

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO.78/2007

State
 (Through P.I.,
 Margao Town Police Station,
 Margao – Goa 403 601)

Appellant

Versus

1. Shri Anand Naik,
 s/o Baburao Naik,
 r/o House No.58, Near Krishna Temple,
 Ecoxim,
 Bardez-Goa.

2. Shri Bishnu Chawdary,
 s/o Mahadeo Chawdhary,
 Occupation labour,
 r/o village – Boholi,
 Dist. Basti, Post-Parsa, Uttar Pradesh
 Presently r/o Novowaddo,
 Near S.P. Chowgule College,
 Margao (Fatorda),
 Salcete-Goa.

Respondents

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Shri Mahesh Amonkar, Additional Public Prosecutor for the
 appellant.

Shri A.V. Pavithran, Advocate for the respondent no.1.

CORAM : F.M.REIS & NUTAN D. SARDESSAI, JJ

DATED : 13/07/2016.

ORAL JUDGMENT (PER NUTAN D. SARDESSAI, J):

1] Heard Shri M.Amonkar, learned Additional Public
 Prosecutor appearing for the appellant-State and Shri
 A.Pavithran, learned Advocate for the respondent no.1 being the
 original accused no.1. Shri M. Amonkar, learned Additional Public
 Prosecutor on behalf of the appellant confirmed on instructions

that the respondent no.2-the accused no.2 had expired and, therefore, the appeal to that extent would stand abated against the respondent no.2. We would, therefore, be constrained to examine the records to consider whether the appellant had carved a case for a reversal of the judgment of acquittal of that passed by the learned Additional Sessions Judge, South Goa Margao which acquitted both the respondents for the alleged commission of the offences punishable under Sections 302, 307 and 120-B IPC.

2] Briefly the case of the appellant-State is that both the respondents had conspired to kill the deceased Nivrutti on account of the rivalry over the running of a new restaurant known as hotel 'Surya' run by the deceased. The deceased was working before in a hotel run by the accused no.1. The accused no.2 stabbed the deceased due to which he died and also attempted to kill the witness Prakash and it was apparent from the record that the criminal conspiracy was hatched pursuant to which the accused no.2 stabbed the deceased as well as Prakash giving rise to the offences punishable under Sections 302, 307 and 120-B IPC.

3] The learned Additional Sessions Judge, Margao had framed the Charge accordingly against the two respondents to which each of them pleaded not guilty and claimed to be tried.

4] The appellant-State had examined Maria (Pw1) who was the witness after the incident and had learnt on the morning of the ill-fated day i.e. 11.11.2001 that she had seen a body lying on the ground on going out of her house with blood all around and informed the police about it. She had set the law in motion and lodged a complaint to the Police. What all emerges from her testimony is that the deceased had told her about 15 days earlier that the respondent no.1 had issued threats to him to leave the place i.e. the running of the hotel "Surya" and that if he failed to do so, he would show him.

5] Thereza (Pw2), sister of Maria (Pw1) similarly stated that she had learnt during the morning of 11.11.2001 that a large crowd had gathered in front of the restaurant, informed Maria (Pw1) who had gone to the place and she too went towards the spot and later learnt about the murder. She had identified the person lying inside the restaurant of which the shutters were open upto the height of 1 mtr. from the ground and the body was lying at about 2 mts. distance from the shutter. She was instrumental in taking the police through the back-door in order to go to the restaurant along with Maria (Pw1) and after entering the restaurant identified the dead body of Nivrutti who had injuries all over. She was also informed by the mother of Prakash, who was working in the restaurant that he had come home in the early hours at about 03.00 hours and had some

injuries on his person. There was nothing in her evidence in spite of her cross-examination to show the nexus of the respondents to the crime in question.

6] Laxmi (Pw3) the mother of Prakash had resiled from her previous statement to the police and accordingly she was cross-examined by the learned Public Prosecutor seeking the indulgence of the learned Additional Sessions Judge. During such time, she maintained that she had not given any statement to the police and resiled from all the statements put to her which were reflected in her statement.

