

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

Criminal Appeal No.108 of 2006

The State of Maharashtra.

.. Appellant.

Versus

Devidas Abhimaniv Ghadge

Age 22 years.

R/o Khalapuri, Taluka Ghansavngi,
District Jalna.

.. Respondent.

Shri. R.V. Dasalkar, Additional Public Prosecutor, for the
appellant.

Shri. T.W. Pathan and Shri. G.R. Syeed, Advocates, for
respondent.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 2 MAY 2018

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

1) The appeal is filed against the judgment and order of Sessions Case No.57 of 2005 which was pending before the learned Sessions Judge, Jalna. The respondent - accused No.1 is acquitted by the trial court of the offences punishable under sections 302, 201 read with 34 of Indian Penal Code. Both the sides are heard.

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

3) Deceased Ramesh Autade was a son of Eknath Autade. Eknath Autade is resident of Khalapuri, Tahsil Ghansavangi, District Jalna. Accused persons, respondent are also residents of the same village.

4) The incident in question took place on the night between 3-1-2005 and 4-1-2005. On that day the family members of Eknath Autade had gone to village Hiradpuri to attend a marriage. They had gone separately on a motor cycle and deceased Ramesh had gone to Hiradpuri in a tempo, with marriage party. After attending the marriage, deceased returned by the same tempo and reached the village between 8.30 p.m. and 9.00 p.m. of 3-1-2005. Ramesh however did not return home from the place where he alighted from the tempo.

5) Eknath and others searched for Ramesh on 4-1-2005 and on 5-1-2005 Eknath gave missing report to Ghansavangi Police Station. In this report he informed

that for about 3 days the deceased was missing. The deceased was aged about 21 years.

6) Persons of Khalapuri continued the search and ultimately the dead body of Ramesh was seen in canal water of Loni Shivar. Eknath identified the dead body and gave A.D. report on 6-1-2005. A.D. was registered and inquiry was started. During inquiry inquest was prepared and post mortem was conducted on the dead body.

7) On 6-1-2005 Eknath gave F.I.R. at 23.15 hours. In the F.I.R. he informed that chappals of the deceased were found on a bridge which was there on the canal of Khalapuri on 4-1-2005 and these chappals were noticed by Pandurang Bhosle. The chappals were belonging to Sandip, cousin of Ramesh and he had given the chappals to Ramesh for use when he was leaving to attend the marriage. In the F.I.R. Eknath informed that he had examined the site in the vicinity of the chappals and he had noticed that on northern side of the canal there were blood stains. He informed that when Ramesh had alighted from the tempo, he was called by accused No.1

Devidas Ghadge and Devidas had taken Ramesh with him on that night. He informed that accused No.2 Sambhaji and accused No.1 Devidas had strained relations with Ramesh as in the past on the basis of information supplied by Eknath, the first informant, a theft case was filed by police against the accused persons. He also informed that the deceased had probably love affairs with one girl of the village and the said girl had died 15 days prior to the incident all of a sudden and after that Devidas had one more reason to finish Ramesh. He also informed that on the night between 3-1-2005 and 4-1-2005 at about 9.30 p.m. Bhagwan Gaikwad of his village had seen accused No.2 Sambhaji near the wall of the canal and he was in the company of one person and after seeing him he had run away. Thus, Eknath expressed suspicion against accused No.1 and accused No.2.

8) During investigation police recorded statements of some persons who had returned to village in the same tempo. The statement of Bhagwan also came to be recorded. Both the accused came to be arrested. During search of the residential places, their clothes came

to be recovered and the clothes were having blood stains. In view of this F.I.R., crime was registered for the aforesaid offences in Ghansavangi Police Station at CR No.2/2005. In this crime investigation was made and charge-sheet came to be filed for the aforesaid offences. Doctor gave opinion that death took place due to strangulation.

9) Charge was framed for the aforesaid offences and plea was recorded. Both the accused pleaded not guilty. Prosecution examined in all 11 witnesses. The prosecution case rests entirely on the circumstantial evidence. The trial court has held that the circumstantial evidence is not convincing in nature and the chain of circumstances is not completed. The trial court has, however, held that Ramesh died homicidal death.

10) The evidence given before the trial court shows that the circumstantial evidence is of the nature of "last seen together", "motive" and "presence of blood stains on the clothes of the two accused persons".

11) To give evidence on "last seen together" the prosecution has examined three witnesses. Khanaji Bendre (PW-5) has given evidence that on 3-1-2005 he had returned with the marriage party in a tempo to the village at 8.30 p.m. and when the persons who had come in the tempo were alighting from the tempo he had noticed accused No.1 Devidas standing near the tempo and in his presence, accused No.1 had given call to the deceased and he had requested the deceased to give him company and so he and the deceased had gone towards canal side.

12) Jalindar Bhakre (PW-7) has given evidence similar to the evidence of PW-5 and the evidence of Dashrath (PW-9) is also similar. In the cross examination Khanaji Bendre (PW-5) has deposed that his police statement was recoded on 11th or 12th when the record shows that the statements were recorded on 6-1-2005. PW-7 has also given evidence that his statement came to be recorded 4 to 5 days after finding of the dead body. The evidence of Khanaji Bendre (PW-5) in the cross examination shows that around 70 to 80 persons had returned to village in the said tempo. The evidence of all

these witnesses shows that there was no electricity between 6 p.m. and 11.00 p.m. of 3-1-2005. PW-5 was sitting at the front side of the tempo when according to him, Ramesh was sitting at the back side of the tempo. The evidence of the witnesses shows that the tempo had halted in front of the house of the bride-groom for short time. All these circumstances create doubt about the version that they had really seen the deceased in the company of accused No.1 and they had noticed the call given by accused No.1 to the deceased. It needs to be kept in mind that both in the missing report and in the A.D. report there was no mention of these circumstances. In ordinary course, PW-5 and PW-7 who are youngsters would have informed at least the father of the deceased that they had seen the deceased in the company of accused No.1 lastly. The evidence and the record show that search was started for the deceased right from the night between 3rd and 4th January and it was continued on 4th, 5th and 6th January 2005. In the missing report it was not mentioned that the deceased had returned to village on that night. It came to be mentioned first time in the A.D. report and then on the same day F.I.R. came to be

given. It can be said that only after conducting the post mortem examination which was done between 4.00 p.m. and 5.00 p.m. on 6-1-2005 the F.I.R. was given. Injuries were noticed on the dead body. The definite opinion about the cause of death was not given on 6-1-2005. These circumstances cannot be ignored in such a serious case and when the entire case rests on circumstantial evidence.

13) Some omissions in relation to previous statements of these witnesses are brought on record during cross-examination. PW-5 had not stated in the statement before police that he had seen accused No.1 and the accused going towards canal side. Similarly, PW-7 had not given such evidence against accused No.1. PW-9 was aged about 65 years at the relevant time. It was night time and as more than 50 persons had alighted from the tempo and everybody was in hurry to return to home, the version given by the aforesaid three witnesses that accused No.1 had come there, he gave call to the deceased and then he took the deceased with him does not appear to be probable in nature.

14) Bhagwat Gaikwad (PW-10) has given evidence that on that night when he was proceeding towards his field at about 9.30 p.m. he had seen two persons and he had given call to them. His evidence shows that when he gave call, two persons stopped, gave response to him and they asked them as to whether the person who gave call was Sambha. Though Sambha is the name of accused No.2, the evidence given is not that way. Further he has given evidence that he had informed to his *Bataidar* that the person who had given response by shouting was Devidas, accused No.1. He has not given evidence that the deceased was seen in the company of accused No.1. The deceased was known to him. His evidence shows that he was at a distance of 50 to 60 feet from the two persons as he had seen him on the canal road which is at such height and even if it was night time, he could have identified the two persons as he knew them. In any case, when he has not given substantive evidence that the deceased was in the company of accused No.1, not much can be made out from the evidence of Bhagwat (PW-10).

15) The other prosecution evidence is mainly on motive. It appears that in the past, many years prior to the date of the incident information was given against accused by father of the deceased that the accused persons had committed theft of motor cycle and police had filed case against them. However, in the cross-examination he has deposed that the accused were acquitted in the said case. In any case the deceased had not given such information against the accused and if the relations were strained, the deceased would not have gone with accused No.1 on that night. Thus, the version on "last seen together" cannot be accepted if the relations were really strained. Some evidence is given in respect of one girl of the village due to which there was dispute between these youngsters but that evidence is also not that convincing. Relationship with the said girl or the reason for the accused is not brought on record.

16) The version given that chappals of the deceased were found on the bridge constructed over the canal is also not consistent with the case of the prosecution. If the deceased was murdered at some

distance from the bridge and if the dead body of the deceased was thrown from the bridge in the canal water, there was no reason to keep the chappals of the deceased on the bridge. No blood was found on the bridge. These circumstances are important as the entire case rests on circumstantial evidence and there was charge of offence punishable under section 201 of Indian Penal Code.

17) Dr. Jairaj (PW 6) has given evidence that he found following external injuries on the dead body:

- (1) Scratch abrasion over left axillary region. Left arm medial lateral aspect.
- (2) Scratch abrasion over both knee joint left size 5 cm x 5 cm and right side 4 cm x 4 cm.
- (3) Multiple scratch abrasion over right scapula region, infra scapular region, also on left scapular region.
- (4) Scratch abrasion over both hands external aspect.

The doctor found following internal injuries :

Subcutaneous tissues on the neck shown extravation of blood. Haemorrhage in the subcutaneous tissues and muscles underlying. Subcutaneous tissues are ecchymosed Injury to muscles of neck is seen. Bruising is seen over muscles. Subnjucosal haemorrhages of the larynx are also seen. Fracture of five bones seen in region of greater cornuae, broken ends being displaced inwards.

The doctor has given evidence that the aforesaid injuries were ante mortem in nature. He found that larynx and trachea and also bronchi were congested and the tongue had become black and swollen. He has given evidence that the death might have occurred within 72 hours from the post mortem examination. Viscera was sent to C.A. but no poison was detected. Admittedly on 6-1-2005 no opinion was given by the doctor regarding cause of death though he had noticed the aforesaid injuries. In ordinary course, he could have given probable cause of death as death due to throttling or strangulation and he could have mentioned that the final opinion can be given after receipt of C.A. report. This was not done and this is again a circumstance which needs to be kept in mind in view of the aforesaid peculiar circumstances of the present matter. Even if the evidence of the doctor that Ramesh died homicidal death is accepted as it is that cannot change the fate of the matter.

18) The evidence is given to prove the recovery of blood stained clothes of both the accused from their residential places. The blood group of the blood found on

the clothes was not detected and similarly the blood group of the deceased is not known. Due to these circumstances and as the recovery was shown to be made on 9-1-2005, not much importance can be given to the evidence on recovery of blood stained clothes.

19) In the spot panchanama, hand sketch map is there but the distance between the two places is not given. No map of scene of offence was prepared. Due to these circumstances it is difficult to ascertain as to whether there was proximity between the place where the deceased was last seen in the company of accused No.1 and the place where the incident allegedly took place. These circumstances cannot be ignored in the present matter. Due to all these circumstances this Court holds that the view taken by the trial court is a possible view and it is not possible to interfere in the decision given by the trial court. In the result, the appeal stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

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

rs1