

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

Criminal Appeal No. 555 of 2001

* The State of Maharashtra. .. **Appellant.**

Versus

- 1) Gangadhar Andappa Ghatte,
Age 25 years,
R/o Ghattewadi,
Taluka Tuljapur,
District Osmanabad.
- 2) Vijay Mallinath Sarate,
Age 32 years,
R/o Ghattewadi,
Taluka Tuljapur,
District Osmanabad. .. **Respondents.**

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

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Date : 04 SEPTEMBER 2017

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

- 1) The appeal is filed against the judgment and order of Sessions Case No.1 of 2001 which was pending in the Court of the learned Additional Sessions Judge, Osmanabad. Respondents Gangadhar and Vijay were tried for offence punishable under section 302 read with 34 of

the Indian Penal Code and they are acquitted by the trial Court. Learned Additional Public Prosecutor for the State is heard.

2) The deceased Apparao Ghatte was the father of the first informant, Dilip. The deceased was living at village Ghatte, Tahsil Tuljapur with the first informant, other son Santosh and his wife. The incident took place in the night between 13-5-2000 and 14-5-2000. On 13-5-2000 after having dinner, the deceased went to the field for sleeping there. Other members used to sleep in the house situated in the village. On 14-5-2000 when Dilip went to the field he noticed that Apparao was murdered. There were bleeding injuries on the dead body. He gave report against unknown persons that due to some dispute somebody must have finished his father. Crime was registered on the basis of this report at CR No.78/2000 in Naldurg Police station. The dead body was referred for post mortem examination after preparing spot panchanama and inquest panchanama. The doctor who conducted the post mortem gave opinion that there were as many as 5 surface wounds which were mainly on face

and head and they had caused fracture of skull and the death took place due to fracture of skull bone and the hemorrhage in the brain.

3) During the course of investigation, the members of the family of the deceased informed about the dispute which respondent Gangadhar had with them. The field of Gangadhar is situated adjacent to the field of the deceased. Dispute was in respect of use of the road situated in the field of the deceased and there were quarrels over that dispute. On 12-5-2000 accused Vijay had given threat to Santosh and he had warned not to create trouble for Gangadhar. Similar threat was given to the mother of Santosh.

4) Both the respondents came to be arrested. During course of investigation statements of the respondents were recorded under section 27 of the Evidence Act and then one stick came to be recovered from Gangadhar and weapons like a stone weighing 25 Kilograms and one stick came to be recovered on the basis of statement given by accused Vijay. They were

arrested on 18-5-2000 and the recovery of these articles came to be made on 18-5-2000. Clothes of both the accused were taken over on 19-5-2000 as there were blood stains on the clothes. The blood samples of the accused and the deceased were sent to CA office along with the weapons recovered and also the clothes of both the deceased and the accused. The bed and blanket on which the dead body was found were also sent to CA office. After completion of investigation charge-sheet came to be filed and the accused came to be tried for the aforesaid offence.

5) The prosecution examined in all 9 witnesses. The evidence is given on motive which is of aforesaid nature. It can be said that there was motive at the most for accused Gangadhar and not for accused Vijay. Vijay is noway related to Gangadhar.

6) The murder took place in the field of the deceased in night time and so entire case rests on circumstantial evidence. The circumstantial evidence is mainly of the nature of recovery of weapon having blood stains and recovery of the clothes of the accused having

blood stains.

7) Manoj (PW 6) and his father Limbanappa (PW 5) are the main witnesses of prosecution. In the cross examination Limbanappa (PW 5) has admitted that the widow of the deceased is real sister of the wife of Limbanappa. He hails from different village situated at long distance but he acted as panch witness. Manoj (PW 6) has tried to give evidence that accused No.2 was seen by him on 14-5-2000 and it appeared to him that Vijay was in frightened condition and there were blood stains on the clothes of Vijay.

8) The F.I.R. was given by son of the deceased and the crime was registered at about 12.45 hours of 14-5-2000. In the F.I.R. there was no mention of dispute with respondent No.1. It can be said that if there were quarrels with accused Vijay those quarrels could have been mentioned but there is no mention about such quarrels with Vilay in the F.I.R. As the F.I.R. is an exhibited document, these omissions can be seen.

9) The evidence of Manoj (PW 6) shows that it is a concocted version. If Manoj had seen Vijay at 7.30 a.m. on

14-5-2000 and he had seen blood stains on the clothes of Vijay and if Vijay had appeared to him in frightened condition, he would have made a mention about it to the sons of the deceased. His evidence shows that he went to the field to see the dead body at 8.00 a.m. He has stated that he had narrated the incident of his meeting with Vijay to the sons of the deceased. If there was such disclosure, the first informant would have made a mention about it in the F.I.R. but that did not happen. So, the evidence of PW Manoj cannot be believed.

10) In the evidence, Limbanappa (PW 5), the prosecution has proved the statements given by the two accused under section 27 of the Evidence Act and the recovery of one stone and two sticks is shown to be made on the basis of these statements. This evidence needs a very close scrutiny as the entire case rests on this circumstance. No explanation was given by the prosecution as to why Limbanappa who is close relative of the deceased was used as panch witness. His evidence shows that he is close relative of Ex MLA and he was interested in keeping watch over the investigation of the

present matter. Such admissions are given by him in the cross-examination. Thus he was interested not only because the deceased was his close relative but he had shown interest in the investigation of the case also. There is no map of the scene of offence and so nothing can be said about the distance of the place from where the stone of 25 kg is shown to be recovered which was used as a weapon. There was no reason for the assailant to take away the stone if the stone was used as weapon and it could have been left on the spot of the incident itself. These circumstances have created a doubt about the entire case. The nature of injuries shows that all the injuries were probably caused by stone and not by stick but the sticks are shown to be recovered. The defence admitted the post mortem report but it was necessary for the prosecution to examine the doctor to prove the cause of the injuries. Such attempt was not made by prosecution.

11) The learned Additional Public Prosecutor drew attention of this Court to the circumstances like presence of the blood of group 'O' on the weapons and on the

clothes of the accused. It is already observed that even when the accused were arrested on 18-5-2000 the clothes were not taken from them on 18-5-2000. If there was any blood on their clothes, in ordinary course, the police would have taken over the clothes on 18-5-2000 itself. The blood of the deceased was sent to CA but the group could not be ascertained. Blood group 'O' was found on the clothes of the accused and on the clothes of the deceased and on that basis submission was made that presence of blood of 'O' group on the clothes of the accused is an incriminating circumstance. When the case rests on circumstantial evidence, the circumstance needs to be proved to the satisfaction of the Court. Due to the aforesaid circumstances the trial Court has refused to place reliance on the aforesaid two circumstances. As there is possibility of concoction and that is created due to the aforesaid circumstances, this Court holds that it is not possible to interfere in the decision of the trial Court by which acquittal is given to the respondents. In the result, the appeal stands dismissed.

Sd/-
(S.M. GAVHANE, J.)
rsl

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