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

**CRIMINAL REVISION APPLICATION NO.422 OF 2003**

Kallubai w/o Sangram More,  
Age: 40 years, Occu: Household,  
R/o Gutti, Tq. Jalkot,  
Dist. Latur ..APPLICANT

VERSUS

1. The State of Maharashtra
2. Motiram s/o Gyanoba More,  
Age: 57 years, Occu: Agri.,
3. Shetiba s/o Motiram More,  
Age: 22 years, Occu: Agri.,
4. Gendabai w/o Motiram More,  
Age: 47 years, Occu: Household,
5. Balaji s/o Chandar More,  
Age: 27 years, Occu: Labourer

All respondent Nos. 2 to 5  
R/o Gutti, Tq./ Jalkot,  
Dist. Latur ..RESPONDENTS

Mr R. N. Chavan, Advocate h/f Mr R. R. Suryawanshi,  
Advocate for applicant;  
Mr R. V. Dasalkar, A.P.P. for respondent No.1;  
Mr S. S. Choudhari, Advocate for respondent Nos. 2  
to 4

**CORAM : N.W. SAMBRE, J.**

**DATE : 27th SEPTEMBER, 2016**

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**ORAL JUDGMENT :**

Present revision is by original complainant Kallubai, whose husband Sangram came to be murdered resulting into registration of crime for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal code.

2. The facts as are necessary for deciding the present revision preferred at the behest of the complainant against the judgment of acquittal are as under :

That, deceased Sangram was having three sisters, out of which Padmini was married to brother-in-law of accused No. 1 Motiram. The said brother-in-law was already married to one Aruna and Padmini, being his second wife, on 19<sup>th</sup> November, 2001, Aruna assaulted Padmini as such, she complained to her mother and deceased Sangram, her brother and called them at Udgir.

3. It is then claimed that Sangram, feeling

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annoyed about the conduct of Aruna, approached accused No. 1 and narrated him the incident of alleged assault of Aruna on Padmini and then claimed that he should take appropriate steps in the matter.

4. Accused No. 1 Motiram took the said issue on the part of deceased Sangram as an insult and issued threats to deceased Sangram of dire consequences. As Sangram was not having sufficient money to go to Udgir, he left home to fetch money from his sister Drupadabai on the date of incident i.e. 19<sup>th</sup> November, 2001, however, since did not return back, his brother Kerba and daughter started his search and his body was noticed in a public well. As such, on the date, dead body was located, complaint came to be lodged at Exh. 51 by the widow of deceased Sangram, namely, Kallubai on 23<sup>rd</sup> November, 2001.

5. After Crime No. 130 of 2001 for the offence punishable under Section 302, 201 read with

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Section 34 of the Indian Penal Code was registered, inquest came to be drawn on 24<sup>th</sup> November, 2001 at Exh. 40. The body of deceased Sangram was in highly de-composed condition and autopsy was conducted by Dr. Parmeshwar Dhappadhule on the spot and P.M. notes accordingly were issued at Exh. 33, cut injury to throat and injuries on other parts of deceased Sangram were noticed and cause of death cited in the post mortem notes was due cardio-respiratory failure due to haemorrhagic shock due to incised injury over the neck. C.A. reports at Exhs. 34 and 35 disclosed that blood group of deceased Sangram could not be identified. The spot panchnama at Exh. 46 was prepared on 24<sup>th</sup> November, 2001. The spot was discovered under Section 27 of the Evidence Act at the behest of accused No. 1 Motiram and weapon i.e. Sphere was recovered pursuant to seizure panchnama at Exh. 29. So far as muddemal articles i.e. blood stained stones, cotton swab, sphere, Shirt and Pant of the accused persons were referred for chemical analysis. C.A. Report at Exh. 62 does not speak of blood stains

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are that of deceased Sangram.

6. The charge came to be framed against the accused persons at Exh. 3 for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.

7. So as to prove the case, the prosecution has examined in all nineteen witnesses.

| P.W. No. | Name of witness                                | Exhibit |
|----------|------------------------------------------------|---------|
| 1        | Ganpati Ramrao Kendre – Panch witness          | 17      |
| 2        | Vithal Bhujangrao Suryawanshi – Panch witness  | 19      |
| 3        | Sanjay Ramkishan Kendre – Panch witness        | 27      |
| 4        | Ishwar Jalba More – paternal uncle of deceased | 30      |
| 5        | Dr. Parmeshwar Rajendra Dhappadhule            | 32      |
| 6        | Dnyanoba Ramkishan Banduke – Panch witness     | 37      |
| 7        | Balaji Shivaji Suryawanshi – Panch witness     | 39      |
| 8        | Hanumantrao Kishanrao Kendre – Panch witness   | 41      |
| 9        | Baburao Parvatrao Ghule – Panch witness        | 45      |
| 10       | Gangaram Hulaji Telang – Panch witness         | 47      |

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|    |                                                    |    |
|----|----------------------------------------------------|----|
| 11 | Yeshwant Ramchandra Kendre                         | 49 |
| 12 | Kallubai Sangram More – Complainant                | 50 |
| 13 | Gangadhar Kishanrao Sangle                         | 52 |
| 14 | Shivaji Bapurao Kendre – second panch of panchnama | 53 |
| 15 | Gangadhar Maruti Banduke                           | 55 |
| 16 | Padminibai Antoba Saknure – sister of deceased     | 56 |
| 17 | Drupadabai Dnyanoba Bhalerao – sister of deceased  | 57 |
| 18 | Kerba Pundlik More – brother of deceased           | 59 |
| 19 | Hanuman Vithalrao Parande – Investigating Officer  | 60 |

8. The trial Court, thereafter analysed oral evidence brought on record by the prosecution and recorded findings that deceased Sangram died of homicidal death.

