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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 110 OF 2008**

1) Ramesh Namdeo Undre	]	
Age 27 years, Occ: Agri.	]	
	]	
2) Namdeo Sopan Undre	]	
Age 62 years, Occ: Agri.	]	
Both residing at village Kolawadi	]	
Tal. Haveli, Dist. Pune	]	
(At present detained at	]	
Yerawada Central Prison)	]	...Appellants
		[Ori. Accused Nos. 1 & 3)
Vs.		
1) The State of Maharashtra	]	
	]	
2) Smt. Surekha Rajendra Undre	]	
Residing at Kolawadi, Tal. Haveli	]	
Dist. Pune.	]	..Respondents

....

Mr. M.S.Mohite Advocate for the Appellants
Dr. F.R. Shaikh A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI,JJ.**

DATED : JUNE 10, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellants-original
accused nos.1 and 3 against the judgment and order dated

29.1.2008 passed by the learned Ad-hoc District & Additional Sessions Judge-10 Pune in Sessions Case No. 326 of 2006. By the said judgment and order, the learned Sessions Judge convicted the appellants/accused along with original accused no. 2 under Sections 302 and 201 r.w. 34 of IPC. For the offence under Section 302 read with Section 34, each of the accused has been sentenced to life imprisonment and fine of Rs.25,000/- i/d R.I. for one year and for the offence under Section 201 read with Section 34 of IPC, each of the accused has been sentenced to R.I. for three years and fine of Rs.5000/- i/d R.I. for three months. For the sake of convenience, the appellants will be referred hereinafter as they were referred before the trial Court.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Rajendra alias Raju was the son of P.W. 2 Tukaram and the brother of P.W. 1 Sunil. Tukaram is the first informant in the present case. Accused no.3 Namdeo was the younger brother of Tukaram. He was residing adjacent to the house of Tukaram in village Kolawadi. Tukaram was residing in village Kolawadi along with his wife, his two sons i.e. Rajendra

and Sunil, their wives and grand children. There was some dispute in relation to agricultural land between Tukaram and Namdeo which was known to everyone in the village. The agricultural land of Tukaram and Namdeo were situated adjoining to each other.

(ii) On 20.3.2006 at about 6.30 p.m. Tukaram told Rajendra to go to their field and to start electric motor, hence, Rajendra went on motor-cycle to the field. Rajendra did not come back home till 8.00 p.m., hence, Tukaram told his son Sunil (P.W.1) and his grand-son to look out for Rajendra. Sunil came back and told Tukaram that Rajendra is not in the field, however, he had seen Namdeo and his two sons in the field. Sunil visited the field few times, however, he did not find Rajendra in the field. Next morning at about 7.00 a.m. Tukaram again told Sunil to search for Rajendra. Sunil found some blood near the boundary of the field of accused no.3 Namdeo. After proceeding ahead about 100 feet, he found slippers of Rajendra. Sunil then returned home and narrated this fact to his father Tukaram. Tukaram then went to the Police Station. He lodged missing report (Exh. 55) in relation to

Rajendra. Police accompanied Tukaram to the spot where the blood was noticed. Police prepared panchnama. Police were searching for Rajendra till 6.00 p.m. of 21.3.2006. They all came near the field of Namdeo. At one spot, they noticed a bundle of sticks. The villagers suspected something, hence, the villagers with the help of police started removing mud. The dead body of Rajendra was found under the mud. Tukaram identified the body as that of his son Rajendra. Tukaram then lodged F.I.R. (Exh. 56). In the complaint, he stated that the appellants along with original accused no.2 Gangadhar @ Gangaram on account of dispute in relation to agricultural land, committed the murder of his son Rajendra and buried the dead body of Rajendra in their field. After lodging of F.I.R., the investigation commenced. Dead body of Rajendra was sent for post-mortem. In the opinion of P.W. 13 Dr. Wable who conducted the post-mortem, the cause of death was head injury and injury no.10 which is 'irregularly shaped lacerated wound 2 cms. above right mid eyebrow, measuring 9 x 4 cms., opening in cranium, underlying bones fractured, brain matter visible and margins irregular' was sufficient to cause death in ordinary course of nature with corresponding injury no. 14

which is `circular lacerated wound, 3 cms. above lateral angle of left eyebrow, measuring 2.5 x 1.5 cms. underlying bone fractured.' After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3 Charge came to be framed against the present appellants along with original accused no.2 Gangadhar alias Gangaram under Sections 302 and 201 read with Section 34 of IPC. All of them pleaded not guilty to the said charge and claimed to be tried. The defence of the accused was that of total denial and false implication. It may be stated at this stage that accused Gangadhar alias Gangaram was the son of accused no.3 Namdeo and he was brother of accused no.1 Ramesh. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellants along with original accused no.2 as stated in para 1 above, hence, this appeal. We may further state that accused no.2 expired soon after the judgment was pronounced by the Sessions Court.

4 We have heard the learned counsel for the appellants and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt against any of the appellants and hence, the appellants deserve to be acquitted.

