

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

CRIMINAL APPEAL NO.344 OF 1999

The State of Maharashtra **APPELLANT**
[ori.complainant]

VERSUS

1. Krishana Sandu Pache,
Age 25 yrs.
2. Uddhav Sandu Pache,
Age 22 yrs.
3. Pandharinath Yadavrao Pache,
Age 35 yrs.
4. Samindrabai w/o. Tatyarao Pache,
Age 67 yrs.
5. Gitabai Yadavrao Pache,
Age 65 yrs.
6. Asrabai Bhagchand Pache,
Age 35 yrs.
7. Bhagchand Yadavrao Pache,
Age 42 yrs.

All R/o. Golatgaon
Tq. Aurangabad.

RESPONDENTS
[ori.accused]

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Mr.P.G.Borade, APP for the Appellant - State
Mr.Joydeep Chatterji, Advocate for
Respondents.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Date: 08.06.2017.

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 Sessions Judge, Aurangabad on 29th May, 1999 in Sessions Case No.52/1999.

2. The prosecution case in nutshell is as under:

Sominath Pache, victim, belonged to a family, which had some dispute with the accused about using a path through the field of the accused. A few days before the incident, members of the family of Sominath had been obstructed from using the said path and this had led to report being given to the Police Station, Karmad. On 16th October, 1998, in the morning Sominath was proceeding to the

village for purchasing oil, when he was passing by the field of the accused Uddhav and Krishna, both of them obstructed Sominath, and prevented him from proceeding further. Uddhav hit Sominath with a stick on back. Accused Krishna, Uddhav, Bhagchand and Pandharinath administered some insecticide to the Sominath. At that time, accused Samindrabai, Gitabai and Asrabai were abusing Sominath. Upon seeing Sominath Pache who administered insecticide to Sominath, wife of victim namely Subhadrabai and her mother-in-law Sonabai and one Sumanbai rushed to rescue Sominath and made him drink butter-milk. Suryabhan came there, and asked Sominath about the incident whereupon Sominath was reported to have told Suryabhan that, accused had administered insecticide to him. Sominath was carried in a bullock cart to village, and thereafter, he was carried in a tempo to the Hospital at Aurangabad. But, Sominath

breathed his last on the way of Hospital. Therefore, the dead body of Sominath was brought back to his village. On report lodged by the wife of Sominath, namely Subhadrabai, an offence was registered and investigation was commenced.

3. During the course of investigation, the police performed inquest panchnama and sent the dead body for postmortem examination. The Medical Officer preserved viscera and reserved opinion. The viscera was sent to the Forensic Science Laboratory. An expert opined that, organochloro insecticide Endosulfan was found in the viscera. Upon receipt of this report, the Medical Officer gave death certificate stating that, the death was due to poisoning due to consuming organochloro insecticide endosulfan. During the course of investigation, the Police performed spot panchnama and also recorded the statements of witnesses. The accused

persons had been arrested. The accused Bhagchand allegedly agreed to produce the bottle of insecticide, which he claimed to have been thrown on the rubbish heap. A memorandum of his statement was made, and the bottle was subsequently recovered and seized. Accused Krishna agreed to produce the sticks used in assaulting Sominath. A memorandum was made, and the sticks were seized upon their being pointed out by the accused Krishna. The incriminating articles were seized including the clothes of the deceased, which were sent to the Forensic Science Laboratory. The reports from the Laboratory were received, and on completion of the investigation, the charge sheet was filed.

4. The Judicial Magistrate First Class [14th Court], Aurangabad, committed the case to the Sessions Court at Aurangabad, on finding that the accused had allegedly committed an offence, exclusively triable by

the Court of Session. The trial Court framed charge for the offences punishable under Sections 147, 148 and 302 r/w. 149 of the IPC against the accused persons. The accused pleaded not guilty to the said charge and claimed to be tried.

5. The prosecution examined Velhorenukanand as PW-1, panch of the inquest panchnama. Ramu Salunke was examined as PW-2, panch of the spot panchnama. Wife of victim Subhadrabai and brother of victim Janardhan were examined as PW-3 and PW-4. Dr.Bhalchandra, who conducted the postmortem examination, was examined as PW-5. The eye witnesses, Dwarkabai and Sonabai, were examined as PW-6 and PW-7. Prabhu Rithe, was examined as PW-8, panch to the recovery of bottle of insecticide and sticks at the instance of the accused persons. The Investigating Officer, API, Rajendra Murkute was examined as PW-9. The defence of the

accused in the statement under Section 313 of the Criminal Procedure Code is that of denial and false implication.

6. After full-fledged trial, the trial Court acquitted all the accused of the offences punishable under Sections 147, 148, 302 r/w.149 of the I.P. Code. Hence this Appeal filed by the appellant – State.