9. Thereafter the trial Court proceeded to analyze the evidence of each of the witnesses on merits and recorded the findings that the prosecution has failed to prove the case beyond reasonable doubt and as such, granted benefit to the accused by ordering their acquittal. As such, present revision.

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10. Learned Counsel for the applicant would submit that once it is observed by the learned Sessions Judge that deceased has died of homicidal death, even though there is no eye witness to the incident in question and the entire case is based on the circumstantial evidence, still the Court below has failed to appreciate evidence of P.W.3 Sanjay, Panch witness to the recovery of sphere which is used in the commission of crime, PW-4 Ishwar, to whom confession was given and PW-15 Gangadhar, who had last seen together of accused NO.1 Motiram with that of deceased Sangram, when he was visiting to his mother-in-law's place.

11. Mr. Choudhary, learned Counsel for respondent Nos. 2 to 4 would submit that even if the findings of homicidal death of Sangram are recorded, still there is presumption in law about innocence of individual accused. According to him, unless through cogent evidence proved that accused were involved in the crime in question, particularly murder of deceased Sangram, the Court

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below was right in acquitting the accused. He would then urge that analysis of the evidence, particularly when the prosecution is based on circumstantial evidence, is required to be done with extreme care and caution and same appears to be approach of the learned Sessions Judge. He would then urge that the acquittal, as is ordered does not call for any interference in revisional jurisdiction.

12. Learned A.P.P. supports the case of the prosecution and submits that the acquittal needs to be reversed.

13. With the assistance of respective learned Counsel, I have scanned the evidence of witnesses as is brought on record. It is required to be noted that the findings as are recorded by learned Sessions Judge, particularly as regards homicidal death of deceased Sangram, appears to be just and proper. However, by recording such findings, the involvement of present respondents-accused to the

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crime in question is required to be analyzed independently, based on material as is brought on record by the prosecution.

14. It is required to be noted that it is brought in the evidence, that Sangram was addicted to liquor and was not in good terms with accused No.1 Motiram. It is then to be noted that Padmini, sister of deceased Sangram was second wife of brother in law of accused Motiram and differences between Padmini and first wife Aruna cannot be treated to be motive behind the involvement of the present respondents-accused in the commission of crime in question, unless it is proved beyond reasonable doubt that all the accused persons have killed deceased Sangram with common intention. So as to substantiate the case of the prosecution, though prosecution has examined in all 19 witnesses, the material as is sought to be placed on record to complete the chain in regard to circumstantial evidence as is brought on record appears to be very weak and not complete. For the

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said purpose, if we analyze the evidence brought on record, it is to be noted that the evidence of PW-1, namely, Ganpati, panch witness to the panchnama at Exhibit-18 was discarded, particularly having regard to the time, of visit of the said witness to the police station and drawing of panchnama at Exhibits-28 and 29, particularly as regards seizure of sphere, weapon used in the commission of crime in question. It is then required to be noted that pursuant to Sections 25 and 27 of the Evidence Act, the confession given to independent witness as is claimed in the testimony of PW-4 is not admissible when the accused person was in the police custody. Apart from above, PW-2 Vitthal, who was panch witness to the panchnama at Exhibit-20 for seizing the clothes and other material from the accused persons, for which reliance is placed on the evidence of PW-4 Ishwar, PW-6 Dnyanoba, PW-8 Hanumantrao, PW-9 Babanrao, will be of hardly any assistance when the blood group of deceased Sangram could not match with that of blood stains found on the seized material i.e.

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shirt, pant, sphere, stone and other material seized at the behest of the accused in the form of discovery under Section 27 of the Evidence Act.

15. The prosecution has tried to rely upon the evidence of PW-12 Kallubai, who is complainant, so as to establish motive, however, motive as is attributed pursuant to the statement of Kallubai was rightly discarded when the story as is narrated so as to connect motive to the commission of crime in question, was without any basis. Said Kallubai deposed contrary to the evidence of PW-18 Kerba, brother of deceased Sangram, particularly to the extent of denying assistance of her relatives when her real brother was in fact was alive. It is to be noted that PW-15 Gangadhar was cited to be a star witness so as to establish last seen together. It is claimed that Gangadhar was moving in village so as to visit his father in law and when he was crossing Datta temple in the light, at about 9 to 9.15 p.m., he saw that Motiram was going along with deceased Sangram. The testimony of

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Gangadhar when appreciated, it is required to be noted that there is improvement in the said testimony, as he has not stated in his statement recorded under Section 161 of the Code of Criminal Procedure that he could witness the movements of both these persons i.e. deceased Sangram and accused Motiram. Leave apart above, the fact remains that the incident, as is narrated about last seen could not be appreciated, particularly to conclude that accused Motiram was last seen together with deceased Sangram, when timings as are narrated in the deposition would not match and there is certain exaggeration to that effect.

16. In my opinion, Mr. Choudhari, learned Counsel was right in pointing out that when the case is based on circumstantial evidence, appreciation of evidence has to be with alertness and with care and caution. Taking cumulative effect to overall evidence brought on record before learned Sessions Judge, what is required to be inferred that the prosecution has failed to

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establish the case based on circumstantial evidence so as to conclude that the accused persons are involved in the commission of crime in question.

17. In this view of the matter, the acquittal as is ordered by learned Sessions Judge, in my opinion, does not call for interference in the revisional jurisdiction. Criminal Revision Application, as such, fails and same stands dismissed.

**(N.W. SAMBRE, J.)**

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