

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.698 OF 2012

Gopal Bajirao Ankushrao,	]	
Age : 31 Yrs., Occ.: Nil,	]	 Appellant /
R/o. Ambe, Tal. Pandharpur,	]	(Org. Accused
Dist. Solapur	]	No.6)

Versus

The State of Maharashtra,	]	
Thru' Valsang Police Station,	]	
Dist. Solapur	]	 Respondent

WITH
CRIMINAL APPEAL NO.490 OF 2012

Arjun Sahadev Salunkhe,	]	 Appellant /
Age : 28 Yrs.,	]	(Org. Accused
R/at Ambe, Tal. Pandharpur, Dist. Solapur	]	No.1)

Versus

The State of Maharashtra	]	 Respondent
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WITH
CRIMINAL APPEAL NO.690 OF 2012

1) Sangappa Ramanna Koli,	]	
Age : 38 Yrs., Occ.: Nil	]	
	]	 Appellant /
2) Santosh @ Balu Dagadu Pawar,	]	(Org. Accused
Age : 36 Yrs., Occ.: Nil	]	Nos.2 & 4)

Versus

The State of Maharashtra,	]	
Thru' Valsang Police Station,	]	
Dist. Solapur	]	 Respondent

**WITH
CRIMINAL APPEAL NO.851 OF 2012**

Nisar Sadiq Shaikh @ Attar,	]	 Appellant /
Age : 23 Yrs., R/o. Sarkoli,	]	(Org. Accused
Tal. Pandharpur, Dist. Solapur	]	No.5)

Versus

The State of Maharashtra,	]	
Thru' Valsang Police Station,	]	
Dist. Solapur	]	 Respondent

**AND
CRIMINAL APPEAL NO.1092 OF 2013**

Pramod @ Kingbhai Prakash Swami,	]	 Appellant /
Age : 28 Yrs., R/at Neharu Nagar,	]	(Org. Accused
Backside of D.Ed. College, Solapur.	]	No.3)

Versus

The State of Maharashtra	]	 Respondent
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Mr. A.P. Mundargi, Senior Advocate, with Mr. V.V. Purwant,
for the Appellant/Original Accused No.6 in Criminal Appeal
No.698 of 2012.

Mr. V.V. Purwant for the Appellants/Original Accused Nos.1
and 3 in Criminal Appeal Nos.490 of 2012 and 1092 of 2013
and for the Appellant/Original Accused No.4 in Criminal
Appeal No.690 of 2012.

Mrs. Nasreen S.K. Ayubi, appointed Advocate, for the
Appellant/Original Accused No.2 in Criminal Appeal
No.690 of 2012.

Mr. Siddeshwar B. Kalel for the Appellant/Original
Accused No.5 in Criminal Appeal No.851 of 2012.

Mr. H.J. Dedhia, A.P.P., for the Respondent-State.

**CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 2ND FEBRUARY, 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. All these five Appeals are decided by this common Judgment as they are directed against one and the same Judgment of 1st Ad-Hoc Additional Sessions Judge, Solapur in Sessions Case No.263 of 2010, thereby convicting the Appellants, who are the Original Accused Nos.1 to 6, for the offences punishable under Section 302 r/w. Section 120-B of the IPC and under Section 4/25 of the Arms Act and sentencing them to suffer imprisonment for life and to pay fine of Rs.1,000/- each, in default to suffer R.I. for three months on first count and R.I. for three years and to pay fine of Rs.500/- each, in default to suffer R.I. for one month on the second count.

2. Facts, as are necessary, for deciding these Appeals can be stated in brief as follows :-

On 7th April, 2010, at about 7 p.m., PW-13 Baliram Kale received information that his nephew Santosh Ghagre was found injured, along with his motor cycle bearing No. MH-24-K-8786, near Bidi Gharkul.

Hence, he went there and noticed that Santosh has sustained grievous injuries on his head and other parts of the body. By the same time, PW-30 API Haragbal of Valsang Police Station, Dist. Solapur, received the information of the incident and he also reached at the spot. There, he found one Sickle and big stone stained with blood lying near the body of Santosh. As PW-13 Baliram identified the dead body of that of his nephew Santosh, he took PW-13 Baliram to the Valsang Police Station. There, his complaint (Exhibit-93) came to be recorded for the offence of committing murder of Santosh, against some unknown persons.

