

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

CRIMINAL APPEAL NO. 319 OF 2014

Raju @ Raja Reddi Rathod }
Age:26 years, R/at. Shastrinagar, }
Pipe line, Behind Hanuman Mandir, }
Kalwa (W), Thane. } ... Appellant
Versus.
The State Of Maharashtra } ... Respondent

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Mr. Shashikant Choudhari, Advocate for Appellant.

Mr. P. H. Gaikwad, A.P.P. for the State-Respondent.

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**CORAM : PRASANNA B. VARALE &
PRAKASH D. NAIK, JJ.**

DATE : 29th JULY, 2020

JUDGMENT:- (Per:- PRAKASH D. NAIK J.)

1. This Appeal is preferred against the Judgment and Order dated 26th February, 2014 passed by the learned District Judge-4 and Additional Sessions Judge, Thane in Sessions Case No.49 of 2012, convicting the Appellant for the offence punishable under Section 302 of Indian Penal Code (for short "IPC") and sentencing him to suffer imprisonment for life.

2. The prosecution story in brief is as under:-

(i) Deceased Vishal Patil was residing with his mother,

brother and sister at Shastri Nagar, Kalwa. Accused was friend of Vishal. He used to visit house of Vishal. Accused and Vishal were in habit of consuming liquor and they used to consume it together either in the house or outside.

- (ii) Quarrel took place between Vishal and accused on 26th June, 2011 since Vishal demanded money for consuming liquor with accused. Complaint was lodged against Vishal by accused which was registered as N.C. complaint.
- (iii) On 30th June, 2011 Accused visited Police Station holding blood stained axe in his hand. His clothes were also blood stained. He confessed that he has committed murder of Vishal Patil by assaulting him with axe on his head at Manisha Nagar, graveyard.
- (iv) Police Station Officer Aaba Malche, took the blood stained axe from accused. The police and accused then proceeded towards graveyard at Manisha Nagar. The accused pointed out the place where he had killed Vishal Patil. Body of Vishal was lying in pool of blood on the road. Vishal had sustained injuries on head etc.

(v) Police Station Officer Aaba Malche registered FIR against the accused for committing murder of Vishal Patil. Offence under Section 302 of IPC vide C.R. No. I-260 of 2011 was registered at Kalwa Police Station. Inquest Panchnama of body of the deceased Vishal was prepared. Body was sent for postmortem. Investigation was conducted. Spot panchnama was recorded. Statements of witnesses were recorded. On completing investigation, charge sheet was filed against the accused.

3. Charge was framed against the accused for offence punishable under Section 302 of IPC vide order dated 18th July, 2013. The Accused pleaded not guilty and claimed to be tried. His defence was of total denial.

4. Prosecution examined ten witnesses. (PW-1) Pramod Patil is the brother of deceased Vishal. (PW-2) Uttam Bagul was on duty at Kalwa Police Station on 30th June, 2011. (PW-3) Sundar Nisargandh was witness to quarrel between accused and deceased on 30th June, 2011. (PW-4) Aaba Malche was Police Station Officer on 30th June, 2011 at Kalwa Police Station. (PW-5) Udesb Gaikar is

a panch witness for panchnama in respect to recovery of dead body of Vishal. (PW-6) Vinod Patil is brother of Vishal. (PW-7) Prakash Ekbote is the Police Inspector attached to Kalwa Police Station. (PW-8) Dr. Mangesh Ramchandra Ghadge conducted Postmortem on dead body of deceased. (PW-9) Deepak Gaikar is the panch witness for seizure of axe and clothes. (PW-10) Ravsaheb Jadhav was Police Inspector attached to Kalwa Police Station, he conducted investigation.

5. Learned Advocate for the Appellant submitted that the Appellant has been falsely implicated in this case. The entire case is based on circumstantial evidence. There is no eye witness to the incident. The prosecution has not proved the chain of circumstances. No reliance can be placed on evidence of PW-2 and PW-4. Their evidence is inconsistent with regard to blood stains on axe. The prosecution has failed to establish as to where the axe was lying till it was produced by the accused. PW-2 and PW-4 are silent with regard to the fact that the accused pointed out the body of deceased Vishal in Exh-22 i.e. panchnama. There is no reference of labelling and sealing axe and clothes. For a period of 18 days, the articles were lying at

the Police Station and thereafter, the same were sent to Forensic Science Laboratory. No blood group of deceased could be detected. There was no blood of 'O' group on the clothes of accused. The prosecution has failed to prove that the accused is author of crime. There are contradictory versions of the witnesses. There are several infirmities in the evidence of witnesses and the charge has not been proved beyond all reasonable doubt. Thus, the accused is entitled for acquittal.

