

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 42 OF 2015.

State of Goa, Through
Ponda Police Station, Ponda Appellant.
Goa.

Versus

Mohan Biswal (Major),
s/o Rangadhar Biswal, r/o
Shantinagar, Ponda, Native
of Vill. Achyutpur, Tal.
Rajkanka, Dist:
Kendrapada, State: Orissa. Respondent.

Mr. S. R. Rivankar, Public Prosecutor for Appellant.
Mr. V. Rodrigues and Mr. V. Naik, Advocates for the respondent.

**Coram:- R. D. DHANUKA &
PRITHVIRAJ K. CHAVAN, JJ.**

Reserved on:-1st April 2019.

Pronounced on:- 25th April 2019.

JUDGMENT (Per Prithviraj K. Chavan, J.)

By this appeal under Section 378(1)(b) of the Code of Criminal Procedure 1908, the State of Goa has preferred this appeal against the impugned judgment of acquittal passed by the Sessions Judge Panaji, on 27.2.2015 amongst following facts and grounds.

2. The facts of the prosecution case, as emerged from the record can be summarised as follows:-

On 27.3.2011 Police Sub Inspector Nikhil Palekar (PW19)

received a phone call that a person was lying dead in a pool of blood in front of gate of Sairaj Park at Shantinagar leading to Ponda city. PSI Nikhil Palekar (PW19), therefore, immediately rushed to the scene of occurrence alongwith staff and found one unknown male person lying in front of the gate of said Sairaj Park. He conducted an inquiry with the watchman of the said park namely Rajpayeng (PW3) who informed PSI Nikhil Palekar(PW19) that when he resumed duties at about 23.20 hours, he noticed an unknown person rushing towards the gate and fell down in a pool of blood. When PW3 Rajpayeng noticed that lower part of left side of his abdomen was bleeding, he poured some water and at the same time contacted emergency no.108. PW3 Rajpayeng had also noticed a sharp and deep cut injury on the left side abdomen of said person. He was wearing white long sleeves shirt with white checks and dark colour full pant.

3. Thus, on the information given by PW3 Rajpayeng to PSI Nikhil Palekar (PW19), he lodged a complaint with Police Station Ponda. On the basis of his complaint an FIR came to be registered being crime No.57/11 on the same day at 3.30 hours. Crime came to be registered under Section 302 of the IPC against an unknown person.

4. The Investigating Officer of the case namely PW24 Chetan Patil received a phone call from PW19 PSI Nikhil Palekar about the incident. He immediately rushed to the spot. He secured presence of two pancha witnesses namely PW1 Gaus Kamalsab Khan and Babu Shaikh. PW24 Chetan Patil had conducted a scene/Inquest Panchanama in the presence of these two witnesses wherein he noticed a deep sharp cut wound below the left side rib cage of the deceased. He also drew a spot panchanama. He noticed a pair of black coloured sandal lying near the dead body with blood stains. The Scene of offence/Inquest Panchanama is at Exh.13.

5. The Investigating Officer had also found a cell phone in the pocket of the deceased which was also seized under the panchanama. The dead body was sent to Goa Medical College, Bambolim.

6. The Investigating Officer had also collected CDR and SDR of cell Nos.8971990949, 7507388448 and 8805415982.

7. On reliable information, the respondent was traced at Agassaim and brought to Police Station, Ponda on 27.3.2011. He was arrested in the presence of two pancha witnesses namely PW2

Shamim Khan and Shridhar Prabhu. The Investigating Officer had noticed certain abrasion on the right side neck of the respondent.

8. At the Goa Medical College, Bambolim, Autopsy over the dead body of the deceased was conducted by PW10 Dr. Pannag Kumar. He certified that the case of death was due to hemorrhagic shock consequent to damage to the spleen, abdominal blood vessels and stomach and due to penetrating stab injury no.1 which was ante-mortem and fresh at the time of the death and fatal in the ordinary course.

9. PW24 Chetan Patil, the Investigating Officer, thereafter, during the police custody remand of the respondent on the basis of his voluntary statement discovered weapon of offence as well as clothes of the respondent which were on his person at the time of committing the offence. The said panchanama was also drawn in the presence of two pancha witnesses. The Investigating Officer had recorded the statement of the witnesses. He also obtained opinion of Dr. Pannag Kumar in so far as the weapon of offence is concerned.