3. On this complaint, C.R. No.28 of 2010 came to be registered under Section 302 of the IPC. During the course of investigation, PW-30 API Haragbal made Spot Panchanama (Exhibit-95) and seized the motor cycle, the rod, the goggle of the deceased along with the blood stained Sickle, stone and other articles lying at the spot under Panchanama (Exhibit-95). Then, he made Inquest Panchanama of the dead body (Exhibit-83) and sent it for autopsy. The cause of the death was found to be head injury as per the Post Mortem Report (Exhibit-108). He recorded further statements of the witnesses in the next four days and thereafter arrested the various Accused. During their Police custody, at the instance of Accused No.1 Arjun, the Sickle, Nokia Mobile Phone and blood stained

clothes were recovered under Panchanama, whereas, at the behest of Accused No.3 Pramod also, the blood stained clothes came to be seized under Panchanama. At the instance of Accused No.5 Nisar also, his clothes, one Sickle came to be seized under Panchanama. Then all these seized articles were sent to Chemical Analyzer and after completion of due investigation, Charge-Sheet came to be filed in the Court against the Accused.

4. On case being committed to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-15. The Accused abjured the guilt and claimed trial raising the defence of total innocence.

5. To prove the guilt of the Accused, Prosecution examined as may as 30 witnesses, majority of them, from PW-1 to PW-12, are the Panch Witnesses to the various Seizure Panchanamas of the clothes and weapons of assault. They have not supported the Prosecution case. Hence, declared hostile. Other set of witnesses examined by the Prosecution from PW-16 to PW-18 are the officials from Pratik Associates Finance Company, whereas, PW-20 is Dr. Suryakant Kamble, who conducted the post mortem. PW-23 to PW-30 are the Police Officers, who had carried out some or other part of investigation. The material set of

witnesses is PW-12 Shamuwel, the friend of the deceased, PW-13 Baliram, the Informant and PW-19 Nagnath, father of the deceased. Relying on the evidence of these three witnesses, coupled with the recovery evidence of weapons and blood stained clothes, the Trial Court held the guilt of all the six Accused to be proved beyond reasonable doubt and convicted and sentenced them, as stated above, for the offence of hatching the criminal conspiracy and committing the murder of Santosh, in pursuance of the said conspiracy.

6. This Judgment of the Trial Court is being challenged in these Appeals by the learned Counsels for the Appellants on the ground that there is absolutely no iota of incriminating evidence on record against the Accused even to prove the charge of committing the murder, far remain to prove the charge of hatching criminal conspiracy. According to the learned Counsels for the Appellants, the entire Judgment of the Trial Court is based on surmises, assumptions and conjectures and, therefore, it is liable to be quashed and set aside. Per Contra, the learned A.P.P. has made an attempt in vain to support the said Judgment.

7. The entire case of the Prosecution is based on circumstantial evidence, as there is no eye witness account. Though the incident has

taken place on the public road, near Bidi Gharkul, and that too in the evening at about 6:30 p.m. to 7 p.m., the Investigating Officer has failed to secure the evidence of even a single eye witness. Even the complaint (Exhibit-93) is also lodged by PW-13 Baliram against the unknown persons. Therefore, the case, which has come before the Court, stands only on the basis of circumstantial evidence.

8. The law relating to circumstantial evidence is well settled and, in such cases, it is expected that the incriminating circumstances, which the Prosecution wants to rely upon, should be positively established by cogent and reliable evidence on record and they should form a chain so complete that no other inference, but that of the guilt of the Accused, can be drawn from the said chain of circumstances. In other words, no other hypothesis, but that of the guilt of the Accused, should be available from the proved circumstances on record.

9. In the back-drop of these facts and law, coming first to the evidence of PW-20 Dr. Kamble, who has conducted the autopsy on the dead body of Santosh. It shows that he found following injuries on the dead body of Santosh :-

External Injuries :

- (i) Chop wound semi circular over left temporo-parietal occipital region on left side of size 9 inch x 3 inch beveling of underlying bones exposing skin, bones and brain matter.
- (ii) CLW over forehead on right side supra orbital region of size 2 x ½ inch, bone deep.
- (iii) Incised wound over back on left side with infra scapular region of size 4 x 1 inch, bone deep.
- (iv) Incise wound over left thigh posteriorly in upper 1/3 part of size 5 x 1 inch muscle deep.
- (v) Stab, wound oval in shape right hypochondriac muscle deep of size 1 x ½ inch.

Internal Injuries :

- (i) Scalp haematoma in right frontal region corresponding injury no.2 mentioned in para no.17 of P.M. Notes

Skull :-

- (i) Evidence of depressed beveling fracture of left temporo parieto occipital bone of left side of size 6 x 3 inch, it is corresponding injury no.1 mentioned in para no.17 of our P.M. Notes.

Brain Section :-

- (i) Extradural haematoma in parieto occipital region with contusion of size 4 x 2 cm. also sub arachnoid

haemorrhage in both parietal region and subdural haematoma in right frontal lobe of size 1 x 1 cm, it is corresponding to injury no.1 and 2, of injuries mentioned in para no.17 of P.M. Notes.”

10. According to him, all these injuries were ante-mortem and sufficient in the ordinary course of nature to cause the death. He has further opined that Injury Nos.1, 3, 4 and 5 are possible by pointed and sharp object and the cause of death was “head injury” and he has issued the Post Mortem Report (Exhibit-108). There is not much cross-examination of this witness and, otherwise also, there is no reason to disbelieve him as regards the cause of the death, which is proving the homicidal nature of the injuries found on the dead body of Santosh.

11. The real issue for consideration is about the involvement of Accused in the said cause of death. As stated above at the time of lodging the complaint about his death, who has committed the offence and what was the cause for the said offence, was not at all disclosed by PW-13 Baliram, the Informant, who is the uncle of the deceased. The investigation, therefore, has started without there being any material to show the involvement of particular Accused in the offence or the motive for commission of the offence. As a matter of fact, as deposed by the

Investigating Officer and as brought out from cross-examination of PW-13 Baliram and the witnesses from Pratik Associates Finance Company, i.e. PW-16 to PW-18, initially, investigation proceeded on the basis, as deceased Santosh was working as Recovery Agent of Pratik Associates, for and on behalf of Accused No.16 Gopal, his murder was committed. Hence, the investigation was directed pointing the needle of suspicion against one Pramod Gaikwad and not against the present Accused.

12. However, as per Prosecution case, during the course of investigation, it was transpired that Accused No.6 Gopal was friend of deceased Santosh. Both of them were working as Recovery Officers with Pratik Associates Finance Company. Accused No.6 Gopal and Accused No.2 Sangappa, along with four other persons, were in Jail custody in Crime No.193 of 2008 registered with Pandharpur City Police Station regarding incident dated 3rd December, 2008 for the offence punishable under Section 302 of the IPC. Accused No.6 Gopal has requested deceased Santosh to help him for getting his release on bail in the said crime. He has also paid the amount of Rs.1,00,000/- to Santosh for arranging the bail. However, Santosh did nothing. Moreover, though Accused No.6 Gopal has requested Santosh to take care of his beloved Priyanka, Santosh betrayed the faith of Accused No.6 Gopal and developed his own relations with Priyanka @ Kavita as his keep. As per

Prosecution case, Accused No.6 Gopal was, therefore, angry and annoyed with Santosh and, hence, along with Accused Nos.1 to 5, he conspired to commit murder of Santosh.

13. However, to prove this case of conspiracy and murder, the Prosecution has utterly failed to bring on record any incriminating evidence worth the name. It may be true that for proving the charge of criminal conspiracy, there may not be any direct evidence and it can be proved by indirect or circumstantial evidence also, but then those circumstances must be established by cogent evidence forming a complete chain leading unerringly to the guilt of the Accused and Accused, alone, which Prosecution has failed to do in the present case.

