

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

CRIMINAL APPEAL No.18 OF 1999

The State of Maharashtra,
Through Sr. P.S.I. Shrirampur,
Tq. Police Station for
complainant - Vikas Dattatraya
Amale, r/o. Malewadi,
Tq. Shrirampur ..Appellant

Vs.

Sukhdeo Sitaram Aamale,
Age 37 years,
r/o. Malewadi,
Tq. Shrirampur,
Dist. Ahmednagar ..Respondent

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Mr.D.R.Kale, APP for the appellant

Mr.N.K.Kakade, Advocate for respondent

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

DATE : AUGUST 18, 2016

JUDGMENT (PER SANGITRAO S. PATIL, J.) :

The appellant – State has challenged the vires of the judgment dated 29.07.1998 delivered in Sessions Case No.32 of 1997 by the learned Addl. Sessions Judge, Shrirampur, whereby the respondent came to be acquitted of the offence punishable

under Section 302 of Indian Penal Code ('I.P.C.' for short).

2. The case of the appellant is that the respondent is the uncle of the informant namely, Vikas Dattatraya Amale, resident of Malewadi, Tq. Shrirampur, Dist. Ahmednagar. Their agricultural lands are adjacent to each other. The informant and his mother namely, Janabai had lodged a report against the respondent on 27.04.1996 on the allegations that the respondent had beaten the informant. Due to the said report, the respondent got annoyed and killed the younger brothers of the informant, namely, Vidnyan and Gokul by giving axe blows, at their farm house. The father of the informant had lodged a report against the respondent in respect of that incident also. Thereafter, due to the fear of the respondent, the informant and his parents had started residing in their dwelling house situated in the village Malewadi.

3. On 04.11.1996 at about 7:00 p.m., the mother of the informant was preparing food on a stove inside the kitchen room of the house. The informant was sitting just near her. His neighbor namely, Ravindra was sitting near the door frame of the kitchen room. At that time, they heard sound of breaking of electric bulb. Therefore, the mother of the informant peeped out of the kitchen room through its door frame. At that time, a person, who had worn a saree and covered his face by means the part of saree, gave two blows of a 2 feet long sharp edged weapon, on the head of the mother of the informant. At that time, the informant caught hold of the chin of that person and turned face of that person towards him. He found that the said person was none other than his uncle Sukhdeo i.e. the respondent. The informant got frightened. He pushed the respondent aside and ran away out of the house. He then went to Haregaon Police out-post in a private jeep and

brought the police to his house. His mother Janabai was lying in the pool of blood. She was not talking. She was taken to German Hospital at Shrirampur in a private jeep, where Doctor examined and declared her as dead. The informant then lodged a report about of the said incident in the Police Station, Shrirampur.

4. The Investigating Officer conducted necessary investigation, prepared spot panchnama, seized clothes of the deceased – Janabai, recorded statements of the witnesses and got post-mortem of the body of the deceased Janabai performed through the Medical Officer. The Medical Officer opined that Janabai died of shock due to massive cerebral hemorrhage due to head injury. After completion of the investigation, the Investigating Officer submitted charge sheet against the respondent for the offence punishable under Section 302 of I.P.C. The learned Judicial Magistrate F.C., Shrirampur, committed the case to the Court of learned Addl.

Sessions Judge, Shrirampur, for trial.

5. The learned Addl. Sessions Judge framed the charge against the respondent for the above-mentioned offence and explained the contents thereof to him in vernacular. The respondent pleaded not guilty and claimed to be tried. His defence was of total denial and false implication on account of previous rivalry.

6. The prosecution examined eight witnesses. After evaluating the evidence of the said witnesses the learned Addl. Sessions Judge held that the prosecution failed to establish the guilt of the respondent for the above mentioned offence. He, therefore, acquitted the respondent as per the impugned judgment.

7. Dr.Sudha Kamble, (PW7) (Exh.20) conducted post mortem of the body of the deceased Janabai on 05.11.1996 at Municipal Hospital, Shrirampur and found two incised wounds on her forehead. This

witness states that the said injuries were ante-mortem. They were interconnected. She opined that Janabai died of shock due to massive cerebral hemorrhage due to head injuries. Accordingly, she prepared memorandum of post-mortem (Exh.21) of the deceased Janabai. She states that the injury found on the head of the deceased Janabai was possible by a blow of any sharp edged weapon like Koyta. She states that the death of the deceased Janabai was homicidal. This evidence has not been challenged on behalf of the respondent. Considering the nature of the injuries found on the body of the deceased Janabai and the evidence of Dr. Sudha Kamble (PW7), we have no hesitation to hold that the deceased Janabai met with a homicidal death.

8. The learned A.P.P. submits that the evidence of the informant is quite reliable. No contradiction or omission has been proved in his evidence. There was no reason for him to falsely

implicate the respondent. Though there is no corroboration to his evidence, his evidence being trustworthy and unimpeachable, would be sufficient to establish guilt of the respondent for the offence alleged against him. He contends that the learned Trial Judge has wrongly discarded the evidence of the informant and wrongly acquitted the respondent.