10. The seized muddemal was forwarded to Central Forensic Scientific Laboratory(CFSL), Hyderabad for chemical analysis vide

request letter at Exh.141 colly. The said CFSL reports from Hyderabad are proved at Exhs. 98 and 108 collectively.

11. According to the Investigating Officer, it revealed during the course of investigation that the deceased was arranging jobs on commission basis. When he had been to the respondent to demand his commission, the respondent committed his murder.

12. After investigation PW24 Chetan Patil laid a chargesheet in the Court of Judicial Magistrate First Class, Ponda under Section 302 of IPC.

13. The learned JMFC by her order dated 21.6.2011 committed the case to the Sessions Court, as the offence under Section 302 of IPC is exclusively triable by the Court of Sessions.

14. The respondent appeared before the learned Sessions Judge on 23.8.2011. The learned Sessions Judge after hearing the prosecution and the respondent and after going through the record *prima facie* found that there was sufficient material to frame a charge against the respondent under Section 302 of IPC.

15. Accordingly, a charge was framed which is at Exh.6 under Section 302 of IPC. It was read over and explained to respondent to which he pleaded not guilty and claimed a trial.

16. The defence of the respondent as emerged from his statement under Section 313 of Cr.P.C. as well as from the line of cross examination of prosecution witnesses is that he has been falsely implicated in this case. No defence evidence has been adduced on his behalf.

17. We have extensively heard Mr. S. R. Rivankar, learned Public Prosecutor for the appellant and Mr. V. Rodrigues learned Counsel for the respondent.

18. The entire case of the prosecution revolves around circumstantial evidence. Shri Rivankar took us through the record and vehemently argued as to how the learned Trial Court has failed to appreciate the evidence of the prosecution witnesses in its correct perspective and arrived at an erroneous conclusion of giving benefit of doubt. The learned Public Prosecutor contended that the evidence of PW13 Maruti Hadimani on the point of last seen together theory is so inspiring as there is hardly any scope of escape coupled with the

fact of extra judicial confession given by the respondent to this witness.

19. The learned Public Prosecutor has also drew our attention to the fact that the weapon of offence i.e a knife and blood stains clothes were discovered at the instance of the respondent in the presence of independent witnesses which substantiates his involvement in the crime.

20. There is no doubt that deceased Wahid died a homicidal death which, according to the learned Public Prosecutor is an undisputed fact. Chemical analysis confirms the blood group of the deceased as B+ve over the knife used in commission of offence. It has been proved that the blood group of the respondent is ORh +ve. It is contended by the learned Public Prosecutor that the nature of the weapon used and part of the body chosen by the respondent to inflict a lethal blow on the person of the deceased is a clear indication of his intention to eliminate the deceased.

21. The learned Public Prosecutor further argued that immediately after the assault at about 11.00 p.m when they were last seen together by PW13 Maruti Hadimani, the deceased was found

fallen with a stab injury at around 11.30 p.m by PW3 Rajpayeng. The learned Public prosecutor also drew our attention to the evidence of PW9 Dharmesh Singh who heard the respondent saying “Chaku dal ke aya”, which according to the learned Public Prosecutor is an extra judicial confession.

22. The learned Public Prosecutor would further submit that since the prosecution has established the entire chain of circumstances, it was for the respondent to explain as to where was he between 11.00 to 11.30 p.m on that night? There is no explanation forthcoming from the respondent and, therefore, this would also be a circumstance against the respondent.

23. As far as motive is concerned, it is contended by the Public Prosecutor that since the deceased demanded money from the respondent towards the commission, he was done to death by the respondent. As such the learned Public Prosecutor submits that, impugned judgment being perverse needs to be set aside and respondent is required to be convicted for the offence with which he has been charged.

24. The learned Public Prosecutor has placed reliance on a

few authorities which shall be referred herein after.