7. Heard learned APP appearing for the State and Mr.Joydeep Chatterji learned counsel appearing for the respondents – accused. The prosecution examined Dr.Shrikrishna Ramchandrarao Bhalchandra as PW-5, Medical Officer and Associate Professor, who conducted postmortem examination of deceased Sominath. He observed injuries as stated herein below:

- i] Contusion over lateral aspect of upper part of right arm measuring 7.5 cm x 2.5 to 3.0 cms. It was rail

track type of injury with central pale area into 1.5 cm. in breadth-it was reddish bluish in colour.

ii] Abraded contusion over lateral aspect of left elbow joint, oblique, 3 x 1 cm. reddish in colour.

He opined that, the afore-mentioned injuries are ante-mortem. On internal examination, brain and lungs were congested and ordematous. Mucosa of bucal cavity was congested and also of oesophagus. Stomach was normal in size, congested in abdomen, mucosa congested eroded at places. There was 300 cc yellowish coloured fluid with strong aromatic smell. Small intestine and large intestine were congested. Rest of the organs were congested. He kept the viscera preserved for chemical analysis. The opinion as to cause of death was preserved and viscera was preserved. He further stated the cause of death was organochloro insecticide endosulfan

[thiodan] poisoning. Dr.Zine gave this opinion after consulting him. He further stated that, except afore-mentioned two injuries, he did not notice any other injury. He did not find any deep seated injury in this case. He did not notice any injury on the base of nose, mandible, jaw or neck. There was no injury to the scapula or ear pinna. No crescent shape marks were found on the wrist, arm or any part of body. No blood was found beneath the nail clippings. Normally, a person will resist administration of poison forcibly. Bowels were not empty. When a person omit, part of the contents of the stomach would be removed partly. Injury no.2 can be possible by a fall. He does not agree that, injury no.1 is possible by a fall on bamboo. He has not mentioned bamboo stick in the p.m. notes. He does not agree that, rail track injury can be produced by a cut plastic pipe embodied on the ground on which

a person is fallen. Police did not bring any object before him for examination. In cases of poisoning, organs are supposed to congest. He fairly conceded that, he did not seal the clothes of the victim before handing them over to the Police.

8. The prosecution examined Subhadrabai Sominath Pache as PW-3. She stated that, Sominath was her husband. At the time of incident, they used to reside in the field. On the date of incident, her husband was proceeding towards the village to purchase oil and groundnuts. Accused Uddhav and Krishna were standing near their cattle shed. Uddhav, Krishna, Bhagchand and Pandharinath started beating her husband with sticks. On the previous day, her husband and brother of her husband had been stopped by Uddhav and Krishna from using the said path which was in dispute. They had given application raising grievance about it. Uddhav, Krishna,

Pandharinath and Bhagchand made her husband drink some medicine. Accused Asrabai, Geetabai and Samindrabai were giving abuses. She [PW-3] was shouting, but the accused prevented her from going to her husband. Sumanbai and Sonabai came there. They brought her husband near the cattle shed of Sumanbai and Sonabai. They made Sominath drink butter milk. Her father-in-law's younger brother brought a cart. Her husband was taken to the village in the cart and from there in a tempo towards Aurangabad. Sominath died on the way. They turned back and carried the dead body home. Policemen came to the village. Police recorded her statement.

During her cross examination, she stated that, her husband was carrying a plastic bag for bringing oil. Krishna and Uddhav are not residing in the field adjacent to her field. When her husband was proceeding to bring oil, she was cooking. Her parent in

law were not at home. Her small son and daughter are with her. At the relevant time they were playing. She cooked all pan cakes. The work of digging well was in progress. The material excavated while digging the well is laid towards the east. The bund has been pitched up by laying stones around 10 ft. in height. There are big *neem* and *babul* trees on the bund. She further stated that, she came out of the house immediately after her husband left. She further stated that, it is true that she came out of the house on hearing noise of quarrel. The quarrel was going on in the field of Bhagchand. She started running. When she reached at the spot, only her husband Sominath was lying there. Sonabai and Sumanbai came after her. Sominath was not given butter milk at the place where he was lying. Butter milk had been brought by one Sarla. Sominath omitted after drinking butter milk. Therefore, though

she stated in examination in chief that, Uddhav, Krishna, Pandharinath and Bhagchand made her husband drink some medicine, it appears from her cross examination that, neither she saw accused persons administering poison / medicine, nor they were present when she went to the spot of incident. She further stated that, Nagu was not at all with them, when they went to the Police Station. She admitted that, PSI seized a bottle from the roof of her house. It was bottle which contained pesticide. She further stated that, her husband was healthy and wrestler. She further stated that, Sominath used to tell his father to partition his property, but father-in-law did not effect partition. This had given rise to dispute between father and son. The suggestion was given to her that, one or two days prior to the incident, there was exchange between father and son in respect of partition of the property. The

suggestion was also given that, since father of Sominath refused to effect partition, in the heat of anger Sominath consumed insecticide, however, she denied the said suggestion. She further stated that, thorny fencing has been set up on the bund between their field and the field of the accused. Upon careful perusal of her evidence, it appears that, she had neither witnessed the accused administering poison nor the presence of the accused on the spot of incident at the relevant time. Her some of the admissions given in the cross examination clearly show that, she has not actually witnessed the incident. Therefore, the trial Court has rightly disbelieved her evidence.

