

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

CRIMINAL APPEAL NO. 331 OF 2008

The State of Maharashtra
through PSO, Police Station,
Ahmedpur

... Appellant/
(Orig. Complainant)

versus

Vasant Bhaurao Kendre,
Age 37 years, r/o Ahmedpur

... Respondent/
(Orig. Accused No.1)

Mr. S. K. Tambe, Additional Public Prosecutor for appellant
Mr. Satej S. Jadhav, Advocate for respondent

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 28th September, 2017

JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. This is an appeal by the State – prosecution, preferred only against accused No. 1 Vasant Bhaurao Kendre who is one out of six accused persons who had been tried and acquitted by Additional Sessions Judge, Latur, under judgment and order passed in Sessions Case No. 30 of 2006 on 17-04-2007, of the offences with which they were alleged of commission of offences punishable under Section 302 read with section 34 and sections 147, 148, 149 of Indian Penal Code and section 25(1) of the Indian Arms Act registered against them under crime no. 70 of 2006 with Police

Station, Ahmedpur, imputing constitution of unlawful assembly, possessing deadly weapon illegally and using the same for common object of killing Venkat.

2. The prosecution case before the Sessions Court had been, on 15-05-2006 accused persons had formed unlawful assembly in furtherance of their common intention to commit murder of Venkat and had caused his death by shooting him with bullet from a rifle.

3. Jayashree (accused No. 3) and Shobha (accused No. 6) are the daughters, while Balasaheb (accused No. 4 and Pappu @ Eknath (accused No. 5 are the sons of Pandhari (accused No. 6). Vasant Bhanudas Kendre (accused No.1) is husband of Shobha (accused No.2). The Deceased Venkat was the husband of Jayashree (accused No. 3). All the accused are residents of Ahmedpur. House of accused no. 1 is in the area known as "Hanuman Tekdi" in Ahmedpur. The incident in question is stated to have taken place in front of house of accused no.1.

4. The Deceased Venkat was serving in military and had been posted in Jammu and Kashmir. Accused no. 1 - brother in law of Venkat, is also ex-military man. Deceased Venkat and his mother Premkala had been staying at Molvanwadi.

5. Venkat had got married with accused no. 3-Jayashree about

two years before the date of incident. Marriage of Shankar, deceased Venkat's younger brother, had been arranged on 16-05-2006. Venkat, for said purpose had arrived at village Molvanwadi a few days before.

6. It is the case of the prosecution that according to prevailing customs in the community of accused, at the time of marriage of family member of son-in-law, clothes are offered to the son-in-law and his parents. On the fateful day, according to the witnesses from Venkat's family, a phone-call at their residence at village Molvanwadi had been received by Dilip to send his brother Venkat to Ahmedpur for purchasing clothes and accordingly Venkat had gone to Ahmedpur. Around 1.30 p.m. to 2.00 p.m. accused no. 1 Vasant had given a telephone call, which had been picked up by mother of Venkat, telling her that he had murdered Venkat shooting him by a rifle with a bullet. Thereupon, immediately, family members of Venkat had proceeded to Ahmedpur and they had found corpse of Venkat in front of house of accused no. 1 at Ahmedpur. On the very day, around 5.00 p.m. Shankar, another brother of deceased Venkat, had lodged first information report with Police Station, Ahmedpur which had been registered as crime no. 70 of 2006. Accordingly, the matter had been investigated.

7. During the course of investigation, statements of the witnesses came to be recorded, various panchanamas viz. inquest,

spot, seizure were also effected and upon collection of sufficient material, charge sheet was filed against the accused persons in the court of Judicial Magistrate, First Class, Ahmedpur and the case initially was registered as Regular Trial Case No. 127 of 2006, however, the offence under section 302 of Indian Penal Code being triable exclusively by Sessions Court, the case was committed to the Court of Session, Latur, numbered as Session Case No. 30 of 2006.

8. Charges framed against accused were read over and explained to them by Additional Session Judge, Latur, camp at Ahmedpur. They pleaded not guilty to the charges and preferred to proceed with the trial.

9. It appears, the witnesses who were immediately on the scene after occurrence of the incident constituting mainly women folk have been declared to be hostile, for, they had disowned certain statements recorded before the police which, to quite some extent, had been in respect of *mens rea* since the recorded police statements show that the witnesses had stated before the police during the investigation that Shobhabai (accused no. 2) wife of Vasant (accused No.1) had been telling that from over 3 to 4 days before the date of incident the deceased Venkat was visiting her house while the male members were not in the house. There

appears to be a little discrepant version about appearance of witnesses on the spot, whether had been immediately after they had heard the sound of firing which is described as sound of fire cracker or after hearing of noise of people who had gathered upon sound of rifle shot. Majority of the witnesses are from neighbouring residences.

10. While this is the evidence in respect of the statements of the persons other than the members of the family of deceased Venkat, evidence of his two brothers, namely, Shankar and Dilip, is at variance in respect of the motive for Vasant–accused no.1. Shankar has stated that relationship between deceased Venkat and his wife Jayashree had been strained over a year whereas version of Dilip is that Venkat had been suspecting illicit relationship between Vasant and Jayashree (accused no. 1 and 3 respectively.)

11. The evidence on record does show that Venkat had been to Ahmedpur on 15-05-2006 and had been shot at. There is no eye witness or direct evidence in respect of shot being fired from the rifle on Venkat though there does not appear to be any dispute over that Venkat had suffered bullet shot on his chest and succumbed to the shot. Evidence of Medical Officer – P.W. 8 and post mortem report support the cause of death. There is also no dispute over that bullet had been shot from a rifle and that Vasant – accused no. 1 had a rifle. Deceased Venkat was also a military man.

12. Evidence, however, concurs on one aspect that is Venkat had been to Ahmedpur with variance in the reasons for being there because while the prosecution alleges that he had been invited at Ahmedpur, disowned defence version is about he had been visiting Ahmedpur while male persons in the family were away.

13. There is no evidence whatsoever that the persons who are alleged of unlawful assembly had been in the house of accused no. 1 and 2 (Vasant and Shobha) and had at any point of time assembled with a common object to kill Venkat nor had Venkat been earlier on, was alleged of keeping a lecherous eye on accused Vasant's wife Shobhabai (accused No. 2). Jayashree used to stay with her parents, while Venkat used to be away from Molvanwadi. There is no eye witness to the incident of firing. There is no evidence about accused no. 1 and deceased Venkat were last seen together.

14. Accused no. 6 Pandhari is also from Ahmedpur who has been serving in M.S.R.T.C. Accused no. 1 has stated that he was away from home since being employed and serving as security guard in Maharashtra Warehouse Corporation as an employee of security contractor, who and accused no. 2 as well had been away from the house.

15. Version of witness Shankar as appearing in his evidence is also discrepant on the point of strained relationship between deceased Venkat and Jayashree since the same had not been referred to in the first information report. So is the case in respect of Venkat having been to Ahmedpur on the fateful day along with brother Dilip which had not been stated to the police and also can be seen from the first information report.

16. Further, the clothes of the accused persons containing blood stains which were sent to Chemical Analyzer did not conclusively show that the blood stains can be said to match with blood group of deceased Venkat as the report of the Chemical Analyzer in that respect has been inconclusive.

17. In the face of absence of any convincing evidence in respect of the motive for accused no. 1 Vasant, the findings reached by the Trial Court on appreciation of the evidence as has been adduced, do not appear to be in any way deficient and erroneous. Benefit of doubt would go in favour of accused No. 1. In the cases of acquittal, it has long been settled that upon evidence having been appreciated by the Trial Court, if a possible view has been taken, it would not be proper for Appellate Court to take a different view since different view is possible.

18. In the circumstances, it does not appear to be a case wherein it is possible for us to reverse the decision of acquittal by Sessions Court and convert the same into conviction of accused no. 1. The prosecution has not been able to bring home the guilt of the accused conclusively.

19. The appeal, as such, fails and stands dismissed.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH,
JUDGE

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