25. Per contra, Mr. Rodrigues learned Counsel for the respondents vehemently urged that prosecution has failed to establish the motive behind the offence. He submitted that the deceased wanted to collect money from the contractor viz Suresh and not from the respondent and therefore, there was no question of respondent assaulting the deceased. It is also submitted by the learned Counsel that what PW3 Rajpayeng heard from the deceased as his last word is that "Security Security, Kuta Mara, Police ko bulavo" which takes the prosecution case nowhere. The deceased had not named the respondent as his attacker. The learned Counsel has also drawn our attention to the testimony of PW13 Maruti Hadimani and submits that this witness had not seen the deceased prior to the incident and therefore, his testimony is unworthy of credit on the point of last seen together. He also submits that prosecution had withheld the best evidence of Suresh Chodankar. Thus, the learned defence Counsel has supported the impugned judgment and order of acquittal.

26. As stated herein above, the prosecution story revolves around circumstantial evidence and, therefore, as held in catena of

decision, motive plays very important role when a case rests upon circumstantial evidence. Before adverting to the aspect of circumstantial evidence, it would be pertinent to note that there is no dispute about homicidal death of the deceased on 26.3.2011. This has been substantiated from the inquest panchanama at Exh. 13 coupled with evidence of PW10 Dr. Pannag Kumar who had conducted the Autopsy.

27. PW10 Dr. Pannag Kumar testified that he conducted autopsy on the body of the deceased Wahid on 28.3.2011 between 11.05 am to 12.30.pm. He has returned his findings as under :-

“The external injuries on the body are as under:

- 1. Stab wound, boat shaped, measuring 3 cms. Long x 1.2 cms. maximum breadth, with depth extending into stomach cavity (around 4.5 – 5 inches deep). The wound was vertically obliquely placed, with upper end placed posteriorly and lower end placed anteriorly. The lower end was acute and showed tailing 0.5 cms. The upper end was curved and ragged. The wound was directed upwards and from the back to the front. Edges of the wound were incised and blood was seen to have oozed out through the wound. Underlying damaged intercostal muscles were visible. Upper end of the wound was 19 cms. Below apex of the axilla, lower end was about 24 cms. from anterior midline of the chest and abdomen and 2.5 cms. behind left mid-axillary line. The wound was placed in the left 9th intercostal space. The said injury was caused by sharp, penetrating, cutting edged weapon and was antermortem and fresh at the time of death.*
- 2. Reddish abrasion 2 cms. x cm. over right side of the lower back, 2 cms. to the right of posterior midline and 18 cms. above upper end of gluteal cleft.*

3. Reddish abrasion measuring 2 x 1.5 cms. over the right scapular area of back of chest, 5 cms. to the right of posterior midline and 11 cms. below upper border of right shoulder.
4. Elevated bruise (visible on reflection of the scalp) measuring 3.5 cms. diameter over the left lower occipital area of scalp.
5. Reddish abrasion measuring 0.5 x 0.5 cms. over the dorsum of distal interphalangeal joint of right thumb.
6. Reddish abrasion measuring 0.8 x 0.2 cms. over the dorsum of knuckle of right index finger.

Injuries no. 2 to 6 were caused by blunt object or surface impact and were antermortem and fresh at the time of death.

The said injuries have been described diagrammatically on page 4 of the Report.

The larynx and trachea contained froth. Injury no. 1 of pages 3 and 4 was seen to extend through the intercostal muscles of the left 9th intercostal space, behind midaxillary line, cutting the intercostal blood vessels and cutting the lower border of 9th rib and upper border of 10th rib. Pleurae were pale. About 100 mly of blood was seen in the pleural space. The trachea and bronchi contained froth. Right lung weighed 486.13 gms. And left lung weighed 452.35 gms. Both lungs were pale but oedematous exuding froth on cut section. Pericardium was pale. The heart weighed 236.13 gms. The valves and myocardium did not show any gross changes. Coronary vessels were patent. The large vessels were intact. The left lateral part of diaphragm showed incised penetrating wound corresponding to external injury no. 1 of pages 3 and 4.

There was stab wound over diaphragmatic surface of spleen corresponding to external injury no. 1 of pages 3 and 4. The injury extended through the thickness of the splenic parenchyma and existed over the gastric impression on the visceral surface, near the hilum. The splenic artery and vein, left gastroepiploic artery and short gastric artery were seen damaged. The pancreas were pale. The right kidney weighed 128.14 gms. and left kidney weighed 132.76 gms. Both kidneys were pale. The suprarenals and inferior vena cava were intact. The testes were normal. The urinary

bladder was empty. No injuries were seen to the pelvis.

