

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

CRIMINAL APPEAL NO. 511/2006

The State of Maharashtra
Through Police Station, Ardhapur
at the instance of
Raosaheb Vithalrao Ghorband
PHC B.No. 1379, P.S. Ardhapur

.. **Appellant.**

Versus

1. Rajesh @ Raju s/o Gangadhar Bandale
Age : 23 yrs, occu. : agri.,
2. Sudam s/o Govind Bandale
Age : 25 yrs, occu.: agri.,
3. Nirmala w/o Digamber Bandale
Age : 25 yrs, occu. : agri.,
4. Lalita w/o Sudam Bandale
Age : 22 yrs, occu. : household
5. Minakshi Vilas Bandale
Age : 20 yrs, occu. : household

All r/o Ganpur, Tal. Ardhapur,
District Nanded.

.. **Respondents.**
(Original accused)

Mr. M.M. Nerrikar, A.P.P. for the Appellant/State.
Mr. S.S. Chaudhari, Advocate for the respondents/accused.

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

Date : 09.01.2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This appeal is directed by the State against the judgment of acquittal passed in Sessions Case No.119/2004 by Adhoc Additional Sessions Judge, Nanded, acquitting accused Nos.1 to 5 of the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code ("I.P.C." for short)

2. Respondent Nos.1 to 5 are the original accused.

3. Facts leading to institution of this appeal are that accused Nos.1 to 5 were prosecuted for the offences punishable under Sections 302, 201 read with Section 34 of I.P.C. Prosecution case in brief is that deceased Keruji @ Babushah Bandale was the resident of Ganpur, Taluka Ardhapur. He had illicit relations with the wife of brother of accused No.2. On 20.01.2000, near-about 8.00 p.m. deceased left his house and thereafter never turned up. Therefore, his maternal uncle namely Sambhaji Munjaji Kadam lodged missing report

(Exh.45) to Police Station, Ardhapur on 23.01.2000. On 28.01.2000, one decomposed human dead body was found near Ganpur river, and therefore, Police Patil, Ganpur informed Police Station, Ardhapur about the said dead body. In the result, A.D. was registered at Police Station, Ardhapur. After holding inquiry, as the decomposed dead body was identified by Sambhaji Kadam as the dead body of missing Keruji @ Babushah, Police Head Constable Raosaheb Ghorband (PW-7) lodged F.I.R. to Police Station, Ardhapur against unknown culprit. In the result, Crime No. 13/2000 was registered at Police Station, Ardhapur under Sections 302 and 201 of I.P.C. against unknown culprit.

4. During the course of investigation, on suspicion, house search of the accused was conducted and blood stained gunny bag, blood stained axe and other incriminating articles were seized from the house of accused persons. In the result, accused were arrested. Blood stained clothes of accused Nos.1 and 2 were recovered. All the seized Muddemal was referred to Chemical Analyst, Aurangabad for analysis. The decomposed

dead body was also examined by Dr. Rajendra Kagne (PW-9). However, he could not give opinion regarding cause of death. Therefore, the bones of the deceased were referred to Dr. Bhikulal Baheti (PW-10), Associate Professor (Anatomy), Medical College, Ambejogai, who submitted his report (Exh.59). After completion of investigation, charge-sheet was submitted against the accused persons before the Judicial Magistrate, First Class, Nanded.

5. The offence punishable under Section 302 of I.P.C. being exclusively triable by the Court of Session, this case was committed to Sessions Court, Nanded.

6. The then Adhoc Additional Sessions Judge, Nanded framed charge (Exh. 8) against accused Nos.1 to 5 for the offences punishable under Sections 302 read with Section 34 the Indian Penal Code. Accused pleaded not guilty and claimed trial.

7. Prosecution examined total 11 witnesses. After considering the oral and documentary evidence placed on

record by prosecution, the learned trial Court pleased to acquit all the accused of the offences punishable under Sections 302 and 201 read with Section 34 of I.P.C. Therefore, this appeal arises.

8. Learned A.P.P. for the appellant/State submitted that the prosecution case is based only on circumstantial evidence in the form of last seen together, recovery of blood stained incriminating articles from the possession of accused persons, recovery of blood stained clothes from accused Nos.1 and 2 and illicit relations of the deceased with the wife of brother of accused No.2. Learned A.P.P. has drawn our attention towards forensic examination report (Exh.59), C.A. Report (Exh. 79) and submitted that as no explanation is coming forth from the accused for recovery of human blood on their clothes, the above circumstantial evidence together with last seen together evidence is sufficient to convict the accused persons under Section 302 and 201 read with Section 34 of I.P.C.

