

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

CRIMINAL APPEAL NO. 407 OF 1999

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

...APPELLANT
(Ori. Complainant)

versus

- 1] Prakash Motiram Patil, Age 25,
- 2] Motiram Gotu Patil, Age 55
- 3] Narayan Motiram Patil, Age 26,
- 4] Kailash Motiram Patil Age 28
- 5] Govind Motiram Patil, Age 33
- 6] Digambar Motiram Patil, Aged 22
- 7] Shivnarayan Deoram Patil Age 55
- 8] Ram Khandu Patil age 83
{Appeal rejected as against respondent Nos. 2 to 8
vide order dated 2.5.2000}

All r/o. Varud (Bk.), Taluka Erandol
Dist. Jalgaon.

...RESPONDENTS
(Ori. Accused)

Mr. S.G. Karlekar, APP for the appellants

.....

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

**JUDGMENT RESERVED ON : 2ND FEBRUARY, 2017
JUDGMENT PRONOUNCED ON : 17TH FEBRUARY, 2017.**

JUDGMENT : (Per : K.K. Sonawane, J.)

1] The applicant State of Maharashtra preferred the appeal under section 378 of Cr.P.C. against judgment and order of acquittal passed in Sessions Case No. 302 of 1996, dated 21.7.1999 by the Additional Sessions Judge, Jalgaon. The appeal came to be admitted by this Court against accused No.1 vide order dated 5th June, 2000, for reappraisal of the evidence of prosecution.

2] The factual matrix of the case in brief is as under :-

That, the victim Pundlik Patil was the husband of first informant Kamalbai Patil r/o. Varad Budruk, Taluka Erandol. The respondents were also residing in the same village. There was a litigation going on in between the victim Pundlik Patil and the respondent No.2 Motiram, on account of encroachment over the agricultural land of victim Pundlik. There was also dispute about fruit bearing trees and boundary wall. It has been alleged that on 15.9.2016, after enjoying the lunch, wife and sons of the victim Pundlik had been to field for agricultural operation. Thereafter, victim Pundlik also went in the field. But, he did not return to home. The family members of Victim Pundlik took the search but they did not succeed and eventually, wife Kamalbai filed missing report to Dharangaon Police Station on 15.9.1996. Thereafter, on 20.9.1996, police Patil of village Warad received the information about the dead body lying in the well of one Gulab Kabre. The Police registered A.D. No. 57 of 1996 and visited to the spot. They fished out the dead body of victim Pundlik from the well. Police drawn inquest panchanama and referred the dead body for autopsy to

ascertain the cause of death. The statement of witnesses acquainted with the facts came to be recorded on 21.9.1996. The first informant Kamalbai w/o. Pundlik filed the FIR and figured the respondents as culprits for the murder of her husband victim Pundlik. It has been alleged that there was a civil litigation going on in between respondent No.2 Motiram and victim Pundlik on account of encroachment over agricultural land of victim Pundlik. The accused, adjoining landholder Motiram and his sons, taking umbrage of the litigation attacked the victim Pundlik and committed his murder and to screen themselves from the legal punishment, thrown the dead body in the well. The I.O. recorded statements of the witnesses and apprehended the accused for the sake of investigation. The weapon, clothes and other incriminating articles were seized at the instance of accused. After completion of investigation, I.O. preferred charge sheet against the respondents. The learned Sessions Judge, framed the charges under Section 302, 201 r/w. 34 of IPC for murder of victim Pundlik and destruction of his dead body in the well to disappear the evidence.

3] The prosecution adduced evidence of in all 15 witnesses in this case. Considering the entire evidence on record, learned Sessions Judge did not convince for awarding conviction to the respondent and arrived at the conclusion that the prosecution failed to prove charges against accused beyond all reasonable doubt. Therefore, learned Sessions Judge proceeded to acquit all the accused for the charges pitted against them in this crime. Being aggrieved by the findings of the learned trial court, the prosecution

preferred the present appeal to redress the grievances.

4] The learned APP for the appellant/State vehemently submitted that the death of victim Pundlik was homicidal in nature. There were fatal injuries received to him. Prosecution examined eye witnesses PW-6 Vijaysingh and his sons PW-5 Sunil and PW-6 Kiran. These eye witnesses had seen respondent Prakash while assaulting victim Pundlik in the field near the common well. But, the learned trial court did not appreciate the evidence of these eye witnesses in its proper perspective. There were enmity terms in between the victim Pundlik and respondents on account of encroachment over the agricultural lands. The land of the victim Pundlik was measured by the revenue authorities and encroachment of the respondent Motiram was shown on the land of victim Pundlik. The respondent also forcibly took the possession of 3 fruit bearing trees of victim Pundlik which were in his field. But, these aspects were not considered by the learned trial court in this case. The articles were also seized at the instance of the accused. The Post Mortem report indicate fatal injuries. The victim Pundlik had on occasion to file complaints to the police prior to the alleged incident against the respondents. But the learned trial court failed to appreciate the circumstances and committed grave error in acquitting the respondents from the charges levelled against them.

