

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

CRIMINAL APPEAL NO.159 OF 2013

Govind s/o. Sambhaji Hanmante,
Age 67 yrs., Occu. Nil,
R/o. C/o. Kadam's House
Sambhaji Chowk, Cidco,
Nanded.

**APPELLANT
(victim)**

VERSUS

1. The State of Maharashtra
2. Manoj s/o. Rajpalsingh Thakur
Age 21 Yrs., Occu. Labour
R/o. Old Kautha, Nanded.
3. Balaji s/o. Devidas Wasanwar
Age 21 Yrs., Occu. Auto Driver
R/o. Nyayanagar, New Kautha
Nanded, Dist. Nanded.
4. Sunilsinh Pratapsinh Thakur
Age 22 yrs. Occu. Labour
R/o. Chirag Galli, Nanded
5. Lakhansinh Arjunsinh Thakur
Age 19 yrs. Occu. Labour
R/o. Chirag Galli, Nanded
6. Chotu @ Indrajeet Ramlal Yadav
Age 22 Yrs., Occu. Auto Driver
R/o. Old Mondha, Nanded

RESPONDENTS

(Resp. Nos.2 to 6
are orig.accused)

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Mr.P.M.Shinde, Advocate for the appellant
Mr.K.S.Patil, APP for respondent no.1.
Mr.G.G.Kadam, Advocate for respondent nos.2,
3, 5 & 6.

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

Date : 23.09.2016

JUDGMENT: (Per S.S.Shinde, J.):

This Appeal is filed by the father of the deceased Sanjay, challenging the judgment and order dated 27.07.2012 passed by the Additional Sessions Judge-3, Nanded in Sessions Case No.169/2011, thereby acquitting the original accused nos.1 to 5 i.e. respondent nos.2 to 6 of the offences punishable under Sections 302, 379 r/w. 34 of the Indian Penal Code (for short 'IPC').

2. The brief facts of the prosecution case are as under:

The deceased Sanjay was the son of informant Parvatibai Govind Hanmante and that

of the appellant. On 26.06.2011 at about 11.00 a.m. after having his meals, Sanjay had gone to the Hospital for treatment, as he had sustained injury on 23.06.2011 on his cheek at the hands of one Arun Lokre and others. In respect of the said incident, he had lodged the report to the Police. On 26.06.2011, for the whole day and night, Sanjay did not return to his house. On 27.06.2011, the informant Parvatibai had gone to Meenal i.e. wife of Sanjay, for making inquiry about Sanjay. Meenal told the informant that, on 26.06.2011 at about 5.42 p.m. she received a phone call from Manoj Thakur i.e. respondent no.2, on her mobile phone No.9881165054, Manoj told her that Sanjay assaulted him in last year, therefore, he was not going to leave Sanjay. At 5.51 p.m. on the same day she received another phone call of Lakhan Thakur i.e. respondent no.5 and he also said that he was not going to leave her husband as

his sister was eloped and in the said matter Sanjay was involved. The informant and Meenal took search of Sanjay for the whole day on 27.06.2011. On the said day at about 6.15 p.m. the dead body of Sanjay was found in the bed of Godavari river, below the bridge within the limit of village Bondhar. One Ansarkhan Samsherkhan Pathan supplied information in that respect to the Police Station Nanded Rural. Accordingly, the entry was taken in the station diary. The PSI visited the spot where the dead body was found. He prepared the inquest panchanama on the dead body. He noticed multiple injuries on the dead body.

3. At about 7.30 p.m. the informant Parvatibai learnt that her son Sanjay was murdered and his dead body was taken for post mortem in the Government Hospital, Nanded. She, along with Meenal, went to the Hospital. The informant Parvatibai lodged the First

Information Report (for short 'FIR'). The Medical Officer conducted autopsy on the dead body of Sanjay. He noticed multiple injuries on the dead body. The accused came to be arrested. After investigation, the charge-sheet came to be filed against the accused in the Court of Judicial Magistrate First Class, Nanded, for the offences punishable under Sections 302, 379 read with Section 34 of the IPC. The learned JMFC, Nanded committed the case to the Court of Session for trial. The trial Court, after full-fledged trial, acquitted all the accused. Hence this Appeal.