9. As against this, the learned counsel for the respondent submits that admittedly there was previous rivalry between the family of the informant and the respondent. Therefore, false implication of the respondent cannot be ruled out. Consequently, it would not be desirable to rely on the sole testimony of the informant, more particularly when his own friend viz. Ravindra (PW4), who allegedly happened to be an eye witness to the incident, does not support the prosecution. He submits that there were a number of persons residing near the house of the informant. However,

no independent witness has been examined by the prosecution. According to him, the conduct of the informant at the time of and after the incident is not at all natural and probable. His evidence cannot be believed in the absence of independent corroboration. In the circumstances, he supports the impugned judgment of acquittal and prays that the appeal may be dismissed.

10. The prosecution is relying on the sole testimony of the informant recorded at Exhibit 11, to prove guilt of the respondent. He deposes that on 04.11.1996 at about 7:00 p.m., when the deceased Janabai was cooking inside the kitchen room and he himself was sitting near her, his friend Ravindra, (PW 4) (Exh.15) was sitting near the door-frame of that kitchen room, they heard a sound of breaking of electric bulb from the entrance room of the house. The deceased Janabai tried to see through the door frame of the kitchen room as to what had happened. At that time, a

person, who was wearing saree, gave two blows of Koyta i.e. a sharp edged long weapon, on her head. At that time, the informant caught hold of the chin of that person, moved the face of that person towards him and found that it was the respondent only, who assaulted his mother. He got frightened, pushed the respondent aside and ran away out of the house. He states that he directly went to the house of Appasaheb (PW6) to see whether his father was there. He found that his father was not there. Then he immediately went to the thrashing floor of one Tarde, where one Jeep was standing. He boarded in the jeep and went to Haregaon Police out-post. He narrated about the incident to a person sitting out of the police out-post. That person gave a telephonic message to Shrirampur Police Station. In the meanwhile, a Police Constable came there. He narrated about the incident to that Police Constable also. Thereafter, the said Police Constable and himself went to his house, where the

deceased Janabai was lying in the pool of blood. She was not speaking. She was brought in a private jeep to German Hospital at Shrirampur, where the Doctor examined and declared her as dead. Thereafter, he went to the Police Station, Shrirampur and lodged the report (Exh.12).

11. Ravindra, (PW 4) (Exh.15) who was present at the scene of offence at the relevant time, states that on 04.11.1996 at about 7:00 p.m. to 7:15 p.m., he was sitting in the house of the informant. The mother of the informant was cooking in the kitchen room. The informant was also in the kitchen room. At that time, all of them heard a noise of breaking of electric bulb. He turned back to see as to what had happened. At that time, he saw a person wearing saree. After narrating this, this witness did not support the evidence of the informant. He does not connect the respondent with the incident in question. Thus, his evidence is of no use to corroborate the version of the

informant.

12. Babasaheb, (PW 5) (Exh.17) is not an eye-witness. His evidence is of no use to the appellant to connect the respondent with the incident-in-question.

13. Appasaheb, (PW 6) (Exh.18) is the person whom the informant states to have met immediately after the incident to inquire, whether his father Dattatraya was at the house of this witness i.e. Appasaheb (PW 6). He states that he asked the informant as to why, he (the informant) was so frightened, whereon the informant told him that his uncle was beating his mother with a sharp edged weapon. Thereafter, the informant immediately ran away from his house. It has come in his cross-examination, that he did not state before the police in his statement that he inquired with the informant as to why the informant was so frightened. This is the material

omission in his evidence. Moreover, the informant himself does not state that when he met Appasaheb, (PW 6) immediately after the incident, he informed Appasaheb, (PW 6) that the respondent was beating his mother with a sharp edged weapon. In the circumstances, the evidence of this witness would not implicate the respondent in the incident in question.

14. Gokul, (PW 8) (Exh.23) happened to be a panch to the panchnama (Exh.24) in respect of the spot of the incident and seizure of the samples of plain earth, blood stained earth, a blood stained cooking instrument called 'Ulathane' and a blood stained steel plate therefrom. The evidence of this witness is of formal nature. It does not incriminate the respondent.

15. Madhav, (PW 1) (Exh.9) is the Revenue Circle Inspector, who visited the spot of the incident and prepared a rough sketch thereof. His

evidence also is of formal nature, which does not directly connect the respondent with the incident in question. Nothing was found on the spot of the incident to connect the respondent.

16. Sagunabai, (PW 3) (Exh.13) happened to be a panch to the inquest panchnama (Exhibit 14) of the dead body of Janabai. Her evidence is of formal nature. It has no direct nexus with the guilt of the respondent.

