age : 45 years,
2. Raghunath Govinda Muthe,
Age : 33 years,

Both R/o. Shelad,
Taluka : Akole,
District : Ahmednagar.

.. Respondents
(Original accused)

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*Mrs. S.G. Chincholkar, Additional Public Prosecutor,
for the applicant - State.*

Mr. R.K. Temkar, Advocate, for respondent no.1.

Mr. V.Y. Bhide, Advocate, for respondent no.2.

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 6TH FEBRUARY 2015

COURT'S ORDER *(Per A.M. Badar, J.)* :

1. This is an application filed by the applicant - State seeking leave to file appeal challenging the judgment and order dated 23rd July 2014, passed by the learned Additional Sessions Judge, Sangamner, thereby acquitting respondents - accused for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code.

2. We heard the learned Additional Public Prosecutor appearing for the applicant, as well as learned Counsel appearing for respondents - accused. With their assistance, we perused the record and proceedings including the depositions of witnesses.

3. At this stage, we may note few facts projected from Police report, leading to the prosecution of respondents - accused.

It is the prosecution case, that in between 4.30 p.m. of 24-6-2013 to 1 p.m. of 26-6-2013, respondents - accused, in furtherance of their common intention, committed murder of one Bhanudas s/o. Raoji Talekar, resident of village Shelad, Taluka : Akole, District : Ahmednagar, and despite having knowledge that murder of said Bhanudas is committed, in order to screen themselves from legal punishment, destroyed evidence of that offence by removing clothes from the dead body of Bhanudas and by throwing that naked body in Bhandardara Dam.

4. Case of the prosecution rests on circumstantial evidence. The learned Additional Public Prosecutor is relying on the following circumstances :-

(a) Respondents - accused and deceased Bhanudas s/o. Raoji were last seen together by Ashok Kisan Muthe and PW 12 Yogesh Dattu Yadav on 24-6-2013 at *Tapari* of Somnath at Papalshet Shivar.

(b) On the basis of voluntary disclosure statement made by accused no.1 Bhanudas Yadav, pair of blood stained Chappals as well as blood stained clothes of deceased Bhanudas s/o. Raoji were recovered.

(c) According to the prosecution, blood stained clothes of respondent - accused no.2 Raghunath s/o. Govinda Muthe, as well as weapon of offence i.e. blood stained stone and Chappals were recovered. On the basis of voluntary disclosure statement of respondent - accused no.2 Raghunath Muthe.

(d) The prosecution is attributing motive to respondents - accused for eliminating deceased Bhanudas s/o. Raoji as very old enmity and recent scuffle between them.

5. It is not in dispute that Bhanudas Raoji Talekar died homicidal death. Evidence of PW 13 Budhaji Lahamte - Autopsy Surgeon proves that Bhanudas Talekar died due to haemorrhage shock due to head injury. His blood stained clothes were found on the bank of Bhandardara Dam.

6. Let us examine the last seen theory propounded by the prosecution as the case in hand entirely rests on circumstantial evidence.

In cases where evidence is of circumstantial nature, circumstances from which the conclusion of guilt of accused persons is drawn needs to be established firmly and cogently. All facts so established should be consistent with sole hypothesis of guilt of accused and inconsistent with their innocence. Last seen theory can be used and come in play when the time gap between the point of time when accused persons and deceased were lastly seen together and when the deceased is found dead, is so small that possibility of any other person committing the act of offence or being author of crime is virtually impossible. Keeping in mind this position, let us examine evidence adduced on record by the prosecution to prove that deceased Bhanudas s/o. Raoji was lastly seen in the company of respondents - accused. At this juncture, we may note that even according to the prosecution case, as reflected in the FIR, deceased Bhanudas s/o. Raoji, as well as respondents - accused were friends. This fact is also deposed none else but by father of deceased Bhanudas s/o. Raoji, namely PW 1 Raoji s/o. Gopala Talekar.

7. Evidence of PW 1 Raoji as well as that of PW 2 Usha w/o. Bhanudas Talekar shows that on the day of incident, deceased Bhanudas s/o. Raoji had gone to town Rajur with his wife PW 2 Usha for selling beans. Evidence of PW 2 Usha shows that he parted her company by saying that he was having work at Rajur. Thereafter, it is the prosecution case, that he joined company of accused persons. As seen from the evidence of PW 3 Ashok s/o. Kisan Muthe, when he along with respondent - accused no.1 Bhanudas s/o. Narayan Yadav reached at the *Tapari* of Somnath s/o. Sakharam Muthe, at village Papalshet Shivar, Bhanudas (since deceased) came there with PW 12 Yogesh s/o. Dattu Yadav, on the

motorcycle driven by Yogesh. Version of PW 3 Ashok shows that respondent - accused no.2 Raghunath Muthe was already present there. Thereafter, as stated by PW 3 Ashok, Bhanudas s/o. Raoji Talekar went with both accused persons towards Padalne Road.

Evidence of this witness is disbelieved by the learned trial court as this witness has admitted in cross examination, that what is stated by him in chief examination is his version before the court for the first time and that he never went to Police Station. This was taken by the learned trial court, to be the first version of the incident from his mouth and, therefore, this witness was disbelieved.

8. We have perused the charge-sheet. PW 3 Ashok is cited as prosecution witness. Investigating Officer is stating that statement of this witness was duly recorded by him. However, it appears that the learned Public Prosecutor has not cross examined PW 3 Ashok on this aspect in order to confront him with his Police statement recorded under Section 161 of the Code of Criminal Procedure, 1973.