14. The first witness examined by the Prosecution on this point is PW-13 Baliram, the Informant. He is not an eye witness to the incident as he came to know from unknown person about Santosh being subjected to assault. What is pertinent to note that from his cross-examination is that entirely different motive is brought on record as to the assault on the deceased and, further, several omissions are brought out in his cross-examination, which are marked as portion "A to E". According to his further cross-examination, only from Police and news items in the paper,

he came to know that the Accused Nos.1 to 5, in collusion with Accused No.6, had committed the murder of Santosh. Therefore, his knowledge is not personal but hear-say, based on the news items.

15. The second witness on which the Prosecution is placing reliance to prove the conspiracy is PW-12 Shamuwel. Much reliance is placed on his evidence by the Prosecution to prove that Accused No.3 Pramod Swami met him in the hospital on 28th February, 2014 and there he asked this witness to convey the message of Accused No.6 Gopal to deceased Santosh that Accused No.6 Gopal is angry upon him and he would kill Santosh as Santosh was using his beloved and also the cash amount given by him for his release from the Jail. The least said about this evidence is better because one Accused conveying the message of another co-accused to the witness is in the first place unbelievable and, secondly, evidence relating to it is also inadmissible.

16. His evidence is also relied upon to show that on the date of incident, he saw Accused No.3 Pramod Swami and Accused No.4 Santosh Pawar proceeding in rickshaw and he informed about their presence to deceased Santosh Gharge. Thereafter, at about 5:30 p.m., Santosh Gharge proceeded towards his house. He himself went to his house. After some

time, he came out of the house at Kumtha Naka Chowk and he saw Accused No.1 Arjun and Accused No.5 Nisar proceeding on their motor cycles towards 70 feet road in fast speed. From there, he went to RPI Office. There his friend Nitin Kamble came and made enquiry of Santosh. Hence, he tried to contact Santosh on mobile, but there was no response. After some time, one boy came and told him that Santosh was lying injured near Vinayak Nagar.

17. Thus, this witness is also not an eye witness to the incident. His evidence that he has seen Accused No.1 Arjun and Accused No.5 Nisar proceeding on motor cycle in high speed is also in the nature of omission. As admitted by him, he has neither stated it in his statement before Police, recorded on 8th April, 2010 and even his supplementary statement recorded on 12th April, 2010 is also silent about it. Moreover, even assuming that he has seen Accused No.1 Arjun and Accused No.5 Nisar proceeding on motor cycle in fast speed towards 70 feet wide road, this circumstance is innocuous in itself and not sufficient to lead to any inference against the Accused.

18. Third witness on whose evidence the Prosecution is relying is that of PW-19 Nagnath Gcharge, father of deceased Santosh. He has deposed

that about ten to twelve days prior to the incident, when he was present in the office of his son Santosh, PW-18 Rahul Shinde, friend of Santosh, came in the office and told Santosh that he should try for release of Accused No.6 Gopal on bail or else he should return the motor cycle of Accused No.6 Gopal. Further, PW-18 Rahul Shinde also informed Santosh that as he was using Priyanka @ Kavita and also the money given by Accused No.6 Gopal, Accused No.6 Gopal is angry upon him and he has threatened to kill him. As per the evidence of this witness, after PW-18 Rahul Shinde left the office, he told his son Santosh to return whatever he has taken from Accused No.6 Gopal. It is further deposed by him that in the last week of February, 2010, in the morning, mother of Accused No.6 Gopal came to the house and told that Santosh has obtained Rs.1,00,00/- from Accused No.6 Gopal for securing bail of Accused No.6 Gopal, but he has not done anything and hence, he should repay the amount. Moreover, he has also kept Priyanka with him as a keep and, therefore, her son Accused No.6 Gopal was angry. She further warned him that If her son takes any action against Santosh, she will not be responsible. It is deposed by PW-19 Nagnath that he requested her not to do anything and he will give understanding to his son. However, again she came to him on 15th March, 2010 and again reiterated the same thing.

19. However, in cross-examination, this witness has admitted that he has not stated these material facts in his statement recorded by Police and he is deposing about the same for the first time. Further, he has also not lodged any complaint against Accused No.6 Gopal, even after Santosh was found to be murdered. Conversely, his evidence also goes to prove that from the news item and the Police, he came to know that Santosh was murdered by Accused in collusion, on account of money and Priyanka.