9. Learned defence Counsel submitted that motive

behind the murder of deceased is not established by the prosecution. He has drawn our attention towards cross-examination of the Medical Officer Dr. Bhikulal Baheti (PW-10) and submitted that neither cause of death of deceased is established by the prosecution nor the prosecution can establish that the death of deceased was homicidal. According to defence Counsel, the Muddemal articles were not kept in sealed condition till it were examined by the Chemical Analyzer at Aurangabad, therefore, the possibility of tampering of Muddemal cannot be ruled out. He also points out that as the time of death is not established, the weak evidence of last seen together is not sufficient to establish guilt of the accused beyond reasonable doubt.

10. Undisputedly, no eye witness is available who had seen the accused while committing murder of deceased. Thus, the prosecution case is totally based on the circumstantial evidence. In such case motive plays a very important role. According to learned A.P.P., the motive behind the murder of deceased was his illicit relations with the wife of Vilas Bandale,

who is the brother of accused No.2. The second link of the circumstantial evidence is in the form of “last seen together”. To establish this link of the circumstantial evidence, the prosecution has placed reliance on the testimonies of three witnesses who had seen accused No.2 in the company of deceased on 20.01.2000 at about 8.00 p.m. The third link of the circumstantial evidence is recovery of blood stained axe, empty fertilizer bag and the other articles from the house of the accused persons.

11. To establish the motive behind the murder of deceased, learned A.P.P. has placed reliance on the testimony of Sangita Balande (PW-6) who is the wife of deceased, who deposed that her husband told her regarding his illicit relations with the wife of brother of accused No.2. However, from her cross-examination it emerges that the deceased was well known womanizer and he had also developed illicit relations with many women. The most important aspect is that the version of Sangita Balande (PW-6) regarding disclosure by the deceased of his illicit relations with the wife of Vilas to this witness is proved

as material omission which amounts to contradiction. So also from the cross-examination of Sangita Balande (PW-6) it further emerges that after getting knowledge about illicit relations from her husband, neither she made any complaint to her parents nor to her parents-in-laws. In natural course after getting knowledge of such illicit relations Sangita (PW-6) would have made complaint to her in-laws or to her own parents and she would not have kept mum. In the consequence, the testimony of Sangita Balande (PW-6) regarding disclosure by her husband about his illicit relations with the wife of brother of accused No.2 does not inspire confidence to hold that it was the motive behind the murder of deceased.

12. If we examine the second link of the circumstantial evidence i.e. in the form of “last seen together”, it emerges that though Sangita Balande (PW-6) claims that on 20.01.2000, at night her husband went to the house of accused No.2 and did not return, from her cross-examination it emerges that deceased was addict to Gutkha and on the date of incident after dinner the deceased went outside the house for eating Gutkha as usual

and thereafter he did not come back. It means that Sangita Balande (PW-6) had no personal knowledge as to whether on the date of incident at night after dinner the deceased went to the house of accused No.2 or not. So also from the cross-examination of Sangita Balande (PW-6) it further emerges that police recorded her statement 2 ½ months after the date of incident. Thus, otherwise also the testimony of Sangita (PW-6) does not appear to be trustworthy to hold that on the date of incident at night the deceased was last seen together with accused No.2.

13. The next witness relied by the prosecution is Kesharbai Shinde (PW-3), who deposed that on the date of incident at about 8.00 p.m. she had seen the deceased while passing by the road alongwith accused No.2. According to this witness, it was Thursday and on the next Saturday when she visited the house of accused No.2 at 12 noon hours for demanding vegetable, that time she had seen accused Nos.3 to 5 while washing blood which was lying on the floor of that house and that time they were talking that one body was half

buried near Mahadev temple. According to this witness, she witnessed this occurrence while standing near the pipe of the bathroom of the house of accused.

14. However, from the cross-examination of Kesharbai Shinde (PW-3), it emerges that her testimony regarding witnessing the deceased alongwith accused No.2 on Thursday evening is nothing but a material omission which amounts to contradiction. Even the version of this witness regarding witnessing accused Nos.3 to 5 while washing blood stains from the floor of their house and that she witnessed the occurrence while standing near the pipe of the bathroom of the house of accused is proved as material omission. In addition to this, from her cross-examination it also emerges that when the decomposed dead body of the deceased was found on that day, she narrated the above occurrence to the Police Sub Inspector who visited the house of the father of deceased, but police did not record her statement. From her cross-examination it emerges that her statement was recorded by police two months after the date of occurrence of the incident. Even her statement

(Exh.36) recorded by the Magistrate under Section 164 of the Code of Criminal Procedure shows that it was recorded on 30.01.2001. Thus, the conduct of this witness is absolutely abnormal. Despite the knowledge of missing and an unnatural death of deceased, she kept mum regarding the incident witnessed by her at the house of accused. Such dubious witness, whose statement is recorded after an inordinate delay of by the police, does not inspire confidence and was rightly rejected by the learned trial Court.

