

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

Criminal Appeal No. 363 of 2000

* The State of Maharashtra. .. **Appellant.**

Versus

- 1) Vithal s/o Ramaji Kolhe
 Age 45 years,
 Occupation : Agriculture.
- 2) Vishwanath s/o Narsingrao Kamble,
 Age 40 years,
 Occupation : Agriculture,
 Both R/o village Jam (Bk),
 Taluka Mukhed, Dist. Nanded. .. **Respondents.**

Shri. S.S. Salgare, Additional Public Prosecutor, for
appellant.

Shri. N.N. Shinde, Advocate, for respondent Nos.1 & 2.

**Coram: T.V. NALAWADE &
 SUNIL K. KOTWAL, JJ.**

Date: 11 July 2017.

JUDGMENT:

- 1) The appeal is filed to challenge the judgment
and order of acquittal delivered by the learned Additional
Sessions Judge, Biloli, District Nanded in Sessions Case
No.16 of 1993. Both the sides are heard.

2) The respondents are acquitted in the aforesaid sessions case in which charge was framed against them mainly for offence punishable under sections 302 and 109 of the Indian Penal Code. Murder of one Babu was committed on 14-8-1984 at about 1.00 p.m. in village Jam (Bk) near the shop of one Ganesh Pampatwar. There was political rivalry between deceased Babu and the accused persons. In one election to village panchayat which was held 4 months prior to the date of the incident Babu and his party members were declared elected and the group of accused persons was defeated. There was long standing rivalry between the two groups and due to the defeat, accused persons had become angry with Babu. On the day of the incident when Babu was proceeding towards aforesaid shop, the accused followed him with weapons like axes and firstly they pelted stones and then they used the weapons like axes and murdered Babu near this shop. Allegation against present respondents is that they were instigating accused Nos.1 to 7 who are not involved in the present proceeding, to finish Babu and they were the leaders.

3) Sessions case No.116/1984 was filed against accused Nos.1 to 7 and investigating was started of that case on the basis of report given by Ramkishan, brother of Babu. Names of present respondent were not mentioned in the F.I.R. Ramkishan tried to see that their names are also included by taking some steps but he failed in those steps. Ultimately he filed a private complaint against all accused, 9 accused persons, by making allegations against all of them. The Judicial Magistrate First Class made inquiry under section 202 of the Criminal Procedure Code and issued process against all the accused. Ultimately the order of issue process which was made as against accused Nos.1 to 7 was set aside as charge sheet was filed against those accused as Sessions Case No.116/1984. In view of these circumstances, the case was committed to Sessions Court only as against present respondents who were not in the previous sessions case.

4) During trial Ramkishan examined himself and he examined two witnesses like Subhan (PW 4) and Digambar (PW 5) as eye witnesses. Ramkisan was not present on the spot when Babu was murdered and he had

made allegations against accused Nos.1 to 7 that after finishing Babu near the shop, the accused Nos.1 to 7 had come to his field and there he was assaulted immediately after the incident of murder of Babu. He had not mentioned in the F.I.R. the names of PW 4 and PW 5 as witnesses to the incident of murder of Babu and in the F.I.R. he had given names of other persons who had supplied information to him. The eye witnesses who were examined in previous sessions case which was tried against accused Nos.1 to 7 are not examined in the present case.

5) Admittedly statement of Subhan was not recorded by police during investigation of the crime in which charge sheet was filed. It is not disputed that PW 5 had not taken names of present respondents as accused in his statement given before police during investigation of the F.I.R. These circumstances are considered by the sessions Court in the present matter.

6) The Sessions Court has considered the discrepancies in the evidence given by the aforesaid two

eye witnesses. When one witness has deposed that both of them were proceeding together when they reached near the shop, the other witness has stated in the evidence that he alone was proceeding and then he came across the incident. It is not their version that present respondents participated in the incident and that was also not the case of Ramkisan at any time. They want to prove that respondents were instigating other accused to finish Babu. In the past, during trial of the previous cases nobody had uttered a word to say that the respondent were present on the spot.

7) During cross-examination, PW 4 and PW 5 have admitted that at the instance of the persons from the group of accused cases were filed against them and their relations with the accused persons were not good. PW 4 and PW 5 are close relatives of each other. There is no circumstantial check to the evidence given by PW 4 and the Court found that there are material omissions in the previous statement which was recorded by police of PW 5. The conduct of the prosecution of not examining the other eye witnesses who are believed in the past by the Court is

also considered by the Sessions Court. Thus the view taken by the sessions Court that the PW 4 and 5 cannot be believed is a possible view. Some accused are already convicted and their conviction is confirmed for offence under sections 302/149 of the Indian Penal Code. After scrutiny of the evidence such decision has come out from the High Court. In view of these circumstances, it can be said that there is possibility of false implication of present respondents in the case as they are from rival political group. This possibility has also created doubt about the entire case of the prosecution. The manner in which the incident took place is totally changed in the present matter by the witnesses and that circumstance is also considered by the sessions Court. This Court holds that it is not possible to interfere in the decision of acquittal given by the Sessions Court in favour of the respondents. In the result, the appeals stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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