6. Per-contra, Learned APP appearing for state contended that the prosecution has proved the charges against accused by adducing cogent evidence. Although, the case is based on circumstantial evidence, the evidence adduced by the prosecution is sufficient to link the accused with commission of crime. The chain of circumstances leading to involvement of the appellant in commission of murder are established beyond doubt. There are strong circumstances against the accused. The evidence discloses that prior to the incident there was quarrel between deceased and the appellant. On the day of incident, there was quarrel between deceased and the accused. Thus, the appellant had motive to commit crime. The appellant was

last seen with the deceased, which is apparent from the evidence of the witnesses. The appellant had surrendered before the police and confessed to the crime. He had disclosed the place where the crime was committed and the body of deceased was lying. The body was recovered on disclosure by accused which is admissible under Section 27 of the Evidence Act. The evidence of brothers of deceased shows that victim and the appellant had strained relationship on the day of incident on account of quarrel between them. There were blood stains on axe. The Medical Officer has stated that the death was homicidal and the injuries on the body of deceased were possible by axe. The panch witnesses have supported the recovery of axe and clothes. The Chemical Analysis reports corroborates the prosecution case. The trial Court has assigned reasons while convicting the appellant, which do not warrant interference. The appeal be dismissed.

7. The law relating to circumstantial evidence is settled. The chain of events in circumstantial evidence cases has to be such as to point out to guilt of the accused alone beyond reasonable doubt. The question that would fall for consideration is whether the circumstances noticed

would form a complete chain of events without any snap and point to the accused as the guilty person and no one else. Inference of guilt can be justified only when all incriminating facts and circumstances found to be in compatible with innocence of accused or guilt of any other persons. Circumstances have to be proved beyond reasonable doubt and have to be shown to be closely connected with principle fact sought to be inferred from those circumstances. Great care must be taken in evaluating circumstantial evidence and if the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the fact to establish must be consistent only with the hypothesis of guilt.

8. Prosecution in the present case relied upon the following chain of circumstances viz.

- (i) Deceased Vishal was last seen in the company of accused.
- (ii) The accused visited Police Station with blood stained axe and blood stained clothes.

- (iii) The accused showed the place where Vishal was killed and his body was lying. The body was recovered at his instance.
- (iv) The medical evidence supports the ocular evidence.
- (v) The experts evidence in the form of C.A. reports in respect of axe and clothes of the accused supports the prosecution.

9. Considering the circumstances relied upon by the prosecution and the principle for appreciation of circumstantial evidence, we have examined the evidence on record. To establish motive for commission of crime, the prosecution is relying on the evidence of PW-1, PW-3 and PW-6. (PW-1) Promod Patil is brother of deceased. He stated that accused and deceased were friends. He did not know what had happened between deceased and accused. There was quarrel between them. PW-3 stated that he knows accused. He was not knowing deceased Vishal. He do not know what had happened on 26th June, 2011 between accused and Vishal. He do not know what had happened on 30th June, 2011 between them. The Police made inquiry with him about murder of Vishal. The

prosecution sought permission to cross-examine the witness since he has resiled from his statement. In the cross-examination by the prosecution he stated that he do not know whether deceased and accused were in habit of consuming liquor. He denied that one month prior to the incident, there was quarrel between accused and deceased, since deceased was demanding money for consuming liquor. He also denied that on 26th June, 2011 Vishal demanded money from accused for consuming liquor and hence there was quarrel between them. On 30th June, 2011 there was exchange of words between accused and deceased in the evening at 7.30 pm and he convinced them not to quarrel. In the cross-examination by the defence he again stated that he was not knowing any person by name Vishal Patil. He did not tell to the police that on 30th June, 2011 in the evening at 07.30 pm deceased Vishal Patil came there when accused was standing on the road. He did not tell Police that deceased assaulted accused by saying that why he brought police to his house and lodged the complaint at Police Station and that he sent both of them to their houses after resolving their quarrel. There was frequent variation in his version. The trial Court has however, erroneously accepted the

