

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

CRIMINAL APPEAL NO.76 OF 2000

The State of Maharashtra
Through Public Prosecutor,
High Court Bench at
Aurangabad.

APPELLANT
[Ori.Complainant]

VERSUS

1. Kishabapu @ Krushnarao Nanasaheb
Bhosale, age: 36 Yrs., R/o.Deogaon
(Bk) Tq.Paranda, District: Osmanabad
2. Jalindar Vishwanath Bagal,
age: 25 Yrs, r/o. as above
3. Mohan Nivrati Kakade,
age: 27 Yrs.,
r/o. as above.

RESPONDENTS
[Ori. Accused]

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Mr.S.P.Deshmukh, Advocate for the appellant –
State.

Mr.Satej S. Jadhav, Advocate for respondent
nos.1 to 3.

...

WITH

CRIMINAL REVISION APPLICATION NO.37 OF 2000

Madhukar s/o Baba Lawangare,
Age : 55 Yrs, Occu: Agri,
R/o Deogaon, Dist : Osmanabad

PETEITIONER

VERSUS

1. The State of Maharashtra

2. Kishabapu alias Krushnnarao s/o Nanasaheb
Bhosale, Age : 41 Years, Occu:Agri,
R/o.Deogaon (Bk), Tq : Paranda,
District: Osmanabad
3. Jalindar s/o Vishwanath Bagal,
Age: 30 year, Occu: Agril,
R/o. As above
4. Mohan s/o Nivruti Kakade,
Age: 32 Yrs., Occu: Agri
R/o. as above

RESPONDENTS

...

Mr.V.M.Humbe and Smt. M.A.Kulkarni, Advocate
for the petitioner – absent.

Mr.S.P.Deshmukh, APP for respondent – State.

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 17.02.2017

Pronounced on : 31.03.2017

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

1. Criminal Appeal No.76 of 2000 is
filed by the appellant, challenging the
judgment and order of acquittal dated 6th
November, 1999, passed by the Additional
Sessions Judge, Osmanabad in Sessions Case
No.146/1995.

Criminal Revision Application No.
37/2000 is filed with prayer for quashing and

setting aside the judgment and order passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.146/1995, dated 6th November, 1999 and for imposing the punishment to the respondent nos.2 to 4 under Section 302 r/w. 34 of the Indian Penal Code.

2. It is the case of the prosecution that, deceased Ashok was the son of the informant-Madhukar and husband of Pavitra [PW3]. The informant and his two sons were residing together and running grocery and tailoring shop. Accused nos.1 to 3 are also residing at village Deogaon i.e. village of the informant. It is the case of the prosecution that the alleged incident had taken place out of political rivalry. The accused had grudge in their mind that the deceased Ashok was opposed to the name suggested by the accused for appointment on the post of Sarpanch.

3. It is the prosecution case that, on 6th May, 1995 at about 9.30 a.m., when the informant, Ashok [deceased] and Pavitra were taking meals in their house, the accused went to their house on the pretext of purchasing cigarette. The deceased Ashok went to the shop section which is part of one room of the house so as to give them cigarettes, but accused nos. 2 and 3, Mohan and Jalindar caught his hands while accused no.1 Kishabapu inflicted scissor in his chest. Deceased Ashok sustained bleeding injury and when the informant and Pavitra went in the shop; the persons from the adjoining houses also gathered on the spot. The deceased was carried to the Government Hospital, Paranda, but the Medical Officer declared him dead. The informant went to the Police Station Paranda and lodged the first information report [Exh.44]. The First Information Report was recorded at zero number and then the same

was forwarded to the Ambi Police Station for investigation as the alleged crime was committed within the jurisdiction of the said Police Station. When Ambi Police Station on receiving said First Information Report registered it as crime No.16/1995 for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code and one Mr.Mundhe working as API acted as an Investigation Officer and continued with the further investigation.

