

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

CRIMINAL APPEAL NO.1038 OF 2003

The State of Maharashtra	 Appellant
versus	
Santosh Shivram Nakhate & Anr.	... Respondents
.....	

- Mrs.M.M. Deshmukh, Advocate for the Appellant/State.
- None for Respondents.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 05th JUNE, 2018.**

P.C. :

1. The State has taken exception to the Judgment and Order passed by the learned Session Judge dated 09/05/2003, thereby acquitting the original Accused Nos.1 and 2 for the offences punishable u/s 364, 302 and 201 of the Indian Penal Code (for short 'the Indian Penal Code').
2. The original accused was charged for having committed murder of one Laxman Ovale. It is the case of prosecution that the deceased Laxman Ovale was having a

dispute with Balu Nakhate over agricultural land. It is the prosecution case that on 08/07/2002, the original Accused Nos.1 and 2 picked up Laxman from a place in front of Rajdhani Hotel on their motorcycle and took him to various places on their motorcycle and murdered him by stoning him to death. The incident is alleged to have taken place on 08/07/2002.

3. The learned Trial Judge after considering the evidence led on behalf of the prosecution, held that the prosecution has failed to prove its case beyond reasonable doubt and as such acquitted the accused.
4. Being aggrieved by the said Judgment and Order, present Appeal has been filed by the State. During the pendency of the Appeal, the Respondent No.1 Santosh Shivram Nakhate died and as such the Appeal stands abated against him.
5. The learned APP submitted that the learned Trial Judge has grossly erred in acquitting the accused. She submitted

that though the witnesses have established that the deceased was last seen in the company of the Accused the dead body of the deceased was recovered at the instance of the accused and the incriminating material i.e. clothes worn by the accused at the time of commission of the offence, were recovered at the instance of the Accused, the learned Trial Judge has erred in acquitting them.

6. The principles governing the conviction in the case based on the circumstantial evidence are very well crystallized in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra, reported in AIR 1984 SC 1622*. For resting conviction on the basis of circumstantial evidence it is not only necessary for the prosecution to prove the incriminating circumstance, but also establish a chain of proven circumstances, which lead to no other conclusion than the guilt of the accused.

7. The prosecution has relied on the motive to commit crime. In this respect the prosecution has relied on evidence of

P.W.3 Baby Ghole as well as P.W.5 Yogesh Bahal. The learned Trial Judge found that P.W.3 Baby Ghole herself has admitted that the incident regarding the quarrel had taken place in the year 1983 i.e. almost 19 years before the incident. The learned Trial Judge further held that the evidence of P.W.5 Yogesh Bahal as also the evidence of P.W.6 R.K. Suryavanshi was not sufficient to bring home the case of motive as alleged by the prosecution.

8. Insofar as the circumstance with regard to the accused person on memorandum u/s 27 disclosing the place where the dead body was thrown by them is concerned the learned Trial Judge has held that the Investigating Officers were aware about the place where the accused had allegedly thrown the dead body. Since the police were already aware about the said place no reliance on such a disclosure could be made.

9. Insofar as the last seen theory is concerned, the learned Trial Judge found that the only evidence of the P.W.1

Balu Kalbhor was not such that would inspire confidence in the mind of the Court. The other witness P.W.11 Vikas Tambe has turned hostile and as such his evidence was also of no assistance to the prosecution case.

10. By now it is a settled principle of law that interference in the finding of acquittal would be warranted only if it is found that view taken by the learned Trial Judge is either perverse or impossible. It is equally settled that only because the Appellate Court finds another view to be more probable view, cannot be a ground to interfere with the finding of acquittal. No perversity is noticed to warrant interference.

11. In the result, the Appeal is rejected.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)