

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

CRIMINAL APPEAL NO. 461 OF 2006

The State of Maharashtra
through Police Station,
Renapur, District Latur

**APPELLANT
(Prosecution)**

VERSUS

1. Kakasaheb s/o Ramchandra Deshmukh,
Age : 37 years, Occu. Agriculture,
R/o Chincholi (Bal.), Taluka
and District Latur
2. Shivaji @ Baburao s/o Amrutrao
Deshmukh, Age : 25 years,
Occu. Agriculture
3. Amrut s/o Venkatrao Deshmukh,
Age : 50 years, occu. Agriculture,
Respondent nos. 2 and 3 residents
of Murdhav, Tq. Renapur,
District Latur

**RESPONDENTS
(Orig. Accused)**

Smt. S.S. Raut, A.P.P. for the appellant/Prosecution
Mr. Nileshsingh J. Patil, Advocate for the respondents

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

JUDGMENT RESERVED ON : 30th NOVEMBER, 2017
JUDGMENT PRONOUNCED ON : 8th DECEMBER, 2017

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

The appellant/prosecution has taken exception
to the judgment and order dated 13th march, 2006,
passed in Sessions Case No. 58 of 2005 by the learned

2nd Additional Sessions Judge, Latur, whereby the respondents have been acquitted of the offence punishable under Section 302 of the Indian Penal Code ("IPC" for short).

2. The deceased Madhukar Ramchandra Deshmukh, resident of village Chincholi (Bal.), Taluka and District Latur was the real brother of respondent No.1. Their dwelling houses were adjacent to each other. There were some disputes between them on account of agricultural land. They had filed criminal cases against each other.

3. It is alleged that on 4th June, 2005, at about 10.00 a.m., respondent No.1 took the deceased Madhukar with him to village Murdhav, Taluka Renapur, District Latur for settling the dispute between the deceased Madhukar and himself with the assistance of respondent Nos.2 and 3, who are the brother-in-law and father-in-law respectively of respondent No.1. Thereafter, the deceased Madhukar did not come back to his house. He was found in an injured condition in the land of one Tryambak Kapse situate within the revenue limits of village Ghansargaon, near Ghansargaon to Talni cart-way, which was at the distance of 500 feet to the west of

Renapur to Pangaon road, on 5th June, 2005 at about 9.00 a.m. to 10.00 a.m. He was unconscious. He had sustained a head injury. His cap and pair of chappals were lying nearby him. A stone stained with blood also was there. A bottle of pesticide namely "rogor" and two empty bottles of English liquor also were lying there. One Pratap Deshmukh, who noticed the deceased Madhukar at that spot, informed the Police Station, Renapur on phone. The police came there and took the deceased Madhukar to the Civil Hospital, Latur where he was admitted for treatment. On the same day, at about 7.30 p.m., the deceased Madhukar was shifted to Vivekanand hospital at latur for treatment. He died there on 7th June, 2005 at about 12.20 a.m.

4. The inquest of the body of the deceased Madhukar was prepared. It was referred to the Medical Officer, Civil Hospital at Latur for postmortem. The Medical Officer conducted postmortem and opined that Madhukar died due to poisoning with head injury.

5. The widow of the deceased Madhukar namely Panchafula (hereinafter referred to as "the informant") was interrogated by PSI Shaikh of Police Station, Renapur on 8th June, 2005. She alleged that on account

of previous enmity, respondent No.1 took the deceased Madhukar with him to the village of respondent Nos. 2 and 3 on the pretext of settling the dispute and respondent Nos. 1 to 3, in furtherance of their common intention, administered poison to the deceased Madhukar and further caused head injury by means of a stone and thereby committed his murder. The said statement was treated as the First Information Report (FIR), on the basis whereof, Crime No. 69 of 2005 came to be registered against the respondents for the offence punishable under Section 302 read with Section 34 of the IPC.

6. The statements of the witnesses were recorded. The clothes of the deceased Madhukar came to be seized. Respondent Nos.1 to 3 were arrested on 9th June, 2005. The clothes on their respective persons were seized, which were bearing blood stains and smelling of pesticide. A stone, stained with blood, came to be seized pursuant to the disclosure statement made by respondent No.1. After completion of the investigation, the respondents came to be chargesheeted for the said offence in the Court of Chief Judicial Magistrate, Latur.

