

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.632 OF 2019

**NANDA ARUN GHODKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Appellant : Ms. S. G. Sonawane
APP for Respondent No.1 – State : Mr. S. G. Sangle
...

**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.**

DATE : 22ND FEBRUARY, 2021

PER COURT :

1. By this appeal, the appellant, original informant seeks to challenge the judgment dated 03-05-2019 delivered by the learned Additional Sessions Judge, Beed in Sessions Case No. 136 of 2015, thereby acquitting all five accused from the charge of having committed an offence punishable under Sections 363, 302 and 201 read with Section 34 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. We have heard the strenuous submissions of the learned advocate for the appellant and the learned prosecutor. With her assistance, we have carefully gone through the record and proceedings.

3. The prosecution had put forth a case of the five accused having caused the death of one, namely Sunny Sharad Shinde. The accused are alleged to be residents of the neighbourhood in which the deceased used to reside. The deceased was said to have had a love affair with Misbha Shaikh, sister of Zeshan Shaikh Raees, accused No.5. The deceased was alleged to have eloped with Misbha and he was charged with the offences of having raped her. Being an under age, he was put in the remand home upon his arrest. He had escaped from the remand home and the accused allegedly put him to death on 01-07-2015. His dead body was found on 02-07-2015. All the five accused were arrested in between 05-07-2015 and 27-07-2015.

4. PW2 Suhas Patole was said to be an eye witness to the "last seen alive together" theory. As per his statement, on 30-06-2015 at around 11:30 p.m. PW2 had stepped out of the house for a walk and he noticed all the accused assaulting the deceased. One of the accused Mohammad Ali arrived in a white coloured Toyota car, whose registration No.32 was identified by PW2. They bundled the deceased into the back seat of the car and sped away. The said car was noticed in a CCTV footage of a nearby petrol pump.

5. After the arrest of the accused, accused No.5 is said to

have led the police in the disclosure of a knife, which had blood stains. The clothes of some of the accused were also seized, which had blood stains. The hair and nail clippings of the accused were also collected. All these articles were referred to the Forensic Science Laboratory for analysis. The reports with regard to all these articles as well as the blood sample of the deceased were placed before the trial Court. Since the trial Court noticed that there was no evidence to prove the guilt of the accused, it handed down a judgment of acquittal.

6. In so far as the knife is concerned, we find that the C.A. report with regard to the blood stains on the knife does not disclose the blood group, which would match with the blood group of the deceased being "O".

7. In all eleven witnesses were examined by the prosecution. PW10 was the S.D.P.O. and the I.O. PW11 was the API who had initially commenced the investigation. PW9 was the Deputy Superintendent of Police at the relevant time, who collected the CCTV footage and interrogated the employees of the petrol pump at which the CCTV was installed. He then, based on the memorandum statement, followed the accused who took him near a village by name Shendipokharni and the car which was concealed under dry grass behind a stable was seized under panchanama

Exhibit-96. Blood stains were noticed on the rear seat and three hair were collected. However, blood stains, upon analysis, did not match with the blood group of the deceased. No DNA sampling with regard to the three hair was done.

8. PW2 Suhas had recorded his statement under Section 164 of the Cr.P.C. before the learned Magistrate on 21-07-2015. However, in his testimony at Exhibit-91/C recorded before the trial Court on 22-10-2018, he turned completely hostile and has taken a diagonally opposite stand.

9. The blood sample and nail clippings of all the accused were collected, so as to find out as to whether any skin tissue or blood of the deceased could be found beneath the nails. The C.A. report indicates that no such matching skin tissue or blood group was found, and as such, there is no evidence, from the Forensic Science Laboratory as against any of the accused. The nail clippings of the deceased were also collected to find out as to whether his scuffle in self defence with the assailants, may have the skin tissue of any of the accused, embedded. The C.A. report on this count also furnished no evidence against any of the accused. The CCTV footage gave a blurred picture as the camera had an inferior quality resolution. This aspect, as well, did not give any clue to the investigation.

10. Considering the above, we find that, on account of an

eye witness turning hostile and the Forensic Science reports failing to furnish any evidence, the prosecution could not circumstantially establish that the accused had committed the murder of Sunny.

11. The learned counsel for the appellant has strenuously contended that the accused had a very strong motive to kill Sunny, as he had eloped with Misbha, who was the sister of Zeshan Raees (accused No.5) and was related to the other accused. Both were found together in Pune and he was charged with kidnapping and raping Misbha.

12. We are of the view that in the absence of any evidence, we cannot draw a conclusion that the accused had killed the deceased merely because they were on inimical terms. We cannot base a judgment of conviction on inference and on a solitary factor of motive, which could only be a corroborative factor, provided the prosecution establishes the murder of the deceased at the hands of the accused.

13. In view of the above, this appeal is dismissed.

14. After the appeal period is over, the muddemal property be destroyed. The record and proceedings be returned to the trial Court.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)