

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1000 OF 2012**

The State of Maharashtra } Appellant

Versus

1. Appa @ Prakash Baban Gavali	}	
Age: 24 years, Occu: Nil	}	
R/a. Nira Niwas, Gaonthan Lonavala	}	
Taluka: Maval, District-Pune.	}	
	}	
2. Amit Appa @ Prakash Gavali	}	
Age: 24 years, Occu.: Nil,	}	
R/a: Nira Niwas, Gaonthan Lonavala,	}	Respondents
Taluka: Maval, District-Pune.	}	(Orig. accused nos. 3 and 5)

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

Mr. Kuldeep Patil a/w. Ms. Heena Suvarnakar I.by Mr. Shailesh Chavan for the respondent nos. 1 and 2 in Apeal/1000/2012.

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

RESERVED ON : MARCH 17, 2021.

PRONOUNCED ON : JUNE 8, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The state being aggrieved by the acquittal of the present respondents passed by District Judge-10 and Additional Sessions Judge, Pune, in Session Case No. 1085 of 2009 dated 27th of April 2012 has filed the present appeal.

2. It is the case of the prosecution that PW.6 is the sole eye-witness to the incident in which the Mayor of Lonavala Municipal Council namely Bhupendra @ Raju Choudhari was murdered in his cabin, in broad daylight on 26th May 2009. PW.6 was also injured at the hands of the accused Sumit Gavali. According to the prosecution in the preceding year, by virtue of the order of the High Court, Ekvira Chinese and other establishments owned by Prakash Gavali and Sumit Gavali were demolished. There was political rivalry. That Gavali family had suffered heavy economic loss and therefore, they had killed the deceased in his cabin. As far as motive is concerned, it cannot be said that the demolition of the establishments of Gavali family could be the reason of causing his murder as there is sufficient record to show that there were several criminal cases registered against the deceased. He was also convicted for an offence punishable under section 302 of Indian Penal Code and subsequently, acquitted by the High Court.

3. There was political rivalry as well the accused persons had taken recourse to legal remedies seeking disqualification of the deceased as a President and in any case, even according to PW.6 on the day of the incident, the term of Presidentship was about to expire.

4. The account of the incident as given by the solitary eye-witness is that the convicted accused i.e. Sumit Gavali and Jafar Shaikh were the perpetrators of the crime. Motive by itself would not be sufficient to convict an accused for an offence punishable under section 302 of Indian Penal Code in absence of any material which would establish the commission of the offence at the hands of the accused persons. The accused Prakash Gavali and Shashikant Jadhav (accused no. 3 and accused no.6) had filed legal proceedings and therefore they were arraigned as accused persons.

5. The testimony of the eye-witness is found unreliable even to establish the authorship of the injuries at the hands of the accused Sumit Gavali and Jafar Shaikh. The prosecution has not examined any witness to even demonstrate that at the time of the incident, the respondents were in the vicinity of the Lonavala Municipal Council or anywhere nearby.

6. The respondents were arraigned as accused only because the family members of the deceased had complained against them as the political rivals of the deceased and according to PW.18-Shadan Choudhari, the wife of the deceased, her husband had disclosed to her

that he had threat perception and that she should remember the names and faces of his political rivals. Moreover, Prakash Gavali happens to be the father of Amit and Sumit Gavali.

7. The evidence of PW.11 Sagar Gavali, the Rickshaw Driver 15 days prior to the incident, he had seen the respondents in Chinese Restaurant talking about the deceased. His evidence is not trustworthy and hence deserve to be discarded. There is no iota of evidence to establish the involvement of respondents in the murder of the Mayor-Raju Choudhari.

8. A detailed reasoning is assigned for acquitting the convicted accused in Criminal Appeal No. 592 of 2012 and Criminal Appeal No. 728 of 2012. Hence, for the same reasons appeal being sans merits deserves to be dismissed. Hence, the following order:-

ORDER

Appeal is dismissed and disposed of accordingly.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)