

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

Criminal Appeal No.401 of 2000

* State of Maharashtra
Through Police Station Officer,
Police Station, Ambajogai,
District Beed. **.. Appellant.**

Versus

- 1) Govind s/o Narhari Aghav,
Age 45 years,
Occupation : Agriculture,
R/o Dounapur,
Taluka Ambajogai, Dist. Beed.
- 2) Sudam s/o Narhari Aghav,
Age 30 years,
Occupation : Agriculture
R/o Dounapur, Tq. Ambajogai.
- 3) Shridhar s/o Narhari Aghav,
Age 35 years,
Occupation : Agriculture
R/o As above.
- 4) Narhari s/o Patloba Aghav,
Age 70 years,
Occupation: Agriculture
R/o As above.
- 5) Pandurang s/o Vithal Andhale,
Age 35 years,
Occupation: Agriculture,
R/o as above.
- 6) Smita Govind Aghav,
Age 22 years,
Occupation: Agriculture,
R/o as above.

- 7) Satwashila Pandurang Andhale,
Age 30 years,
Occupation: Agriculture & Household
R/o As above.
- 8) Harishchandra s/o Narhari Aghav,
Age 43 years, Occu: Agriculture,
R/o as above.

.. Respondents.

Shri. S.D. Ghayal, Additional Public Prosecutor, for
appellant.

Shri. G.A. Kulkarni, Advocate, holding for Shri. R.S.
Deshmukh, Advocate, for respondent Nos.1 to 8.

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

Date : 12 July 2017

JUDGMENT:

1) The appeal is filed by the State to challenge the judgment and order of acquittal delivered by the learned 2nd Additional Sessions Judge Ambejogai in Sessions Case No.32/1995. Both the sides are heard.

2) The respondents were charge-sheeted for offences punishable under sections 302, 147, 148, 149 of the Indian Penal Code for commission of murder of one Eknath. On 10-11-1994 two incidents had taken place. The first incident took place at 7.00 p.m. and the second

incident took place at 7.45 p.m. In the first incident some prosecution witnesses were assaulted by the accused but charge was framed only for offence of murder of Eknath and so the material given by the prosecution for this offence only needs to be considered.

3) The star witness for the prosecution was Vishnu Kokare (PW 7) who had allegedly witnessed the incident. He has given evidence that at the relevant time he was proceeding to his field and he was required to go through the field of one Manohar Aaghav. He has deposed that when he heard some noise he paid attention towards that side in the field of Manohar Aaghav and in the light of torch which he was having he noticed that the accused persons were giving beating to Eknath. He has deposed that all the accused were present on the spot though Harishchandra, Shridhar, Sudam and Govind were actually assaulting Eknath. His evidence shows that he wanted to say that accused could not see him and when he felt that there was danger to his life he left the spot. He has deposed that on that date i.e. 10-11-1994 he slept in his field to which he was proceeding on that night.

4) Evidence of Vishnu (PW 7) shows that on the next day he learnt from his brother that murder of Eknath was committed in Khari field. He has deposed that he got frightened and he kept mum. He has deposed that he attended the funeral of the dead body of Eknath which took place on the next day of the incident at about 7.00 p.m. The evidence of Vishnu in the cross examination and the record show that his statement came to be recorded by police on 14-11-1994. His evidence shows that he did not approach police and he is trying to say that somebody must have told police that he witnessed the incident. The evidence shows that he had not disclosed the incident to anybody including to his close relatives with whom he had talk about the quarrel which had taken place between the accused and the complainant side on that day. In the cross examination it is brought on record that he tried to improve the version given to police materially.

5) The evidence of Vishnu (PW 7) has no support of medical evidence. Dr. Godbole (PW 12) had conducted the autopsy on the dead body on 11-11-1994 between 4.15 p.m. and 5.30 p.m. He noticed following surface wounds

on the dead body:

- (i) Abrasion over left forearm, middle 1/3rd laterally 5 x 1 cm. reddish
- (ii) Abrasion over left forearm lower 1/4 laterally 5 x 1 cm reddish.
- (iii) Abrasion over right knee, anteriorly 2 x 1 cm reddish
- (iv) A curved scratch abrasion over top of left shoulder ball, concavity facing anteriorly 1.25 x 0.1 cm reddish.

When the doctor handed over the post mortem report to police he had not given opinion regarding cause of death and he had preserved the organs for histopathology. After receipt of report of the histopathology he gave opinion as to cause of death as cerebral and pulmonary oedema. In the Court he tried to say that thymus was enlarged and this was abnormality. He tried to say that due to such abnormality if some injuries like which were found on the dead body are caused, death can take place. The injuries are already mentioned and the doctor had admitted in the cross examination that such injuries can be sustained in simple fall. From the nature of injuries already described it is difficult to believe that so many persons had assaulted and due to that such injuries were caused. The age of the deceased was hardly 25 years. No record is produced to

show that this abnormality was treated in the past and there was some medical advice in respect of the abnormality. First time in the court the doctor gave opinion of aforesaid nature.

6) The medical opinion is not consistent with the direct evidence given by the so called eye witness. Further, the delay caused in approaching police by the so called eye witness is not at all explained. There was dispute between two sides and so there was motive for false implication also. There was no other circumstantial evidence to show involvement of all accused in the alleged incident. In view of these circumstances it is not possible to interfere in the decision of the trial court in which the accused persons are acquitted. The view taken is a clear possible view and there is clear probability that it was not a homicidal death. In the result, the appeal stands dismissed.

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

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

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