7] Anil (Pw4) knew the deceased who was working for the respondent no.1 as he used to go to the hotel 'Anant Raj' for tea some times. The deceased had differences with the respondent no.1 and as such had left his job and gone to his native place somewhere in Karnataka. He had returned after a few days and taken over his restaurant which he was running in the name of hotel 'Surya'. The deceased had also shown a complaint lodged by him against the respondent no.1. Besides, he knew the respondent no.2 who was earlier working in his restaurant. On 10.11.2001 which was a Saturday, he was in his hotel 'Surya' till about 23.00 hours and noticed that the respondent no.2 was having his meals in the said hotel. While leaving, the respondent no.2 came to him and asked his permission to sleep in the hotel when he told him to seek

permission of the deceased and went to his residence. On the morning of 11.11.2001 he had received a phone-call and was informed that there was some problem in the hotel 'Surya' and on going to the said spot he had noticed a crowd gathered outside with some policemen present at the place.

8] Anil (Pw4) saw the dead body of Nivrutti lying on the floor in a pool of blood. He had also noticed Prakash in the hotel when he had gone on the previous night and learnt that Prakash was assaulted and admitted in the hospital. He had seen a pair of grey colour casual shoes and identified them to be those of the respondent no.2 since he had seen him using the same earlier when he was working in his restaurant. He confirmed the presence of Maria (Pw1) and Thereza (Pw2) at the spot on his arrival and confirmed that he had stayed at the place of the incident till about 18.00 hours. The Police had conducted the panchanama and recovered a key on the body of the deceased. He had, however not seen Prakash at the place of incident when he reached but had gathered from the people at the spot that Prakash too was stabbed and taken to the hospital. Suffice it to say that there was no statement incriminating either the respondent no.1 or the respondent no.2 apparent also from his testimony.

9] The testimony of Anil (Pw4) reflected that the deceased Nivrutti had never told him that he had received any

threats from the respondent no.2 nor had he learnt from any other person that Nivrutti had received the threats from the respondent no.2. Anthony (Pw5) was the panch witness near hotel 'Surya' at the instance of the police when a photographer was also present. They had entered the hotel through a door from the house of Viegas and seen a body partly on the floor and partly on the mat. He described at length what was noticed in and around the body and made a pertinent reference to the stab injuries seen on the body and the blood all around. He had referred to the finger prints collected by the police apart from the dog-squads being summoned. But his testimony too was unable to relate to the involvement of both or any of the respondents in the crime.

10] The testimony of Gurudas Naik (Pw6) a Draughtsman is not of any significance to the case of the State who had come in the picture to draw a sketch much after the crime at the instance of the Police and had undertaken the exercise more than 10-12 days later. Sushant (Pw7) knew the deceased as also the respondent no.1 who was running a canteen in Chowgule College where Nivrutti was working for about four to five years and besides knew the respondent no.2 who was working in the hotel Filmar owned by Anil (Pw4). The deceased started running the hotel in the name 'Surya' about one and half to two months prior to his death and the respondent no.2 had worked as a

waiter in the said hotel till the date of the incident. It emerged from his testimony that the people used to make fun of the respondent no.2 by saying that he had become a Waiter from a Manager and he used to get annoyed at the people who used to tease him.

11] Narayan (Pw8), was the father of the deceased who had learnt about the murder of his son Nivrutti after he came down to Goa from Kanarpur. Jaganath (Pw9) had disclosed that he was residing in one of the rooms in a Chawl near Chowgule College, Margao. On 10.11.2001 he had gone to sleep after dinner and woke up at 03.00 hours of the next day on hearing someone knocking at his door. He had seen one lady residing in the room no.2 and her son outside his door and the said son was holding his hand across his abdomen. He noticed that he was bleeding through his abdomen and felt giddy. Gangaram (PW10) stated that he knew the deceased Nivrutti being his brother in law. The deceased had told him that the respondents had threatened him not to start his own hotel at Margao and the respondent no.1 in particular had told him that he would be affected in case he started the hotel near that of the respondent no.1. Nonetheless Nivrutti had gone with his plans and started a hotel. He had learnt about his murder and went to Bambolim to see the body when he noticed the stabbed injuries.

