

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

Criminal Appeal No. 515 of 2001

* The State of Maharashtra
Through the City Police
Station, Osmanabad. .. **Appellant.**

Versus

- 1) Sidheshwar Sadashiv Karwar
Age 19 years.
- 2) Sanjay @ Balu Shivaji Karwar,
Age 19 years.
- 3) Sopan Pandurang Nile,
Age 36 years,
All r/o Raghuchiwadi,
Taluka and District Osmanabad. .. **Respondents.**

Shri. V.S. Badakh, Additional Public Prosecutor, for
appellant.

Shri. Vikas S. Tanwade, Advocate, for respondent No.1.

Shri. Santosh S. Jadhavar, Advocate, for respondent No.2.

Shri. V.B. Deshmukh, Advocate for respondent No.3.

**Coram: T.V. NALAWADE &
A.M. DHAVAL, JJ.**

Date: 3 November 2017

JUDGMENT (Per T.V. Nalawade, J.):

1) The appeal is filed against the judgment and order of Sessions Case No.188/1996 which was pending in the Court of learned Additional Sessions Judge, Osmanabad. The trial Court has acquitted the respondents – accused in that case for offence punishable under section 302 read with 34 of Indian Penal Code. Both the sides are heard.

2) In short, the facts leading to the institution of the present appeal can be stated as follows:

3) Deceased Vijay was younger brother of first informant, Satish Karwar. The first informant is resident of Raghuchiwadi, Tahsil and District Osmanabad and the deceased was living with the first informant. The deceased was aged about 19 years and in the past he had appeared for the examination of 12th Standard. It is the case of the State that accused No.1 Sidheshwar and accused No.2 Sanjay were studying in 12th Standard and they were classmates of deceased Vijay. It is the contention of the first informant that deceased Vijay used to go with

accused Nos.1 and 2 to the house of Hirkanabai, sister of Sidheshwar to study there.

4) On 13-11-1995 at about 8.30 p.m. deceased Vijay disclosed to the first informant Satish that on the date when he was in the company of Sidheshwar and Sanjay, Sopan Nile had talk with Sidheshwar and Sanjay and he had said to them that it was not proper for them to remain in the company of Vijay as Vijay was his enemy. He also disclosed that Sopan, accused No.3 had asked Sidheshwar and Sanjay to bring Vijay to him. In the past, there was quarrel between Sopan Nile on one side and members of family of the first informant on the other and police had filed cases out of that quarrels.

5) On 13-11-1995 at about 10.00 p.m. Vijay took dinner in the house. Accused Nos.1 and 2 came to his house and they said that they would study in a room and they invited Vijay to come with them. Vijay took the dinner and then he took a blanket and books with him and left for study with accused Nos.1 and 2.

6) Dead body of Vijay was found at 6.00 a.m. of 14-11-1995 in front of the house of Shivaji Karwar, father of accused No.2 Sanjay. Accused No.2 is living there. One lady Krishnabai noticed the dead body and she informed about it to the members of the family of the first informant. They rushed to the spot and they saw bleeding injuries on the dead body of Vijay. Satish approached police after seeing the dead body and he gave report against Sidheshwar, Sanjay and also Sopan. Crime came to be registered at 8.30 a.m. for the aforesaid offence against these three persons in Osmanabad City Police Station.

7) During course of investigation police prepared inquest panchanama, spot panchanama and they referred the dead body for post mortem examination. The doctor who conducted the post mortem found as many as seven injuries which were ante mortem in nature on the dead body. There were three injuries on head and other injuries were on neck and other portions of the dead body. The injuries to the head had caused depressed fracture of left parietal bone and there was haematoma

over right scalp. There was also fracture of ribs 7th and 8th of left side and due to that there was laceration over lower lobe of left lung and there was bleeding. The doctor gave opinion that the death took place due to shock due to head injury with multiple injuries mentioned in the post mortem report. Opinion was given that death had taken place within 4 to 6 hours of the last meal.

