

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

CRIMINAL APPEAL NO. 488 OF 2015

Motiram s/o. Aglya Kale
Age 62 years, Occ. Agri.,
R/o. Palsap Pardhipidhi Tal Osmanabad,
Dist. Osmanabad

...APPELLANT
(Ori. Accused)

versus

- 1] The State of Maharashtra
Through the In-charge Investigation Officer
Police Station Dhoki Tal. and Dist. Osmanabad
- 2] Siddheshwar Chhagan Kale
Age : 40 years, Occu. Jeep Driver
R/o Palsap Pardhipidhi Tal. Osmanabad
Dist. Osmanabad.
- 3] Shripati Aglya Kale
Age : 65 years Occu. Agri.
R/o Palsap Pardhipidhi Tal. Osmanabad
Dist. Osmanabad.
- 4] Suresh Chhagan Kale
Age : 37 years Occu. Labour
R/o Palsap Pardhipidhi Tal. Osmanabad
Dist. Osmanabad.
- 5] Dashrath Chhagan Kale
Age: 35 years, Occu. Labour
R/o Palsap Pardhipidhi Tal. Osmanabad
Dist. Osmanabad.
- 6] Dilip Chhagan Kale
Age :32 years Occu. Labour.
R/o Palsap Pardhipidhi Tal. Osmanabad
Dist. Osmanabad.
- 7] Somnath @ Dada Chhagan Kale
Age : 28 years Occu. Labour
R/o Palsap Pardhipidhi Tal. Osmanabad
Dist. Osmanabad.

Mr. V. S. Undre, Advocate for the appellant
Mr. S.Y. Mahajan, APP for Respondent No.1
Mr. R.D. Sanap, Advocate for Respondent No. 2
(appointed)

...RESPONDENTS
(Ori. Complainant)

.....

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

**JUDGMENT RESERVED ON : 7TH FEBRUARY, 2017
JUDGMENT PRONOUNCED ON : 17TH FEBRUARY, 2017.**

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

1. The applicants preferred appeal against the judgment and order of acquittal passed by the learned Additional Sessions Judge, Osmanabad in Sessions Case No. 8 of 2014.

2] It has been alleged that the respondents in prosecution of their common object assaulted the victim Bappa Shinde and committed his murder on account of dispute of residence of complainant and his son in law in the village Palsap Pardhipidhi. According to prosecution, accused had given threats to the complainant that in case victim Bappa Shinde did not leave village Palsap Pardhipidhi they will eliminate one of the member of their family. The members of the panchayat committee were called to resolve the dispute, but the accused/respondent did not give response to the members of the panchayat. There was a settlement of dispute in the police station on the day of incident after intervention by the PW-5 Rajabhau Chavan. Thereafter, complainant and other members came to the house of

Rekhabai Chavan at village Dhoki. The woman Rekhabai divulged that his son-in-law Bappa Shinde was killed and his dead body was thrown aside the road leading from village Palas to Pardhipeth. Therefore, the first informant Motiram rushed to the spot and saw the dead body of his son-in-law Bappa lying in a pit aside the road. Thereafter, he filed FIR against the respondents for the death of victim Bappa, pursuant to which police registered the crime. The I.O. recorded statements of the witnesses. It was alleged that the respondent/accused, prior to the incident, arrived in the vehicle jeep and gave threats to eliminate the members of the family in case they fail to leave the village. The I.O. seized the jeep during the course of investigation and recovered the sample of tyre of the jeep. The I.O. also seized the clothes and articles of the deceased. The clothes were sent to chemical analyser. It was revealed that the tyre marks on the clothes of the victim Bappa and chemical characteristic of the rubber sample collected from the tyre of the seized vehicle, tallies with each other. It was transpired that the accused killed the victim Bappa by giving dash of the vehicle jeep intentionally and killed him. Therefore, I.O. filed the charge sheet.

3] The learned trial Judge framed the charges and proceeded to record the evidence of prosecution witnesses. According to PW-1 Dr. Chormale, the victim died due to hemorrhagic shock following multiple injuries. The spot panchanama demonstrate that the dead body of the victim Bappa was lying aside the road in the pit with injuries. Prosecution examined in all 11 witnesses in this case. The learned trial Judge did not

accept the allegations nurtured on behalf of the prosecution and acquitted all the accused, by impugned judgment and order, which is put in controversy in this appeal. The impugned judgment and order of acquittal of the accused is the subject matter of present appeal.

4] At the inception, before re-appraisal of 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.”

5] We have heard the learned counsel for the appellant and respondents. We have also scrutinized minutely the evidence adduced on behalf of the prosecution. Admittedly, there is no direct evidence available on record to draw adverse inference against accused. The entire prosecution case is based on circumstantial evidence. PW-2 First Informant

Motiram deposed that the woman Rekha Chavan gave information that her son victim Bappa was killed and his dead body was thrown aside the road leading from village Palsap to Pardhipidhi. Therefore, he rushed to the spot and saw the dead body of his son-in-law Bappa. Thereafter, he approached to the police and filed the FIR.

6] PW-5 Rajabhau Chavan stated about the amicable settlement of the dispute in the police station about residence of appellant Motiram and his family in the locality of Palsap-Pardhipeth. PW-5 Rajabhau did not disclose about the circumstances of cause of death of victim Bappa. PW-6 and 7, are the panch witnesses of the inquest and spot panchanama as well as seizure of the vehicle jeep. PW-1 Dr. Chormale conducted post mortem. PW-3 and 4 did not support the prosecution case and turned hostile.

7] As referred supra, the entire prosecution case is based upon the circumstantial evidence. But, it appears that the prosecution failed to prove the circumstances incriminating in nature leading to complete chain for inescapable inference of guilt of the accused. It is significant to note that the woman Rekha, who had given information to PW-2 Motiram about the murder of victim Bappa did not come forward to adduce the evidence in this case. Therefore, non-examination of key witness of the prosecution i.e. Rekha Chavan, created serious flaw in the prosecution case. There is no substantive evidence available on record to connect the respondents to the alleged cause of death of victim Bappa. The circumstances of C.A. Report

about the chemical characteristics of tyre of the vehicle jeep do not itself sufficient to draw adverse inference against the accused. There is absolutely no evidence on record to prove that the accused/respondent are author of the crime. Therefore, we are not inclined in favour of appellant to upset the impugned findings expressed by the trial court. There is no perversity or error in the impugned judgment and order of acquittal passed by the learned trial Judge. In sequel, we proceed to pass following order :-

The appeal stands dismissed. The impugned judgment and order of acquittal of the accused/respondent is confirmed. Since, Mr. R.D. Sanap, Advocate is appointed to represent the cause of the respondent No.2, his fees be paid as per the schedule maintained by the High Court Legal Services Sub Committee, Aurangabad.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-