

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

**Criminal Appeal No. 134 of 2002**

The State of Maharashtra,  
Through the Police Station Officer,  
Police Station Peth, Beed, .. **Appellant.**

**Versus**

Babasaheb @ Bappa s/o Abasaheb  
Dongare, Age 25 years,  
Occupation : Auto-rickshaw Driver,  
R/o Dhage Colony, Barshi Naka,  
Beed. .. **Respondent.**

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Shri. P.G. Borade, Additional Public Prosecutor, for  
appellant.

Shri. S.P. Katneshwarkar, Advocate, for respondent.

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

**Date : 06 SEPTEMBER 2017**

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

1) The appeal is filed by the State against the judgment and order of Sessions Case No.40 of 2001 which was pending in the Court of learned Additional Sessions Judge, Beed. The respondent was tried for offence

punishable under section 302 of Indian Penal Code and also for offence punishable under section 4/25 of the Arms Act and he is acquitted of the offences by the trial Court. Both the sides are heard.

2) Deceased Sushil was a brother of the first informant Subhash Kokate. About one year prior to the date of the incident, one girl had committed suicide by consuming poison and there was suspicion that the deceased had affair with that girl and the relatives of the girl had opposed that relationship. After the suicide of that girl the relatives of the girl had become angry with deceased Sushil and they were searching for an opportunity to finish him. Present respondent, sole accused, is the son of the aunt on paternal side of the girl. He used to pick up quarrels with the deceased and he used to openly give threats to the deceased to finish him. Due to the dispute of this nature the deceased was kept at Gadhi, Tahsil Georai in the house of the sister of the deceased. The deceased used to visit occasionally his native place Mauj, Tahsil and District Beed.

3) The deceased was murdered at Barshi Naka, Beed. When Subhash Kokate learnt about the incident he visited the spot and then gave report to police mentioning the previous dispute and also taking the name of the present respondent as assailant.

4) During investigation it transpired that Amol Galdhar (PW-10) had witnessed the incident and his statement came to be recorded. Spot panchanama was prepared and after preparing inquest panchanama, post mortem was conducted on the dead body. Present respondent came to be arrested. During the course of investigation he gave statement under section 27 of the Evidence Act and on the basis of that statement, weapon dagger came to be recovered. After completion of the investigation charge-sheet came to be filed for the aforesaid offences. The prosecution examined in all 11 witnesses after framing charge. The accused took defence of total denial.

5) It is not disputed that it was a homicidal death. The prosecution wanted to prove the offence on the basis

of direct evidence and some circumstantial evidence. The witness, who was expected to give direct evidence, turned hostile. Almost all the witnesses including the panch witnesses turned hostile. Even the panchas on the spot panchanama and the inquest panchanama have turned hostile.

6) Learned Additional Public Prosecutor for the State submitted that the evidence of the investigating officer (PW-11) can be used for proving some circumstances. He submitted that Ashok Patil, (PW-11), the investigating officer has given evidence on the statement given by the accused under section 27 of the Evidence Act and that statement led to the recovery of weapon. The learned Additional Public Prosecutor submitted that the doctor has given evidence that such weapon can cause injuries which were found on the dead body. There were as many as five injuries which were penetrating injuries and incised wounds and mainly on the chest and abdomen. The learned APP submitted that the CA report shows that the blood was detected of the group of the deceased on the weapon and so this circumstance is

a clinching circumstantial evidence. It appears that the clothes of the accused were also taken over but the prosecution did not give evidence on the seizure of the clothes of the accused. In the CA report there is mention of such clothes and blood was detected on those clothes also. As there is no evidence of seizure of the clothes of the accused, the CA report in that regard is of no use.

7) The aforesaid circumstances show that there is evidence of only investigating officer, police officer (PW 11) on the statement given by the accused under section 27 of the Evidence Act and the recovery of the weapon. The police officer being interested, his evidence needs close scrutiny. The evidence shows that the dagger is shown to be recovered from the bushes situated by the side of the spot of the offence. This circumstance creates a serious doubt about the cases of the investigating officer that the accused had concealed the weapon in the vicinity of the spot of offence. If there were witnesses in whose presence the incident took place, it does not look probable that the accused had concealed the weapon in the nearby bushes. Thus, it is not possible to get conviction only on

the basis of the evidence of the police officer in the present matter.

8) It can be said that there is evidence of the first informant (PW 5) on motive. Some record is produced to show that one girl, relative of the accused, had committed suicide about one year prior to the date of the incident and there was suspicion that the deceased had affair with the said girl. Though this circumstance is there, the accused is son of the aunt on parental side of the girl and due to that it cannot be said that he was close relative. Thus, the evidence on motive is also not that strong. On the basis of these two circumstances conviction cannot be based in such a serious case. This Court sees no reason for interference in the decision given by the trial Court in which the same reasons are given. In the result, the appeal stands dismissed.

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

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

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