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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 588 OF 1997

Anil Jagannath Rokade
Age – 23 years, Residing at Maradhe,
Taluka & District- Satara.] .. Appellant

Vs.

The State of Maharashtra] .. Respondent

Mr. Chaitanya Pendse for the Appellant.
Mrs. M. M. Deshmukh, APP for the Respondent-State

**CORAM : INDRAJIT MAHANTY AND
V. K. JADHAV, JJ.**

Judgment reserved on : **3rd DECEMBER, 2018.**
Judgment pronounced on : **22nd DECEMBER, 2018.**

JUDGMENT (Per V. K. Jadhav, J.)

1. This is an Appeal preferred against the Judgment and order of conviction by the sole accused. The learned IV Additional Sessions Judge, Satara by Judgment and order dated 22.08.1997 in Sessions Case No. 188 of 1996 has convicted the Appellant-accused for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- I/d to undergo S. I. for one year.

2. The brief facts of the prosecution case are as follows:

Deceased Pralhad had two younger brothers, namely, Suresh and Dada. Deceased Pralhad, said Suresh and Dada were residing separately with their respective families in one house but in different rooms. The real sister of the Appellant-accused viz. Usha was given in marriage to said Dada. On 09.05.1996, Usha had sustained burns in the house and she died on 17.05.1996 due to said burns. She had sustained those burns accidentally by flickering of flames of stove. Even after the death of Usha, Appellant-accused Anil used to come to the house of deceased Pralhad. Likewise the brothers of the Appellant-accused also used to come to the house of deceased Pralhad. Appellant-accused Anil used to say that they had murdered his sister by burning her and he would take the revenge of it.

3. It further reveals from the prosecution story that the incident had taken place on 28.08.1996. It was the festival of Rakhi Poornima. On that day, the uncle of deceased Pralhad, namely, Jotiram Gaikwad was expired and the post funeral ceremony was to be performed in the field at Vasti. On 28.08.1996 at about 8.00 a.m. deceased Pralhad left home for attending the said ceremony. However, his brothers Suresh and Dada left home in order to attend their duties at Satara. At about 9.30 a.m. Appellant-accused Anil went to the house of his deceased sister Usha and talked to

her children. Thereafter, PW Phulabai (wife of deceased Pralhad) had tied Rakhi to Appellant-accused in the Vharanda (front open room) of their house. PW Phulabai had also served him breakfast. PW Vinod Gaikwad, Vijay had also taken breakfast along with accused Anil. After breakfast accused Anil inquired with PW Phulabai as to where deceased Pralhad had gone. PW Phulabai had informed that deceased Pralhad had been to a place where the post funeral ceremony of Jotiram was to be performed. Thereafter, accused Anil told her that "मी राखीच्या बंधनात राहणार नाही, मी दोघ गिपैकी एकीचे कुंकू पुसणार आहे" (he is not bound by the Rakhi tied on his hand and he would wipe out the Kunku either of them from their forehead). PW Phulabai asked him as to what he would get by doing that. Accused Anil again uttered previous sentence. Thereafter, accused Anil entered in the room of deceased sister Usha at about 11.00 a.m., and thereafter left the home. It is the further prosecution story that accused Anil went towards the place of funeral ceremony, took deceased Pralhad towards the nearby place and stabbed him on his abdomen with the help of weapon Gupti, Article 10. Though deceased Pralhad was immediately taken to the hospital, he died in the hospital.

4. On the basis of complaint lodged by PW Phulabai Exhibit 28, Crime No. 52 of 1996 for the offence punishable under Section 302 of the Indian Penal Code came to be registered in the concerned police station. PW 9

API Ashok Survegandh has drawn the inquest panchnama and sent the dead body for the post mortem examination. He also drawn the spot panchnama Exhibit 20, seized plain soil, blood mixed soil from the spot and also the articles lying thereon. He also seized the clothes of the deceased and also recorded the statement of important witnesses. On 30.08.1996 the IO has effected the arrest of the accused. Thereafter, at the instance of the accused, the muddemal Article No.10 weapon Gupti came to be seized from the place where it was concealed by the accused. All the muddemal articles were sent to C.A. After completion of investigation, the IO has submitted charge-sheet against the accused under Section 302 of the IPC.

5. The learned Judge of the trial Court has framed the charge against the accused under Section 302 of the IPC. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution has examined in all 9 witnesses to substantiate the charge levelled against the accused. The defence of the accused is of total denial. The learned Judge of the trial Court by his impugned Judgment and order convicted the accused under Section 302 of the IPC and sentenced him to suffer life imprisonment. Hence, this Appeal.

6. Learned Counsel for the Appellant-accused submits that there is no

iota of evidence to connect the accused with the crime. The prosecution case entirely rests on the circumstantial evidence and there is no direct evidence in this case. The real sister of accused, namely, Usha met with an accidental death due to flickering of flames of the stove and the said incident of sustaining burns accidentally was witnessed by her two children. It was, thus, unlikely on the part of the accused to carry to grudge in his mind by suspecting about the death of his sister Usha. The learned Counsel submits that thus the prosecution failed to prove the motive on the part of the accused for the commission of alleged crime. It is also unlikely on the part of the accused to disclose about his intention of commission of murder to PW Phulabai. The learned Counsel submits that PW 7 Balu Motling is highly interested witness. His evidence is not reliable, trustworthy and consistent. PW Balu was also the panch witness on the spot panchnama Exhibit 20. PW Balu Motling had shown the spot of incident to the panchas and police and at the time of drawing of panchnama informed to them that deceased Pralhad went towards the stream along with another person. Even PW Balu Motling has failed to disclose before police and also before PW 5 Phulabai in the hospital that deceased Pralhad disclosed him the name of the assailant. The learned Counsel submits that the prosecution story about the oral dying declaration and last seen together is a concocted story. PW Balu Motling has also admitted in his cross-examination that two boys had been to a brook side

after the deceased Pralhad fell down and those boys were the sons of Shankar Nanavare. The learned Counsel submits that the possibility of the participation in the crime by some other persons cannot be ruled out. The learned Counsel submits that the recovery of the blood stained clothes and the weapon Gupti Article 10 is the false evidence prepared by the IO. PW 6 Vinod Gaikwad has admitted in his cross-examination that a day prior to drawing of panchanama Exhibit 35 under Section 27 of the Evidence Act, the police had shown him the said Gupti Article 10. The memorandum panchanama and recovery of weapon Gupti was drawn on 1st of September, 1996 whereas the same article was shown to PW Vinod Gaikwad on 31.08.1996 by the police. Even the trial Court discarded the said evidence of recovery of the weapon Gupti at the instance of the accused. The learned Counsel submits that the prosecution has failed to prove the case against the accused beyond reasonable doubt. There is no chain of circumstantial evidence. The accused is entitled to benefit of doubt thereof.

7. The learned APP submits that the evidence of PW 5 Phulabai, PW 6 Vinod and PW 7 Balu is reliable, trustworthy and consistent. There was no reason for them to depose falsely against the accused. Accused Anil had given open threat and disclosed his intention to PW Phulabai. Further the accused procured the information from PW Phulabai as to where deceased

Pralhad had gone in the morning and accordingly went to the spot of the funeral ceremony. Before that, accused Anil had shown the weapon Gupti Article 10 to PW Vinod Gaikwad. The learned APP submits that PW 7 Balu Motling is important witness before whom deceased Pralhad had made oral dying declaration and disclosed the name of accused Anil as his assailant. Further PW Balu Motling had seen the deceased lastly in the company of the accused just before his death. The blood stained clothes of the accused also came to be seized after his arrest and the blood group 'A' of the deceased appeared on those blood stains. Accused Anil had himself disclosed his intention and as such the prosecution has established the motive on his part for commission of crime. The learned Judge of the trial Court has rightly appreciated the evidence and convicted the accused. There is no substance in the Appeal and the Appeal is, thus, liable to be dismissed.

8. Prosecution has mainly relied upon the evidence of PW 5-Phulabai, PW 6-Vinod Gaikwad, PW 7-Balu Motling and PW 8-Ganpat Gaikwad. PW 7-Balu Motling is the star witness.

9. According to the prosecution, PW Balu Motling has lastly seen deceased Pralhad in the company of the accused and immediately after that deceased Pralhad ran towards him in the injured condition and made oral

dying declaration disclosing the name of the assailant as the accused herein. PW Balu Motling has deposed that on the day of incident at about 8.30 a.m. he had been for attending the post funeral ceremony and deceased Pralhad was also present there. The said ceremony was to be performed in the house of Jotiram Gaikwad which is situated beyond the village. Deceased Pralhad was fetching water for the said ceremony. At about 11.00 a.m. PW Balu Motling went towards the brook for answering nature's call and while returning, he saw deceased Pralhad and the accused. They were coming from the side of the place where the ceremony was going on. While he was proceeding to the said place of ceremony, according to him, he had crossed them. Deceased Pralhad and accused Anil proceeded towards the brook. He has further deposed that when he reached to the house of Shankar Nanavare, deceased Pralhad had returned towards him and told that he was assaulted by Anil and he fell down. There was bleeding from the abdomen of Pralhad. PW Balu Motling rushed towards the place of ceremony and told the persons gathered there that accused Anil had assaulted deceased Pralhad. In this backdrop, it is necessary to look at the contents of spot panchnama Exhibit 20. Admittedly, after registration of the crime, the spot panchnama Exhibit 20 was drawn and thereafter the IO has recorded the statement of witness including PW Balu Motling. Spot panchnama Exhibit 20 was drawn in between 15.45 to 16.45 on 28.08.1996. On going through the contents of

the spot panchnama minutely, it appears that the spot of incident was shown by PW 7-Balu Motling and he had specifically stated before the police that at about 11.00 a.m. he went towards the brook to answer the nature's call and while returning from the brook, he saw deceased Pralhad along with one person proceeding towards the brook. PW 1 Madhukar Gade, who happened to be a panch of the spot panchnama Exhibit 20, has also admitted that PW Balu Motling has stated so before him. It is the part of the evidence that PW Balu Motling was knowing the accused from many years. There was no reason for PW Balu Motling to refer the companion of deceased Pralhad as a "person" instead of taking the name of the accused. Thus, the inference could be drawn that PW Balu was not knowing the person and therefore he has referred so at the time of drawing the panchnama. PW 9 API Ashok Survegandh has also admitted that at the time of drawing of spot panchnama Exhibit 20, PW Balu Motling has stated the portion marks 'A' and 'B' of the spot panchnama Exhibit 20. It is necessary to repeat here that even PW Balu Motling has also not disputed the same. However, he has not bothered to explain it nor the prosecution.

10. As admitted by PW Balu Motling, he was hard of hearing from last 10-15 years prior to the incident. He has further admitted in his cross-examination that at the time of last seen and so called oral dying declaration, two boys had been towards the brook side after Pralhad fell

down and those boys were the sons of Shankar Nanavare. PW Balu Motling has further admitted in his cross-examination that he took deceased Pralhad to Civil Hospital and after the death of Pralhad, Police Inspector came to hospital. He was inquired about the incident to Police Inspector and his statement was recorded. After some time, the widow of Pralhad (PW Phulabai) and other relatives came to the hospital. PW Balu Motling further stated in his cross-examination that he has stated before the police that deceased Pralhad was lying unconscious in injured condition and he was lying behind the house of Nanavare and they had brought him in hospital by auto rikshaw. According to him the same thing he has told to doctor. Admittedly, PW Phulabai went to the hospital first and after the death of her husband, she went to police station to lodge the complaint. PW Balu Motling was there in the hospital for a long. Even then, in the complaint Exhibit 28, the name of PW Balu Motling was not mentioned as witness. Furthermore, PW Balu Motling rushed to the place of ceremony and informed that deceased Pralhad was assaulted by Anil and the the people rushed to the place where Pralhad was lying. The prosecution has examined one PW 8 Ganpat Gaikwad on this point. According to him, PW Balu Motling and wife of Shankar Nanavare rushed to the place of post funeral ceremony and PW Balu Motling said 'Pala, Pala, Anil ne Pralhadla Marle.' (Run, Run, Anil had assaulted Pralhad). It, thus, appears that the wife of Shankar Nanavare was the person to whom PW Balu Motling has

contacted first in time after Pralhad made a dying declaration. However, prosecution has not examined the said wife of Shankar Nanavare, instead, examined PW 8 Ganpat Gaikwad whose name was at all disclosed by PW Balu Motling. PW Ganpat Gaikwad has inserted certain words in the mouth of PW Balu Motling which he never uttered. Even PW Balu Motling has denied that he ever said Pala Pala i.e. Run, Run. It is to be mentioned here that PW Balu Motling is related to the complainant. We are not inclined to place reliance on the evidence of PW Balu Motling and PW Ganpat Gaikwad. Their evidence is not reliable, trustworthy and consistent. PW Balu Motling has kept mum in the hospital when he was inquired about the incident by the police and even did not disclose the name of the accused before the police and the Medical Officer. He has simply narrated that deceased Pralhad was lying in injured condition and he took him in the hospital along with others in an auto rikshaw. In our considered opinion PW Balu Motling was knowing as to who was the assailant and that is the reason that he had given reference to one unknown person accompanied with deceased Pralhad when he was proceeding towards the brook from the place of ceremony. Assuming that PW Balu Motling is telling the truth, he had also admitted in his cross-examination that two sons of Shankar Nanavare had been towards the brook after Pralhad fell down. This possibility cannot be ruled out that deceased Pralhad was assaulted by some other person.

11. So far as the evidence of PW 5-Phulabai is concerned, the prosecution has relied upon her evidence to establish the motive on the part of the accused for commission of the alleged crime. PW-Phulabai has deposed that her husband deceased Pralhad had two brothers, namely, Suresh and Dada. Both of them are married. They were residing separately with their respective families in one house but in different rooms. It, thus, appears that deceased Usha, who happened to be a real sister of the accused, died in her matromonial home while cohabiting with her husband Dada. PW-Phulabai has also admitted that said Usha sustained burns accidentally. PW-Phulabai has also admitted that her children are eye witnesses to the said accidental death. She has also deposed that the accused used to come to their house and also on festival of Rakhi. In the backdrop of these admissions, it is difficult to persuade ourselves that accused Anil was suspecting some foul play about the death of his sister Usha and thus wanted to take revenge. It is very unlikely on the part of the accused Anil to disclose his intention before PW-Phulabai in a manner as deposed by PW-Phulabai. In ordinary course of nature, PW-Phulabai could have disclosed to her deceased husband Pralhad or at least the brothers of her husband. Furthermore, if at all accused Anil had some grudge, he could have spoken against the husband of his sister Usha. All the brothers were residing separately in different rooms. There was no

reason for accused Anil to think about the involvement of deceased Pralhad in the death of Usha which according to him was a suspicious incident. We do not think that the prosecution has established the motive like any other circumstances. Needless to say that if the case rest upon the circumstantial evidence, it is incumbent upon the prosecution to prove the motive as like any other circumstances. So far as the evidence of PW 6-Vinod Gaikwad is concerned, we do not think that his evidence is worthy to be considered.

12. The learned Judge of the trial Court has not considered the evidence with regard to the recovery of the weapon at the instance of the accused as reliable and trustworthy. The learned Judge has discarded the said evidence about the recovery of weapon Gupti. The learned Judge has observed that from the evidence of PW 6-Vinod Gaikwad, it appears that the Article No.10 before the Court is not used by the accused while assaulting deceased Pralhad.

13. Incident has taken place on 28.08.1996 in between 11.00 a.m. to 11.15 a.m. PW 9-API Ashok Survegandh has arrested the accused on 30.08.1996. The prosecution has proved the contents of the seizure panchnama of the clothes of the accused Exhibit 22 through PW 2-Nathu Pisal. It is very unlikely on the part of the accused to wear the same clothes two days after the incident, though having blood stains over it and

the shirt was torn on the right arm. So, we are not inclined to give much importance to credence of the recovery of blood stained clothes of the accused and further the confirmation from the C.A. report about the blood group of the said blood stains on the clothes.

14. In the case of **The State of Punjab Vs. Bhajan Singh & Ors.** reported in (1975) 4 SCC 472, the Supreme Court held that, suspicion, by itself, however, strong it may be, is not sufficient to take place of proof and warrant a finding of guilt of the accused.

15. The Supreme Court, in case of **Kali Ram Vs. State of Himachal Pradesh** reported in 1973 (2) SCC 808 observed as under :

“Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

16. In the case of **Hanumant Govind Vs. State of Madhya Pradesh**, 1953 Cr. L. J. 129 and also reiterated in the case of **Mohd. Mannan Vs. State of Bihar**, (2011) 5 SCC 317 the Supreme Court has observed “that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first

instance, be fully established, and all the facts so established should, be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such that as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.” The above said principles were reiterated in **Sudama Pandey Vs. State of Bihar, AIR 2002 SC 293, Subhash Chand Vs. State of Rajasthan, (2002) 1 SCC 702.**

17. In the instant case, we find that the circumstances relied on by the prosecution are not conclusive in nature. It is a part of the evidence that many circumstances which we have discussed in the foregoing paras are consistent with the innocence and inconsistent with the guilt of the accused. The prosecution has failed to prove its case beyond doubt. In a case rest upon the circumstantial evidence, it is incumbent upon the prosecution to prove the motive like any other incriminating circumstances. We find the evidence regarding the motive is insufficient and unreasonable. It is well settled that the suspicion, by itself, however, strong it may, is not sufficient to take a place of proof and warrant a finding of the guilt of the

accused. Thus, the accused is entitled for the benefit of doubt. Hence, we proceed to pass the following order:

ORDER

1. The Criminal Appeal is hereby allowed.
2. The Judgment and order of conviction dated 22.08.1997 passed by the IV Additional Sessions Judge, Satara in Sessions Case No. 188 of 1996 is hereby quashed and set aside.
3. Appellant-accused Anil Jagannath Rokade is hereby acquitted of the offence punishable under Section 302 of the Indian Penal Code.
4. Criminal Appeal is, accordingly, disposed of.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]