5] At the inception, before re-appraisal of the evidence of prosecution witnesses in this case, we would like to refer to the observation of Hon'ble Apex Court in the Case of Shyam Babu V/S State of U.P. as reported in

(2012)8 SCC 651 in Para 16 :

16. It is true that it would not be possible for the appellate court interfere with the order of acquittal passed by the trial court without rendering specific finding, namely that the decision of the trial court is perverse or unreasonable resulting in miscarriage of justice. At the same time it cannot be denied that the appellate court while entertaining an appeal against the judgment of acquittal by the trial court is entitled to re appreciate the evidence and come to an independent conclusion. We are conscious of the fact that in doing so, the appellate court should consider every material on record and reasons given by the trial court in support of its order of acquittal and should interfere only on being satisfied that the view taken by the trial court is perverse and unreasonable resulting in miscarriage of justice. We also reiterate that if two views are possible on a set of evidence, then the appellate court need not substitute its own view in preference to the view of the trial court which has recorded an order of acquittal.

6] Admittedly, the prosecution examined in all 15 witnesses in this case. The evidence of first informant Kalambai and her son PW-2 Samadhan appears hear-say on the point of actual incident of assault on the part of respondents resulting into death of victim Pundlik. The wife and son of victim Pundlik stated about the litigations and strained relations in between the family of Pundlik and respondents on account of encroachment over the agricultural land, But, the enimical terms could be a double edged weapon and these circumstances of enmity brought on record would not render assistance to the prosecution showing complicity of the respondents in the crime.

7] The prosecution made abortive attempt to adduce the evidence of PW-4 Vijaysingh and his minor sons PW-5 Sunil and PW-6 Kiran, who are allegedly the eye witnesses of the incident of assault by the

respondent No.1 Prakash. It has been contended that these eye witnesses received the opportunity to watch the spectacle. At the relevant time Respondent Prakash was assaulting victim Pundlik in the field. PW-4 Vijaysingh deposed that when he was busy in agricultural operations in the field, that time he heard the shouts “Melo Melo” (I am dying). Therefore, he rushed towards that direction and saw that respondent No.1 accused Prakash was assaulting the victim Pundlik with iron rod (Thasani). The accused Prakash also gave threats to life to PW-4 Vijaysingh for not disclosing about the crime. Therefore, PW-4 Vijay Singh did not disclose about the murderous attack on victim Pundlik by the accused Prakash to anybody else. After arrest of the accused, his statement was recorded by the Police. PW-5 Sunil and PW-6 kiran are the minor sons of PW-4 Vijaysingh. These witnesses also attempted to depose about the overt act of respondent Praksah while assaulting victim Pundlik in similar fashion.

8] It is to be noted that the alleged incident of assault occurred on 15.9.1996. Thereafter, the victim Pundlik was found missing from the village and on 20.9.1996, his dead body came to be recovered from the well of Gulabchand Kabre. Police registered A.D. No. 57 of 1996 and started enquiry about the cause of death of victim Pundlik. But, these eye witnesses did not disclose about the cause of death of victim Pundalik to the police or anybody else in the village including the family members of victim Pundlik. They kept mum for the colossal period and lateron, came forward and portrayed themselves as eye witnesses in this case. Not disclosing the

material facts to anybody else in the village, for considerable period creates doubt in regard to veracity of the version of these eye witnesses I.e. PW-4 Vijaysingh and his minor Sons PW-5 Sunil and PW-6 Kiran. There are also material omissions and discrepancies in the evidence of these so called eye witnesses of the prosecution. The disclosure about murderous attack on the victim Pundlik by respondent Prakash after efflux of considerable period devastated the credibility of the evidence of these eye witnesses in this case. There is no corroboration available to the version of these eye witnesses for appreciation in favour of prosecution.

9] The delay in filing the FIR also appears fatal to the prosecution case. There are circumstances of recovery of incriminating articles at the behest of the accused under section 27 of the Evidence Act, but, in absence of substantive evidence, to prove the involvement and participation of respondents for the death of victim Pundlik, the corroborative circumstances loses its significance to bring home guilt of the accused. The medical evidence of PW-14 Dr. Dinesh Fiske, also appears vague and ambiguous so as to draw inference about the homicidal death of victim Pundlik.

10] The attending circumstances on record adumbrates that the possibility of mishap with the victim Pundlik could not be ruled out. Therefore, considering the overall evidence adduced on record on behalf of prosecution, we find that there is no perversity or error in the findings of acquittal of accused/respondent expressed by the learned trial court in this

case. Therefore, the conclusions drawn by the learned trial court deserve to be upheld and confirmed. We are not inclined to nod in favour of appellant for adverse inference against respondent/accused. The appeal preferred on behalf of prosecution deserves to be dismissed. In sequel, the appeal stands dismissed.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-