9. The prosecution examined Janardhan Laxman Pache as PW-4. During the course of recording his evidence, he stated that, deceased Sominath was his brother. He knew all accused. Before incident Sominath came to

Janardhan [PW-4] at Aurangabad. Sominath told him that, accused persons are not allowing them to use the path, which is in dispute. Thereafter, he himself along with Sominath went to their village. When Janardhan [PW-4] along with Sominath were walking on the path, which is in dispute, accused Krishna and Uddhav stopped them. They asked them not to use the said path. On the said date, his father gave application to the Karmad Police Station. He stayed over night in the field on that day. He met PSI of Karmad Police Station on next day. He returned to Aurangabad. Again he went to Karmad Police Station after two days. He accompanied Head Constable Mr.Wagh on his motorcycle and went to his village. On reaching the village, he learnt that, Sominath had been murdered by Krishna, Uddhav, Bhagchand and Pandhari by administering poison. It clearly emerges from this deposition that, he has not witnessed

the actual incident. He was not eye witness. His evidence can be useful to the extent of proving motive of commission of an alleged offence of previous dispute over the foot path between his family on one side and accused on other side.

10. During his cross examination, he stated that, though his father gave report in the police station, however, the said report was not written down by the Officer, who was incharge of the Police Station, neither any action was taken on the basis of said report.

11. The prosecution examined Dwarkabai Santosh Bhawale as PW-6. Her evidence is at Exhibit-26. She stated that, she knew deceased Sominath. She identified all the accused, who are present in the Court. She stated that, she heard noise of quarrel from a place near the cattle shed of Bhagchand. Pandharinath, Bhagchand, Uddhav and Krishna

beat Sominath by sticks. He was also beaten by fists and kicks by those persons. Asrabai, Samindrabai and Geetabai gave abuses. Bhagchand, Pandharinath, Krishna and Uddhav made Sominath to drink some pesticide. Sonabai, Sumanbai and his wife went to the spot. Then three of them brought Sominath to a path. He was made to drink butter milk. He omitted the same. He was placed in the bullock cart and taken away. Lateron Sominath died.

12. During her cross examination, she stated that, when she heard noise of quarrel, she was at home. She was doing domestic work. The noise of quarrel came from beyond Bhagchand's house. She stated to the police that Pandharinath, Bhagchand and Krishna beat Sominath with sticks. She also stated to the police that, Sominath was beaten by fists and kicks. She also told Police that, Pandharinath and Uddhav also administered

pesticide to Sominath. However, she cannot tell the reasons why her said statement is not recorded by the Police. Therefore, it is crystal clear that, the story which witness Dwarkabai [PW-6] gave before the Court about the incident and role of the accused did not find place in her statement before the Police. In her cross examination, though she stated about incident, and role played by the accused, however, the police did not record the same in her statement. PW-9 API Murkute stated in his cross examination that, Dwarkabai did not make such statement before him, and therefore, it creates doubt about credibility of claim of Dwarkabai [PW-6] that, she saw the incident, and the accused were assaulting Sominath by stick, and they administered pesticide to him.

13. The prosecution examined Sonabai Nagorao as PW-7. She claimed that, she is an eye witness. She claimed that, she heard noise of quarrel, and on coming to the door

of the house, she found the accused persons beating up Sominath. However, she stated that, before they reached to Sominath was lying on the floor. He was brought near brick kiln and made to drink butter milk. However, her cross examination would make it clear that, no such statement was made by her to the Police. These omissions in her statements were put to the Investigating Officer, and the Investigating Officer told that, no such statement was made by Sonabai before him. Therefore, the evidence of Sonabai before the Court narrating about the manner in which the actual incident has taken place, and role played by the accused, is an improvement afterthought and therefore same is not reliable.

14. The trial Court, upon appreciation of the evidence of the prosecution witnesses, and in particular three eye witnesses, reached to the conclusion that, their

evidence is not worthy of any trust in order to conclude that, Sominath was administered poison by four accused persons. In the light of the discussion in the foregoing paragraphs, in our view, the view taken by the trial Court upon appreciation of the evidence brought on record is plausible, and the findings recorded by the trial Court are in consonance with the evidence brought on record, there is no perversity as such, and therefore, interference in the impugned judgment and order of acquittal is not necessary.

15. In that view of the matter, the appeal stands dismissed. The bail bonds, if any, shall stand cancelled.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE