

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

CRIMINAL APPEAL NO.768 OF 1997

The State of Maharashtra

.... Appellant
(Orig. Complainant)

versus

1. Sugandh Shankar Chavande
Age : 35, R/o. Chavandevathar,
Ratnagiri.
2. Apay @ Appa @ Sushil
Nathyrām Chavande
Age : 27, R/o. Chavandevathar,
Ratnagiri.
3. Dattaram Namdeo Kir
Age : 36, R/o. Chavandevathar,
Ratnagiri.
4. Nandkumar Prabhakar Patil
Age : 36, R/o. Muruganwada.
Ratnagiri.
5. Ushakant Pandurang Mahajan
Age : 36, R/o. Chavandevathar,
Ratnagiri.

..... Respondents
(Orig. Accused)

.....

- Mr.H.J. Dedhia, APP for Appellant/State.
- Mr.S.B. Shetye, Advocate for Respondents.

**CORAM : INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.
DATE : 10th JANUARY, 2019.**

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. The State of Maharashtra has preferred this Appeal challenging the Judgment and Order dated 21/08/1996 passed by the Additional Sessions Judge, Ratnagiri in Sessions Case No.60 of 1989. By the impugned Judgment and Order, the learned trial Judge had convicted the Respondent No.1 Sugandh Shankar Chavande for commission of offence punishable under section 304 (II) of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for 8 years and to pay a fine of Rs.5,000/-. The Respondent No.1 was further convicted for the offence punishable under section 201 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/-. In default of payment of total fine of Rs.6,000/-, the Respondent No.1 was sentenced to suffer one year and six months rigorous imprisonment respectively for these two offences.
2. All the Respondents including Respondent No.1 were acquitted from the charges of commission of offence punishable under sections 302, 147, 148 r/w 149 of IPC.

3. The State of Maharashtra has challenged the acquittal of the Accused/Respondents. The State of Maharashtra had challenged the acquittal of Respondent No.1 from charges of commission of offences punishable under sections 302, 147, 148, 149 of IPC, though he was convicted u/s 304 Part II of IPC. Respondent Nos.1 to 5 are the Original Accused Nos.1 to 5.
4. During the pendency of the present Appeal, the Respondent Nos.1 and 5 have expired and therefore the appeal against them has abated. The Appellant/State of Maharashtra has continued this Appeal only against the Respondent Nos.2, 3, and 4.
5. The prosecution case pertains to the incident dated 20/12/1988. Four months before the incident there was a quarrel between Jaysingh Ghosale, Shailendra Hatiskar and Mayekar on one hand and the accused No.1 Sugandh Chavande, accused No.3 Datta Kir and accused No.4 Nandu Patil on the

other. Subsequently there was another incident in which the Respondent Nos.1 and 2 had assaulted one Rakesh Vasant Ghosale. Thus there was enmity between two groups. On 20/12/1988 at about 05.20 p.m. Rakesh's brother Waman was assaulted near one Radio Repairing Shop. The Respondent Nos.2 to 5 had assaulted Waman with fist and kick blows and the Respondent No.1 had inflicted a blow with Gupti on Waman's chest. Waman had succumbed to his injury. Rakesh Ghosale lodged his FIR No.265/88 at Ratnagiri City Police Station. The investigation was conducted. It is the prosecution case that on 10/05/1989, the murder weapon i.e. the Gupti was recovered at the instance of the accused No.1 Sugandh Chavande. The investigation was completed and the charge-sheet was filed.

6. During trial 16 witnesses were examined on behalf of prosecution. Accused No.1 had taken plea of alibi. At the conclusion of the trial, the accused No.1's alibi was not accepted. The other accused were given benefit of doubt and it was

observed that the offence against them were not proved. Even against accused No.1, the conviction was recorded u/s 304 Part II of IPC, holding that the incident had occurred on the spur of moment without premeditation.