17. As stated above, there is sole testimony of the informant on the basis of which the appellant has tried to prove the guilt of the respondent for the above-mentioned offence. As seen from the evidence of the informant himself, there was previous rivalry between the respondent and the family of the informant. Previous rivalry is a double edged weapon. It may indicate false implication of the accused or may lend corroboration to the case of the prosecution that

because of the previous rivalry, the incident in question took place wherein, the accused concerned participated. In the present case, there is nothing in the evidence of the informant to disclose the motive on the part of the respondent in committing murder of Janabai. The informant did not speak about any incident that took place on the day or prior to the day of the incident, which could have prompted the respondent to commit murder of Janabai. In the circumstances, the evidence of the informant, which is not corroborated by his own friend, who, allegedly, was present at the time of the incident, would require close scrutiny.

18. It has come in the cross-examination of the informant that he has studied upto 8th standard. Thus, the informant is not an illiterate person. He was aged about 16 years at the time of the incident. As such, he had attained the age of understanding. He states that there is

a front hall of the house ad-measuring 10 ft. x 15 ft. and the kitchen room ad-measuring 8 ft. x 10 ft. in his house. There is a door in between the front hall and the kitchen in the centre of the common wall. He admits that the height of that door is $3\frac{1}{2}$ ft. to 4 ft and the width thereof is about 1.34 ft. The rough sketch (Exh.10) prepared by Madhav (PW 1), shows that the incident took place inside the kitchen room at the red square shown by Sr. No.1. The said spot is to the northern side of the door frame of the kitchen. This fact indicates that the assailant of the deceased Janabai entered into the kitchen room for assaulting her. However, from the evidence of the informant, it would be seen that the person who assaulted Janabai did not enter into the kitchen. He states that when the deceased Janabai was peeping into the front room through the door frame of the kitchen room, she was assaulted. The evidence of the spot panch Gokul (PW 8) or the

contents of the panchnama (Exh.24) in respect of the spot, do not show that the blood stains were found on the door frame of the kitchen. In paragraph 3 of the deposition, the informant states that the assailant of the deceased Janabai had entered into the kitchen room. However, in paragraph 17 of his cross-examination, an omission has been brought on record that the fact, that the assailant had entered into the kitchen room, was not stated by him in his report (Exh.12). The report (Exh.12) does not corroborate his version on the point that the assailant of the deceased Janabai had entered into the kitchen room. This is a material omission in the evidence of the informant, which creates doubt about the actual place of the incident and entry of the assailant of the deceased Janabai into the kitchen room.

19. The learned Counsel for the respondent submits that the conduct of the informant at the time of the alleged incident was not at all

natural and probable. He submits that the informant states that he caught hold the chin of the assailant of the deceased Janabai. If that be so, in the natural course, the informant would have raised shouts after identifying the assailant of the Janabai and also would have tried to catch hold of the said assailant with the assistance of the neighbours, who were present nearby his house, as has been stated by the informant himself. Indeed, after confirming the identity of the assailant, the informant would have immediately raised shouts in the name of the respondent, as the assailant of his mother inviting attention of his neighbours for rescue of his mother and also catching hold of the respondent. Nothing of that sort has been done by the informant.

20. The informant states that he directly rushed to the house of Appasaheb (PW 6), who, admittedly, is the friend of the father of the informant. In the natural course, the informant

would have disclosed to Appasaheb (PW 6), about the incident, but the informant does not state that he narrated about the incident to Appasaheb (PW 6) at least in brief and particularly the fact that the respondent was assaulting the deceased Janabai. The informant does not seem to have informed about the incident to anybody in the village before going to Haregaon Police out-post. This conduct of the informant is not at all natural and probable.

21. There is nothing on record to show that the respondent came to be apprehended immediately after the incident and any incriminating article came to be recovered from him. The alleged weapon of the offence also has not been seized by the police. The Investigating Officer also has not been examined by the prosecution.

22. As stated above, there is no corroboration to the version of the informant in

respect of the alleged incident. Considering the previous rivalry between the respondent and the family of the informant, it would be highly risky and hazardous to rely on the sole uncorroborated testimony of the informant, particularly when his conduct at the time and after the incident cannot be said to be natural and probable. In the circumstances, we are not inclined to rely on the sole uncorroborated testimony of the informant to hold the respondent guilty of committing murder of the deceased Janabai. The evidence of the informant is not free from doubts. Benefit of doubt necessarily will have to be given to the respondent. The prosecution, thus, has failed to establish the guilt of the respondent for the above-mentioned offence beyond reasonable doubt.

23. The learned Addl. Sessions Judge has rightly appreciated the evidence on record and rightly held that the evidence of the appellant falls short in bringing home the guilt of the

respondent for the offence of murder of the deceased Janabai. The learned Addl. Sessions Judge considered the evidence of the informant as well as other evidence produced on record in detail and came to hold that the prosecution failed to establish guilt of the respondent for the above-mentioned offence. The view taken by the learned Addl. Sessions Judge is quite possible view. For the reasons recorded in connection with point No.2 above, we are not inclined to take any opposite view to that of the learned Trial Judge. We, therefore, hold that the impugned judgment needs no interference.

24. The impugned judgment of acquittal of the respondent does not call for any interference. The appeal is devoid of any substance. It is liable to be dismissed and accordingly dismissed.

Sd/-
[SANGITRAO S. PATIL, J.]

Sd/-
[S.S. SHINDE, J.]