The death was inferred to have occurred within 6 hours of the last meal ingested."

28. Nothing could be elicited in the cross examination of this witness which would render his testimony unworthy of credit.

29. Once it has been proved by prosecution that the deceased died a homicidal death, the next important question would be whether the respondent was responsible for intentionally and knowingly causing death of his friend deceased Wahid?

30. As already stated herein above, the prosecution case is based on circumstantial evidence and, therefore, motive is a sine qua non.

31. According to the learned Public Prosecutor the prosecution has proved the "last seen together" theory and further that the respondent has failed to discharge the burden under Section 106 of the Evidence Act and, therefore, he is required to be convicted under Section 302 of IPC. The law is well settled on the important aspect of last seen together theory by the Hon'ble Supreme Court in case of Sharad Birdhichand Sarda Vs State of Maharashtra, 1984(4)

SCC 116. The principles enunciated by the Hon'ble Supreme Court can be enumerated as follows:-

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- 2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- 3. The circumstances should be of a conclusive nature and tendency.*
- 4. They should exclude every possible hypothesis except the one to be proved.*
- 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

32. According to the learned Public Prosecutor, PW3 Rajpayeng, the security guard, PW9 Dharmesh Singh, PW12-Anandi Gaude and PW13 Maruti Hadimani are the witnesses who had seen the deceased alive in the company of the respondent on the fateful night of 26.3.2011.

33. The deceased and the respondents were friends. Both were residents of an area known as Shantinagar at Ponda. Respondent is a plumber by profession. The deceased was a labourer. The testimony of PW9 Dharmesh Singh indicates that he knows the respondent who was residing as a tenant of his in-laws in

his adjoining room. According to this witness when he returned home at about 8.00p.m on 26.3.2011 and went to bed around 10.30 p.m, he heard the respondent and a mason who was working with the respondent talking loudly with each other. They were also abusing one another. PW9 Dharmesh Singh got up at about 11.30 p.m to answer nature's call when he saw the respondent coming towards his room and he heard him saying "Chaku dal ke aya" (I have stabbed). PW9 Dharmesh Singh did not ask any question to the respondent. He went to his room and slept. However, he recollected that the respondent wore a red T-shirt and trouser. On the following day at about 8.00 a.m he witnessed the police near his house. He questioned the police upon which he came to know that some one was murdered. He proceeded to his work place. When he returned home he learnt that the respondent was arrested in a murder case. At that time he realised and recalled the words spoken by the respondent on the earlier night. However, he did not take those words seriously as he thought respondent was joking. In his cross examination the defence had reiterated the fact of this witness noticing the quarrel between the deceased and the respondent. It is pertinent to note that even if the evidence of this witness is to be believed, though he is a resident of Shantinagar and was acquainted with the respondent, it is not clear whether he had identified or knew

the deceased, as he had not testified anything to that effect. He simply refers that the respondent was quarreling with one mason. The identity of the deceased has not been confirmed from the testimony of this witness.

34. Another witness is PW13 Maruti Hadimani who is also a resident of Shantinagar, Ponda. He testified that on 26.3.2011 he went to Ponda market at about 8.00 p.m. After shopping, he returned around 10.15 to 11.00p.m. When he was proceeding towards his house after crossing the building complex namely Sairaj Park, he noticed, Mohan and Wahid i.e respondent and the deceased quarreling with each other on the road. He being a resident of Shantinagar knows the respondent. However, he testified that he had heard that deceased Wahid also used to reside at Shantinagar. According to him, the deceased and the respondent were quarreling over money matter and were pushing each other. He waited there for two minutes and proceeded towards his house. On the next day he learnt that Wahid was murdered. When PW13 Maruti Hadimani was shown the photograph (Exh.14 colly), he could not identify the deceased Wahid as according to him he had not seen him properly. The testimony of this witness is doubtful and it is difficult to place reliance on it for the reason that when he referred the deceased and

the respondent by their names quarreling on the night of the incident how he could refuse to identify Wahid as the one quarreling with the respondent. It appears that the prosecution, instead of seeking permission to cross examine this witness as he did not support the prosecution case, sought leave of the Court to recall and re-examine him after receipt of the muddemal. However, during his cross examination by the defence it has been elicited that he had not seen the deceased Wahid prior to the incident. It, therefore, becomes difficult to accept the testimony of this witness as truthful and reliable as during night hours of 26.3.2011 whether he had really seen the deceased and the respondent together. It is doubtful whether he had really seen the deceased in the light of the fact that there was no occasion for him to see the deceased prior to the incident. His testimony also needs to be discarded in view of the fact that in examination in chief he states that the deceased and the respondent were quarreling over money matter. However, in cross he admits that he does not know what was the exact dispute between the respondent and the deceased. This gives a jolt to the very motive behind the commission of the offence. The evidence of this witness is therefore, quite shaky and does not support the prosecution case on the important aspect of 'last seen together.'

35. PW3 Rajpayeng is a security guard posted on duty at Sairaj Park Shantinagar Ponda. His evidence reveals that on the day of the incident his duty hours were from 20.00 hours to 8.00 hours. When he joined the duty at 8.00 hours he noticed a person rushing near the gate of the building at about 23.30 hours wearing a white colour shirt and dark colour long pant who was holding his stomach with his hand and blood was oozing out. He further testified that said person was screaming and saying "Security security, kuta mara, police ko bulao." He fell on the ground. This witness brought water and poured on the wound. He cleansed the wound and tried to stop the bleeding. He also tied a towel around the wound. According to him, injured did not speak anything after the fall. He was bleeding profusely and, therefore, PW3 Rajpayeng contacted Ambulance by dialing 108 from his cell phone. Around 12.00 hours an ambulance came to the spot and shifted him. The staff of the ambulance PW12 Anandi Gaude declared him dead after checking his pulse. The evidence of this witness is also not useful to the prosecution to base its theory on 'last seen together' for the simple reason that this witness had no occasion to see the respondent with the deceased. The evidence of this witness is restricted only to the extent of hearing the deceased saying "Security security, kuta mara, police ko bulao" It is not the case of the prosecution that the respondent was nick

named as "Kuta". PW3 Rajpayeng being a Security guard, perhaps rightly performed his duty by trying to provide some first aid to the deceased and then by calling the ambulance facilitating his shifting to hospital. His testimony is corroborated materially by PW12 Anandi Gaude who was working as an Emergency Medical Technicians on GVK.EMRI 108 which appears to be some ambulance service.

36. There is one more angle to this case. As per the evidence of PW13 Maruti Hadimani who had seen the deceased and the respondent quarreling on account of money at about 11.00p.m and thereafter was seen by PW3 Rajpayeng at about 23.30 hours, there was a gap of half an hour for which there is no explanation by the prosecution in the sense that there was no possibility of any other element or third person entering at the scene.

37. This particular circumstance does not exclude every possible hypothesis and give scope for some doubt or suspicion creeping in as it being a case on circumstantial evidence, every possible hypothesis consistent with the innocence should be excluded. Possibility of another person entering at the scene during the night hours, therefore, cannot be totally ruled out in the light of the fact that widow of the deceased PW22 Parvin Munshi had

testified that the deceased was to collect money from contractor Suresh Chodankar who was not examined by the prosecution and withholding of his evidence would lead to drawing of an adverse inference against the prosecution in view of section 114 (g) of Indian Evidence Act. PW22 Parvin Munshi has not named the respondent as the one from whom her husband deceased was to collect money. We shall discuss the aspect of motive in the subsequent paras. However, suffice it to say at this juncture that even on the count of 'last seen together theory' the prosecution has not established the said fact beyond doubt.

38. Motive is something which prompt the person to form an opinion or intention to do some illegal act or even a legal act, with illegal means with a view to achieve that intention.

39. PW22 Pravin Munshi is the widow of deceased Wahid. After her marriage with the deceased she came to Goa in the year 2006 with deceased and cohabited with him at Shantinagar, Ponda. The deceased was labourer doing the work of centering. She testified that he was helping others to get employment with the contractor and used to get commission for that. At the time of incident she was not at Shantinagar, Ponda as she had been to her

native place as her eleven months old daughter was not keeping well.