7. The offence under Section 302 of the IPC being exclusively triable by the Court of Session, the learned Chief Judicial Magistrate, Latur committed the case to the Court of Session for trial.

8. The learned Trial Judge framed charge against the respondents vide Exh-8 for the above mentioned offence and explained the contents thereof to them in vernacular. The respondents pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication.

9. The prosecution examined fifteen witnesses to bring home guilt to the respondents. The respondents examined Anil Andhorikar, who was Administrative Officer of Vivekanand Hospital, Latur, in their defence. After scrutinizing the evidence on record, the learned Trial Judge did not find sufficient and dependable evidence to hold the respondents guilty for the offence mentioned above. He, therefore, acquitted them of the said offence.

10. The learned A.P.P. submits that though there is no direct evidence to connect the respondents with the

murder of the deceased Madhukar, there is strong evidence to establish that the deceased Madhukar was lastly seen in the company of respondent No.1. There is sufficient evidence on record to show that there was previous enmity between the deceased Madhukar and respondent No.1, which indicated motive on the part of respondent No.1 to commit murder of Madhukar with the help of respondent nos. 2 and 3. The learned A.P.P. further submits that the blood stained stone was discovered at the instance of respondent No.1 from the spot of the incident. The seized clothes of respondent Nos.2 and 3 were sent to C.A., who reported that human blood stains were found thereon. According to the learned A.P.P., these circumstances are sufficient to establish guilt of the respondents for the above mentioned offence. However, the learned Trial Judge wrongly acquitted them. She, therefore, prays that the respondents may be convicted for the said offence.

11. On the other hand, the learned counsel for the respondents submits that the respondents have been falsely implicated in this case by way of afterthought. None of the witnesses made any allegations against the respondents though respondent No.1 was present in the

Civil Hospital at Latur when the deceased Madhukar was admitted there and also until funeral of the deceased, which was attended by respondent Nos. 1 and 3. The delay in lodging the FIR has not been satisfactorily explained. There is delay on the part of the witnesses in giving statements before the police about having seen the deceased Madhukar in the company of the respondents. He submits that the theory of "last seen together" has not at all been established by the prosecution. He further submits that the evidence in respect of the alleged discovery of blood stained stone at the instance of respondent No.1 is not at all believable. Likewise the evidence in respect of seizure of blood stained clothes from the persons of respondent Nos. 2 and 3 after four days of the alleged incident also is not believable. According to him, the learned Trial judge appreciated the facts of the case as well as the evidence on record correctly and rightly acquitted the respondents.

12. There is sufficient evidence on record to show that the relations between the deceased Madhukar and respondent No. 1 were strained prior to the incident. It has come in the evidence of Subhash (PW11) (Exh-57),

who is the Sarpanch of village Chincholi, and Dattatraya (PW12) (Exh-58), the cousin maternal uncle of the informant — Panchfula that the relations between the deceased Madhukar and respondent No.1 were strained on account of a dispute of agricultural land and particularly common bund of the agricultural land. They state that a meeting was held in front of the house of the deceased Madhukar in the month of May, 2005 which was attended by them amongst others and in that meeting, the dispute between them was settled subject to payment of Rs. 15,000/- by the deceased Madhukar to respondent No.1. If this evidence is considered, the case of the prosecution that respondent no.1 took the deceased Madhukar from his house on 4th June, 2005 at about 10.30 a.m. on the pretext of settling the dispute between them at village Murdhav with the assistance of respondent Nos.2 and 3 does not stand to reason. From the evidence of these witnesses, it is clear that the dispute between the deceased Madhukar and respondent No. 1 was already settled. Thus, the motive attributed against respondent no. 1 behind taking the deceased Madhukar with him and committing his murder becomes nonexistent.

13. It is well settled that previous enmity is a

double edged weapon. On one hand, it may assume the character of motive for committing the alleged offence, while on the other, it may be a cause for false implication of an innocent rival as well. Therefore, in such a case, the evidence needs to be scrutinized with care and caution. Independent corroboration to the version of the relative witnesses of the deceased/victim becomes indispensable, if it is otherwise available. Keeping in mind this settled position of law, the evidence on record will have to be considered.

