

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 1087 OF 2002**

State of Maharashtra	... Appellant
V/s.	
1. Krishna Santu Ikke	
2. Bandu Appaso Kumbar	... Respondents

Ms P.P. Shinde, APP for the Appellant-State.
None present for the Respondents.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

**RESERVED ON : 12.02.2021.
PRONOUNCED ON : 08.06.2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal at the instance of State takes an exception to the judgment and order dated 12.04.2002 passed by the learned 2nd Ad-hoc Additional Sessions Judge, Kolhapur in Sessions Case No. 243 of 2001. By the impugned judgment and order, the respondents, who were accused Nos.1 and 2 before the trial court, have been acquitted of the offences punishable under sections 302 read with 34 of the Indian Penal Code (for short 'IPC').

2] It is the case of the prosecution that during the relevant period, the deceased Chimasahab Balasahab Mulik was residing alone at Village Tilavani, Tal. Hatkanangale, Dist. Kolhapur. On 17.6.2001 at about 9.00 a.m., the deceased was found lying in dead condition in front of door of his house.

There were multiple injuries on the person of deceased. Intimation about the incident was given to Hatkanangle Police Station. On the basis of report lodged by PW-1 Prashant Bhosale, crime was registered vide crime No. 48 of 2001 for the offence punishable under sections 302 of the IPC against unknown persons.

3] The investigation of crime was entrusted to PW-15 Satish Mane, who was then working as Police Inspector with Hatkananagle Police Station. Inquest panchanama of the dead body was prepared. The dead body was then sent to the Government Hospital for the postmortem. The panchanama of place of incident was prepared. The statements of witnesses were recorded. On the basis of statements of witnesses, the present accused were arrested. Weapons allegedly used by the accused for committing murder of the deceased, i.e., sickle and axe were recovered at the instance of accused No.2. On completion of investigation, chargesheet was filed, against both the accused for the offence punishable under section 302 read with 34 of the IPC.

4] Accused were charged and tried for the said offences. As stated earlier, the trial court by the impugned judgement and order acquitted both the accused of all charges.

5] We have heard learned APP for the appellant/ State . None appeared for the respondents.

6] Admittedly, the case is based on circumstantial evidence. The prosecution in order to prove its case has *inter alia* relied upon extra judicial confession allegedly made by accused no.1 to PW-9 Chandrakant Khot.

7] PW-9 Chandrakant Khot has stated in his evidence that the deceased Chimasahab Mulik was known to him. Accused are also known to him. On 22.6.2001, accused No.1 Krishna came to him while he was in the premises of Lakshmi Industries and told him that he and accused No.2 killed the deceased. PW-9 has stated that accused No.1 disclosed the said facts to him at about 9.00 p.m.. On the same day, at 9.30 p.m., he went to the police station and disclosed the said facts to the police.

8] In the cross-examination, PW-9 has admitted that he had not gone to the house of deceased to tell about the alleged disclosure made to him by accused No.1. He has stated that accused No.1 came to him to seek his help. He has further stated that the police were in search of murderer of the deceased. He has further admitted that except police, he did not disclose to anybody else about the alleged confession to him by accused No.1. He has stated that the police recorded his statement after 15 days from the day on which the alleged confession was made to him.

9] According to PW-9 on the day of alleged confession, accused No.1 came to him to seek his help. However, PW-9

has not stated as to what sort of help the accused No.1 was seeking from him. It is also not stated as to what made accused No.1 to make alleged confession to him after approximately five days of the incident. In absence of such particulars, it would not be safe to rely upon the evidence of PW-9. Apart from this, it appears from the evidence of PW-9 that his statement in respect of alleged confession was not recorded immediately. Considering these facts and circumstances, no reliance can be placed on the evidence of PW-9 to connect the accused with alleged crime.

10] Another circumstance which the prosecution has relied upon to connect the accused with alleged crime is that, on previous night of incident at about 9.30 to 9.45 p.m., the accused were seen in the vicinity of the house of the deceased and at that time they were armed with axe and sickle.

11] PW-7 Maruti Birnale has stated in his evidence that on 17.6.2001, at about 9.30 a.m., while he was collecting sugarcane, one Devgonda Bandu Patil came to him and told him that the deceased is lying in front of his house in unconscious condition. Thereafter they both went to the place of incident. They saw that the deceased was lying in front of his house in unconscious condition and there were multiple injuries on his person. PW-7 has further stated that the accused met him on the previous night of incident at about 9.30 to 9.45 p.m. and at that time, they were armed with axe

and sickle. According to PW-7, the accused were coming from the house of the deceased.

12] In the cross-examination, PW-7 has admitted that he has not stated to the police that on previous night of incident, he met the accused and at that time they were armed with axe and sickle. Apart from it, PW-7 has admitted in his evidence that he did not ask the accused as to where they were going at such odd hours of night armed with sickle and axe. He has further admitted that on 17.6.2001, the villagers who had gathered at the place of incident were asking each other as to who could have killed the deceased and at that time, he did not disclose to the villagers what he saw on the previous night of the incident. Considering over all conduct of PW-7 and material omission in his evidence, no reliance can be placed on the evidence of PW-7 to connect the accused with alleged crime.

13] The last circumstance is recovery of weapons at the instance of accused No.2. It appears from the evidence of PW-3 Chandrakant Chougule, who has been examined to prove the said recovery that, he was already aware as to what statement accused No.2 was going to give. The alleged recovery, therefore, cannot be relied upon.

14] Apart from above facts and circumstances, though the prosecution case cannot be discarded on the basis of absence of motive or for non proving the same, however, it is certainly

an important link in the chain of circumstantial evidence, which is missing in the present case.

15] The impugned judgment and order, therefore, cannot be said to be perverse warranting interference by this court. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(SMT. SADHANA S. JADHAV, J.)