40. On 26.3.2011 at about 9.30 p.m she received a phone call from the deceased who inquired about the daughter and had said that after collecting some money from said Suresh he will bring the money for treatment of their daughter. She further testified that the respondent was employed with contractor Suresh through her husband and her husband was supposed to get commission. If the evidence of this witness is to be accepted then, obviously the amount of commission probably was to be paid by the said Suresh to the deceased and not by the respondent. It therefore, follows that prosecution has failed to establish the motive behind the commission of the offence by the respondent coupled with the fact that it had also failed to establish the last seen together theory. It is difficult to accept the theory of the prosecution that there was some dispute between the deceased and the respondent on account of money.

41. As such, there is no question of discharging the burden under Section 106 of the Evidence Act upon the respondent to give reasonable explanation. Section 106 of the Evidence Act does not shift the burden of proving a criminal charge, which is always upon

the prosecution.

42. The evidence in the form of discovery under Section 27 of the Indian Evidence Act is tendered by the prosecution during the trial. PW6 Deepak Borkar is a resident of Ponda who repairs the punctured tyres of the vehicles. On 29.3.2011, he was called at Police Station Ponda by the Inspector alongwith one more person namely Roshan Zamir. They were requested by the Police Inspector Chetan Patil (PW24) to act as a pancha witnesses. A person was present in the cabin of PI Chetan Patil (PW24) who is the respondent. The respondent disclosed his name as Mohan Biswal. He was speaking in Hindi. It is testified by PW6 Deepak Borkar that the respondent stated in Hindi that his friend Wahid was asking money from him. He did not give money to Wahid. However, Wahid slapped him and ran away. Respondent followed him with a knife and inflicted a blow. Respondent further disclosed that he had hidden the said knife and his blood stained T-shirt and pant in his house. However, inculpatory part would be inadmissible in evidence. The evidence of PW6 Deepak Borkar further reveals that the respondent had stated that he would show the knife and clothes and therefore, panchanama was drawn which was signed by this witness, Roshan Zair and PI Chetan Patil (PW24).

43. All of them left the police station to Sairaj Park, Shantinagar as per the direction of the respondent. The respondent had shown the spot of incident also which was 30 mts from the Sairaj Park. The respondent thereafter, led the police team and pancha witnesses to his room. He took out the key which was kept below the tin roof. He opened the door and requested the owner of the room to switch on the lights as there was a temporary connection provided to his room. The respondent thereafter removed his clothes kept beneath a bed sheet which comprised a light maroon T-shirt with blood stains and grey coloured long pant. He also removed a knife having length of 24 cms with black handle and length of blade was 14.5 cms and breadth of 2.5 cms with stains of blood. The aforesaid articles were seized by the police under the panchanama and were sealed. The panchanama is at Exh.32. The law is well established on Section 27 of the Indian Evidence Act. The Hon'ble Supreme Court in the case of **Anter Singh Vs. State of Rajasthan, AIR 2004 Supreme Court 2865** observed in para 16 thus:-

1. The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

2. *The fact must have been discovered.*
3. *The discovery must have been in consequence of some information received from the accused and not by accused own act.*
4. *The persons giving the information must be accused of any offence.*
5. *He must be in the custody of a police officer.*
6. *The discovery of a fact in consequence of information received from an accused in custody must be deposed to.*
7. *Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."*

44. It is interesting to note that the Investigating Officer PW24 Chetan Patil testified that on 29.3.2011 during interrogation the accused(respondent) volunteered to disclose some fact about the case. If the accused disclosed the facts during interrogation by the police it cannot be said to be voluntary disclosure of the fact. The discovery of articles in this case appears to be by the act of the accused during interrogation and not on some information voluntarily given by him. It is not clear from the evidence of PW24 Chetan Patil, as to whether the accused/respondent was in police custody. As already stated herein above though the prosecution had sought to rely on the discovery evidence of this witness it is to be borne in mind that this provision has nothing to do with the question of relevancy. Even if it is assumed that the prosecution has discovered the said fact, it had not established, according to the prescriptions relating to the relevancy of other evidence connecting with the crime

in order to make the fact of discovery, admissible. We have already stated herein above, that since the prosecution has failed to establish the motive as well as last seen together theory, the question of making the discovery admissible has become academic.