evidence of this witness as a circumstance to establish that the deceased was last seen with the appellant. (PW-6) Vinod Patil is brother of deceased Vishal. According to him, there was quarrel between Vishal and accused on 26th June, 2011 on account of demanding money by deceased. The accused lodged the complaint at Police Station. Police released them after convincing them. He came to know from his friend that his brother Vishal has been killed by the accused.

10. (PW-2) Uttam Bagul was on duty as Assistant to P.S.O. on 30th June, 2011 at Kalwa Police Station. According to him accused visited the Police Station. He was holding an axe having blood and his clothes were blood stained. P.S.O. Malche (PW-4) took the axe from his hand. In the cross-examination he deposed that there is no special identification mark on the axe. His statement was recorded on 02nd July, 2011.

11. (PW-4) Aaba Tulshiram Malche was attached to Kalwa Police Station as P.S.I. He was on duty as P.S.O. on 30th June, 2011. According to him one person holding blood stained axe and blood stained clothes came at the Police

Station on 30th June, 2011 at about 09.15 pm. He gave his name and confessed that he has committed murder of Vishal Patil near graveyard by giving axe blow on his head. He took blood stained axe from the hands of the said person. Accused is the same person who visited Police Station with axe and blood stained clothes. Thereafter, police proceeded to graveyard at Manisha Nagar and accused pointed out the place where he killed Vishal Patil. One person was lying in pool of blood having injury on his head. He lodged FIR against the accused. He identified the axe and clothes shown to him during the recording of evidence. In cross-examination, it was stated that he had not seized the blood stained axe in presence of panchas under panchnama.

12. PW-7 Prakash Ekbote was attached to Kalwa Police Station as Police Inspector. He was on duty on 30th June, 2011. PW-4 informed about disclosure made by accused to him. Thereafter, all of them went to graveyard at Manisha Nagar. They saw body of one person lying. Accused had taken them to graveyard at Manisha Nagar. Accused pointed out the body of the person lying on the road. There were injuries on the body. PW-4 lodged FIR.

He recorded his FIR. He prepared inquest panchnama. (PW-6) Vinod Patil also came when inquest panchnama was recorded. He identified body of his brother Vishal. He prepared spot panchnama. He seized axe on 01st July, 2011 in presence of panchas. He also seized blood stained clothes of accused. In cross-examination, he stated that the articles are required to be sealed. There is no reference of sealing the samples of blood with earth taken in spot panchnama Exh.-18. There is no reference of sealing axe and blood stained clothes of accused in seizure panchnama Exh.-22. There is overwriting in the name of panch as well as timing in inquest panchnama Exh.-21.

13. (PW-10) Raosaheb Baburao Jadhav was attached to Kalwa Police Station as Police Inspector. He deposed that he took over investigation on 01st July, 2011. He seized clothes of deceased Vishal Patil on 01st July, 2011. He recorded statements of Four witnesses including Pw-1 and Pw-6 on 1st July, 2011. He recorded statements of other witnesses on 3rd July, 2011, 5th July, 2011, 7th July, 2011 and 18th July, 2011. He sent samples such as stone, axe and clothes of accused and deceased to F.S.L. by letter dated 18th July, 2011. After completion of investigation, he

submitted charge sheet in Court. In cross-examination it was stated that he did not send seized articles immediately to F.S.L. for chemical analysis. He recorded statements of Police Head Constable Bagul, Police Naik More, Police Constable Sirsat and Police Hawaldar Ibrahim on 2nd July, 2011. There was no locality nearby the place where body of Vishal was found. There is a road near by the place going to Saiba Nagar and Janki Nagar. He did not get any eye witness to murder of Vishal from the said locality. He did not record statement of constable Bhusare who produced clothes of deceased Vishal after postmortem.