15. The third witness relied by prosecution is Ravan Bandale (PW-2), who claims that on 20.01.2000 at about 7.00 p.m. he had seen accused No.2 and deceased when they were sitting outside the grocery shop of one Rajuapa. According to this witness, the deceased and accused No.2 were eating Gutkha. However, from the cross examination of Ravan (PW-2) it emerges that as per the missing report (Exh.45) lodged by Sambhaji Kadam, on 20.01.2000 at about 8.00 p.m. the deceased left his house as he was mentally affected. It means that after eating Gutkha alongwith accused No.2 at about 7.00

p.m. he returned to his house and thereafter at 8.00 p.m. he again left his house and thereafter he did not turn up. Thus, it cannot be said that on the date of incident after 8.00 p.m. the deceased was last seen together in the company of accused No.2. Thus, in fact the evidence placed on record by prosecution in the form of last seen together is nothing but absolutely unreliable.

16. Assuming that on the date of the incident at about 8.00 p.m. the deceased was last seen together in the company of accused No.2, even then it cannot be ignored that the dead body of the deceased was found on 28.01.2000 as per A.D. report (Exh.43). The dead body was in totally decomposed condition and it was partly eaten by dogs and other animals. From the evidence of Dr. Rajendra Kagne (PW-9) it emerges that on 29.01.2000, he performed autopsy examination of the dead body of deceased which was in the form of skeleton and by submitting postmortem notes (Exh.55) he reported that cause of death of deceased cannot be given. In addition to this, the prosecution has examined Dr. Bhikulal Baheti (PW-10) who also

examined the bones of deceased and submitted report (Exh.59) indicating that the mandible of the deceased shows sharp margin injury at its lower part of the body and this injury was caused by sharp heavy cutting weapon. He also opined that if these injuries are ante-mortem in nature, they are sufficient to cause death. This witness also opined that the time of death cannot be given. From the cross-examination of Dr. Baheti (PW-10) it further becomes clear that this medical expert cannot opine whether any injury noticed by him was ante-mortem or postmortem and whether such injury is possible even after the death of deceased. Therefore, the evidence of these both medical experts is not sufficient to establish that the death of deceased is homicidal death.

17. The another important aspect is that when the time of death is not established by the prosecution, only because on 20.01.2000 the deceased and accused No.2 were lastly seen together at about 7.00 p.m. to 8.00 p.m. and later on the decomposed dead body of deceased was found on 28.01.2000, considering the long time gap in detection of the dead body of

the deceased and the time when the deceased was found in the company of accused No.2, the above circumstantial evidence cannot connect accused No.2 with the unnatural death of the deceased.

18. Now, we turn towards the last link of the circumstantial evidence i.e. recovery of blood stained axe and other incriminating articles from the house of the accused.

19. In fact, both panch witnesses on the house search panchnama (Exh.29) have turned hostile. Even the testimony of the Police Inspector Uddhav Molvane (PW-12) who conducted the investigation of this crime is accepted as it is, at the most the prosecution can establish that when this witness took the search of the house of Govindrao Bandale, he seized one fertilizer bag, axe and shirt which were stained with blood and prepared seizure panchnama (Exh.29).

20. C.A. Report (Exh.79) shows that human blood was found only on the axe (Article-7) of which blood group cannot be determined. From the C.A. report it can be ascertained that

on the clothes of deceased, which were found near his dead body, the human blood of group 'A' was detected. However, the human blood of group 'A' could not be detected on axe seized from the house of accused persons. Even the house search panchnama read together with C.A. report cannot connect the accused persons with the death of deceased, in any manner.

21. Undisputedly, the accused persons are agriculturists, and therefore finding of axe and detection of human blood on the blade of axe cannot be an unnatural circumstance as during day-to-day work an agriculturist may sustain cut injuries due to his own axe blade. Even the investigating officer has not taken pains to prepare arrest panchnama of the accused persons to prove that no injury was found on their body at the time of arrest. The Investigating Officer did not refer the accused persons for medical examination to ascertain their blood group. In the circumstances, only on the basis of recovery of one axe having human blood stains, the prosecution cannot connect the accused persons with the unnatural death of deceased.

22. In fact, the prosecution cannot establish that the deceased died of homicidal death. The prosecution cannot establish beyond reasonable doubt that accused caused homicidal death of deceased with the requisite intention or knowledge and accused caused certain evidence to disappear. The view taken by the learned trial Court while acquitting the accused of the offences punishable under Sections 302 and 201 of I.P.C. is probable view, and therefore, this Court is not expected to interfere with the judgment of the trial Court.

23. We hold that this appeal being devoid of merit deserves to be dismissed.

24. Hence, the following order

ORDER

1. Criminal Appeal No.511/2006 is dismissed.
2. The bail bonds of the accused/respondents shall stand cancelled.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE