

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

CRIMINAL APPEAL NO.12 OF 2000

The State of Maharashtra **APPELLANT**
[Ori. complainant]
VERSUS

Bharatsing Harsing Patil
age 30 yrs., r/o. Vitner,
Tq. Parola, Dist. Jalgaon. **RESPONDENT**
[ori. accused]

...
Mr.P.G.Borade, APP for the Appellant-State.
Mr.P.B.Patil, Advocate for respondent/sole.
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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Date: 27.06.2017.

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

1. This Appeal is filed by the appellant-State, challenging the judgment and order of acquittal passed by the Additional Sessions Judge, Amalner, District Jalgaon, on 30th September, 1999 in Special Criminal Case No.6/1999.

2. The prosecution case in nutshell is as under:

It is the case of the prosecution that Ramdas Hari Nikam with his son Ravindra and wife Yashoda were residing at village Vitner, Taluka Parola. Accused Bharatsing Harsing Patil is also resident of the same village. It is alleged that accused Bharatsing always used to visit the house of Ramdas [deceased], and they used to have drink together. On 26th November, 1998, at about 7.00 p.m. while Ramdas Hari Nikam was sitting in the varanda situate on front side of his house, accused Bharatsing came there, and sat with him. It is alleged that Bharatsing said to Ramdas '*kay beta basalas*'. On uttering such words by accused Bharatsing, there was exchange of words and abuses between the accused and Ramdas. Ravindra son of Ramdas intervened and pacified the accused and sent him to his house. It is the case of

the prosecution that while returning back accused threatened that he will come back and will see his father.

It is alleged that when the informant Ravindra was taking dinner at about 7.30 p.m. on the same day, and mother of Ravindra was serving dinner to him, that time Ramdas was lying on the cot, which was in front of the front door in the eastern portion of varanda, with his head towards courtyard i.e. southern side. Accused suddenly came there holding iron pipe in his hand, and loudly uttered 'kay ahe re' and dealt a blow by iron pipe on the head of Ramdas. Due to his blow, there was bleeding injury to the head of Ramdas. The informant tried to apprehend the accused, and snatched pipe which he was holding in his hand. However, accused rescued himself, and went towards his house. It is alleged that due to noise of the said incident, persons residing

nearby the vicinity gathered there. One Lalsing, Suresh and many others came at the house of the informant. As there was severe injuries on the head of Ramdas, there was no movement of his body. Somebody informed the police, and the police reached at the house of the informant. Thereafter, the Police had taken injured Ramdas in a vehicle at Cottage Hospital, Parola. The Medical Officer Dr.Raghuwanshi examined the injured Ramdas, and declared that he is dead, and accordingly, issued certificate.

It is the case of the prosecution that the informant Ravindra at about 11.00 to 11.30 p.m. went to the Police Station, and lodged the First Information Report. The said FIR was registered by PSI Mr.Jadhav, vide Crime No.197/1998, for the offences punishable under Sections 302, 452, 504 and 506 of the Indian Penal Code and under

Section 3 [ii] [v] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989.

3. The investigation was initiated, and PSI Mr.Jadhav on the next day i.e. 27th November, 1998 morning went to the Cottage Hospital, Parola, and recorded the inquest panchnama of the dead body of Ramdas in presence of the panchas namely, Suresh Dala Wankhede and Vilas Bhika Patil. The dead body was sent to the Medical Officer for postmortem examination. Dr.Raghuwanshi performed postmortem examination on the dead body in the morning on 27th November, 1998, and found that there was fracture to the skull bone, and cause of death was due to shock to the fracture of skull bone. He accordingly issued P.M. note. Then he went at the house of the informant, and verified the spot of incident at the varanda of his house,

which was shown by the informant in the presence of the panchas, namely, Suresh and Vilas. The Investigating Officer collected the blood soaked soil, plain soil and blood stains seen on the wall from the spot of incident. The informant Ravindra produced the iron pipe, which was snatched by him from the accused, and the same was seized by the Investigating Officer for further investigation. Accordingly, spot-cum-seizure panchnama was prepared in the presence of panchas namely, Suresh and Vilas. Thereafter, he recorded the statements of the witnesses Yashodabai wife of deceased, Lalsing, Santosh Wankhede and Suresh Wankhede. The Investigating Officer then apprehended the accused in the noon on that day, and then had taken him to the Police Station, Parola. It is further the case of the prosecution that in presence of the panchas namely, Bhura Hiranman and Rajendra