5 There is no eye witness in the present case and the case is entirely dependent on circumstantial evidence. The circumstances which are relied upon by the prosecution against the appellants, are as under:

- (i) Motive;
- (ii) Last seen;
- (iii) Recovery of weapons from both the accused;
- (iv) Seizure of clothes of accused no.3.

6 As far as the first circumstance i.e. motive is

concerned, the prosecution is relying on the evidence of P.W. 1 Sunil and P.W. 3 Shivaji. P.W. 1 Sunil is the brother of deceased Rajendra. Sunil has stated that he was residing at Kolawadi with his parents, his brother Rajendra and other family members. Their agricultural land was situated within the boundaries of Kesnand. His father had three brothers i.e. Maruti, Bhagwan and Namdeo (accused no.3). Each of them received 3 Acres and 30 Gunthas of land out of ancestral property. One Civil Suit was filed against Namdeo as he was in possession of more land than the land which came to his share. The agricultural land of Namdeo was situated adjacent to the agricultural land of Sunil and his family members. P.W. 3 Shivaji has also deposed about quarrel between deceased and accused in relation to boundary of land.

7 It is the prosecution case that the motive for the accused persons to commit the crime is that there was some boundary dispute in relation to agricultural land between the accused and the family of the deceased. In this connection, we would like to advert to the evidence of P.W. 3 Shivaji who has stated that he knew that the deceased Rajendra had some

quarrel with 'Dalit' people and a criminal case was filed in relation to the said quarrel. Shivaji has further stated that the fields of the 'Dalit' people are situated opposite to the field of the accused persons. It has already come on record that the agricultural field of family of Rajendra was situated adjacent to the field of the accused persons. A pair of slippers of Rajendra and blood stains were in fact found in the field belonging to 'Dalits' which has come on record in the evidence of P.W. 2 Tukaram who is the father of Rajendra. Tukaram has stated that the pair of chappals of Rajendra was in the field of 'Dalits' at a distance of 50 feet from the road and blood was also found besides the spot where the pair of chappals was found. P.W. 2 Sunil has also stated that the place where pair of Chappals of Rajendra was found belongs to 'Dalit people' and blood was also seen at the spot where the pair of chappals was found. As stated earlier, the evidence of P.W. 3 Shivaji who was close relative of deceased Rajendra, shows that Rajendra had some quarrel with Dalit people and a criminal case was filed. The field of Dalit people was situated opposite to the field of the accused persons. Slippers of deceased Rajendra and blood stains were found in the field of Dalit people. No doubt, dead

body of Rajendra was found buried in the field of accused persons, however, it appears that not only the accused persons but Dalit people also had grudge against Rajendra, hence, we find much merit in the submission of the learned counsel for the accused that Dalit people had murdered Rajendra and thereafter buried the dead body of Rajendra in the field of the accused persons. It appears this was done because the evidence of P.W. 6 Dilip who is the nephew of deceased Rajendra, shows that all the persons in the village knew that the relations between Namdeo (accused no.3) and his brothers were strained due to property disputes. It appears that the Dalit people had taken advantage of this knowledge and buried the dead body of Rajendra in the field of the accused persons, otherwise, there is no explanation for the presence of slippers of the deceased and blood stains in the field of Dalit people. This also clearly shows that deceased was assaulted in the field of Dalit people.

8 As far as second circumstance is concerned i.e. 'last seen', P.W. 3 Shivaji and P.W. 4 Dattatraya have deposed about it. Shivaji was the brother-in-law of P.W. 1 Sunil and P.W. 4

Dattatraya was the brother-in-law of Rajendra. Shivaji has stated that he met Rajendra on 20.3.2006 between 6.30 p.m. to 7.00 p.m. at his field near the boundary of Kesnand. At that time, he was returning from Shirur. He saw Rajendra, the appellants and original accused no.2 Gangadhar. A quarrel was going on between Rajendra on one side and the appellants and original accused no.2 on the other side, in relation to boundary of the field. Shivaji has stated that he pacified the dispute. Only after Shivaji was satisfied that the dispute was pacified, he left the spot. On the next day at about 10 a.m. he received telephone call from P.W. 1 Sunil i.e. his brother-in-law. Sunil made enquiry with him about Rajendra as Rajendra was missing since the earlier night. Sunil told him that blood and pair of chappals were seen near the boundary of the field of the accused, hence, Shivaji went to the spot. All of them searched for Rajendra. After some time, police arrived at the spot. They saw some bundle of sticks at one spot. The villagers took out the mud from the spot under the sticks and the dead body of Rajendra was found. It is to be noted that it is the case of P.W. 3 Shivaji that he saw the accused persons and Rajendra quarreling at about 6.30 to 7.00 p.m. on 20.3.2006. Shivaji

