

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.527 OF 2018
(CRIMINAL APPEAL NO.1204 OF 2019)**

Bapu Dhondiba Mungase

...Appellant/
father of deceased

vs.

Gorakshanath @ Gorkh Baban
Ghenand and Another

...Respondents/
Accused

Mr. K.U. Nikam, for the Appellant.

Mr. V.B. Kande-Deshmukh, for the Respondents.

**CORAM : INDRAJIT MAHANTY &
N.B. SURYAWANSHI, JJ.**

DATE : SEPTEMBER 05, 2019

P.C.:

. This Application for leave to file Appeal is registered in the year 2018 after condoning the delay vide order dated 23rd October, 2018. In view of the subsequent legal development, the victim need not file Application for special leave and the proceeding challenging the acquittal by the victim needs to be registered as an Criminal Appeal against acquittal. In this view of the matter, the Registry was directed register this Application as Criminal Appeal and is converted into Criminal Appeal No.1204 of 2019 against acquittal.

2. This is an Appeal filed by the victim/ father of the deceased Vishal Mungase challenging the judgment and order of acquittal passed by the learned Additional Sessions Judge, Khed thereby acquitting the accused for offence punishable under sections 302 and 201 of Indian Penal Code.

3. Heard the learned counsel for the Appellant and learned AGP for the State. We have perused the case on evidence produced on record with the assistance of learned counsel for the parties.

4. The prosecution case in nutshell is that deceased Vishal Mungase was the son of Bapu Mungase. Complainant Krushna Mungase is the distant uncle of the deceased. Bapu Mungase had agricultural land at Kelgaon as well as Shelgaon. Bapu Mungase had purchased the land at Shelgaon near about 8-10 years before the incident and he had constructed a bungalow in the said land. Approximately 2 years ago from the date of incident, Somnath Mungase, the cousin of the complainant Krishna contested the election of Zilla Parishad for which

deceased Vishal and other villagers were canvassing in Vadgaon Ghenand and Shelgaon area. Vishal went to the house of Somnath on 6th February, 2012 at about 10.30 am and from there he went to village Shelgaon for canvassing for Somnath. However, Vishal did not return to home and his cellphone was out of coverage. Therefore, complainant Krushna, Raju Sulave, Dynaneshwar Mungase and Kaluram Mungase went to the bungalow of Bapu Munmgase at Shelgaon. Vishal could not be found at the said bungalow. Search was initiated for Vishal in nearby areas. Thereafter, missing report of Vishal was lodged on 7th February, 2012 by Popat Mungase. On 8th February, 2012 the search continued and when the complainant along with others went to Shelgaon, they went to river Bham. Some of the relatives were also accompanied. The dead body of Vishal was found floating in the river. Chakan police station was informed and on arrival of police, the dead body was taken out of water. It was identified to be of Vishal. After conducting the postmortem, last rites of Vishal were performed. On 9th February, 2012 complainant lodged report that Vishal was murdered by unknown persons for unknown reasons.

Accordingly, C.R. No. 36 of 2012 was registered for offence punishable under sections 302 and 201 of Indian Penal Code. After conducting the investigation charge-sheet came to be filed against the Respondent-accused. So also amount of Rs. 24,000/- was recovered at the instance of Respondent-accused from his house. Subsequently, charge-sheet was filed and after completion of investigation Respondent-accused was charged for the offence punishable under sections 302 and 201 of Indian Penal Code.

5. The prosecution examined in all 10 witnesses. After recording the evidence and hearing the parties, the learned trial Judge was pleased to acquit the Respondent-accused of all the charges.

6. Admittedly, this is the case of circumstantial evidence and the chain of circumstances is not complete. The learned advocate for the Appellant/father of the deceased vehemently argued that there is cogent and reliable evidence of PW. 4 Seema Ghenand, sister of the deceased (wife of the

Respondent-accused) who has categorically deposed that the accused came on the motor-bike of the deceased on the date of incident. There is recovery of weapon used in the offence as well as cash amount of Rs. 24,000/- from the accused. He therefore contended that learned trial Judge has erred in acquitting the Respondent-accused and there is sufficient material on record to warrant conviction.