14. PW-5 and PW-9 are panch witnesses. (PW-5) Udesb Gaikar acted as a panch witness for spot panchnama. He stated that they saw blood at the place of incident. He had not seen body of Vishal at that place. The police took sample of blood mixed earth, Mobile and T.V. Police prepared panchnama of scene of offence. This witness was declared hostile to the extent of inquest panchnama and cross-examined by APP. In the said cross-examination, he stated that he can tell that any person by name Raja was in custody of Police at the time of panchnama. It is incorrect to say that accused before the

Court was in custody of Police and he pointed out body of Vishal. It is not true that the body of Vishal was lying to the back side of graveyard at Manisha Nagar. It is not true they saw injuries at the neck, ear and left hand thumb of deceased Vishal. It is not true that Police prepared inquest panchnama of body in their presence. In the cross-examination conducted by Advocate for accused, it was stated that the Police had come to call him at 11.15 pm. It is not true that Police took sample of blood mixed earth and seized Mobile and T.V. in their presence. (PW-9) Deepak Gaikar was called at Kalwa Police Station on 1st July, 2011 to act as panch witness. He stated that one accused was present at Police Station. He pointed out axe and clothes. The clothes were on the table. The axe was wrapped in a paper. Clothes were also wrapped in paper. Panchnama Exh.22 was prepared. Nothing happened in his presence on 1st July, 2011 other than panchnama Exh.22. No other panchnama was prepared in his presence on 1st July, 2011. In cross-examination, he stated that he was called at Police Station at about 7.00 or 8.00 pm on 1st July, 2011. He left the Police Station at 2.00 am. He was again called by Police on the next day at 10 am. He was again called in the evening. Vinod Patil, Udesb Gaikar were also

with him on 1st July, 2011. They acted as panch witness with him.

15. (PW-8) Dr. Mangesh Ghadge is the Medical Officer. He conducted postmortem of the body of Vishal Patil on 1st July, 2011. He noticed external injury on the body of Vishal such as chop wound over neck, head, back, thumb etc. He also noticed other injuries in the nature of CLW and puncture abrasions. On internal examination of head he found contusion underneath scalp over left parieto temporal region, cut scalp, parieto temporal bone, cut brain, temporal lobe, fracture pitrous temporal bone and occipital bone on left side. On internal examination he found trachea filled with blood and left and right lung bilaterally pale and collapsed. He also noticed cut thyroid cartilage. The opinion about the cause of death of Vishal was haemorrhage and shock due to multiple chop wounds involving vital organs caused by heavy sharp weapon. He took sample of blood, scalp hairs, nail clippings, stomach etc. The chop wounds are possible by sharp and heavy object. The external and internal injuries mentioned in post-mortem note is possible by article No.7 axe. The injuries found on the body of Vishal were sufficient in the

ordinary course of nature to cause death. In the cross-examination he deposed that, the investigating officer had not requested him for opinion whether the chop wound mentioned in column no.17 of P.M. notes are possible by axe during investigation. He had received C.A. reports in respect of samples collected by him. He tendered C.A. reports in respect of blood grouping, nail clippings and scalp hair of deceased Vishal. He did not give probable time of death on the basis of stomach contents in column no.21 of P.M. Notes Exh.24.

16. The prosecution is also relying upon the C.A. reports in respect to the article sent for examination to Forensic Science Laboratory. Exh.25-A is the forwarding letter dated 18th July, 2011 sent by the investigating officer to the Directorate of Forensic Science Laboratory along with the articles for examination. The articles included blood mixed earth from the place where dead body was found, blood stained stone, axe, clothes of accused, clothes of deceased, blood sample of deceased, scalp hair, nail clippings of deceased and blood sample of the accused. The examination report dated 5th November, 2011 (Exh.-25) in respect to blood of deceased was that the blood was

not suitable for blood grouping. C.A. report dated 5th November, 2011 (Exh.26) in respect to nail-clippings of deceased Vishal Patil shows the result of analysis as no blood is detected on both the exhibits of nail clipping. C.A. report dated 5th November, 2011 Exh.27 in respect to scalp hair of Vishal Patil showed result that it is stained with blood. The species origin was human but the ABO grouping was inconclusive.

17. On scrutiny of evidence, we are of the considered opinion that the prosecution has not proved its case beyond all reasonable doubt. There are inherent defects in the evidence of witnesses. The circumstances relied upon by the prosecution are not enough to establish that the appellant is the author of crime. Undisputedly, since there is no eye witness, the case rests on the circumstantial evidence. The incident of murder had allegedly occurred on 30th June, 2011. The prosecution case proceeds with the fact that there was a quarrel between the appellant and the deceased on 26th June, 2011. This is considered as a motive for committing murder of deceased. The cause of quarrel is that the accused and the deceased were friends and they were

habitually consuming liquor. The deceased had demanded money from the accused and on that count there was quarrel between them. N.C. complaint was lodged by the accused against the deceased on 26th June, 2011. Assuming that there was a quarrel between accused and deceased on 26th June, 2011 we do not find that it could be a strong motive to kill the deceased. PW-1 and PW-6 are brothers of the deceased Vishal Patil. They have referred to the quarrel dated 26th June, 2011. Their evidence does not indicate that there was any enmity between the accused and the deceased. PW No.3 kept on changing his version. His evidence cannot be supported to prosecution case. The prosecution case further proceeds with the allegation that on 30th June, 2011, the accused had appeared before Kalwa Police Station and confessed that he has committed murder of Vishal Patil and his body is lying near graveyard at Manisha Nagar. The alleged confession is not admissible in evidence. The trial Court has not accepted the confessional statement of the accused as evidence on the ground that it is hit by provision of the Evidence Act. The evidence of PW-2 indicates that he was attached to Kalwa Police Station on 30th June, 2011. He was on duty as Assistant to P.S.O. Shri. Aaba Malche (PW-4) he stated that

the accused came at the Police Station at about 9.15 pm with axe and blood stained clothes. He took axe from the hands of accused. He has not referred to the confessional statement made by the accused that he has killed Vishal Patil. He has also not stated that the accused made a statement that the deceased is killed near graveyard situated at Manisha Nagar and he would show the place of incident and dead body of the deceased. He stated that there was no special mark on the axe which was handed over by the accused. PW-4 however has referred to the special mark on the axe. His evidence is contradictory to the evidence of PW-4 with regards to the alleged confession and the statement leading to discovery of body from the place of incident. Although, he was present at the Police Station on the day when the accused had presented himself, the statement of this witness was recorded on 2nd July, 2011.

18. PW-3 knows accused. Initially he stated that he do not know the deceased. He do not know what happened between accused and deceased on 26th June, 2011 and 30th June, 2011. He was cross-examined at the instance of prosecution since he had resiled from his statement. In the

cross-examination he stated that he is not aware that Vishal used to meet accused as they were childhood friends. He is also not aware that they were consuming liquor and there was no quarrel between them prior to one month of incident. There was no quarrel between them on 26th June, 2011. However, he stated that there was exchange of words between the accused and deceased on 30th June, 2011 at 07.30 pm. The prosecution has relied upon this version of PW-3 as one of the circumstance of last seen together. The trial Court has accepted that Vishal was last seen with the accused on 30th June, 2011 at 07.30 pm. This circumstance and finding of the trial Court is based on the shaky evidence of PW-3. The version of this witness cannot be accepted as a circumstance to prove the guilt of the accused. It is pertinent to note in the cross-examination of PW-3 conducted by the Advocate for accused he once again stated that he was not knowing Vishal. He did not tell Police that Vishal came and he was standing on the road on 30th June, 2011. He did not tell Police that Vishal had assaulted accused. Thus, this witness has denied that this fact was stated by him to the police. In these circumstances, no adverse inference could be drawn against the appellant on the basis of his version.

19. PW-4 was on duty as P.S.O. with Kalwa Police Station on 30th June, 2011. He has referred to the presence of accused at the Police Station with axe in his hand. He took the axe from the hands of the accused and kept it at the Police Station. In his evidence he did not say that the accused made statement that he would show the place where he has killed the deceased and his body is lying. He took the axe from the hands of the accused. However, he did not seize it immediately at that point of time. He did not seize the blood stained axe and clothes in presence of pancha under Panchnama.

20. PW-5 is a panch witness for spot panchnama. The spot panchnama Exh.18 was recorded on 30th June, 2011 in respect to the place of incident where the body was found. He was declared hostile to the extent of inquest panchnama and cross-examined by the prosecutor. However, nothing could be elicited from his evidence in support of the prosecution case. From the evidence of PW-7 it can be seen that according to him the disclosure made by the accused was informed to him by PW-4. Thus, the disclosure about the crime or that the place of incident where the accused had allegedly killed deceased was not

made in his presence. According to him he seized axe on 1st July, 2011. It is relevant to note that Exh.22 is panchnama in respect of seizure of the axe and clothes. There is no reference of sealing of blood stained axe and clothes of the accused in Exh.22. There was overwriting in respect to name of pancha and time of recording of panchnama. It is pertinent to note that although, the axe was in the possession of accused when he had appeared at the Police Station and it was taken from his hand by PW-4, Exh.22 indicate that the statement of the accused was again recorded stating that he is handing over the axe which was used in commission of crime and the same was seized by the Police. It is pertinent to note that axe was already in possession of Police when the accused had allegedly remained present at Police Station. Thereafter, the panchnama Exh.22 was recorded indicating that the accused has handed over the axe which was used in crime.

21. PW-8 Medical Officer Ghadge has conducted postmortem. He has referred to the nature of injuries sustained by the victim and the cause of death. He stated that the investigating officer did not ask opinion whether the chop wounds mentioned in column No.17 of

postmortem report were possible by axe during investigation. In any case the question is whether the accused is the author of crime. The evidence of PW-9 panch witness indicate that axe and clothes of the accused were recovered by panchnama Exh.22 on 1st July, 2011. He do not talk about sealing of the said articles. He has stated that clothes were lying on the table. PW-10 has referred to the fact that the articles were sent for chemical analysis on 18th July, 2011 by forwarding letter. Exh.25-A shows that there was delay in forwarding the articles which were lying at the Police Station for substantial period of time. Looking into the nature of evidence of witnesses, the circumstance relied upon by the prosecution, we are not satisfied that there is cogent evidence for convicting accused. We do not find that prosecution has succeeded in establishing the offence against the accused beyond all reasonable doubt. It is pertinent to note that the corroborative evidence in the form of C.A. report also do not support the prosecution to draw any inference of guilt against the accused. The forwarding letter dated 18th July, 2011 indicate that several articles were sent for chemical analysis to Directorate of Forensic Science Laboratories. The C.A. report Exh.25 indicate that it was not suitable for blood grouping. Exh.26

is a C.A. report regarding nail clipping of deceased Vishal Patil. The result of analysis is that no blood was detected on the nail clippings. Exh.27 is the report regarding the scalp hair of deceased Vishal Patil. The report of analysis is that the species origin is human but ABO grouping was inconclusive. Thus, the blood group of deceased Vishal was not available. There is no incriminating evidence against the appellant viz-a-viz the C.A. reports. C.A. report Exh.35 is also on record. It is in respect to several other articles recovered during the course of investigation. The mobile phone, earth mixed with blood, stone stained with blood and axe were having blood group 'O'. Full shirt of accused and full jeans of accused had species origin human but a blood group was inconclusive. Shirt of deceased Vishal had 'O' grouping and human blood. Thus, it is clear that no blood of 'O' group was found on the clothes of the accused.

22. Taking into consideration the aforesaid circumstance we are of the considered opinion that the prosecution has failed to prove its case and the conviction of the appellant cannot be upheld and required to be set aside with consequential order of acquittal. Hence, we pass the following order:-

ORDER

- (a) Criminal Appeal is allowed.
- (b) The Judgment and Order dated 26th February, 2014 passed by the learned District Judge-4 and Additional Sessions Judge, Thane in Sessions Case No. 49 of 2012 is hereby quashed and set aside and the Appellant-accused is acquitted for the offence charged against him. The appellant is set at liberty forthwith, if he is not required in any other case.
- (c) We appreciate the assistance rendered by the learned Counsel appointed to prosecute the appeal on behalf of the appellant and we quantify the fees payable to him at Rs.5,000/- (Five Thousand Only). The Registry to ensure payment of fees to the learned Counsel appointed on behalf of the Appellant, within four weeks from today.

23. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

(PRASANNA B. VARALE,J.)