4. This Appeal is admitted only against respondent no.2 Manoj and respondent no.5 Lakhansinh (original accused nos.1 and 4) and this Court by order dated 14.07.2014 declined to entertain the appeal against the other accused. Therefore, adjudication of this Appeal is confined in respect of the aforesaid two accused persons.

5. The learned counsel appearing for the appellant submits that there was motive for commission of the offences. The prosecution examined the informant and also wife of Sanjay. The medical evidence unequivocally indicates that the death of Sanjay was homicidal. The circumstances relied upon by the prosecution unerringly pointed out the guilt of the accused, and therefore, the Appeal deserves to be allowed.

6. The learned APP appearing for the respondent-State also submits that the prosecution has led sufficient evidence and firmly established the chain of circumstances, which would lead to the only hypothesis that the respondents are responsible for the death of Sanjay.

7. The learned counsel appearing for the respondents relying upon the findings recorded by the trial Court and also the

evidence of the prosecution witnesses submits that the prosecution case rests upon the circumstantial evidence, and the prosecution has utterly failed to establish the chain of circumstances which would unerringly point out the guilt of the respondents, and therefore the Appeal may be dismissed.

8. We have considered the submissions of the learned counsel appearing for the parties. With their able assistance, perused the entire evidence so as to find out the correctness of the findings recorded and conclusions reached by the trial Court. The prosecution examined Dr.Dake (PW5), working as Lecturer in Department of Forensic Medicine and Toxicology, Government College, Nanded, who performed the P.M. Examination on 28.06.2011. On external examination, he noticed the following injuries on the dead body:

- i) Crush injury present on head and face with lacerated wound of size 4 c.m. x 1 c.m. x cavity deep present on right frontal region, lacerated wound on medial end of right eyebrow of size 2 c.m. x 1 c.m. x bone deep, multiple contused abrasion present on face of sizes varying from 1 cm. x 1 cm. to 3 cm. x 2 cm., reddish, all facial or cranial bone fractured.
- ii) Contusion present on left Supra-mammary region 6 cm. x 4 cm., reddish.
- iii) Contusion present on right lateral aspect of chest 14 cm. x 10 c.m., reddish.
- iv) Stitched lacerated wound present on right lateral aspect of right arm, mid part, oblique, 15 cm. above right elbow, 4 cm. x 1 c.m. x bone deep, underlying bone fractured, 4 sutures present into situ.
- v) Contusion present on central part of back, upper part 20 cm. x 20 cm., reddish.

vi) Multiple contused abrasions present on left elbow, back of left hand of sizes 1 cm. x 1 cm. to 3 cm. x 3 cm., reddish.

vii) Postmortem ant bites marks present on chest, abdomen, both upper limbs.

9. On the basis of P.M. examination, he came to the conclusion that the death of Sanjay was caused due to injuries to vital organs, and accordingly, he issued the post mortem report. During his cross examination, he states that injury no.1 of column no.17 was likely to be caused because of crushing the head in between two hard objects. Injury nos. 2, 3, 5 and 6 were possible due to fall, however, not possible due to single fall.

10. The trial Court, after examining the evidence of Dr.Dake (PW5) and the defence taken by the accused and also the attending circumstances, as taken a view that the

prosecution has not firmly established that the death of Sanjay was homicidal. It appears that the injury on head stated at serial no.1 by the witness has caused death coupled with other injuries on all over the body. As already observed, during his cross examination, Dr. Dake (PW5) states that injury no.1 of column no.17 was possible because of crushing the head in between two hard objects. It appears that upon appreciation of the medical evidence on record, the trial Court reached to the correct conclusion that the prosecution has not firmly established that the death of Sanjay was homicidal.

11. The entire prosecution case rests upon the circumstantial evidence, and the circumstances relied upon by the prosecution are that *firstly*, there was dispute between the deceased and respondent no.2 - Manoj as he was having evil eye on the informant.

Secondly, the presence of the deceased in the company of the accused and telephonic talks between respondent no.2 Manoj and the wife of deceased. *Thirdly*, the threats extended by respondent no.2 - Manoj and respondent no.5 - Lakhansinh on telephone to the wife of Sanjay that they would kill Sanjay.