14. The informant states at Exh-50 that respondent No. 1 and his wife Savita had come to her house on Saturday (i.e. 4th June, 2005) at about 10.00 a.m. and taken the deceased Madhukar with them on the pretext of settling the dispute at village Murdhav. However, Sarika (PW9) (Exh-54) does not whisper about presence of the wife of respondent No.1 Savita at that time. She does not state that respondent No.1 and his wife Savita had asked the deceased Madhukar to accompany them to village Murdhav. Indisputably, respondent No.1 was residing in a house adjacent to the house of the deceased Madhukar. Anil Andhorikar (DW1) (Exh-77), who was serving as an Administrative Officer of Vivekanand Hospital at Latur,

states that the deceased Madhukar was admitted in his hospital on 5th June, 2005 at about 7.30 p.m. and at that time, the history of injuries sustained by the deceased Madhukar was given by respondent No.1. In the case-papers maintained by Vivekanand Hospital, Latur, there is specific mention about that history recorded on 6th June, 2005 at 12.45 p.m. under the signature of respondent No.1 and two others. Subhash (PW11) specifically states that when he went to the Civil Hospital at Latur on 5th June, 2005 to see the deceased Madhukar, respondent No.1 was with him. The informant Panchfula herself states that respondent Nos.1 and 3 were present at the time of funeral of the deceased Madhukar. It is strange to note that neither the informant, nor Sarika (PW9) nor anybody else questioned respondent No. 1 at that time as to where he had taken the deceased Madhukar on 4th June, 2005. If respondent No. 1 really had taken the deceased Madhukar with him on 4th June, 2005, the informant and Sarika (PW9) certainly would have questioned him on the whereabouts of the deceased Madhukar immediately after seeing him. Nothing of that sort was done by them. Consequently, their belated version that respondent No.1 took the deceased Madhukar with him on 4th June, 2005 at about 10.00 a.m.

on the pretext of settling the dispute at village Murdhav with the assistance of respondent Nos. 2 and 3, cannot be believed in the absence of any independent corroboration.

15. The prosecution examined Khandu (PW8) (Exh-53), a cobbler doing his work near a bus-stop of village Chincholi. He states that on 4th June, 2005 at about 10.00 a.m. to 10.30 a.m., the deceased Madhukar came to his shop for repairing his shoes. Accordingly, he repaired shoes of the deceased Madhukar. Thereafter, respondent No. 1 and the deceased Madhukar boarded in a jeep and went towards Latur. The evidence of this witness would be hardly of any use to the prosecution to establish the circumstance of last seen together. Admittedly, the deceased Madhukar was not wearing shoes. Even at the spot of incident, a pair of chappals was found and it has been identified even by the informant as that of the deceased Madhukar. Therefore, the version of Khandu (PW8) that the deceased Madhukar had been to his shop for repairing his shoes and after getting his shoes repaired, he went towards Latur, cannot be believed. Moreover, a vital omission has been brought in the statement of this witness as seen from

the evidence of PSI Shaikh (PW15), the Investigation Officer, who states that Khandu (PW8) had not stated before him that he had seen the deceased Madhukar and respondent No.1 boarding in a jeep and proceeding towards Latur. There is one more circumstance to discard the evidence of this witness which has come on record through the evidence of Sahebrao (PW10) (Exh-56). He states that one day prior to the death of Madhukar (i.e. 4th June, 2005), the deceased Madhukar met him in front of market-yard of village Renapur at about 4.00 p.m. At that time, the deceased Madhukar was saying that he was going to village Muslewadi. This witness does not refer to the presence of respondent No.1 with the deceased Madhukar. As such, the deceased Madhukar was not seen in the company of respondent No.1 on 4th June, 2005 at 4.00 p.m. at Renapur. If that be so, the evidence of the informant, Sarika (PW9) and Khandu (PW8) that the deceased Madhukar was lastly seen in the company of respondent No.1 on 4th June, 2005 at about 10.00 to 10.30 a.m. would be of no help to the prosecution to implicate respondent No.1.

16. The prosecution examined Uttam Jadhav (PW13) (Exh-59) resident of Musalewadi, who is one of the

relatives of the informant from her maternal side. He states that on 4th June, 2005 at about 7.30 p.m., he met the deceased Madhukar on the pandan (cart-way) between Ghansargaon and Talni. At that time, the deceased Madhukar and respondent Nos.1 to 3 were sitting. He asked the deceased Madhukar whether he was coming to Muslewadi whereon the deceased Madhukar replied that he was going to village Murdhav for having stay in the night. He further said that the dispute between respondent No.1 and himself was to be settled at village Murdhav at the house of respondent No.3. The prosecution is relying on the evidence of this witness to establish the circumstance of last seen together. It has come in his cross-examination that after he came to know that the deceased Madhukar was admitted in the hospital at Latur, he went to the hospital to see the deceased Madhukar. He was present in the hospital till 6.00 p.m. on Monday i.e. 6th June, 2005. He met the informant and other villagers of Chincholi. After the death of Madhukar, he went to Chincholi to attend the funeral of the deceased Madhukar. He was there till 3rd day after funeral i.e. upto 10th June, 2005. However, his statement has been recorded by the police at village Muslewadi on 12th June, 2005. There is absolutely no

explanation given by this witness to show as to why there has been so much delay on his part in disclosing before anybody about seeing the deceased Madhukar in the company of respondent Nos.1 to 3 near the cart-way between Gharsargaon and Talni on 4th June, 2005 at 7.30 p.m. Had he really seen the deceased Madhukar in the company of the respondents on 4th June, 2005 at about 7.30 p.m. near the spot of the incident, he would not have kept silence and would have disclosed that fact to the informant and other relatives of the deceased Madhukar at the earliest possible opportunity. It is quite clear that Uttam (PW13) is a got-up witness. A material omission has come in his evidence. Though he states that he had stated before the police that the deceased Madhukar had told that he was going to the house of respondent No.3 for settlement of dispute, the said fact does not find place in his statement before the police as seen from the evidence of PSI Shaikh (PW15). Anyway, the unexplained delay on the part of Uttam (PW13) in disclosing the fact of having seen the deceased Madhukar in the company of the respondents on 4th June, 2005 at 7.30 p.m. near the spot of the incident, itself makes his evidence suspicious and unbelievable.

17. The prosecution, thus, has totally failed to establish that the deceased Madhukar was lastly seen in the company of the respondents.

18. The learned A.P.P. cited the judgment in the case of **Ashok Vs. State of Maharashtra (2015) 4 SCC 393**, wherein it has been held in paragraph No.12 as under:-

"From the study of abovestated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have been burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."

19. If the facts of the present case as well as the evidence on record is tested on the touchstone of the observations made in paragraph 12 above, it will be clear that the burden to explain as to how the deceased Madhukar sustained injuries would not at all shift to the respondents and the prosecution would be under an obligation to prove guilt of the respondents by adducing sufficient evidence, since it failed to prove that the deceased Madhukar was lastly seen in the company of respondent Nos.1 to 3.

20. The prosecution examined Uttam (PW2) (Exh-41) and Angad (PW3) (Exh-44) to establish that a blood stained stone came to be discovered pursuant to the disclosure statement made by respondent No.1. Uttam (PW2) states that respondent No.1 pointed out to the stone which was already kept in the Police Station. Thereafter, PSI Shaikh (PW15) and two constables took him and others to the spot of incident, which was near village Ghansargaon. He again states that respondent No.1 took them to a mango tree and pointed out to a stone having blood stains after removing the sticks of Tur from near the trunk of that mango tree. Angad (PW3)

states that respondent No. 1 took him and policemen to a mango tree and pointed out to a stone. He does not state that respondent No.1 had taken out that stone from under the sticks of Tur from near the trunk of that mango tree. There is nothing in the evidence of both of these witnesses to show that respondent No.1 gave any disclosure statement before them offering to produce any stone from any particular place. If that be so, the alleged recovery cannot be said to have been made in pursuance of the information given by respondent No. 1 and would not be a discovery as contemplated under Section 27 of the Evidence Act.