was aware that after that Rajendra was not seen, however, Shivaji did not inform anyone till his statement was recorded on 22.3.2006 that he had witnessed a quarrel going on between Rajendra and the accused persons the earlier evening. In fact, Shivaji has stated that after police arrived at the spot, police and the villagers were searching for Rajendra, however, even at that time, Shivaji did not inform anyone, he did not even inform anyone when the body of Rajendra was found at about 6.00 p.m. on 21.3.2006 that he had seen Rajendra and the accused persons together at about 6.30 to 7.00 p.m. on 20.3.2006 and that a quarrel was going on between them at that time. In fact, P.W. 1 Sunil called Shivaji at about 10 a.m. on 21.3.2006 and informed him that Rajendra was missing since the earlier night, even at that time, Shivaji did not tell Sunil that he saw the accused persons and the deceased quarreling in the field on 20.3.2006 at about 6.30 p.m. to 7.00 p.m. In fact, P.W. 1 Sunil had further told Shivaji on telephone that a pair of chappals of deceased Rajendra and blood were found near the boundary of the field of the accused. Even at that time, Shivaji remained silent and did not tell Sunil that he saw the accused and the deceased quarreling the

earlier evening. The fact that for the first time Shivaji stated about this on 22.3.2006, raises a grave doubt about the veracity of his evidence.

9 The second witness on the aspect of 'last seen' is P.W. 4 Dattatraya. Dattatraya was the brother-in-law of the deceased. Dattatraya has stated that he had gone to the field of Rajendra to give him an invitation to attend 'Yatra' (pilgrimage) and at that time, he saw quarrel was going on between the accused persons and Rajendra. He then gave invitation to Rajendra as well as the accused persons and went back to his village. On the next day, he received telephone call enquiring about Rajendra, hence, he went to village Kolawadi. He was at Kolawadi throughout the day. After 6 p.m. the dead body of Rajendra was traced. Thereafter his statement was recorded by police. It is pertinent to note that this statement of Dattatraya was recorded on 11.4.2006 i.e. almost 21 days after the incident and 20 days after the dead body of Rajendra was traced. No explanation at all has been furnished by the prosecution for the delay in recording the statement of Dattatraya. There is no reference in the F.I.R. that any quarrel

took place on 20.3.2006 between the accused persons and the deceased Rajendra. P.W. 2 Tukaram who lodged F.I.R., was not informed either by P.W. 3 Shivaji or P.W. 4 Dattatraya that on the previous day, a quarrel had taken place between the accused persons and Rajendra and that they were seen together at about 6.30 p.m. to 7.30 p.m. on 20.3.2006. All these facts raise grave doubt about the veracity of the evidence of P.W. 3 Shivaji and P.W. 4 Dattatraya. In view of these facts, we are not inclined to place any reliance on the evidence in respect of circumstance of 'last seen'.

10 The prosecution tried to place reliance on the fact that a quarrel took place between the deceased and the accused persons on 20.3.2006 at about 6.30 p.m. to 7.00 p.m. P.W. 3 Shivaji and P.W. 4 Dattatraya have deposed about this. But Shivaji has clearly stated that he pacified the dispute between the deceased and the accused persons and only upon being satisfied that the dispute was pacified, he left the place. Thus, this shows that the quarrel was pacified and immediately thereafter, there was no reason for the accused persons to cause the death of Rajendra.

11 The third circumstance against the appellants/accused is recovery of weapons. Panch witness P.W. 11 Ashok has deposed about recovery of sickle at the instance of accused no.3 Namdeo. Panch witness P.W. 12 Dinkar has deposed about recovery of Teekas (pick-axe) at the instance of accused no.1 Ramesh. As far as recovery of weapons from both the appellants/accused is concerned, it is to be noted that there is no eye witness to the incident, hence, there is no witness to state that these very weapons were used by the accused to commit the offence. Moreover, the C.A. report Exh. 133 shows that none of the weapons had any blood on it. Thus, this circumstance of recovery is not of much help to the prosecution.

12 As far as seizure of clothes of accused no.3 is concerned, panch witness P.W. 8 Keshav has deposed about seizure of clothes which were on the person of accused no.3 Namdeo at the time of his arrest. It is to be noted that there is no eye witness hence, there is no evidence on record to show that these very same clothes were worn by accused no.3

Namdeo at the time of incident. Moreover, the forwarding letter sending the clothes to the C.A., is not on record hence, it is not possible to make out from the C.A. report which clothes belonged to accused no.3 Namdeo. In any event, out of the clothes seized, only one article of clothing i.e. 'banyan' had human blood on it, however, the blood group could not be ascertained. As stated earlier, as the forwarding letter is not on record, it cannot be made out to whom this 'banyan' belonged as four banyans have been seized in the present case. Thus, this circumstance is also not conclusively proved by the prosecution against accused no.2.

13 In the result, on going through the evidence on record, we are of the opinion that both the accused are entitled to the benefit of doubt, hence, the following order is passed:

ORDER

- (1) The Appeal is allowed.
- (2) The conviction and sentence imposed on both the accused-appellants by the learned Ad-hoc District & Additional Sessions Judge-10 Pune vide judgment and order dated 29.1.2008 in Sessions Case No. 326 of 2006, is set aside. The

appellants are acquitted thereunder.

(3) Appellants be set at liberty forthwith, if not required in any other case.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]

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