7. The learned APP has supported the judgment of acquittal.

8. In the present case, admittedly, there is direct evidence and the chain of circumstances which needs to be complete to arrive at a irresistible conclusion that it is the accused only who had committed the offence and no one else, is not proved by the prosecution. The prosecution has failed to prove the motive and further the chain of circumstances which lead to murder of deceased Vishal. It is pertinent to note that the motor-bike of deceased Vishal was found by the complainant and other searching party by the side of body of the deceased Vishal at Shelgaon. In this view of the matter, the evidence of P.W. 4

Seema is doubtful. In the evidence of complainant PW. 1 Krushna, PW. 2 Popat Mungase, PW. 3 Suryakant Mhaske and PW. 8 Bapu Mungase, father of Vishal have stated in their evidence that they did not notice injury on the dead body of Vishal. The learned trial Court has therefore rightly come to the conclusion that their evidence does not help to the prosecution in proving that the death of Vishal was homicidal. Similarly, even the inquest panchanama (Exhibit 28) does not refer to any injury on the dead body of Vishal.

9. PW.7 Dr. Milind Sonavane, the medical officer has found three external injuries on the dead body of Vishal i.e. (1) Contused lacerated wound over right side of forehead, above right angle of eye, contusion 9 cm x 8 cm, laceration 1.5 x 1 cm x bone deep; (2) Nibbled wounds over face over both lips, margins irregular and nibbled involving whole thickness and (3) Peeling with erosion of skin over anterior aspect of neck and over left axilla. The medical officer also narrated corresponding internal injuries and opined that the death is due to shock following fracture to skull and injury to brain due to

assault vide final cause of death certificate (Exhibit 35). P.W. 7 Dr. Sonawane issued the postmortem report (Exhibit 34) and stated in his evidence that deceased Vishal had consumed liquor. He has given certain admissions in respect of the age of injury and further admitted that if any person falls from the height, injury could be possible. Learned trial Judge was therefore right in holding that the prosecution has miserably failed to prove beyond reasonable doubt that the death of Vishal was homicidal.

10. The learned trial Court in paragraph 24 (A to E) of its judgment has referred to the circumstances relied upon by the prosecution. Learned trial Court after analyzing the evidence has come to the conclusion that prosecution has failed to prove the involvement of the accused in the crime. There was no motive brought on record by the prosecution for which the accused murdered deceased Vishal. In view of the evidence on record that Bapu Mungase had three children Vishal, Seema and Archana. Seema is the wife of accused and accused is nephew of Bapu Mungase. In this view of the matter, it is

difficult to digest that the accused committed murder of Vishal to grab the property. The marriage of Seema was performed with accused in May, 2008 and the complainant has admitted that there were cordial relations with the accused till the incident.

11. P.W. 4 Seema though has stated in her evidence that on 6th February, 2010 at about 1.00 pm her brother victim came to her house with friend Dadu on motor-bike. Then Vishal proceeded to search Respondent-accused assuring Seema that he will bring her husband at her house. His sack and money purse were kept by Vishal with sister Seema and he left to bring her husband but did not return back. On the same night at about 11.00 pm Seema's husband came on motor-bike of Vishal.

12. P.W. 3 Suryakant Mhaske has stated in his evidence that on 8th February, 2012 he along with others went to take search of Vishal and while taking search, they found motor-bike on the pathway with key. P.W. 4 Seema has failed to explain as to how

motor-bike of Vishal was not at her home. The statement of P.W. 4 Seema was recorded only on 15th February, 2012 and till that date she has not disclosed this fact to anybody including her father. Even PW.4 Seema has admitted that wife of Vishal was having cellphone, however for the reason best known, she has not informed such important fact to the wife of accused.

13. So far as the recovery of Rs. 24,000/- from the accused, the learned trial Court was justified in disbelieving the same, as the evidence on that point of prosecution witnesses was unsustainable. PW. 5 Raju Shaikh has given crucial admission that they were in police station for about two hours and police obtained his signature on the panchanamas (Exhibit 24 and 25) in police station, on the recovery of weapon allegedly used in the murder. The same was recovered from bungalow of Mungase i.e. father of the deceased, who was called at the time of recovery and who opened the bungalow for police authorities. Hence, both the recoveries are of no help to the prosecution. The learned trial Court has rightly disbelieved the evidence of PW. 5 Shaikh on the point of recovery. Except this,

there is no material brought on record by the prosecution to proved the guilt of the accused.

14. Taking into consideration the evidence brought on record by the prosecution, we are of the considered view that the prosecution has miserably failed to prove its case beyond reasonable doubt. The view taken by the learned trial Court is correct and no interference is called for in the impugned order of acquittal. Hence, the following order.

15. The Appeal stands dismissed.

16. Bail bonds of the accused, if any, are cancelled.

(N.B. SURYAWANSHI, J.)

(INDRAJIT MAHANTY, J.)