9. Be that as it may, we have also perused evidence of PW 12 Yogesh s/o. Dattu Yadav on record. However, unfortunately, that evidence is of no assistance to the prosecution as PW 12 Yogesh has turned hostile. In cases based on circumstantial evidence, evidence of the prosecution needs to be strong, cogent and sufficient. As PW 3 Ashok in his cross examination has stated that he has disclosed the incident for the first time before the court and as prosecution has not examined Somnath - owner of *Tapari*, where deceased Bhanudas s/o. Raoji met, it is not possible to

conclude that the fact that the deceased was lastly seen in the company of respondents - accused is proved by the prosecution.

10. Then comes evidence of recovery allegedly made at the instance of respondent - accused no.1 Bhanudas Yadav under Section 27 of the Indian Evidence Act. According to the prosecution case, pair of Chappals and blood stained clothes of the deceased were recovered at the instance of respondent - accused no.1 Bhanudas s/o. Narayan Yadav. To prove this recovery, the prosecuting is placing reliance on evidence of PW 5 Ankush s/o. Ramnath Kale as well as PW 7 Vijay s/o. Ramhari Awari. Evidence of PW 5 Ankush shows that on 26-6-2013, when he was called at Police Station, respondent - accused no.1 Bhanudas s/o. Narayan was present there and narrated before him that dead body of Bhanudas is thrown in Bhandardara Dam. This witness further deposed that then accused Bhanudas Yadav, he himself, PW 7 Vijay Aware along with Police personnel went to Bhandardara Dam in a Police jeep, where pair of Chappals and blood stained clothes were found. As against this, another Panch PW 7 Vijay is stating that on 26-6-2013, Police had called him at Rajur Police Station. When he went to the Police Station, respondent - accused no.1 Bhanudas s/o. Narayan Yadav was present there and in his presence, Police told him that the accused is ready to produce clothes. Then this witness deposed that by Police vehicle they went to the dam and the accused produced clothes as well as Chappals. Similar is the evidence of Investigating Officer. Exhibit 32 is the alleged memorandum statement of accused no.1 Bhanudas s/o. Narayan Yadav. With the aid of this evidence, the prosecution is trying to establish that on the basis of discovery statement of respondent - accused no.1 Bhanudas s/o. Narayan

Yadav, blood stained clothes and Chappals of the deceased came to be seized.

11. Sections 25 and 26 of the Evidence Act provides that a statement made by the accused while in Police custody, being tainted, cannot be relied upon. Section 27 is an exception to this proposition. It prescribes that a fact can be discovered by the Police pursuant to the information given by the accused while in Police custody. To illustrate if any weapon is recovered at the instance of accused on the basis of disclosure statement and if ultimately that weapon is found to be connected with the crime in question, then such fact become relevant while inferring guilt of accused persons.

12. In the light of these principles, if evidence on record is perused, then it is clear that Police were already knowing where clothes of deceased Bhanudas s/o. Raoji were lying even prior to arrest of respondent - accused no.1 Bhanudas Yadav. On this aspect, evidence of PW 1 Raoji - father of the deceased is material. It is in his evidence, that from 25-6-2013, he along with Police started search of his missing son and ultimately they found dead body of Bhanudas floating in the water of Bhandardara Dam on 26-6-2013. Evidence of PW 1 Raoji further shows that clothes of deceased Bhanudas were found to be lying near Bhandardara Dam. In the wake of this evidence, and particularly when Police were already knowing the fact that clothes of deceased Bhanudas were lying at Bhandardara Dam, evidence of discovery allegedly made at the instance of respondent - accused no.1 Bhanudas s/o. Narayan loses significance.

13. Next is the evidence regarding recovery at the instance of respondent - accused no.2 Raghunath. According to the prosecution case, at the instance of Raghunath, blood stained handkerchief, pair of Chappals and blood stained stone came to be seized. However, perusal of spot-cum-seizure Panchanama Exhibit 38 do not show that this recovery was made at the instance and upon disclosure statement made by respondent - accused no.2 Raghunath. As seen from evidence of PW 6 Bhausaheb s/o. Ramchandra Yadav, this recovery was made near the bridge of village Dhamangaon Pat. As such, this evidence is also of no assistance to the prosecution in establishing guilt of accused persons.

14. Now let us come to the evidence regarding motive with respondents - accused for commission of murder of Bhanudas Talekar. What impels accused persons to commit crime is difficult to fathom. However, in cases relating to circumstantial evidence, motive for committing offence assumes great importance. Absence of motive puts the court on guard to scrutinise the evidence closely to ensure that suspicion, conjunctures and surmises should not take place of proof. Motive attributed to respondents - accused in this case is old enmity as well as recent scuffle. For this purpose, evidence of PW 10 Dattu s/o. Gopala Shelke is adduced by the prosecution. We have perused evidence of PW 10 Dattu. His evidence shows that a year prior to the incident, he has seen two persons scuffling with one person. While in the witness box, this witness has identified only respondent - accused no.2 Raghunath. Perusal of evidence of PW 10 shows that he was not knowing deceased Bhanudas s/o. Raoji Talekar. As such, it is hard to believe that deceased Bhanudas Talekar and respondents - accused indulged in scuffle and this

scuffle impelled respondents to commit murder of Bhanudas s/o. Raoji Talekar. Apart from this, PW 1 Raoji has categorically deposed that respondents - accused were friend of his son deceased Bhanudas. In the wake of this evidence, alleged motive behind the crime is also not proved by the prosecution.

15. Net result of the foregoing discussion requires us to hold that the prosecution has failed to prove any of the charges levelled against respondents - accused and, therefore, learned trial court has rightly acquitted respondents - accused. It cannot be held that the view taken by the learned trial court is unreasonable or perverse. No case for grant of leave is made out.

16. In the result, the Application is rejected. Consequently, leave to file appeal is refused.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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