Pardhi, the Investigating Officer seized blood stained white shirt from the person of accused, and accordingly, recorded arrest-cum-seizure panchnama at about 3.00 p.m. On 29th November, 1998, the informant Ravindra Ramdas Nikam had produced before the Investigating Officer of the Police Station, Parola, the blood stained turkish towel, blood stained white dhoti which his father Ramdas was wore at the time of incident. The said clothes were seized by the Investigating Officer in the presence of panchas namely, Bhura Hiranman Lonare and Rajendra Pardhi. The postmortem note was collected by the Investigating Officer. Thereafter, seized articles were then sent for C.A. with forwarding letter. C.A. report was received by the Investigating Officer. On 29th November, 1998, the Investigating Officer recorded the statements of Daulat Pandit Wagh, Ramsing Keshav Wankhede and some other

witnesses. He had also collected the caste certificate of deceased Ramdas Hari Nikam. After completion of the investigation, PSO Parola charge-sheeted the accused for the offence punishable under Sections 302, 452, 504 and 506 of the Indian Penal Code and under Section 3 [ii] [v] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989, in the Court of learned Judicial Magistrate First Class, Parola. Since the offences punishable under Section 302 of the I.P. Code and also the offences under Section 3 [ii] [v] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989, was being exclusively triable by the Sessions/Special Judge respectively, the learned Magistrate committed the case to the Special Court.

4. The accused pleaded not guilty and

claimed to be tried. His defence was of total denial. According to him, he was falsely implicated in the case. The trial Court – Special Court after full-fledged trial acquitted the accused for the offences punishable under Sections 302, 452, 504 and 506 of the Indian Penal Code and under Section 3 [ii] [v] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989, hence this appeal filed by the appellant – State against the judgment and order of acquittal.

5. Learned APP appearing for the appellant–State submits that there were eye witnesses to the incident. The evidence of the informant ought to have been believed by the trial Court. The evidence of the informant gets corroboration from the evidence of Yashodabai, mother of the informant, and also from the medical

evidence. When the prosecution case is based upon the direct evidence, and if it gets corroboration from the medical evidence, and other evidence brought on record by the prosecution, there was no reason for the trial Court to acquit the respondent—accused. It is submitted that the prosecution has duly proved inquest panchnama, seizure of the clothes of the accused, and also other witnesses have been examined, who have supported the prosecution case. Other witnesses have stated that the informant Ravindra and Yashodabai were very much present in the house when the incident had taken place. Ramsing Keshav Wankhede [PW-8], who is neighbourer of Ravindra, and whose house is at 20 feet from the house of the informant, has also supported the prosecution case. He also stated that he saw accused Bharat came to the house of Ramdas at 7.00 p.m. on 26th November, 1998. There was hot

exchange of words between accused and Ramdas, which was specified by Ravindra [PW3] and Daulat [PW7]. After half an hour again accused Bharat came there holding iron pipe in his hand and assaulted Ramdas on his head, and then ran away from the spot of incident. C.A. report shows that the blood stains found on the iron pipe were of blood group "B". It is true that blood of Ramdas Hari Nikam could not be determined, and result was inconclusive, nevertheless blood was found on the said iron pipe, which was snatched by the informant from the accused. Dr.Prakash Narayansing Raghuwanshi, who examined Ramdas Hari Nikam, stated that the injuries were ante-mortem, and also there were corresponding internal injuries. It is submitted that as per his opinion the death of Ramdas was due to shock due to injuries to vital organ [brain] due to fracture of skull bone. Therefore, relying upon the evidence of

the prosecution witnesses, and also other evidence brought on record by the prosecution, the learned APP submits that appeal deserves to be allowed.

6. On the other hand, learned counsel appearing for the respondent—accused invites our attention to the findings recorded by the trial Court, and submits that those are in consonance with the evidence brought on record by the prosecution, and therefore, those need no interference. It is submitted that the possible view has been taken by the trial Court, and therefore, interference in the order of acquittal is not necessary.

7. We have given careful consideration to the submissions of the learned APP appearing for the appellant – State, and the learned counsel appearing for respondent—accused. With their able assistance, perused

the evidence of the prosecution witnesses, and also the medical evidence, and other evidence brought on record. In order to prove whether the death of Ramdas was homicidal or otherwise, the prosecution examined Prakash Narayan Raghuwanshi as PW-5. In his examination in chief, he found the following external injury on the dead body of deceased Ramdas Hari Nikam:

C.L.W. over frontal region about 5" inch in length 2" inch in width and one 1" deep and it was bone deep.

8. He stated that the injuries were ante mortem. The corresponding internal injuries were also found and brain matter was coming out to the fracture bone. He stated the cause of death is shock due to injury to vital organ [brain] due to fracture of skull bone. Accordingly, he prepared P.M. note. He was confronted with the column no.11 of

the P.M. note Exh.22, and in reply, he stated that rigor mortis are absent. It were absent because of the secondary relaxation. The death of that person was before about 24 hours next before the P.M. examination by him. He admitted that there is no mention about the time of last meal and the time of the death before the post mortem. He also stated other details.

In the light of the evidence of Dr.Raghuwanshi [PW-5], if the prosecution case is examined that the incident had happened on 26th November, 1998, cannot be accepted, in view of the fact that Dr.Raghuwanshi [PW-5] stated in his evidence that he performed postmortem on 27th November, 1998 at about 9.15 a.m. and said was completed at 10.00 a.m., and death of Ramdas was before about 24 hours next before postmortem examination by him. It means

Ramdas Hari Nikam might have died in the morning on 26th November, 1998 or prior to it. Dr.Raghuwanshi [PW-5] also stated in his cross examination that it is mentioned in column no.11 of the P.M. note Exh.22 that rigor mortis are absent. It were absent because of secondary relaxation. We find considerable force in the argument of the learned counsel for the respondent that rigor mortis disappears after 24 hours from the death of the person. Dr.Raghuwanshi [PW-5] has also expressed in his cross examination that rigor mortis was absent on the dead body.

The evidence of the prosecution witnesses suffers from serious omissions, contradictions and improvements. Bhura [PW-1], who was panch to the seizure of clothes of deceased and accused, stated in his evidence that first panchnama of seizure

of clothes of accused was prepared on 27th November, 1998 at 3.00 to 3.45 p.m. While in cross he stated that he was called in the morning for the first time by the Police. Second panchnama of seizure of clothes of deceased was prepared on 29th November, 1998, at about 8.30 to 9.15 a.m. However, in his examination in chief, Bhura [PW-1] stated that he does not know who gave the clothes of deceased to the Police. In his cross examination, he stated that for the first time he was called for panchnama in the morning while the first panchnama of seizure of clothes of accused was prepared at 3.00 to 3.45 p.m. He stated that shirt and pant of the accused were seized in his presence, while only shirt was seized so both the panchnamas are not proved by the prosecution beyond reasonable doubt. Vilas [PW-2], who was panch to the spot and inquest panchnamas, turned hostile. Ravindra [PW-3],

who is son of deceased, stated in his examination in chief that the accused said to his father that '*kay beta basla*', so there was exchange of words between them. He pacified the said dispute but the accused threatened that he will see his father, when his mother namely, Yashodabai [PW-6] stated that the accused said '*Tyza ka Tatyia Todu*'. Ravindra [PW-3] further stated that the accused came with iron pipe, and gave the blow of pipe on the head of his father when he was taking dinner, and his mother was serving him; while in cross he stated that, he seen the accused when he reached in front of the house of Prabhakar. He further stated that he snatched the pipe from the accused, and he ran away, while in cross he stated that the accused left the pipe and ran away. He further stated that on 29th November, 1998, he went to deposit the clothes of his father but Bhura [PW-1] Panch stated that he does

not know who brought the clothes in the police station. Ravindra [PW-3] admitted that he gave evidence in the Court as per the instructions of the Police. He further stated that the house of Daulat [PW-7] is on the western side of house of Prabhakar with a road in between and nothing is visible beyond the bathroom of Prabhakar. He further admitted that the house of Suresh [PW-4] is beyond 5 to 7 houses from the turning to the road from his house, while the Suresh [PW-4] stated that his house is in front of the house of the informant. He admitted that his father was in the habit of drinking, while his mother-Yashodabai [PW-6] stated that her husband was not in habit of drinking. Ravindra [PW-3] stated that portion marked 'A' of Exh.16, in his statement recorded under Section 161 of the Criminal Procedure Code, in regards to the consumption of liquor of his father, is not correct.

Ravindra [PW-3] stated that his father was wearing the white dhoti and towel at the time of incident but only under-pant was on the person of deceased at the time of inquest, and that under-pant is not seized by the Police. The prosecution is silent how the remaining clothes of the deceased came in the custody of informant.

9. Therefore, we find full force in the argument of the learned counsel appearing for the respondent-accused that the evidence of the alleged two eye witnesses namely, Ravindra [PW-3] and Yashodabai [PW-6], suffers from serious infirmities and rightly discarded by the trial Court.

Dr.Raghuwanshi [PW-5] in column no. 11 of P.M.note mentioned that rigor mortis was absent so the death of person was before about 24 hours next before postmortem. The postmortem was started on 27th November, 1998

in between 9.15 a.m. to 10.00 a.m. so the death of the deceased must have been occurred before 9.15 a.m. on 26th November, 1998, while as per the prosecution story the deceased died on 26th November, 1998, at about 7.30 p.m. It is submitted that if the evidence of Doctor, who is expert and independent witness, is taken into consideration then the entire story is unbelievable.

Yashodabai [PW-6] stated in her deposition that the contents of portion marked 'A' of the police statement are not correct. However, the Investigating Officer stated that the said portion marked 'A' is as per the narration of Yashodabai [PW-6]. She further stated that, because of dark the portion towards the front side door was not visible. She further stated that Daulat [PW-7] was with Ravindra [PW-3], however, Ravindra [PW-3] has not stated that so about

the same in his evidence so there is no corroboration to her version. Even the name of Daulat [PW-7] is not reflected in the FIR at Exh.16. His statement was belatedly recorded on 29th November, 1998. He was trying to implicate the brother of accused in the alleged crime without any foundation. He stated that he himself and Ravindra [PW-3] snatched the pipe from the accused, however, Ravindra [PW-3] has not stated so in his evidence.

10. Ramsingh Keshav Wankhede was examined as PW-8, whose statement was recorded by the Police on 29th November, 1998. The story narrated by him that he could see the incident from his house is unbelievable, because it has come in the evidence of Yashodabai [PW-6] that there was dark at the front side of the door of the house. He has not stated in his Police statement that he

was sitting on the cot in front of his house. Except Dr.Raghuwanshi [PW-5] all other witnesses are interested witnesses. The trial Court has taken possible view, and therefore, the interference in the impugned judgment and order is not necessary.

11. In the present case, the prosecution has not disclosed true facts inasmuch as the Medical Officer has stated that the death of Ramdas was before 24 hours preceding postmortem examination. It is the case of the prosecution that death of Ramdas was at 7.00 p.m. on 26th November, 1998. Therefore, when the prosecution is not able to establish the time of the death and the evidence of the prosecution witnesses suffers from omissions, contradictions and improvements. In our opinion, the trial Court has rightly granted the benefit of doubt in favour of the respondent accused. There is no merit in the

appeal, hence appeal stands dismissed. The
bail bonds, if any, shall stand cancelled.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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