

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

CRIMINAL REVISION APPLICATION NO. 407 OF 2003

Yadav s/o Gopal Bhure,
Age: 25 years, Occ: Agri.,
R/o. Kurula, Tq. Kandhar,
Dist. Nanded.

...Applicant

versus

1. The State of Maharashtra
Through Police Station Kandhar,
Tq. Kandhar, Dist. Nanded.
2. Pralhad s/o Govind Kirpane,
Age: 40 years, Occ: Agri.,
R/o. Kurula, Tq. Kandhar,
Dist. Nanded.
3. Mangal Govind Kirpane,
Age: 37 years, Occ: Agri.,
R/o. Kurula, Tq. Kandhar,
Dist. Nanded.
4. Gopal s/o Govind Kirpane,
Age: 34 years, Occ: Service,
R/o. Kurula, Tq. Kandhar,
Dist. Nanded.

...Respondents

.....
Mr. Gopal D. Kale, Advocate for applicant
Ms. R.P. Gour, A.P.P. for respondent/State
Mr. S.J. Salunke, Advocate for respondent Nos. 2 to 4
.....

CORAM : N.W. SAMBRE, J.

DATE : 4th MAY, 2016

ORAL JUDGMENT :

This criminal revision application is by the original complainant. The applicant lodged complaint against the accused

persons alleging that they have committed murder of his father namely Gopal Bhure. Pursuant to the complaint, the respondents-accused were charge sheeted for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Learned Sessions Judge acquitted all the accused persons vide its judgment and order dated 03/10/2003. As such, present criminal revision application against the acquittal.

3. While questioning the legality and validity of the order of the acquittal, learned Counsel for the applicant would submit that the acquittal is based upon the incorrect appreciation of evidence. He would then urge that the acquittal is required to be reversed as there are two eye witnesses to the incident i.e. PW-4 Prabhakar Motiram Gaud, who is examined at Exhibit-21, brother in law of deceased Gopal and PW-9 Govind Yadav Bhure, who is examined at Exhibit-33, elder brother of deceased Gopal. According to him, their testimony corroborates the active participation of the respondents-accused in the crime in question and as such, he would submit that the present case is fit for reversing acquittal.

4. Learned A.P.P. supported the case of the applicant, whereas the respondent-accused opposed the claim and sought

dismissal of the revision on the ground that learned Sessions Judge while recording acquittal, has rightly appreciated the entire gamut of evidence brought before it.

5. With the assistance of learned Counsel for respective Counsel, I have perused the original record and proceedings in the matter.

6. It is required to be noted herein that complainant Yadav Bhure, son of deceased Gopal, was examined as PW-8 at Exhibit-31. He supported the case in the complaint. He then claimed that on 11/02/2001 he came to know about the murder of his father from his brother, who was sent by his mother to fetch him. According to him, he alongwith five to six persons went to the field, saw the dead body with injuries. According to him, he lodged the complaint with the police which is at Exhibit-32. In his cross examination, he stated that the complaint was lodged at 2-15 p.m. on the date of incident, however, his signature was obtained on the same on the next day. According to him, the field of accused Pralhad is adjacent to his field. He then stated about certain omissions as regards the contents of the first information report. He then claimed that though there is police chowky in the village, no complaint of the earlier two incidents of threat was lodged. He suspected the involvement of present

accused persons in the murder of his father and as such, he disclosed the names of the accused. He then stated that he do not recollect as to whether paternal uncle Govind has attended funeral and whether Govind attended the police station on 24/02/2001. He also stated that Prabhakar from village Jamb attended the police station on 24/02/2001 with one Govind. He then stated about omission about non mentioning of name of Deepak, brother of accused in the first information report by police.

7. The prosecution witness Govindrao Bhure, elder brother of deceased Gopal, was examined as PW-9 at Exhibit-33. He stated that he alongwith brother in law of the deceased went to the field and saw that accused persons were beating the deceased Gopal in the field with stones and then thrown him in the bushes.

8. In his cross examination, it has come on record that he was working in the school as Peon and was not aware about funeral of deceased Gopal, as he was suffering from asthma. According to him, house of deceased Gopal is at the distance of about 5 to 6 houses from his house and stated that he accompanied the complainant on 24/02/2001 to the police station. The contradiction could be noticed from the above statement, as the complainant in clear terms has stated that on 24/02/2001 he has not accompanied

this witness to the police station. He then stated that he has not told to any family members about the incident. It is claimed that Prabhakar met him in the field on 24/02/2001 and both of them went to the field of deceased. *Prima facie*, there are material contradictions in the evidence of PW-9 Govindrao and complainant PW-8 Yadav.

9. So far as the evidence of PW-1 Balaji is concerned, he is witness to the inquest panchnama. He has stated that witness Prabhakar, PW-4, brother in law of deceased was present at the time of funeral. Material contradiction could be noticed from the same. PW-2 Shivaji Dhulshette is a panch witness to the spot panchnama. He has proved the same in his testimony. PW-3 Sharfu Sk. Lal is also witness to the spot incident, supported the spot panchnama.

10. PW-4 Prabhakar Gaud, brother in law of deceased Gopal, is examined at Exhibit-21. He claimed that on the date of incident i.e. 11/02/2001 he had been to the house of his sister in the morning and having taken tea there, he went to the house of Govind, brother of deceased Gopal and both of them went to the field. He stated that he saw three persons were beating Gopal and on seeing them, it is claimed that, Govind shouted. In his cross examination, he stated that after witnessing the incident of beating to his brother in

law, he came back to village from the spot and did not meet anybody and returned to the village and also not narrated the incident to anybody in the village. The above statement of the said witness does not repose any confidence in his testimony so as to infer that he is an eye witness to the incident. According to him, stone was thrown on the head of the deceased, however, there was no bleeding injury. It is then claimed that he witnessed the accused holding stone in their hand. According to him, he apprehended something and as such, he did not narrate the incident to anybody.

11. PW-5 Sk. Pasha, examined at Exhibit-22, claimed to have present on the spot. He noted that he was wandering for some *herbal* medicine so as to apply on the injury of buffalo and he saw one person sleeping in the field of deceased. According to him, he has not witnessed the incident. In his cross examination, he has narrated that there was discussion amongst gathering that bullocks which were owned by the deceased were very violent and might have caused the injuries, which was the cause of death of deceased Gopal.

12. PW-6 Ramesh s/o Gopalrao Bhure, examined at Exhibit-23, narrates about alleged threats given by the accused persons to the deceased Gopal prior to the incident in question. In his cross

examination, he is not an eye witness but narrates the incident based on hearsay story.

13. PW-7 Dr. Dinesh Pawar, examined at Exhibit-26, has proved the injuries. In his cross examination, he has narrated that he has conducted post mortem. He further stated that rigor mortis develops within 2 to 3 hours after death. He noticed bleeding from right ear, which was sign of intracerebral haemorrhage and was due to injury on the right side. He narrates, except contusion, there were abrasions in the form of simple injuries and same were not the cause for death.

14. The evidence as is discussed herein above if analyzed with that of documentary evidence as is brought on record, it is to be noted that Exhibit-15 inquest panchnama, Exhibit-17 & 19 spot panchnamas, were duly proved. The first information report Exhibit-32 was also proved by the complainant in his testimony. If the evidence of an eye witness to the incident PW-4 Prabhakar as is narrated herein above is analyzed, does not repose any confidence that he is actual eye witness to the incident.

15. Apart from above, other eye witness PW-9 Govindrao Bhure also not appears to be an eye witness as to claimed by the

prosecution, particularly when his evidence if analyzed with that of evidence of PW-4 and other witnesses, there are material contradictions and omissions. The conduct of these witnesses of not immediately lodging the complaint in police chowky and narrating the incident to family members or other persons from the village, rather keeping mum takes this Court to infer that they were not an eye witnesses to the incident and as such, their testimony is required to be disbelieved.

16. In the background of analysis of evidence on record, in my opinion, no case for interference in the judgment of acquittal is made out. As such, criminal revision application against acquittal fails and stands dismissed.

[N.W. SAMBRE, J.]