20. The material evidence on this aspect was that of PW-18 Rahul Shinde, who is, according to PW-19 Nagnath, conveyed to Santosh in his presence that Accused No.6 Gopal was angry with Santosh. PW-18 Rahul Shinde has, however, not supported the Prosecution case. He is declared hostile and cross-examined by A.P.P., but nothing worthwhile is elicited to support the evidence of PW-19 Nagnath.

21. Moreover, even if the evidence of PW-19 Nagnath is accepted as it is, at the most it may prove that Accused No.6 Gopal was angry with deceased Santosh and he has given the threatening, but nothing more than it, can be inferred from his evidence. Needless to say, that mere

motive for commission of the offence is not sufficient to prove the offence. At the most, it may raise suspicion but not beyond it.

22. Lastly, there is evidence of PW-28 Sadashiv, who was working as Superintendent of District Jail, Solapur. According to him, Accused No.6 Gopal was in the said Jail since 25th December, 2008, whereas, Accused No.2 Sangappa and Accused No.4 Santosh were in Jail since 25th May, 2009. As per entries in the Jail Register, deceased Santosh came to meet Accused No.6 Gopal on 29th December, 2008, whereas, Accused No.3 Pramod Swamy visited Accused No.6 Gopal on 26th December, 2009. From his evidence, the Prosecution wants to show that Accused No.6 Gopal was in contact with Accused No.2 Sangappa, Accused No.3 Pramod Swamy and Accused No.4 Santosh and even the deceased Santosh. However, it is not the case of this witness that he has overheard any conversation between Accused Nos.2, 3, 4 and 6 *inter se* or the alleged threatening or conversation between Accused No.6 Gopal and deceased Santosh. In such situation, from mere visits of co-accused or their being in Jail along with Accused No.6 Gopal or visit of deceased to meet Accused No.6 Gopal in Jail, is not turning up in either way to prove the Prosecution case.

23. Apart from this evidence, there is absolutely no connecting evidence on record to prove the charge of conspiracy. Needless to say, that conspiracy cannot be proved merely on the basis of inferences. These inferences have to be backed by the evidence. As held by the Apex Court in the case of ***P.K. Narayanan Vs. State of Kerala, 1994 AIR SCW 5043***, *“in the cases of conspiracy, motive and preparation for the commission of the offence are not sufficient”*. It is categorically held by the Supreme Court in this authority that, *“an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence. Inferences from such proved circumstances regarding the guilt can be drawn only when such circumstances are incapable of any other reasonable explanation”*.

24. Here the entire case of the Prosecution is based merely on the surmises and inferences. The evidence of Prosecution Witnesses, even if remain unrebutted or totally accepted, we are of the view that, it does not make out sufficient ground for proving charge of conspiracy against any of the Accused.

25. Once it is held that the charge of conspiracy is not proved by sufficient and cogent evidence on record, the alleged evidence relating to

recovery of some weapons of assault or the blood stained clothes of Accused cannot be of much help to the Prosecution. Moreover, this recovery is also not properly proved as all the Panch Witnesses to the recovery are turned hostile. There is also no sufficient evidence for proving that the weapons of assault and the clothes, on seizure were sealed with wax and they were preserved in the same condition in which they were recovered, till their examination by Chemical Analyzer. The C.A. Report shows that the results of the grouping or matching of blood were inconclusive. The arrest of Accused No.5 Nisar is six months after the incident. Hence, the alleged recovery of sickle at his behest also loses the significance. The Prosecution has also failed to prove the connection relating to recovery of mobile phone or the motor cycle, in the absence of call detail record of the said mobile phone or to whom it was belonging when it was used. Mere recovery is hence of no significance. The conclusion is, therefore, inevitable that Prosecution has failed to prove its case against the Accused on all the scores.

26. Consequently, all the Criminal Appeals are allowed and the conviction and sentence of the Appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by the Appellants, be refunded to them. Since

the Appellant/Original Accused No.5 – Nisar Sadiq Shaikh @ Attar is in Jail, he be released forthwith, if not required in any other case. Bail Bonds of other Accused stand cancelled.

27. Fees payable to Mrs. Nasreen S.K. Ayubi, learned Counsel appointed for Appellant/Original Accused No.2 – Sangappa Ramanna Koli is quantified at Rs.5,000/-.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]