

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

CRIMINAL APPEAL NO. 594 OF 2006

The State of Maharashtra
through City Police Station,
Jalgaon, District Jalgaon

... **APPELLANT**
(Original Complainant)

VERSUS

Raju Sadashiv Mane,
Age 22 years, Occu. Labourer,
R/o Shiwaji Nagar, Jalgaon

... **RESPONDENT**
(Original Accused)

.....
Shri Y.G. Gujarathi, A.P.P. for appellant/ State
Shri Deepak D. Choudhary, Advocate holding for
Shri J.R. Shah, Advocate for respondent
.....

WITH

CRIMINAL REVISION APPLICATION NO.294 OF 2006

Sunil s/o Vithal Patil,
Age 38 years, Occu. Business,
R/o Navi Peth, Jalgaon
District Jalgaon

... **APPLICANT**
(Original Complainant)

VERSUS

1. The State of Maharashtra
(through the P.S.O., City Police
Station, Jalgaon, Dist. Jalgaon

2. Raju s/o Sadashiv Mane,
Age 24 years, Occu. Labour,
R/o Shivaji Nagar, Jalgaon

... **RESPONDENTS**
(No.2 Original Accused)

.....
Shri B.R. Warma, Advocate for applicant
Shri Y.G. Gujarathi, A.P.P. for respondent No.1/ State
Shri Deepak D. Choudhary, Advocate holding for
Shri J.R. Shah, Advocate for respondent No.2
.....

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

DATED : 23rd MARCH, 2018.

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

1. Vires of the Judgment and order of acquittal dated 16.5.2006, passed by 2nd Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No.163/2005 is challenged by State of Maharashtra, by filing this appeal. Correctness of same Judgment is also challenged by Informant Sunil Vitthal Patil by filing Criminal Revision Application No.294/2006. Respondent Raju Sadashiv Mane is original accused. Both proceedings being filed against one and the same Judgment, are disposed off by this common judgment.

2. Shorn of unnecessary details, prosecution case in brief is that informant Sunil Patil (PW 2) used to run Tea Shop in Navi Peth area, Jalgaon in the Shopping Complex of Doctor Pandit, on the ground floor in the style "Uncleji Haji Chaha" in partnership with Shri Sultan Patel. Accused Raju Mane and the deceased Ansar Patel used to work in the said shop as servants of the informant. As the

accused was habitual late comer, on that count, quarrel used to arise in between deceased and accused person.

3. On 17/06/2005 at about 9.30 to 10.00 a.m. quarrel arose in between accused and the deceased as on that date also accused was late in the shop. On that count, accused started inflicting knife blows on the body of deceased Ansar Patel. That occurrence was witnessed by customer Taslim Patel (P.W.1), and another witnesses. When accused tried to run away from the spot after throwing the blood stained knife on the spot, he was apprehended by the citizens who were present outside the shop. When injured Ansar Patel was shifted to Civil Hospital, Jalgaon, doctor declared him dead. This occurrence was informed to Sunil Patil (P.W.2) by his relatives on phone and therefore, he rushed to his shop and later on to Civil Hospital, Jalgaon. From Taslim Patel (P.W.1), Sunil Patil came to know all the details of the occurrence and, therefore, on the same day he lodged F.I.R. (Exh. 16) to City Police Station, Jalgaon.

4. Crime No.73/2005 was registered against accused person under Section 302 of the Indian Penal Code. Constable Ravindra Tayade (P.W.9) who apprehended the accused while attempting to run away from the shop, took him to Police Station, Jalgaon and he was arrested. A.P.I., Laxman Sapkale (P.W.15) conducted investigation of this crime. During investigation, he

prepared inquest panchanama (Exh.29) of the dead body of the deceased and referred it for postmortem examination. Doctor Kishor Chaudhari (PW 14) performed autopsy examination of the dead body and submitted postmortem report (Exh.14). On arrest of the accused under arrest panchanama (Exh.44), his blood stained shirt and full pant were seized. During the course of investigation, spot panchanama (Exh. 22) and seizure memo of the clothes of the deceased (Exh.26) were drawn by the investigating officer. Blood stained knife was also seized from the spot. The seized muddemal was referred to Chemical Analyst, Aurangabad.