4. After investigation, he filed charge-sheet. The Court of Additional Sessions Judge, Osmanabad, framed charge. The accused pleaded not guilty. The trial Court recorded the evidence of the prosecution witnesses, and upon appreciation of the entire evidence, acquitted the accused nos.1 to 3. Hence this Appeal filed by the State. The original informant namely Madhukar Baba Lawangare has also filed Criminal

Revision Application No.37/2000 [Madhukar Baba Lawangare Vs. The State of Maharashtra and others].

5. The learned APP appearing for the appellant-State invites our attention to the evidence of the PW1, and submits that the Medical Officer Dr.Ashok Khanapure has clearly stated that the death of Ashok was homicidal. He invites our attention to the evidence of the PW2 [Madhukar], PW3 [Pavitra] and PW4 [Shakubai], and submits that all three witnesses have witnessed the incident and their evidence is not properly appreciated by the trial Court. It is submitted that if the evidence of three eye witnesses read in its entirety, coupled with the medical evidence, the prosecution did prove that Ashok [deceased] was killed by three accused. He submits that accused nos.2 and 3 Mohan and Jalindar caught the hands of Ashok and accused no.1 Kishabapu gave blow by

scissor on his chest and as a result Ashok died on the spot. He submits that the evidence of PW2 [Madhukar] gets corroboration from the evidence of PW3 [Pavitra] and PW4 [Shakubai]. Therefore he submits that the appeal filed by the State, deserves to be allowed, and the order of acquittal granted in favour of accused, deserves to be set aside.

6. On the other hand, the learned counsel appearing for the respondents - original accused invites our attention to the findings recorded by the trial Court and submits that the prosecution has not proved motive for commission of offence, the evidence of the alleged eye witnesses is totally contradictory and far from truth. He submits that upon reading the evidence of PW2 [Madhukar], PW3 [Pavitra] and PW4 [Shakubai], it is abundantly clear that, neither they have seen the incident nor they were present.

He submits that PW4 [Shakubai], was examined first time in the Court and her statement was not recorded by the police. He invites our attention to the judgment of the Supreme Court in the case of **Ganesh Bhavan Patel and another Vs. State of Maharashtra**¹ and submits that, although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusion are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should "always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of

1 AIR 1979 SC 135

an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." Where two reasonable conclusion can be drawn on the evidence on record, the High Court should as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal. He further placed reliance on the ratio laid down in the judgment of the Supreme Court in the case of **Ramesh Vs. State**² and submits that, the Supreme Court in the facts of that case held that there is a general tendency on the part of the witnesses not to tell the whole truth. They often

² 1979 Cri.L.J. 727

resort to exaggeration and embellishment when narrating an incident. He submits that in the present case the evidence of the alleged eye witnesses is fully untrustworthy, and therefore, it needs to be discarded and rightly benefit of doubt is given in favour of the respondents—accused by the trial Court. He submits that all three eye witnesses are interested witnesses, who are related to the deceased, and there are no independent witnesses examined by the prosecution. Therefore, he submits that the trial Court has rightly granted benefit of doubt to the respondents - accused, and therefore, this Court may not cause interference in the acquittal order passed by the trial Court.

7. We have carefully considered the submissions of the learned counsel appearing for the appellant—State, and the learned counsel appearing for the respondents -

accused. With their able assistance, we have perused the grounds taken in the appeal memo and annexures thereto, and the notes of evidence. We have carefully perused the evidence of PW2 to PW4, who, according to the prosecution, are eye witnesses to the alleged incident. Upon careful perusal of their evidence, it clearly appears that at the relevant time there was no election for the post of Sarpanch. Therefore, the alleged motive of political rivalry between Ashok [deceased] and respondents—accused is completely ruled out. It is stated in the evidence of PW3 [Pavitra] that, deceased Ashok had no quarrels with the accused, and the accused persons were frequently coming to their house. It is also admitted by the PW2 [Madhukar] that deceased Ashok was not member of the Grampanchayat, nor anybody else of his family was member. Therefore, the evidence of PW2 [Madhukar] and PW3 [Pavitra]

clearly indicates that, the term between deceased Ashok and accused were quite cordial and there was no reason to have enmity amongst them. It is not the case of the prosecution or eye witnesses that, an accused came with some weapons to assault the deceased Ashok. It appears that accused persons allegedly came to the house of the informant for the purpose of purchasing cigarette. It is true that motive does not play any important role when the eye witnesses are examined by the prosecution, but the prosecution has not brought on record anything, why respondents-accused decided to kill Ashok, except alleged 'political rivalry' as stated by the prosecution.

8. It appears that the alleged spot of incident is grocery shop situate in the house of the informant. It appears that there is a door from inside of the house for the said grocery shop and unless the person enters in

the shop; it is not possible to visualize from outside what would have happened in the shop on the date of incident. It is also relevant to note that though prosecution witnesses have claimed in their evidence before the Court that they have witnessed the alleged incident, however, if the recitals of the FIR is seen, there appears to be omissions on the part of the prosecution witnesses inasmuch as in the FIR, it is not made clear that, whether an informant has actually witnessed the alleged incident or otherwise. Upon perusal of the evidence of PW2 [Madhukar], he disclosed that when Ashok [deceased] and accused went in the shop section, he heard voice of Ashok that "*Bhau Melo*", however, according to the PW3 [Pavitra], she heard voice of deceased Ashok that "what Ashok has done, why they are assaulting him." Therefore, it appears that PW2 [Madhukar] and PW3 [Pavitra], have

narrated different stories, and therefore, their evidence becomes doubtful. Therefore, their evidence about the presence of the accused on the spot is contradictory. When respondent no.2 lodged FIR [Exh.44], the recital of the FIR is to the effect that accused no.1 stabbed deceased Ashok by means of knife. However, in the evidence before the Court the informant and also PW3 [Pavitra] stated that accused stabbed Ashok by means of scissor i.e article 3. In fact, knife and scissor are two different instruments. Therefore, such statements of the alleged eye witnesses which narrate contradictory versions make prosecution case doubtful. If the evidence of PW3 [Pavitra] is read carefully, she stated that said scissor was pierced in the chest of the deceased and the informant removed the same / took out the said scissor from the chest of Ashok. Therefore, it appears that the informant

handled scissor soon after the incident, and therefore, it is not possible that an informant has mistakenly stated in the FIR that, the accused assaulted Ashok by knife instead of mentioning scissor.

It is also relevant to mention that, though PW1 [Dr.Ashok] has stated in the evidence that death of Ashok was homicidal nevertheless in his cross examination, he stated that the dimensions of injury do not tally to the dimensions of the scissor having its both blades together. If the scissor is inflicted having its both blades in open condition and separate, then there will be more than one injury. He has also stated that there was possibility of survival of deceased, had he been received treatment within one hour from the alleged incident. It appears that the informant did not take deceased Ashok to the nearest Hospital, though available, in time.

9. Upon re-appreciating the evidence of the prosecution witnesses in its entirety, the evidence of PW2 to PW4 i.e. eye witnesses suffers from the omissions, contradictions and improvements. Their evidence makes prosecution case untrustworthy, doubtful and unreliable. The trial Court, upon appreciation of the entire evidence brought on record, has taken plausible view and extended the benefit of doubt in favour of the accused. Even if we assume for the moment that, on the basis of the evidence brought on record by the prosecution, another view is possible, however, it is not a ground to interfere in the findings recorded by the trial Court, when the findings recorded are in consonance with the evidence brought on record and there is no perversity as such, and plausible view is taken by the trial Court.

10. Therefore, for the reasons aforesaid, in our considered view, the view taken by the trial Court deserves no interference, as a squel there is no substance in the appeal filed by the State and the same stands dismissed. For the same reasons, the Criminal Revision Application also stands dismissed.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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