12] The testimony of Rudrappa (Pw11) was along similar

lines like that of Gangaram (Pw10) except for an additional statement that Nivrutti had phone him up two days' prior to his death and told him that the respondent no.1 had threatened him to stop his hotel and in case he did not do so, he would be killed. Nivrutti had told him to come down to Goa but he had expressed his inability and instead told the father of Nivrutti about the phone-call received by him. Vinod (Pw13) was the panch to the attachment of the clothes of the injured Prakash at the Hospicio Hospital, Margao. He had handed over a T-Shirt which had a cut on the front side and soiled with blood stains and which was duly packed and sealed by the police. He relented that he had not seen any injuries on the person of Prakash.

13] Dr. Sapeco (Pw14) had examined the body of Nivrutti and found the oblique stab penetrating injury, vertical stab penetrating injury near the left eye brow and left temple apart from the other stab injuries on the right cheek, neck, below the neck and the scalp, numbering 23 in all. The stab injuries 22 and 23 had pierced the abdomen and had made cuts to the intestines, omentum and mesentery alongwith the blood vessels. He confirmed that he had examined in all 33 injuries which had clean cut incised margins with acute angles at both extremities with fluid blood within and with dried blood externally caused by a double edged, sharp, pointed, cutting and penetrating weapon which were ante-mortem and fresh at the time of the death and

shown diagrammatically in his report. Besides he had found the additional injuries in the nature of abrasions on the body and also found the fractures corresponding to the injuries nos.1, 11, 16, 19, 22, 23, 24, 25, 28, 29 and 30.

14] Dr. Sapeco (Pw14) had therefore opined that the cause of death was due to haemorrhagic shock associated with cuts to the internal ribs, bones and vital organs caused by an impact with a double edged, sharp, pointed, cutting and penetrating weapon which were all necessarily fatal, ante-mortem and fresh at the time of death. The tenor of his testimony which has remained un-rebutted in material particulars confirms that the death of Nivrutti was homicidal. It was also apparent from his testimony that he had examined the respondent no.2 at the instance of the police and noticed some injuries on his person. Besides, he had also voluntarily made a statement indicating the criminal conspiracy entered into by him with the respondent no.1 to kill Nivrutti and confirmed that the injuries suffered by him were in the process of the inflicting injuries on the person of Nivrutti. Since however, it is confirmed from the submission of Shri Amonkar, learned Additional Public Prosecutor on behalf of the appellant-State and conceded by Shri A. Pavithran, learned Advocate for the respondent no.1 that the respondent no.2 has expired, we need not be detained on that part of the testimony relating to the extra judicial confession of the respondent no.2 to

Dr. Sapeco (Pw14).

15] Sadanand (Pw15) examined on behalf of the State stated that he knew the deceased who was working in 'Anand Raj' hotel before he started running hotel Surya. He had learnt about the death of Nivrutti on the next day. Since he was resiling from his previous statement to the Police, he was cross-examined at the instance of the Public Prosecutor but at which time too the prosecution was not able to garner any worthwhile evidence from him. Prakash (Pw16) the injured in the incident stated that he was working as waiter for hotel Anandraj in the year 2000 and knew the respondent no.1. Nivrutti who was working as Manager of the hotel and he left working since good salary was not paid to him. Nivrutti had also left the job in hotel 'Anandraj' and started another hotel name hotel 'Surya' which was near Chowgule College and earlier the hotel being run by the respondent no.2, since deceased.

16] Prakash (Pw16) stated that Nivrutti had told him during the course of his visits that the respondent no.1 was threatening him and thereafter he called him to work in his hotel and he went for work in that hotel. The respondent no.2 used to come to that hotel in the evening time to have tea and sometimes in the morning and Nivrutti used to tell the respondent no.2 to see how well he was running the hotel. On the night of 10.11.2001, the respondent no.2 had come to their

hotel and ordered for drinks when he served whiskey. The respondent no.2 had not drunk the liquor but emptied the same in the wash-basin and thereafter served him food. Nivrutti had told the respondent no.2 to sleep in the hotel and by 23.00 hours they went to the sleep on a table close to each other while he slept on another table slightly away. At about 02.00 hours Nivrutti started calling out when he got up and saw the respondent no.2 continuously stabbing Nivrutti with the knife who was bleeding. He shouted when the respondent no.2 came towards him and stabbed him on his stomach and on his left hand.