8) During course of investigation, the clothes of accused Sidheshwar and Sanjay came to be taken over after their arrest on 14-11-1995. From accused Sanjay one iron bar came to be recovered. Blood was found on the spot where the dead body was found. All the articles were sent to C.A. office. The C.A. report shows that blood was detected on the clothes of Sanjay and also on the clothes of Sidheshwar. Charge sheet came to be filed for aforesaid offence. To the charge the accused pleaded not guilty. Prosecution examined in all 14 witnesses. The accused took defence of total denial. No defence evidence is given. The trial Court has disbelieved the first informant and the mother of the deceased who were the main witnesses on the incident of last seen. The evidence with

regard to recovery of the clothes having blood stains from accused Nos.1 and 2 is also not believed.

9) Satish (PW 1) has given evidence which is mainly on motive as against accused No.3 Sopan Nile. His evidence does not show that he had seen Sopan Nile in the company of accused Nos.1 and 2 and his evidence is on the basis of so called dispute which was there between Sopan and his family members. But the cross-examination shows that there is no force in the evidence given on motive as against accused No.3. No evidence is given on the so called disclosure made by the deceased to him on the same day against accused No.3. From his evidence it can be said that he had only suspicion as against accused No.3 as there was some previous enmity.

10) Satish (PW 1) and Laxmibai (PW 10) have given evidence that on that night accused Nos.1 and 2 had come to their house to take Vijay with them. They have given evidence that Vijay left with them and he had taken with him a bed-sheet. Their evidence shows that, they wanted to say that for study of 12th examination the deceased had

left home on that day with accused Nos.1 and 2. In the cross-examination it is brought on the record that the deceased had failed in the examination of 12th standard in 1995 and then he had gone to Pune in search of job. He had returned to the village after Dasara but before Diwali of the year 1995. The evidence of Satish does not show that he had knowledge as to whether form was filled by the deceased in October 1995 examination of 12th Standard. Further, his evidence shows that October examination of 12th Standard was already over. In view of these circumstances it does not look probable that the deceased had left for the study.

11) The evidence on the record does not show that any attempt was made by police to trace out the blanket and the books of the deceased which he had taken with him on that night. These circumstances create serious doubt about the version of Satish (PW 1) that for study the deceased had left with accused Nos.1 and 2. The evidence on the record shows that in the past accused Nos.1 and 2 used to study in the house of the sister of Sidheshwar and the deceased used to go there. The sister is not examined.

12) The evidence of the doctor who conducted post mortem examination and the post mortem report are sufficient to infer that it is a case of homicide. This evidence shows that the death had taken place within 4 to 5 hours of the last meal. Thus, the incident took place after 1.00 a.m. of 14 November 1995. It was necessary for the investigating agency to find out as to where these three boys were from 10.00 p.m., of 13-11-1995. There is no independent witness with the prosecution to show that they had also seen the accused Nos.1 and 2 in the company of the deceased on that night. The panchanama shows that the house of accused No.2 is situated in the midst of the village and by the side of the road. On both sides of the road there are houses. If the deceased was assaulted there, in ordinary course he would have raised hue and cry as many injuries were found on the person of the deceased and so some persons would have rushed to the spot after hearing hue and cry. That did not happen.

13) The panch witnesses like PW 6 Akheel and PW 7 Jamaloddin who are examined to prove the recovery of the clothes of accused Nos.1 and 2 having blood stains

have turned hostile. No blood was found on the iron bar shown to be recovered from Sanjay. The articles shown to be seized on 14-11-1995 were sent to CA office on 7-12-1995 after about 3 weeks of the seizure. There is no independent evidence like evidence of pancha on the seizure of these clothes. Thus, the evidence on the circumstance like presence of blood stains on the clothes of accused Nos.1 and 2 is not that convincing in nature.

14) The deceased was young boy and he was friend of accused Nos.1 and 2. The evidence on the record shows that they used to remain in the company of each other. There was no dispute as such between the deceased on one hand and the accused Nos.1 and 2 on the other. Thus, there is virtually no evidence on motive as against accused Nos.1 and 2. In view of nature of the evidence of the present matter this Court holds that absence of motive is a circumstance which is relevant in the present matter. Thus the evidence on the record is not sufficient to complete the chain of circumstance to point finger to accused Nos.1 and 2. It can be said that the witnesses have only suspicion against accused No.3 and there is

virtually no evidence as against accused No.3. Due to these circumstances this Court holds that the trial Court has not committed any error in giving decision of acquittal in favour of the respondents. In the result, the appeal stands dismissed.

Sd/-
(A.M. DHAVALÉ, J.)

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

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