

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 429 OF 2006

The State of Maharashtra
Through Police Station Officer
Dondaicha Police Station.

....Appellant.

Versus

1. Eknath Bhika Bhavsar,
Age 40 years, Occu. Legal
Practitioner,
2. Subhash Bhika Bhavsar,
Age 48 years, Occu. Agriculturist,
3. Pappu alias Narendra Subhash
Bhavsar, Age 24 years,
Occu. Agriculturist,
4. Pintu alias Hemant Subhash
Bhavsar, Age 21 years,
Occu. Education,
5. Anil Vasant Mistry (Nikam),
Age 28 years, Occu. Labour,

(Appeal abated as against
R.No. 5 as per Hon'ble Court's
Order dated 6.10.2017)

All R/o. Dondaicha,
Tq. Sindkheda, Dist. Dhule.

....Respondents.

Mr. P.G. Borade, APP for appellant/State.

Mr. S.P. Brahme, Advocate for respondent Nos. 1 to 5.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JANUARY 11, 2017.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed by the State to challenge the decision of acquittal given in Sessions Case No. 162/2002 by the learned 2nd Additional Sessions Judge, Dhule. All the respondents are acquitted of the offences punishable under sections 302 r/w. 149 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and 120-B, 148 and 201 of IPC. Both the sides are heard.

2) The facts leading to the institution of the present proceeding can be stated as follows :-

Deceased Premsingh was the husband of first informant Smt. Shardabai. The deceased was earning livelihood by running a pan stall and by also working as driver on cars. About three years prior to the date of incident, the deceased was working as driver on the car of accused No. 2 Subhash. There was suspicion to accused No. 2 that there was an affair between the deceased and the wife of accused No. 2. Due to that, the deceased was removed from service. Accused No. 1 is real brother of accused No. 2. Accused Nos. 3 and 4 are the sons of accused No. 2 and accused No. 5 is said to be an associate of accused No. 2. The relations between the deceased and the accused were strained due to aforesaid suspicion and in the past, threats were given by the accused persons to the deceased to finish him.

3) The deceased had taken one Dr. Jain to other station and on the night between 22.12.2001 and 23.12.2001 after reaching Dr. Jain to his hospital, the deceased was returning home. Between 11.00 p.m. and 12.00 of the night, the deceased was intercepted near Vasant Saw Mill and there, by assaulting him, he was finished.

4) One Satish Nagoriya was working as watchman in Vasant Saw Mill. This watchman gave A.D. report on 24.12.2001 when he saw the dead body of deceased lying in the open space situated by the side of Vasant Saw Mill. He informed that he did not know the deceased. On the basis of this report, A.D. was registered in Dondaicha Police Station. On 24.12.2001 when the widow of deceased, Shardabai received this information, she gave report against all the accused and expressed suspicion against them that they had finished her husband. The crime was registered for aforesaid offences on the basis of said report in Dondaicha Police Station. The P.M. was conducted on the dead body and doctor gave opinion that the death took place due to cardiorespiratory failure due to haemorrhagic shock due to head injury and also due to compound fractures of both tibia and fibula of leg.

5) During the course of investigation, police prepared spot

panchanama and all the accused came to be arrested. Clothes of the accused Pappu alias Narendra were taken over as there were blood stains on his clothes. On the basis of statement given by accused No. 5 Anil Mistry, a wooden log came to be recovered from the aforesaid saw mill and there were blood stains on the wooden log. Blood samples of accused and deceased were taken and they were sent along with aforesaid articles to C.A. office. The aforesaid watchman gave statement to police that he had actually witnessed the incident also. One chit left behind by the deceased indicating his relations with the wife of accused No. 2 was produced by the first informant before police and it was taken over. It was sent to hand writing expert along with some hand writing of deceased. After completion of investigation, chargesheet came to be filed for aforesaid offences.

6) The prosecution examined in all 17 witnesses to prove the offences. Most of the witnesses turned hostile. The prosecution relied on circumstantial evidence as the watchman, who was expected to give direct evidence, has turned hostile. The evidence was given on motive. The Trial Court has held that the evidence given by prosecution is not sufficient to bring home guilt of the accused and all the accused are acquitted by the Trial Court.

7) Before considering the evidence of watchman Satish Nagoria (PW 11), the A.D. report given by him which is duly proved as Exh. 84 in the evidence of Investigating Officer needs to be kept in mind. This report was the first information given to police and in this report, Satish (PW 11) had not informed that he had seen any part of the incident. Even when there was such report given by Satish (PW 11), his statement was recorded by police on 24.12.2001 to show that he was eye witness. It is clear that as the dead body was found near saw mill where the deceased was working as watchman, after registration of the crime such statement came to be recorded. Satish turned hostile and even after the extensive cross examination of Satish by the learned APP in Sessions Court, nothing could be brought on the record to create a probability that he had an opportunity to see the incident. He has flatly denied that he knew the deceased. Due to this circumstance, only some circumstantial evidence remained with the prosecution.

8) The evidence is given by widow of the deceased Shardabai (PW 5) about the aforesaid suspicion of accused against the deceased. The evidence is given in respect of chit also which was written by the deceased to disclose his relationship with the wife of accused No. 2. Some evidence is given by widow to show that few days prior to the date of incident, out of suspicion one report was

given against the deceased by the wife of accused No. 2 and it was report of theft. Due to such report, the deceased was arrested and he was kept behind bars for few days. Thus, even if it is presumed that there was motive for atleast accused Nos. 1 to 4, it was necessary for the prosecution to show that the accused had an opportunity to finish the deceased and there is some convincing evidence against them either to show that there was conspiracy or to show that the accused actually played part in the incident in which murder was committed. The prosecution wanted to prove through the evidence of watchman that accused Nos. 3 and 5 had finished the deceased by actually assaulting him near the saw mill.

9) For aforesaid nature of case of prosecution, some investigation was made. The clothes of accused No. 3 Pappu alias Narendra were taken over in the presence of panch witnesses. But panch witness Ghanashyam (PW 4) in the cross examination has given evidence that when he went to police station along with other panch, the clothes were already kept on table by police. The evidence of so called statement given by accused No. 5 under section 27 of the Evidence Act is also not convincing as the panch witness examined turned hostile. The recovery is shown to be made subsequently after preparing the spot panchanama. The dead body was found on 24.12.2001 near the saw mill. The case of the

prosecution that wooden logs from the saw mill were used and those were again kept back in the saw mill does not appear to be probable in nature. In that case, there would have been evidence of watchman as eye witness. Even the employer of the watchman, owner of the saw mill has turned hostile.

10) The C.A. report shows that blood of group 'A' was detected on the pant of accused Pappu. Human blood was detected on one wooden log recovered on the basis of statement given by accused Anil. The blood group of deceased was 'A' and the blood group of Pappu is 'AB'. The blood group of blood detected on the weapon could not be detected.

11) There is only aforesaid evidence against accused Nos. 3 and 5. For proving the offence of conspiracy, the prosecution relied only on motive. The incident took place in the night time. The evidence given by prosecution does not show that police could collect any convincing material against all the accused persons. Thus, there is convincing evidence only on motive. But the evidence on other circumstantial circumstances is not convincing and circumstances are not established. Due to all these circumstances, this Court holds that there was no sufficient evidence for convicting any of the accused person. The Trial Court has not committed any

error in acquitting the accused. It is not possible to interfere in the decision given by the Trial Court and the view taken by the Trial Court is possible view. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

SSC/