45. The CSFL report at Exh.103 which indicates that the knife used in the commission of the offence had blood stains of blood group 'B' which was also found on the shirt of the deceased, from which it can be safely inferred that the knife had blood stains of blood group 'B'. Strangely, there is no grouping, whether it was BRh +ve or BRh -ve in the said CSFL report. It is therefore, difficult to place implicit reliance on this report also. Though, Goa Medical College described blood group of the deceased as BRh +ve, why it has not been so mentioned by Chemical analyser in his report at Exh.103? The Rh factor is equally important in the blood group of any person.

46. The opinion of PW10 Dr. Pannag Kumar was obtained by the prosecution in so far as the weapon is concerned. In his evidence PW10 Dr. Pannag Kumar opined that the stab injury at serial no.1 described on pages 3 and 4 of the memorandum of autopsy could be caused by the said weapon. However, that itself is not sufficient to

establish a charge of murder against the respondent. PW10 Dr. Pannag Kumar had denied the suggestion given to him in cross examination by defence that such injury was possible due to vertical fall on a pointed knife. The fact remains that the prosecution has miserably failed in establishing any nexus between the respondent and the death of the deceased.

47. Learned Public Prosecutor has fairly conceded that CDR details of the respondent and the deceased have not been proved sans a certificate under Section 65(B) of the Indian Evidence Act. As such, evidence of PW16 Ravi Pardeshi, a nodal officer of Vodafone company and PW17 Sachin Shinde, a nodal office of Ideal Cellular would be of no assistance to the prosecution. This would be also an important missing link in the chain of circumstance which would be fatal to the prosecution case.

48. PW21 Dr. E. J. Rodrigues, had examined the respondent on 28.3.2011 who was brought before him by the Ponda Police Station for his medical examination. Dr. Rodrigues had noticed three irregular abrasions of 4 X 1 mm, 3 X 1 mm and 2 X 1 mm with reddish brown scab in an area of 4 X 3 cms on his right side upper neck. The duration of the injuries were 1 to 2 days prior to the

examination and were caused by blunt force. He further opined that those injuries could be caused during a scuffle. The evidence of this witness in itself would not establish the fact that these were necessarily caused during the scuffle with the deceased. Even if for the sake of argument it is presumed that there was a scuffle between the deceased and the respondent, it would not take the prosecution case further *dehors* any evidence indicating that it was the respondent who was an author of the fatal injury on the person of deceased.

49. The Investigating Officer PW24 Chetan Patil has testified the way and manner in which he conducted the investigation into the crime. His evidence *per se* would not be of any assistance to the prosecution in establishing the guilt of the respondent beyond reasonable doubt.

50. We are afraid we cannot buy the arguments of the learned Public Prosecutor in the sense that there was an extra judicial confession by the respondent before PW9 Dharmesh Singh for the simple reason that neither the respondent, in clear terms, confessed his guilt of assaulting the deceased before this witness nor it is the evidence of PW9 Dharmesh Singh that the respondent while

addressing him confessed about his so called involvement in the crime. It is quite clear from the testimony PW9 Dharmesh Singh that he heard the respondent saying “Chaku dal ke aya” which, at the most, be branded as murmur by the respondent to himself.

51. By a series of decision the Hon'ble Supreme Court and this Court has laid down parametres for appreciation of the evidence on record vis-a-vis jurisdiction and the limitations of the Appellate Court, especially while dealing with the appeal against an order of acquittal.

52. It would be apposite to refer to the ruling of the Supreme Court in the case of ***Tota Singh Vs State of Punjab, (1987) 2 SCC 529***. It is held by the Hon'ble Supreme Court and we quote thus:-

“The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of

the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

53. We find that findings arrived at by the trial Court in the impugned judgment and order of acquittal are proper and correct wherein there is neither any manifest illegality or perversity which would require any interference in the appeal. It is clear that even if two views are possible while appreciating the evidence adduced in the trial Court and the view taken by the trial Court is a plausible one, normally the Appellate Court should not interfere in the order of acquittal. Thus, we find no substance in this appeal which does not warrant interference in the impugned judgment and order of acquittal passed by the trial Court.

54. Consequently, appeal is devoid of merits and therefore stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

R. D. DHANUKA, J.

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