

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

CRIMINAL APPEAL NO. 691 OF 2015

Mohan s/o. Shrimantrao Sawase,
Age: 25 Years, Ocu. Agri.
R/o. Village Laxmipur, Tal.Wadvani,
Dist. Beed

APPLICANT
[Orig. Complainant]

VERSUS

- 1] The State of Maharashtra,
Through the Police Station Wadvani
Tal. Wadvani Dist. Beed.
- 2] Asaram Shesherao Sawase
Age: 65 Years, Occu. Agri.
R/o. Village Laxmipur, Tal.Wadvani
Dist. Beed
- 3] Gangadhar Shesherao Sawase,
Age: 55 Years, Occu. Agri.
R/o. Village Laxmipur, Tal. Wadvani,
Dist. Beed.
- 4] Dhondiram Asaram Sawase,
Age: 35 Years, Occu. Agri.
R/o. Village Laxmipur, Tal. Wadvani,
Dist. Beed.
- 5] Dnyanoba Gangadhar Sawase,
Age: 29 Years, Occu. Agri.
R/o. Village Laxmipur, Tal. Wadvani,
Dist. Beed.
- 6] Chandrakant Vishwambhar Kadam,
Age: 42 Years, Occu. Agri.
R/o. Village Laxmipur, Tal.Wadvani,
Dist. Beed.

RESPONDENTS
[Accused No.1-4 & 6]

...
Mr. V.S.Undre, Advocate for the Applicant

Mr. K.S.Patil, APP for the Respondent/State

...

**CORAM : S.S. SHINDE &
A.I.S.CHEEMA, JJ.**

Reserved on : 17.07.2015
Pronounced on: 01.09.2015

PER COURT: [Per S.S.Shinde, J.]

1] This Application is filed by the original complainant seeking leave to file appeal, in stead of filing appeal under Section 372 of Criminal Procedure Code, against the Judgment and Order of acquittal dated 12th June, 2014 passed by the Additional Sessions Judge, Majalgaon in Sessions Case No.34/2013. However, we treat this Application as Appeal on behalf of the complainant.

2] In nutshell, it is the case of the prosecution that, on 15.03.2013 at about 8.00 a.m. the father of informant had gone to his field locally named as '*Sitaphaliche Shet*' for grazing she-goats, and the informant and his elder brother namely Chandrakant, were in their house, and his other brother namely Madan had gone to attend his duty at *Vasti* School. On that day, when the informant was present in his house, their she-

goats returned to his house, but his father did not return to the house. Therefore, at about 9.30 a.m. the informant called his father on cell phone, but his father did not receive the call. Therefore, the informant had gone to his field to find out whereabouts of his father, and he found that, his father was lying on bandh [boundary] of his field and sustained serious blood injuries on his head. The blood was oozing from the wound on the head of his father. He also found that, the said wound was caused by assault by an axe, and his father was unable to speak. Therefore, immediately, the informant informed the said fact to his brothers and relatives on cell phone, and called them to the spot. Then, the Police also came on the spot, and after preparing panchanama, the informant shifted his father to the Hospital at Chinchwan. The Doctors in the said Hospital examined the father of informant and declared that, the father of informant is dead.

3] It is further the case of the prosecution that, on the same day, the informant had gone to the Police Station, Wadwani, and lodged report before the Police, and he mentioned in his report that, on 15.03.2013 at about 9.30 hours when his father Shrimant Sawase was

grazing she-goats in his field, the accused Nos.1 to 6 committed the murder of his father by means of sharp weapon like an axe on his head on account of, why his father is not partitioned their shares of land as well as why his father is not given their share of money of the land sold by deceased. On the basis of his report, API of Wadwani Police Station registered Crime No.29/2013 for the offence punishable under Sections 302, 147, 148, 149 of IPC, and investigation of the said crime took himself.

4] After registering the crime, the concerned Investigating Officer completed investigation, charge sheet was filed, and after full-fledged trial, the trial Court convicted the accused No.5 Kalyan Deorao Sawase for the offence punishable under Section 302 of IP Code, however, acquitted all other accused. Hence this Appeal.

5] The learned counsel appearing for the Appellant invited our attention to the notes of evidence, and in particular the evidence of PW-2 and PW-5 and submits that, there was a motive for commission of offence inasmuch as there was civil dispute and some of the accused persons filed Civil Suit against the father of

the complainant i.e deceased. It is further submitted that, the prosecution has proved that, the houses of the accused Nos.1 and 2 are near the spot of occurrence. The suit for partition was pending between accused Nos.1, 2 and deceased father of the complainant. There was dispute about the amount of sale transaction of the agricultural land sold by the deceased and the accused Nos.1 and 2 were demanding the amount. It is further submitted that, there is also evidence against the accused Nos.3 and 4. The accused No.3 has filed Criminal Case against the deceased Shrimant Sawase. The accused Nos. 3 and 4 are the sons of accused Nos. 1 and 2 and they were giving threats to the complainant and deceased, and were demanding amount received from the sale transaction. The accused No.4 has filed RCC No.46/2009, in the Court of Chief Judicial Magistrate at Beed against the deceased and his three sons. It is further submitted that, even there is cogent evidence against the accused No.6. The accused No.6 is the husband of Meenabai, who is party defendant in partition suit. The call details record / CDR record reveals that, accused No.6 had called the deceased on mobile phone at the time of commission of murder. The CDR record shows the involvement and

active participation of the accused No.6 along with accused No.5 while commission of the murder. Therefore, the learned counsel appearing for the Applicant submits that, Appeal deserves consideration.

6] The learned APP appearing for the Respondent – State adopted the arguments advanced by the learned counsel appearing for the Appellant and submits that, Appeal deserves consideration.

7] On the other hand, the learned counsel appearing for the Respondents invited our attention to the notes of evidence, and in particular the evidence of PW-2 and PW-5. It is submitted that, their evidence suffers from omissions, contradictions and improvements. It is further submitted that, the trial Court, after considering the evidence in its entirety, has recorded the findings, which are in consonance with the evidence brought on record, and therefore, Application deserves to be dismissed.

8] We have heard the learned counsel appearing for the parties at length. With their able assistance, perused the entire evidence on record, and in particular

the evidence of PW-2 and PW-5. The prosecution case rests upon circumstantial evidence. It is true that, PW-6 Medical Officer has opined that, death of Shrimant was homicidal. The prosecution, in order to prove its case, placed heavy reliance upon the evidence of PW-2 and PW- 5. Since the case is based upon the circumstantial evidence, motive assumes importance. In the present case, motive alleged for the commission of offence is that, there was a dispute between deceased and his brothers i.e. accused Nos.1 and 2, about partition and possession of the land and to that effect the Civil Suit was filed by the accused persons. The accused Nos.1 and 2 are the real brothers of deceased Shrimant. The accused No.3 is the son of accused No.1, and accused No.4 is the son of accused No.2 and accused Nos.5 and 6 are not the members of the family of deceased Shrimant and accused Nos.1 to 4.

9] Upon careful perusal of the evidence of PW-2 and PW-5 on the point of motive and all other aspects, there are omissions, improvements, contradictions and also exaggerations. It is stated by the PW-2 that, his father Shrimant [deceased] went to his field for grazing she-goats on 15.03.2013 at about 8.00 a.m. and on that day, at about 9.30 a.m. the accused Nos.1 to 4 and 6 committed murder of Shrimant Sawase. It is further deposed by the PW-2 that, she-goats on their own

returned to the home at 9.15 a.m. and father did not return. It is difficult to believe that, she-goats on their own returned to the home at 9.15 a.m. According to the prosecution case, the respondents killed Shrimant at 9.30 a.m. However, upon careful perusal of the evidence of Medial Officer, who performed post-mortem examination, death was not caused within 12 hours before the body was received for post-mortem examination. It further appears from the evidence of PW-6 Dr. Usha Bangar that, on 15th March, 2013, the dead body was received between 1.20 p.m. to 2.20 p.m. for post-mortem. PW-5 Chandrakant in his cross examination stated that, there was no any complaint between accused persons and complainant's family about cultivation of the lands after the oral partition. So far allegation of threatening by the accused No.3, day before the date of incident in the Court premises is concerned, the evidence of PW-2 and PW-5 is by way of omissions and the said version was not stated before the Police as deposed by the Investigation Officer before the Court. It also appears from the evidence of PW-2 and PW-5 that, there was a oral partition and the deceased and his brothers were cultivating the lands fallen to their respective share. It is also stated by PW-5 in his cross examination that, there was no complaint between them about cultivation of the land after oral partition.

10] If the evidence of the prosecution is considered in its entirety, there is no complete chain of

circumstances, muchless even single circumstance is not proved by the prosecution, which would lead to hypothesis of the guilt of the accused. The prosecution has not placed evidence on record showing that, the deceased was last seen in the company of the accused soon before the incident or during the earlier night. Even the prosecution did not establish motive for such alleged commission of offence. The trial Court, upon minute scrutiny of the evidence of the prosecution witness and all other material placed on record, has recorded the findings in consonance with the evidence on record and convicted the accused No.5 Kalyan Deorao Sawase and acquitted other accused.

11] Upon independent scrutiny and assessment of the evidence, we are of the opinion that, the view taken by the trial Court was possible, and therefore, there is no ground to interfere in the order of acquittal. In the result, Appeal stands dismissed.

Sd/-

[A.I.S.CHEEMA, J.]

Sd/-

[S.S. SHINDE, J.]