7. The prosecution had relied mainly on the evidence of P.W.1 Rakesh Vasant Ghosale and P.W.4 Santosh Keshav Pawaskar, who were the eyewitnesses. P.W.2 Nityanand Eknath Mayekar was a Pancha for inquest Panchanama. P.W.3 Kishor Rajaram Sawant was a Panch for Spot Panchanama. The Spot Panchanama was produced at Ex.128. This witness was also present when the Gupti was recovered at the instance of accused No.1. Gupti was recovered from under a pipe in a field. P.W.5 Dr.Shivaji Laxman Jagdale, had conducted the post-mortem examination. He had noticed one incised wound on the chest which had penetrated the heart and that injury was the cause of death. Post-mortem notes were produced at Ex.133.

8. P.W.6 Sudhir Anandrao Burte has deposed that the accused No.1 and four others had met him on 22/12/1988 in

the evening at Kolhapur. He has not deposed about the identity of the four persons as companions of accused No.1. P.W.7 Rajgopal Sheshadri Ayangar, P.W.8 Baringgon Diago Gonsalvis and P.W.9 Mahendra Anantaro Salvi, P.W.10 Subodh Purushottam Khavate, P.W.11 Dr.Abhay Dinanath Gursale and P.W.13 Dr.Ashok Nandlal Lathi were examined to show the movements of the accused No.1 after the incident.

9. P.W.12 Baburao Babaji Parab had conducted initial part of the examination. P.W.14 Rajendra Shankar Surve was the police constable who had carried the articles to the C.A.'s office. P.W.15 PSI Kiran Vishnu Patil and P.W.16 PI Netaji Rambaji Dange had carried out the investigation at different stages.

10. As mentioned earlier, the prosecution case relies heavily on the evidence of two witnesses i.e. P.W.1 Rakesh Ghosale and P.W.4 Santosh Pawaskar. P.W.1 Rakesh Ghosale has lodged his FIR. He has deposed about the previous quarrels which had taken place about four months before the incident

between Jaysingh Ghosale and accused No.1 and another incident wherein, he himself was assaulted by accused Nos.1 and 2.

11. He has further described the incident dated 20/12/1988 when the present offence took place. He has deposed that in the evening, he along with Waman had gone to the shop of one Bandya Pawaskar for collecting the tape recorder given for repairs. At about 05.20 p.m. five persons came there. P.W.1 has given names of accused Nos.1 to 4. He has identified them before the Court. He has deposed that along with them one unknown person also had come there. He has deposed that, the accused No.4 Nandu Patil caught hold of Waman. Accused No.1 Sugandh Chavande pulled Waman down from the shop. He fell on the ground. Accused No.3 Dattaram Kir and accused No.2 Appa Chavande gave fist blows on Waman's face. So did accused No.4 Nandu Patil. P.W.1 tried to intervene, but the fifth person who was unknown pushed him away. He further deposed that Dattaram Kir held Waman's hand

from behind and the accused No.1 took out a Gupti and stabbed Waman on his chest. Thereafter all the five accused ran away from the place. Waman was taken to civil hospital by Rikshaw. But he was declared dead in the hospital. After that P.W.1 lodged his FIR. The FIR is produced on record at Ex.119. In the cross-examination he has admitted that the incident took place suddenly and unexpectedly.

12. P.W.4 Santosh Pawaskar was the other eyewitness examined by the prosecution. He was the shop owner in whose shop P.W.1 Rakesh Ghosale and Waman Ghosale had come to collect their tape recorder. He has deposed that, at about 05.30 p.m. or 05.45 p.m., when Waman was standing near his table, accused Nos.1 to 4 and one unknown person came to his shop. Accused No.1 Sugandh Chavande pulled Waman Down. Accused No.4 Nandu Patil and accused No.2 Appa Chavande gave fist blows to him. Accused No.3 Dattaram Kir held hands of Waman. At that time, the accused No.1 took out a Gupti from his shirt and stabbed on his chest. The fifth person did not allow him to

go near Waman. Thereafter the accused ran away. Waman was taken to hospital as mentioned above by P.W.1. This witness has also admitted that the incident took place suddenly.

13. As mentioned earlier, the rest of the evidence led by the prosecution was mainly concerning accused No.1. Since the Appeal against him is abated, the learned Prosecutor did not emphasize on such evidence and in any case that evidence is not relevant for deciding the case against the present surviving Respondents.

14. The learned trial Judge in paragraph Nos.10 and 11 of the judgment has discussed the evidence against the present Respondent Nos.2 to 4. He has observed that these Respondents had assaulted the deceased with fists. Accused No.3 held his hands. The learned Trial Judge has observed that the Gupti was taken out by the accused No.1 suddenly and there was nothing on record to show that the other accused had any knowledge that the accused No.1 was carrying a Gupti and was planning to

assault the deceased on his chest with his weapon. He has observed that the prosecution had failed to lead cogent evidence to prove case against them beyond reasonable doubt. The learned Judge has observed that since the deceased had fallen down on the ground it was difficult to hold that the accused No.3 Dattaram had caught hold of his hands in that position from behind. On such reasonings, the learned Judge has given benefit of doubt to these Respondents and has acquitted them. The learned Judge however discussed the evidence against the original accused No.1 and has held that he did commit the offence, but not that of murder. The accused No.1 was instead held guilty for committing offence punishable u/s 304 Part 2 of IPC.

15. We have gone through the FIR and evidence of this case. The case depends entirely on the evidence of P.W.1 and P.W.4. Insofar as the present surviving Respondents are concerned, the narrations of the events of these two witnesses show that these Respondents had assaulted with fists and had not even assaulted on vital parts of the deceased. The assault

was not even severe as there are no corresponding injuries in the post-mortem notes. The role of accused No.3 Dattaram Kir of holding his hands can be seen in the light of assault by the accused Nos.2 and 4 with fist blows. As rightly held by learned Judge, it is difficult to hold that even accused No.3 was aware that the accused No.1 Sugandh was carrying a Gupti. Both these witnesses have admitted that the incident had taken place suddenly and unexpectedly. They have not deposed that the accused No.1 had reached their building with Gupti. Therefore it would be hazardous to assume that Respondents/accused Nos.2 to 4 were aware that the accused No.1 was carrying a Gupti. Therefore we do not find that the reasoning given by the learned trial Judge is perverse. The prosecution has not established any possible motive that these Respondents could have had to commit Waman's murder.

16. Since this is an Appeal against acquittal, we have to apply the principles governing the decision making process in deciding Appeal against acquittal. Mr.S.B. Shetye, learned

Counsel for Respondents has relied on two judgments of Hon'ble Supreme Court; (i) *K. Venkateshwarlu Vs. The State of Andhra Pradesh, in Criminal Appeal No.500 of 2011 decided on 17/08/2012*, as reported in *AIR 2012 SC 2955*, and (ii) *State of Rajasthan Vs. Shera Ram, in Criminal Appeal No.1502 of 2005, decided on 01/12/2011*, reported in *AIR 2012 SC 1*.

17. In Shera Ram's case (supra) it is held that there was a very thin but a fine distinction between an appeal against conviction on one hand and acquittal on the other. It was further observed that the preponderance of judicial opinion of the Supreme Court was that there was no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court kept in view the position that the presumption of innocence in favour of the accused had been fortified by his acquittal and if the view adopted by the Court was a reasonable one and the conclusion reached by it had its

grounds well set out on the materials on record, the acquittal ought not be interfered with.

18. In the case of K. Venkateshwarlu (supra), Hon'ble Supreme Court has observed that, if the view taken by the trial court was a reasonably possible view, the High Court could not set it aside and substitute it by its own view merely because that view was also possible on the facts of the case and that the presumption of innocence of an accused is strengthened by his acquittal. It was further observed that unless the order of acquittal was perverse or totally against the weight of evidence, no interference was called for.

19. Keeping above principles in mind, we find that the view taken by the trial Court was a possible view and there was no perversity in his approach.

20. In this view of the matter, the Appeal does not succeed and is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)