

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

CRIMINAL APPEAL NO. 625 OF 2018

1. Pawan Trambak Borase	]	.. Appellants
2. Ankush Shivaji Nathe	]	(Org.Accd.Nos.2 & 3)
vs.		
The State of Maharashtra	]	
(At the instance of Nashik Road	]	
Police Station, Dist.: Nashik	]	.. Respondent

**ALONGWITH
CRIMINAL APPEAL NO. 794 OF 2019**

Amol Suryabhan Sahane	]	.. Appellant
vs.		(Org.Accd.No.1)
The State of Maharashtra	]	.. Respondent

Mr.Aniket U. Nikam a/w Mr.Aashish Satpute, Mr.Amit Icham, Mr.Piyush Toshniwal and Mr. Vivek Arote, for Appellants in Cr. Appeal No.625/2018.

Ms.Sonia Miskin, Appointed Advocate for Appellant in Cr. Appeal No.794/2019.

Ms.P.P. Shinde, APP for the State.

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

**RESERVED ON : 16TH FEBRUARY, 2021.
PRONOUNCED ON : 16TH JULY, 2021.**

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

1] This appeal takes an exception to the Judgment and order dated 20.04.2018 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.245/2017. By the impugned Judgment and order the appellants who were accused before the trial Court have

been convicted for the offence punishable under Sections 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer rigorous imprisonment for 6 months. The appellants have been further convicted for the offence punishable under Section 201 of the Indian Penal code and sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/- each and in default of payment of fine, to suffer further rigorous imprisonment for 1 month.

2] It is the case of the prosecution that at the relevant time, the deceased Krishna Nage was working in the Farsan shop of PW 1- Bajirao Bhagwat. On 29.03.2017 at about 9.40 a.m. the dead body of the deceased was found near Darna Bridge, Nashik. ADR No.52/2017 was thus registered and inquiry of the said ADR was entrusted to PW 8-PSI Rakesh Shevale.

3] The dead body was sent for post mortem. In the post mortem it was found that the deceased was strangled. The crime was thus registered against the unknown person for the offence punishable under Section 302 of the Indian Penal Code. The investigation of crime was entrusted to PW-8. During the course of investigation, it was revealed that the deceased was in the habit of drinking liquor and he used to visit the country liquor shop of Mr.Daswani. PW-8 thus, visited the shop of Daswani. He made inquiry there and it was revealed that the deceased and accused were together in the intervening night of 28.03.2017 and 29.03.2017. The accused were thus arrested. During the course of investigation accused were found to have committed the murder of the deceased, and threw the dead body of the deceased near Darna Bridge.

4] On completion of investigation, a charge-sheet was filed against the accused for the offences punishable under Sections 302, 201 of the Indian Penal Code. The accused were charged and tried for the said offences. On conclusion of trial, the trial Court convicted the accused for the said offences by the impugned Judgment and order.

5] We have heard learned counsel for the appellants/accused and learned APP for the State.

6] Admittedly, the case is based on circumstantial evidence. The prosecution has relied upon following circumstances to connect the accused with alleged crime.

- i] The deceased and accused were last seen together;
- ii] Recovery of blood stained clothes of accused No.1 from his bungalow;
- iii] Recovery of blood stained clothes of accused No.2 from auto-rickshaw;
- iv] Recovery of blood stained clothes of accused No.3 from his house;

7] According to PW 1-Bajirao Bhagwat in the year 2017 the deceased was working in his shop. The deceased was addicted to liquor and under the influence of liquor he used to quarrel with many people. On 28.03.2017, as usual the deceased came to his shop at about 8.00 p.m. At the end of the day he paid him his wages.

8] On 29.03.2017 at about 11.00 to 11.30 a.m. PI Nyahalade came to his shop and he disclosed to him that one unidentified dead

body is found near Darna Bridge. He showed the photograph of the said dead person to him. PW-8 disclosed to him that the person in the photograph is his servant Krishna Nage. He was thus taken to Civil Hospital. PW-1 there was shown dead body and he identified it to be of Krishna Nage. He was then told that according to postmortem report Krishna Nage died due to strangulation and thus he was asked to lodge the report. Thereafter, he lodged report against unidentified persons.

9] PW 1 has further stated that after two days he was called at police station. The accused were shown to him. He disclosed to the police that the deceased used to be in the company of accused Nos. 1 and 3 and he had seen them together. He has stated that 15 days prior to the incident a quarrel had taken place between accused No.3 and deceased and he resolved their quarrel.

10] In the cross-examination conducted on behalf of accused, PW 1 has admitted that the deceased sometimes used to remain absent from work continuously for 8 days. The deceased used to reside in the room owned by him which was on first floor of his Farsan shop. He has admitted that he cannot tell on which issue quarrel took place between accused No.3 and deceased. The deceased was only servant in his shop. He was working with him since 4-5 years. He has further admitted that the deceased, after consuming liquor, used to abuse people known or unknown to him and because of that he was beaten many times. The deceased used to be always in the company of persons who used to drink liquor.

11] The prosecution, in order to prove that the deceased and

accused were last seen together has examined PW 4 Yashwant Baburao Kadam and PW 6 Harish Nandu Ghode.

12] PW 4 has stated in his evidence that on 28.03.2017 he had gone to Country Liquor Shop at Sinnar Phata to consume liquor. While he was sitting in the said shop, he had seen accused and deceased going together by auto-rickshaw. On the next day he came to know about the murder of the deceased.

13] PW-4 in the cross-examination on behalf of the accused has admitted that the police recorded his statement after 4 days of the incident. During the said four days he did not disclose the fact of seeing the accused and deceased together on 28.03.2017 to anybody else.

14] It is apparent from the evidence of PW 4 that on the very next day he learnt about the murder of the deceased. However, for the four days he kept quiet. He has not stated at what time he saw the accused and the deceased together. Apart from it, according to him, he does not know the names of either accused or the deceased and he knows them only by face. Considering the overall conduct of PW 4 it would not safe to rely upon his evidence.

15] PW 6 Harish Ghode has stated in his evidence that on 28.03.2017 in the evening, he had gone to the garrage of Ganesh Sahane near Bhagvat Plaza. At about 9.30 to 10.00 pm he had seen accused standing in front of shop of PW 1. After some time, the deceased came there and exchange of words took place between the

accused and the deceased. Accused then took the deceased in auto-rickshaw by Samangaon Road.

16] PW 6, in the cross-examination conducted on behalf of the accused has admitted that he did not disclose the incident, which he had witnessed on 28.03.2017, till 03.04.2017 to anybody else. He has admitted that he has not stated to the police that exchange of words took place between the accused and the deceased. He has further admitted that he does not know the first names of the accused.

17] PW 6 does not appear to be resident of locality of PW 1. PW 6 has not stated when did he come to know about the death of the deceased. There is no explanation as to why he kept quiet for almost six days. In absence of such particulars, it would not be safe to rely upon the evidence of PW 6. It appears from the evidence of PW 6 that owner of garage, where he was sitting was with him at the time of the alleged incident. In the facts and circumstances of the case, he would have been the best witness. However, he has not been examined.

18] According to the prosecution, the deceased was taken to the bungalow of accused No.1 by auto-rickshaw and there he was murdered.

19] PW 8 PSI Rakesh Shevale has admitted in his cross-examination that there are other residential houses near the bungalow of accused No.1. PW 8 has admitted that he has not recorded statement of people residing nearby the said bungalow of accused No.1. In our view, considering the facts and circumstances of the case, the investigating officer ought to have recorded the statement of

people residing nearby the bungalow where the alleged murder took place.

20] The last circumstance is recovery of blood stained clothes which according to the prosecution the accused were wearing at the time of incident. The recovery appears to be from different places. It is unlikely that accused after committing the murder would conceal their clothes at different places. Even otherwise it's only corroborative piece of evidence.

21] The evidence on record in our view is not sufficient to conclude that the prosecution has proved its case against the accused beyond reasonable doubt. It is apparent from the evidence of PW 1 that the deceased was addicted to liquor, and under the influence of liquor he used to abuse to known and even unknown persons and because of that he was beaten many times. The possibility of committing the murder of the deceased by some other persons, therefore, cannot be ruled out. In the result, following order is passed :

ORDER

i] Appeals are allowed.

ii] The impugned judgment and order dated 29.04.2018 in Sessions Case No.245 of 2017 passed by the learned Additional Sessions Judge, Nashik, convicting the appellants/accused for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code, is set aside.

iii] Appellants/accused are acquitted of the offences punishable under Section 302, 201 read with 34 of the Indian Penal Code.

iv] The accused are in jail. They be released forthwith, if not required in any other crime.

v] The fine, if paid, be refunded.

vi] The Appeals are disposed of accordingly.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]