21. Here, it would be necessary to point out to the evidence of Pratap (PW4) (Exh-45), who happened to be a panch to panchanama (Exh-46) under which the articles which were lying on the spot of the incident, were seized. He states that a stone stained with blood was lying there when the said panchanama was prepared on 5th June, 2005 at about 10.00 to 11.00 a.m. He further states in his cross-examination that whatever was noticed on the spot was seized by the police at that time. In the ordinary course, the blood stained stone must have been seized by the police when spot panchanama

(Exh-46) was prepared on 5th June, 2005. However, it was not shown to have been seized in the said panchanama. In this background, the evidence of Uttam (PW2) that respondent No. 1 pointed out to the stone which was already kept in the Police Station would assume significance and would clearly indicate that the blood stained stone was already produced in the Police Station and a show was made that it was subsequently seized at the instance of respondent No.1. In the circumstances, the blood stained stone cannot be said to have been discovered at the instance of respondent No.1.

22. The prosecution is trying to connect the respondents with the death of Madhukar on the strength of seizure of the clothes, which were on their persons at the time of their arrest on 9th June, 2005 vide seizure panchanamas Exh-61, Exh-62 and Exh-63, respectively. Kalidas (PW14) (Exh-60) deposes that the clothes which were on the persons of respondent Nos.1 to 3 were stained with blood and were smelling of pesticides namely Rogor. It is difficult to accept the case of the prosecution that though the incident took place in the night intervening 4th June, 2005 and 5th June, 2005 and though respondent Nos.1 and 3 even

attended the funeral of the deceased Madhukar, they would continue to wear openly blood stained clothes till their arrest on 9th June, 2005. Respondent No.1 had been to the hospital also when the deceased Madhukar was admitted there for treatment. However, nobody noticed blood stains on his clothes. In the circumstances, the theory of seizure of blood stained clothes or the clothes smelling of some pesticide from the persons of the respondents on 9th June, 2005, being not at all natural and probable, cannot be accepted.

23. C.A. Report (Exh-70) of the clothes of the respondents shows that there were no blood stains on the clothes of respondent No.1. Some blood stains were found on the full manila and full pant of respondent No. 2 and on the Dhoti of respondent No.3. However, the group of blood detected thereon could not be determined as the results were inconclusive. As stated above, seizure of clothes from the persons of the respondents on 9th June, 2005 itself is not believable. Moreover, the C.A. Report (Exh-70) does not connect those clothes with the blood group of the deceased Madhukar. Consequently, the said circumstance would be of no use for the prosecution to connect the respondents with the

death of Madhukar.

24. Dr. Dhele (PW1) (Exh-37), who conducted the postmortem of the body of the deceased Madhukar found four external injuries, out of which one was contused lacerated wound and the remaining three were contusions on the body of the deceased Madhukar. On internal examination, he found fracture of 7th, 8th and 9th ribs in the mid-axillary line (left side). He opined that the death of Madhukar was due to poisoning with head injury. Accordingly, he prepared memorandum (Exh-38) of the postmortem. It has come in his cross-examination that the fracture of ribs is possible due to fall on hard substance. He states that pleura can be damaged if the person falls on rough substance and it may cause damage to lungs. His attention was brought to Chemical Analyser's report (Exh-40) in respect of the viscera and blood sample of the deceased Madhukar which revealed no poison. If the C.A. Report (Exh-40) is considered, the case of the prosecution that the deceased Madhukar was administered poison, would get negatived. The evidence of Dr. Dhele (PW1) shows alternate possibility of the cause behind sustaining head injury by Madhukar.

25. The prosecution has totally failed to establish the circumstances and more particularly a complete chain of circumstances to connect the respondents with the death of the deceased Madhukar. The learned Trial Judge rightly considered the evidence on record and rightly held that the prosecution failed to establish guilt of the respondents for the above mentioned offence. We concur with the findings of the learned Trial Judge, which are well founded. We do not find any reason to interfere with the findings recorded by the learned Trial Judge. The appeal is devoid of any substance. It is liable to be dismissed. In the result, we pass the following order:-

O R D E R

- (A) The criminal appeal is dismissed.
- (B) The bail bonds of the respondents are cancelled. They are set at liberty.
- (C) The appeal is accordingly disposed of.

[**SANGITRAO S. PATIL**]
JUDGE

[**SUNIL P. DESHMUKH**]
JUDGE