12. In order to prove the said circumstances the prosecution examined the informant Parvatibai (PW1). She states that the incident occurred on 26.06.2011 at about 11.00 a.m. Sanjay had gone to the Hospital after taking the meal, since he had sustained injury in the quarrel with Pintu Lokre in the incident which had taken place prior to 2-3 days. Sanjay also lodged the FIR to the Police Station against Pintu Lokre. When Sanjay did not return to home, she went to the daughter-in-law Meenal. Meenal (PW2) informed her that she received phone calls of respondent no.2 - Manoj by which he informed

that Sanjay was with him. Meenal (PW2) also informed that respondent no.2-Manoj told her, as Sanjay caused disfigurement to his face he was going to kill him. Meenal (PW2) told her that she had received phone call of respondent no. 5 - Lakhansinh and he was with respondent no.2 - Manoj. She returned at her house and learnt about the death of her son namely Sanjay. She also states that she along with Sanjay were residing at the house of respondent no.2 - Manoj as tenant one year prior to the incident. Respondent no.2 Manoj was having evil eye on her. The same fact was informed to her husband.

13. During her cross examination, she admits that 10-12 crimes were registered against her son Sanjay in the Police Station Nanded (Rural). On 2-3 occasions, the Police arrested him. The appellant obtained bail for Sanjay. However, in the said cases respondent no.2 - Manoj was not the informant. She is

not aware that who lodged the reports in the Police Station in those cases. Prior to 8 months of the incident, they left the house of respondent no.2 - Manoj. When she was asked about her age, at the relevant time she did not state her age. However, it appears that the defence suggested that at the relevant time her age was 62 years and age of respondent no.2 Manoj was 21 years. She also admits in her cross examination that Sanjay used to stay out of the house in the night, since he was having auto business. She states that neither she herself or Meenal (PW2) lodged the report in respect of the threats given by the respondents on phone that they would kill Sanjay.

14. Meenal (PW2), the wife of the deceased Sanjay, states that she used to reside as tenant in the house of respondent no.2 - Manoj alongwith the informant and Sanjay. Respondent no.2 had evil eye on the

informant. When the said fact was informed to the parents of respondent no.2, they told them to vacate the house and thereafter they left the house of respondent no.2 and started residing elsewhere on rent. She states that she received phone call of respondent no.2 on her mobile phone No.9881166054. Respondent no.2 had made phone call to her from his mobile phone No.9011082085 at about 5.51 p.m. and also she received phone call of respondent no.5 at about 5.42 p.m.

15. It seems that the prosecution ought to have produced strong evidence to establish that the above-numbered cell-phones were belonging to respondent nos.2 and 5. The evidence to that effect would have been a strong circumstance to establish the case of the prosecution. However, the Investigating Officer in his deposition states that he did not find out the ownership of the said mobile

phones. It means the prosecution did not bring on record the ownership of both the cell phones. The prosecution also did not examine the Nodal Officer from the phone companies concerned so as to prove the fact that as a matter of fact phone calls were received by Meenal (PW2). Therefore, the evidence of the informant and Meenal (PW2) that on the date of the incident i.e. 26.06.2011 phone calls from respondent no.2 and respondent no.5 were received on cell phone of Meenal (PW3) cannot be accepted.

16. There is no evidence on record to suggest that the deceased Sanjay was seen in the company of the accused either on 26th or 27th June, 2011. The case of the prosecution entirely rests upon the circumstantial evidence, however the important circumstance i.e. last seen together, is not proved.

17. The Panch Witnesses turned hostile,

and therefore, their evidence is not useful to the prosecution. One witness was examined to prove the commission of offence under Section 379 of the IPC, but the prosecution did not prove the said offence also. It is not necessary for us to lengthen this judgment, suffice it to say that on re-appreciation of the entire evidence, we are of the view that the judgment and order of acquittal passed by the trial Court are based upon the sound findings and those findings are in consonance with the evidence on record.

18. For the reasons stated above, Criminal Appeal fails, hence we pass the following orders:

- i) Criminal Appeal is dismissed.
- ii) Respondent no.5 – Lakhansinh Arjunsinh Thakur, who is in jail, be set at liberty forthwith, if not required in any other case.

iii) Bail bonds of respondent no.2 –
Manoj s/o. Rajpalsingh Thakur stand
cancelled.

Sd/-
[**SANGITRAO S.PATIL**]
JUDGE

Sd/-
[**S.S.SHINDE**]
JUDGE

DDC