17] Prakash (Pw16) had kicked the table which was near his table and then opened the shutter and ran out. He too ran out because he had sustained bleeding injuries, woke up his mother and one of his neighbours who was also woken up. He had gone to the hotel back at 06.00 hours, some Police gathered at the spot and learnt that Nivrutti had died. He had told the Police that he was present and sleeping in the hotel and thereafter he was brought to the hospital. At the cost of repetition and since the respondent no.2 is admittedly deceased, his testimony is of no significance to the case of the State.

18] Shailendra (Pw17) was the panch to the attachment panchanama to the clothes of the respondent no.2 whose testimony also pales into insignificance in view of the admitted

death of the respondent no.2. Sandeep (Pw18) was another panch at the instance of the Police to the recovery panchanama again at the instance of the respondent no.2 but on whose demise his testimony too pales into insignificance. P.I. Kadam (Pw19) was instrumental in recording the statement of the sole eye witness Prakash (PW16) who was also admitted in the hospital with the stab injuries. However, there was no word or whisper on the role played by the respondent no.1 and, therefore, his testimony need not detain us further. Suresh Naik (Pw20) was the Police Dog Handler, who had taken the dog-squad near the body of the deceased, while H.C. G.Naik (Pw21) had recorded the N.C. Complaint of the deceased Nivrutti against the respondent no.1 which was about nine days prior to the ill-fated day.

19] Faria (Pw22) was the Special Judicial Magistrate who had conducted the Test Identification Parade in respect of the respondent no.2 after following all predicates prescribed in the Criminal Manual issued by this Court. His testimony too recedes to the background when admittedly the respondent no.2 against whom he had deposed had since expired. Dr.S.Dalvi (Pw23) had examined the sole eye witness Prakash (Pw16) and noted the injuries on his person in the Hurt Certificate, while P.S.I. Dalvi (Pw24) had carried out a part of the investigation relating to the attachment of the clothes of the eye witness Prakash (Pw16) in

the Hospicio hospital, Margao.

20] Dr. D'Costa (Pw25) was the Senior Surgeon who had examined Prakash (Pw16) and found the stab injuries on his person, while D'silva (Pw26) had carried out a part of investigation in the said Crime. Suffice it to say that from the evidence examined of all the witnesses including P.C.Raul (Pw27) and the Dy. S.P. Gaonkar (Pw 28) there is no material clinching enough to connect the respondent no.1 with the crime. Moreover, the learned Additional Sessions Judge had examined the evidence on record of each of the witnesses and held that even from the extra judicial confession recorded by Dr. Sapeco (Pw14) qua the respondent no.2, there was no corroborative evidence to that effect.

21] The learned Additional Sessions Judge had also concluded that the evidence on record did not show the involvement of the respondent no.1 of entering into a criminal conspiracy with the respondent no.2, since deceased, to murder the deceased Nivrutti and held that the prosecution had failed to establish the aspect of the criminal conspiracy to murder the deceased Nivrutti. For that matter, she had not found the weapon of assault i.e. knife traceable to the respondent no.2. In the ultimate, she had also fallen back upon the fact that there was no police request to Dr. Sapeco (Pw14) to opine about the nature and character of the weapon which was necessary to cause the

injuries mentioned by him on the body of the deceased Nivrutti. The learned Additional Sessions Judge had concluded on an assessment of the evidence that the respondent no.2 had succeeded in creating a doubt in the prosecution story and gave the benefit of doubt to him accordingly which finding does not call for any interference in the appeal.

22] In the ultimate, she had concluded that the prosecution had totally failed to prove the case against the accused and after giving the benefit of doubt acquitted both of them. There is no material whatsoever on the record from the evidence examined in detail to show the involvement of the respondent no.1 in the crime and the evidence against the respondent no.2 being of no consequence on account of his death pending the appeal.

23] In the result, we do not find any reason to interfere with the judgment passed by the learned Additional Sessions Judge, Margao and pass the following order:-

Order

The appeal is dismissed confirming the judgment of acquittal of the learned Additional Sessions Judge, South Goa Margao.

NUTAN D. SARDESSAI, J

F.M. REIS, J