5. After completion of the investigation, charge-sheet was submitted in the Court of Chief Judicial Magistrate, Jalgaon. Offence punishable under Section 302 of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Jalgaon.

6. Charge (Exh.4) was framed against accused for the offence punishable under Section 302 of the Indian Penal Code. He pleaded not guilty and claimed trial.

7. Defence of the accused is of total denial.

8. Prosecution examined 15 witnesses. After considering the evidence placed on record, the learned trial Court pleased to

acquit the accused of the offence punishable under Section 302 of the Indian Penal Code. That order of acquittal is challenged in the present Criminal Appeal and Criminal Revision Application.

9. Heard learned A.P.P. for the State. and Shri Choudhary, learned counsel holding for Shri J.R. Shah, learned counsel for the Respondent/ accused.

10. Learned A.P.P. for the State submitted that, though Taslim Patel (P.W.1) consistently deposed before the Court regarding every details of the occurrence, his direct evidence is disbelieved by learned trial Court without assigning proper reasons. He pointed out that in the entire cross-examination of Taslim (P.W.1) defence nowhere suggested that he was not in position to witness the occurrence. However, learned trial Court has erroneously drawn incorrect inference that Taslim (P.W.1) could not watch and identify the accused at the time of occurrence of the incident.

11. Next limb of the argument of learned A.P.P. is that the testimony of Taslim (P.W.1) was fully corroborated by Najib Patel (P.W.11) and Police Constable Ravindra Tayade (P.W.9) who apprehended accused when he was trying to bolt away from the spot.

12. Learned A.P.P. also pointed out that blood of the

deceased was also detected on the knife seized from the spot as well as on the shirt and pant of the accused. The sum and substance of submission of learned A.P.P. is that the direct evidence of eye witness is also corroborated by circumstantial evidence and there is no room for extending benefit of doubt in favour of the accused.

13. Contention of learned counsel for the respondent/accused is that from the cross-examination of Taslim (P.W.1), it has been brought on record that when this witness watched the occurrence, that time, deceased was lying on the ground and the back portion of the assailant was towards this witness and therefore, identification of the accused by Taslim (P.W. 1) is doubtful.

14. Next submission of learned counsel for respondent is that no evidence in respect of motive behind the murder of deceased Ansar Patel is proved by prosecution. He submitted that the circumstantial evidence placed on record is not trustworthy to establish every link of the circumstantial evidence to prove guilt of the accused beyond reasonable doubt. The sum and substance of the argument submitted by learned defence counsel is that the view taken by learned trial Court is possible view and therefore, the judgment of acquittal cannot be set aside.

15. Though this is appeal against acquittal, the settled law is that, this Court can reappreciate the evidence placed before the trial Court to examine whether the view taken by trial Court while acquitting the accused is possible view. This Court can interfere only if the view taken by trial Court is impossible view.

16. The evidence placed on record by prosecution is direct evidence of eye witness Taslim (P.W.1) as well as circumstantial evidence of Constable Ravindra Tayade (P.W.9) who nabbed the accused outside the Uncleji Haji Tea Shop, when he was trying to run away after throwing blood stained knife on the spot. In addition to evidence of Ravindra (P.W.9), prosecution has also examined Najib Patel (P.W.11) who had also seen the accused with blood stained hands and having blood stains on his shirt and pant when accused was apprehended by the persons outside the Tea Shop. In addition to this circumstantial evidence, prosecution has also brought on record seizure of blood stained clothes from the person of accused at the time of his arrest and seizure of blood stained clothes of the deceased after post mortem examination. The C.A. report (Exh. 35) shows that, on the clothes of deceased, human blood of Group A was found as well as on the blood stained knife seized from the spot of the incident as well as on the clothes of the accused same human blood i.e. of Group 'A' was detected on chemical

examination of these articles.

17. Initially, we propose to examine whether Taslim (P.W.1) is trustworthy eye witness and his sole testimony can be believed to base the conviction of the accused for the offence punishable under Section 302 of the Indian Penal Code. No doubt, evidence brought on record by prosecution regarding motive behind the murder of deceased Ansar Patel is weak because, from the testimony of Barwinbi Patel (P.W.3) who is wife of the deceased, only it has been brought on record that prior to the incident, trifling quarrel arose in between deceased and accused, who used to work as servants in the Tea Shop of Sunil Patil (P.W.2). Even Sunil Patil (P.W.2) deposed regarding quarrel in between accused and deceased in the shop on account of working in the Tea Shop. From the testimony of these witnesses, it emerges that, deceased used to scold the accused as he was not punctual while attending his duty in the shop. However, such type of minor dispute cannot be accepted as motive behind the murder.

18. However, if the direct evidence placed on record is trustworthy, in that case, motive does not play any important role. Taslim (P.W.1) is the regular customer of the Tea Shop, where deceased and accused used to work as servants. From the evidence of Taslim (P.W.1) it emerges that, on 17.6.2005 after 9.00

a.m., when he reached to Uncleji Haji Tea Shop for purchasing tea powder and when he was parking his motorcycle outside the shop, that time he saw that, accused was inflicting knife blows on the body of Ansar Patel. Taslim (P.W.1) shouted "*Maru Nako Re, Maru Nako Re*" and immediately rushed towards the shop. That time accused threw the knife in his hand on the spot and started running away. That time, after hearing shouts of Taslim (P.W.11), "*Pakda Pakda*", the persons who were present outside the shop, apprehended the accused. Thereafter the injured Ansar Patel, who was lying on the floor of the shop, was immediately rushed to Civil Hospital, Jalgaon by autorickshaw where he was declared "dead". Taslim (P.W.1) also deposed that, hands as well as full pant of the accused were stained with the blood.

19. Testimony of Taslim (P.W.1) is fully corroborated by Police Constable Ravindra Tayade (P.W.9) who deposed that on the date of incident in between 9.30 to 9.45 a.m., when he was passing by road near the above said Tea Shop, that time, after hearing shouts, he rushed towards the shop and saw the accused who was trying to run away from that Tea Shop. Ravindra Tayade (P.W.9) deposed that, he apprehended accused on the same spot outside the shop, the people gathered on the spot also shifted the injured Ansar Patel to Civil Hospital. Najib Patel (P.W.1) has also

corroborated the testimony of Constable Ravindra Tayade by deposing that on the date of incident at about 10.00 a.m., when he was passing by road, he saw crowd near the above said Tea Shop and saw that, accused was apprehended by some persons outside the shop and that time, both hands as well as clothes of the accused were stained with blood.

20. After going through the judgment passed by learned trial Court, it emerges that, testimony of these three witnesses is disbelieved by trial Court only on flimsy grounds. According to trial Court, Taslim (P.W.1) admitted in his cross-examination that, when he saw the deceased, that time he was lying on the floor of the shop and the back of the assailant was towards Taslim (P.W.1) and, therefore, neither Taslim could witness the occurrence nor he can identify him.

21. However, trial Court lost sight that though Taslim (P.W.1) has admitted in his cross-examination that on the date of incident when he saw Ansar Patel for the first time, that time he was lying on the floor of the shop. However, Taslim (P.W.1) has nowhere admitted in his cross-examination that he was not in position to watch as to what accused was doing with the deceased Ansar Patel inside the shop. Taslim (P.W.1) nowhere deposed that when he saw accused while inflicting knife blows on the body of Ansar Patel, that

time Ansar was in standing posture. Therefore, over much importance cannot be given to admission of this witness that when he witnessed the occurrence, that time Ansar Patel was lying on the floor of the shop. In that position also accused could inflict knife blow on the body of the deceased.

22. From the evidence of Sanjay Narkhede (P.W.7), who is witness on spot panchanama (Exh.23), it becomes clear that, the main entrance of the Tea Shop was towards northern side. In the cross-examination of panch (P.W.7), it has also come on the record that, if one person stands in front of shop on northern side, he can see show-case of the height 4 ft. on the front side of the shop fixed in East-West wall. However, that does not mean that Taslim (P.W.1), who parked motorcycle on the northern side of the shop cannot watch from the main entrance door what was happening inside the shop. Panch (P.W.7) has also made it clear that when he visited the shop, that time even western side shutter of the shop was open. Thus, the inside portion of the shop was within the view of the outsiders from northern as well as from western side of the shop. In the circumstances, Taslim (P.W.1), who was just outside the shop at the time of occurrence, could have clear sight of the occurrence inside the shop. In the circumstances, we have no hesitation to hold that the inference drawn by trial Court that Taslim (P.W.1) was not in

position to witness the occurrence from the northern side of the shop, is only imaginary inference without any base.

23. So also, Taslim (P.W.1) had seen the accused in broad daylight while running away from the shop after throwing knife on the spot and at that time, the hands and clothes of the accused were stained with blood. Therefore, Taslim (P.W.1), who was well acquainted with the deceased and accused as a regular customer, cannot make any mistake regarding identification of the appellants. We are fully satisfied that, nothing could be elicited from the cross-examination of Taslim (P.W.1) by defence counsel which creates doubt regarding trustworthiness of this independent eye witness. On the other hand, being regular customer of the said Tea Shop, presence of Taslim (P.W.1) on the spot is natural and cannot be doubted in any manner.

24. From the testimony of Sunil Patil (P.W.1), it emerges that, after knowing about the occurrence when he went to Civil Hospital, Jalgaon, at that place, from Taslim (P.W.1) he came to know about details of the occurrence and accordingly, he lodged F.I.R. Exh.16 to City Police Station, Jalgaon. The F.I.R. Exh.16 is registered on the date of incident at 10.40 a.m. Thus, due to prompt lodging of the F.I.R., there remains no possibility of concoction of false case by informant Sunil Patil or by Taslim (P.W.1).

25. In the circumstances, we hold that, even sole testimony of Taslim (P.W.1) is sufficient to prove beyond reasonable doubt that, on the date of the incident in between 9.30 to 10.00 a.m. accused inflicted knife blows on the body of Ansar Patel and intentionally killed him.

26. Otherwise also, testimony of Taslim (P.W.1) is corroborated by Police Constable (P.W.9) and Najib Patel (P.W.11). Ravindra Tayade (P.W.9) had apprehended accused outside the shop when he was trying to run away from the said Tea Shop. Despite searching cross-examination, Ravindra Tayade (P.W.9), stood constant and nothing could be brought on record which creates doubt about truthfulness of the evidence of this witness. Najib Patel (P.W.11) is also independent witness who has proved that, on the date and time of the occurrence accused was apprehended outside the shop and that time, hands as well as clothes of the accused were stained with blood. These all witnesses are totally independent witnesses, who carried no grudge against the accused person. Therefore, we do not find any reason to disbelieve the testimony of these both witnesses to hold that, immediately after the occurrence accused was apprehended outside the Tea Shop with blood stained clothes on his body.

27. Prosecution has also examined Dalsherkha Pathan (P.W.8) who deposed regarding seizure of the clothes of the deceased under panchanama (Exh.17) and seizure of red colour shirt and blue colour pant (Articles B and C) from the person of the accused under seizure memo (Exh.28). Nothing could be elicited in the cross-examination of this panch witness to disbelieve his version. Thus, on the basis of testimony of Darlsherkha (P.W.8) and investigating officer (P.W.15), prosecution has also proved that Articles D, E and F, clothes of the deceased were seized by investigating officer and Articles B and C are the shirt and pant seized from the accused persons.

28. By examining Panch Sanjay Narkhede (P.W.7), prosecution has also proved preparation of spot panchanama (Exh.23) and seizure of blood stained knife (Article A) and sample of blood spread over on floor, from the spot. This witness has duly identified knife (Article A) as the same knife which was seized from the spot of the incident. This witness also stood constant despite searching cross-examination by defence counsel. From the cross-examination of this witness, defence has brought on record that scrapping of the blood lying on the spot was also collected by investigating officer.

29. Police Constable Khushal Patil (P.W.10) has proved

that, these all seized articles were deposited by him to C.A., Aurangabad on 2.7.2005 in sealed condition. The C.A. report of these muddemal articles is on record at Exh.45, which shows that, human blood of Group 'A' was found on the spot, on the clothes of the deceased, on the knife (Article A) seized from the spot as well as on the shirt and pant (Articles B and C) seized from the possession of the accused. In the statement recorded under Section 313 of the Criminal Procedure Code, the accused has not given any explanation for detection of human blood of Group A i.e. blood of the deceased on his clothes. Therefore, this circumstantial evidence i.e. detection of the blood of the deceased on knife (Article A), seized from the spot as well as detection of the same human blood group even on the clothes of the accused, certainly connects the accused with the commission of murder of Ansar Patel even on the basis of circumstantial evidence. Each and every link of the circumstantial evidence is established by the prosecution which points finger towards the accused as culprit, which rules out every possibility of his innocence.

30. By examining Dr. Kishor Choudhari (P.W.14), prosecution has also proved that, on 17.6.2005, when Dr. Kishor (P.W.14) performed post mortem examination of the dead body of Ansar Patel, he found following 8 injuries on the dead body :

- (1) Spindle shaped stab wound on back near vertebral column (1.5 x 1 x 5 cm.)
- (2) Spindle shaped stab wound on lower back 1.5 x 1 x 4 cm.
- (3) Elliptical wound 1.5 x 1 x 2 cm. on right shoulder posteriorly.
- (4) Spindle shaped wound on left side of chest 1.5 x 1 x 1 cm.
- (5) Stab wound in supra sternal notch 1.5 x 1 x 1 cm.
- (6) Incised wound 1.5 x 1 x ½ cm. on anterior side of neck.
- (7) Cut injury 1.5 x 1 x 1 cm. on left thigh anteriorly.
- (8) Stab wound 1.5 x 1 x 2 cm. on left infra axillary region.

31. Dr. Kishor (P.W.14) has opined that, all the injuries found on the body of deceased are possible due to knife (Article A) and those injuries are sufficient to cause death in ordinary course of the nature. According to him, the cause of death was due to haemorrhagic shock due to multiple injuries. Despite searching cross-examination, this witness stood constant on his opinion. Thus, even the medical evidence fully corroborates direct evidence placed on record by prosecution.

32. In view of above discussion, on the basis of truthful testimony of Taslim Patel (P.W.1), which is corroborated by testimony of Police Constable Ravindra Tayade (P.W.9) and Najib Patel (P.W.11), as well as above discussed circumstantial and

medical evidence on record, prosecution has proved beyond reasonable doubt that, on the above said date, time and place, accused intentionally caused death of Ansar Patel by assaulting him by knife blows. In other words, prosecution has proved beyond reasonable doubt guilt of the accused under Section 302 of the Indian Penal Code. The view taken by trial Court while acquitting the accused by giving benefit of doubt on flimsy grounds is impossible view as well as view against record i.e. perverse. Therefore, this Appeal against acquittal deserves to be allowed to record conviction of the accused under Section 302 of the Indian Penal Code.

33. Considering young age of the accused as well as above discussed circumstances of the case, we hold that, this is not a fit case which calls for extreme penalty of death. Therefore, life imprisonment and fine of Rs.1000/- (rupees one thousand), in default rigorous imprisonment for one month will be just and appropriate punishment to the accused. Hence we pass the following order :

ORDER

- (i) Criminal Appeal No.594/2006 is allowed.
- (ii) Judgment and order delivered in Sessions Case No.163/2005, acquitting the respondent Raju Sadashiv Mane of the offence punishable under Section 302 of the Indian

Penal Code is hereby quashed and set aside.

- (iii) Respondent/ accused Raju Sadashiv Mane is convicted for the offence punishable under Section 302 of the Indian Penal Code. Respondent accused is sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- (rupees one thousand), in default to suffer rigorous imprisonment for one month.
- (iv) The respondent to surrender his bail bonds immediately before the trial Court for undergoing the sentence.
- (v) Set off be given under Section 428 of the Criminal Procedure Code for the period already undergone by the respondent/ accused and that period should be mentioned in the jail warrant.
- (vi) Conviction warrant is to be issued accordingly.
- (vii) Criminal Revision Application No.294/2006 is disposed of in the above said terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE