

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 372 OF 2005

Pralhad Kadu Dike,
Age : 66 years, Occu. : Agriculture,
R/o Manur Budruk, Taluka Bodvad,
District Jalgaon. ...Applicant

Versus

- 1] Manik Baburao Patil,
Age : 51 years, Occu. Agri.,
- 2] Baburao Onkar Patil,
Age : 81 years, Occu. Agri.,
- 3] Udhav Baburao Patil,
Age : 38 years, Occu. Agri.,
- 4] Gajanan Baburao Patil,
Age : 32 years, Occu. Agri.,
- 5] Sharad Manik Patil,
Age : 23 years, Occu. Agri.,
- 6] Sachin Manik Patil,
Age : 21 years, Occu. Agri.,
- 7] Punjabrao Baburao Patil,
Age : 41 years, Occu. Agri.,

All residing at Manur Budruk,
Tq. Bodvad, District Jalgaon.

- 8] The State of Maharashtra, ...Respondents

.....
Mr. S.P.Sonpawale, A.P.P. for Respondent No. 8.
.....

CORAM : V.M.DESHPANDE, J.

DATE : 12TH APRIL, 2019

ORAL JUDGMENT :

01. When this revision, which was admitted on 7.4.2006 is called today for its final hearing, the Counsel for the applicant is absent, so also the learned Counsel for the respondents No. 1 to 7 is absent. Mr. S.P.Sonpawale, the learned A.P.P. is representing the respondent No. 8-State of Maharashtra, with his able assistance I have perused the record and proceedings.

02. By the present revision, the applicant is challenging the Judgment and Order of acquittal passed by learned 3rd Ad-hoc Additional Sessions Judge, Jalgaon dated 21.9.2005 in Sessions Case No. 115/2004 whereby the respondents No. 1 to 7 were acquitted for the offence punishable under Sections 306, 109 of the Indian Penal Code.

03. In Sessions Case No. 115/2004 a charge was framed against the respondents No. 1 to 7 (hereinafter referred to as an accused for the sake of brevity), that on 16.3.2004 at 11.00 AM at village Manur they in furtherance of their common intention abetted the deceased Pandharinath Pralhad Dike to commit suicide by their overt act of digging

common well in the field of boundary and when it was opposed, they instigated him to commit the suicide.

04. The accused adjured their guilt. In order to prove the guilt of the accused, prosecution examined in all 7 witnesses. The accused also adduced the evidence of two witnesses. After appreciation of the prosecution case, the Court below passed the impugned Judgment acquitting the accused persons.

05. PW-1-Gajanan is a punch in respect of seizure panchnama Exh. 22, under which a container of insecticide was seized by the Investigating Officer.

06. PW-2 is Pralhad Dike-the father of the deceased, who is also first informant. He lodged report (Exh. 24) resulting into registration of the offence which culminated into the Sessions trial against the accused persons. According to the evidence of Pralhad, the accused persons are having their field adjoining to his field and there exists a common bandh in the two agricultural fields.

07. The accused were preparing to excavate a well on a common bandh, for which they made

demarkation. As the demarkation was within his land it was objected. However, the accused did not listen the same. On that, the deceased gave complaint to the Police. Inspite of that the work of excavation continued at the hands of the accused. On 15.3.2004, abruptly by machine the accused persons started excavating the soil from the demarketed portion. After getting knowledge, the deceased Pandharinath went into the field and came to house and informed about the excavation. According to the evidence of Pralhad, this was narrated to him by the deceased. On that the prosecution witness-Pralhad told that on the next day they will look into the matter. It is the evidence of the Pralhad that on 16.3.2004 when he was in other field he got a knowledge from Eknath that his son has consumed poisonous substance. This is only evidence of the first informant-father of the deceased against the accused persons.

08. PW-3 is Eknath, who has intimated the factum of consumption of poisonous substance to the PW-2 Pralhad. His evidence would show that it was narrated to him by the deceased that because the accused persons have excavated the field, he had consumed the poison.

09. PW-4 is Dr. Hemantkumar Warke, who has conducted autopsy over the dead body and proved the post mortem note (Exh. 29). His evidence and post mortem report shows that the death was caused due to Cardio Respiratory Failure due to Pulmonary adima due to consumption of unknown poison.

10. PW-5, a Police Constable Hussain on getting information about the death, initially he registered accidental death.

11. PW-6 is Baburao Mhaske, who conducted inquest over the dead body under inquest panchnama (Exh. 22) and also prepared spot panchanma (Exh. 22).

12. PW-7, is Ramdas Rathod, who is an Investigating Officer, who after completion of the investigation filed the charge-sheet.

13. To prove the guilt of the accused person, the burden firmly rests on the shoulder of the prosecution, but, the prosecution can not take advantage or disadvantage of the lacunaes in the defence. The prosecution has to stand or fall on his own legs.

14. As discussed in the preceding paragraphs about the quality of the evidence of Pralhad, who is the applicant before this Court, it is clear that there was a dispute going on in between him and the accused persons, who are owner of adjoining land. His evidence would show that due to their was a dispute in respect of excavation of well on the common band and the deceased tried to object the same. It is to be mentioned here that the entire prosecution is totally silent as to what are the acts or omissions done by the accused persons which could be termed as abetment on their part to the deceased to commit suicide.

15. Further, though the viscera which was preserved by the autopsy surgeon and was sent to chemical analyser for the best reasons known to the prosecution the chemical analyzer's report is not filed on record. Consequently, what was the poisonous substance that was consumed by the deceased has remained to be proved.

16. Looking to the quality of the evidence there is no doubt in my mind that the Court below after rightly appreciating the prosecution case has acquitted the accused persons. Resultantly, there

is no merit, revision is dismissed. Rule is
discharged.

[V . M . DESHPANDE]

JUDGE

Dahibhate/-