

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

CRIMINAL APPEAL NO.93 OF 2015

1. Dattu s/o Maroti Salgar,
age 42 years, Occ. Agri,
2. Narayan s/o Maroti Salgar,
age 47 years, Occ. Agri.

Both R/o Morphali, Tq. Dharur,
District Beed.Appellants...

Versus

The State of Maharashtra. ...Respondent..

...

Advocate for Appellants : Mr. Gaikwad Anil M.
APP for Respondent : Mr. P K Lakhotiya

...

WITH

CRIMINAL APPEAL NO.28 OF 2015

Rustum s/o Baburao Gadade,
age 47 years, Occ. Agriculture,
R/o Village Morphali, Tq. Dharur,
District Beed.

(At present the appellant is in Aurangabad
Central Prison, Harsool, Aurangabad.)

...Appellant...
(orig accused no.3)

Versus

The State of Maharashtra.
through the Police Station Officer,
Police Station Dharur, Tq. Dharur,
District Beed. ...Respondent...

...
Advocate for Appellant : Mr. Govind A Kulkarni h/f
Devang R Deshmukh
APP for Respondent : Mr. P K Lakhotiya

...
CORAM:SARANG V. KOTWAL & BHARAT P.DESHPANDE, JJ.
Dated: June 21, 2022
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ORAL JUDGMENT :- (Per Sarang V. Kotwal, J.)

1. Both these appeals are decided by this common judgment because they challenge the same judgment and order passed by the learned Additional Sessions Judge, Majalgaon. Wherever necessary, the appellants are referred to by their original status as accused in the Sessions Case No.39 of 2013.

2. The appellant Dattu s/o Maroti Salgar was the original accused no.1. Appellant Narayan s/o Maroti Salgar was the original accused no.2 and the Appellant Rustum s/o Babanrao Gadade was the original accused no.3.

3. Appellant Dattu s/o Maroti Salgar-original accused no.1 and the appellant Narayan s/o Maroti Salgar-original accused no.2 have preferred Criminal Appeal

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no.93 of 2015 and Rustum s/o Babanrao Gadade-original accused no.3 has preferred Criminal Appeal no.28 of 2015.

4. The appellants have preferred these two appeals challenging the judgment and order dated 24.12.2014 passed by the learned Additional Sessions Judge, Majalgaon in Sessions Case No.39 of 2013. By the impugned judgment and order, the appellants were convicted for commission of offence punishable under section 302 r/w 34 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/- each, and in default to suffer further S.I. for six months. The appellants were granted set off as per the provisions of section 428 of the Criminal Procedure Code. Other accused i.e. Accused nos.4, 5 and 6 were acquitted.

5. The prosecution case is that, accused nos.1 to 6 in furtherance of their common intention committed murder of one Babasaheb Bhavanji Gadade by giving blows of axe on his head on 19.3.2013 between 9 pm to

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12 am and committed this offence. The alleged motive was a dispute regarding property. Dattu and Narayan were arrested on 23.3.2013 and Rustum was arrested on 20.3.2013. Investigation was carried out and charge-sheet was filed.

6. Case was committed to the Court of Sessions. During trial, prosecution examined 11 witnesses as follows :-

- i. PW 1 Bapurao Gadade was the panch on inquest panchnama.
- ii. PW 2 Banshi Shinde was the panch of spot panchnama.
- iii. PW 3 Ganesh Narote was the first informant.
- iv. PW 4 Ratnakar Mane and PW 5 Sudam Mane were the panch witnesses for seizure of clothes of the deceased.
- v. PW 6 Dhondiram Kamble was a panch witness for seizure of clothes of accused nos. 1 to 3 and recovery of Koyta and Axe.
- vi. PW 7 Damodhar Walekar was also a panch witness for the same seizure panchnama.
- vii. PW 8 Shamshoddin Shaikh was examined in respect of civil dispute between the parties.

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- viii. PW-9 Gajrabai Gadade was widow of the deceased.
- ix. PW 10 Dr. Amit Lomte was the Medical Officer, who had conducted postmortem examination.
- x. PW 11 Angad Sudke-was the investigating officer.

7. Besides this oral evidence, documentary evidence in the form of C.A. reports was produced on record. After recording the evidence, statements of the accused and hearing the parties, learned Judge of the Trial Court passed the impugned judgment and order, as mentioned earlier.

8. The evidence of PW 10 Dr. Amit Lomate shows that the deceased had suffered eight injuries. Most of the injuries were in the nature of chop wounds over head and shoulder. The cause of death was mentioned as "Hemorrhage shock due to multiple chop wounds over the body homicidal in nature". Thus, there is hardly any dispute that the deceased had died homicidal death.

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9. The evidence of PW 1,2, 4 and 5 is formal in nature and there is no dispute about the evidence given by them. First important witness is PW 3 Ganesh Narote, who had lodged the FIR. He has stated that the deceased was his father-in-law. Deceased was residing in village Morphalli. On 20.3.2013, at about 7.00, am one Sambhaji Shinde informed him that his father-in-law's dead body was lying in front of a temple. The informant and others went there. He saw the dead body. He informed the police. They came to the spot. After that, he lodged the FIR. The FIR is produced on record at exhibit 51. In the FIR, he had expressed suspicion against the appellants and it was mentioned that they had, before a few days, set some part of Fodder stock on fire in the field of the deceased. In his evidence, he has stated that this information about setting fodder on fire was given to him by his mother-in-law i.e. PW 9 Gajrabai in this case. Rest of the evidence of this witness is in the nature of hearsay evidence and, therefore, it is not of any significance.

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10. PW-9 Gajrabai Gadade was wife of the deceased. She has not supported the prosecution case and she was declared hostile, however, in her evidence she has stated that, prior to two months of the incident, heap of Jowar crop of the deceased was set on fire by accused nos.4 to 6. She has stated that when the deceased had gone to the temple on that night, accused no.4 came from that side. Accused no.6 also came from there. He was holding an axe and he had threatened this witness. According to her, on the next day she came to know that accused nos.4 to 6 had murdered her husband. Thus, she, in her evidence, has completely exonerated the present appellants and has directed her allegations towards accused nos.4 to 6. She was declared hostile and she was cross examined. She was confronted with her police statement, wherein she had stated that on that night accused no.1-Dattu and accuse no.2-Narayan were coming back from the temple and the accused no.3-Rustum was going there. She had also named Balasaheb Gadade and Omprakash Chamnar as the persons who were present there. Her statement was

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recorded on 27.3.2013. She has not supported the prosecution case during trial. She has in fact indicated that the appellants have not committed this offence. Therefore, her evidence does not help the prosecution case in any manner.

11. PW 8 Shamshoddin Shaikh was examined to show that there was settlement between the deceased and accused Mahadev. Even his evidence has nothing to do with the present appellants.

12. Therefore, the prosecution case in respect of the present appellants rests on the evidence of PW 6, 7 and 11.

13. Learned counsel for the appellants submitted that PW 6 and PW 7 were declared hostile. Seizure panchnamas are proved only through the evidence of the Investigating Officer. Therefore, there is infirmity in this evidence and it cannot form basis for conviction. He submitted that though C.A. report to some extent is

incriminating but, that itself cannot form basis of conviction. They submitted that motive is not proved.

14. Learned APP, on the other hand, relied on the same evidence to contend that recovery of weapons i.e. Axe and Koyta and finding of blood on the articles is strong incriminating circumstance. Apart from that, clothes of the accused also show presence of the blood group 'B' which was blood group of the deceased. It is another incriminating circumstance.

15. Learned Judge of the Trial Court has also relied on this circumstance namely motive and recovery of blood stained articles from the accused to convict these three appellants.

16. As far as PW 6 and PW 7 are concerned, they were examined to produce seizure panchnamas of clothes of the accused nos.1 to 3, which are produced on record at exhibit 59, 60 and 61. We have perused those panchnamas. Panchnamas are in some format, however, it is not described as to how these clothes were

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actually seized. Whether they were produced directly in the police station or whether the accused were made to change their clothes and then clothes were produced in the presence of the panchas is not mentioned in the panchnama. Therefore, it is extremely doubtful as to whether the seizure of the clothes can be properly established and proved by the prosecution. C.A. report shows that there was blood of group 'B' on the clothes of the accused Narayan and Rustum. No blood was detected on Dattu's clothes. The C.A. report and seizure of clothes in respect of the present appellants cannot be an incriminating circumstance against any of the present appellants as the circumstances surrounding seizure of clothes are established by the prosecution.

17. Next circumstance is recovery of weapons. Axe was recovered from the house search of the accused Narayan. C.A. report does not show presence of the blood on axe. Therefore, even that circumstance cannot be an incriminating circumstance, particularly, against the accused Narayan, from whose house axe was

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recovered. Koyta was recovered at the instance of the accused no.1-Dattu. C.A.Report shows presence of blood group 'B' on the Koyta. Therefore, that is the only circumstance worth mentioning against the accused no.1 Dattu alone.

18. As far as accused Rustum is concerned, though his clothes shows presence of blood group 'B', his own blood group is not detected. Therefore, the prosecution has not ruled out that it was not his own blood. In any case, as we have discussed earlier; seizure of clothes of the accused, is not incriminating in this case.

19. The only circumstance that remain is about previous enmity. For that purpose, the prosecution has not produced any material worth mentioning. However, in the cross-examination of the Investigating Officer on behalf of the accused nos.4 and 6, two FIR's are produced at exhibit 94 and 95. First one is in the year 2010 against Narayan, Rustum and others, however, that FIR is lodged in the year 2010 and it has no proximate connection. The FIR at exhibit 95 was lodged
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on 25.1.2013 in respect of the fire to the Fodder stock of the deceased. That was lodged against Narayan and others. As far as this incident is concerned, it has allegedly taken place on 14.12.2012 and FIR was lodged on 23.1.2013. Beyond that, nothing much is brought on record as to what had happened actually in that incident. The wife of the deceased P.W.9 has not corroborated this incident.

20. Thus, the entire prosecution case relies on the C.A. reports and these documents showing previous enmity. As far as the FIR regarding setting on fire the Fodder stock is concerned, that was brought on record during the course of cross-examination conducted on behalf of the accused nos.4 and 6. They were not produced by the prosecution. After that, no opportunity was given to the present appellants to cross-examine again to get these allegations clarified. Apart from that, even otherwise, motive appears very weak because allegedly Narayan and others had already set crop on fire and, therefore, there was no further reason to

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commit murder of the deceased. It certainly not a circumstance on which conviction can be based. P.W.9 has not supported these allegations.

21. Only circumstance now that remains is about finding of 'B' blood group on the weapon recovered at the instance of accused no.1 Dattu. Recovery panchnama brought on record mentions that at his instance Koyta was recovered from the roof top of the house of the accused Dattu. Importantly, panch witnesses of this recovery panchnama have turned hostile. Therefore, it has become a weak evidence though evidence of I.O. is admissible in that behalf. It is a solitary weak incriminating circumstance against the accused no.1 Dattu. It does not form a complete chain of circumstances against the accused ruling out the possibility of murder by anybody else. In this view of the matter, benefit of doubt must go to the appellants and they deserve to be acquitted. Hence the following order.

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ORDER

- i. Criminal Appeal no.93 of 2015 (Dattu s/o Maroti Salgar and another Vs. The State of Maharashtra) and Criminal Appeal No.28 of 2015 (Rustum s/o Baburao Gadade Vs. State of Maharashtra) are hereby allowed.
- ii. The judgment and order of conviction dated 24.12.2014 passed by the Additional Sessions Judge, Majalgaon in Sessions Case No.39 of 2013 is hereby quashed and set aside.
- iii. The appellant no.1-Dattu s/o Maroti Salgar and 2-Narayan s/o Maroti Salgar in Criminal Appeal No.93 of 2015 and the appellant Rustum s/o Baburao Gadade in Criminal appeal No.28 of 2015 are acquitted of all the charges.
- iv. The appellants in both the appeals shall be released forthwith, if not required in any other case.
- v. The appellants in both these appeals shall execute a bond to the satisfaction of the Trial Court in consonance with Section 437-A of the Criminal Procedure Code within one month of their release from Jail.

vi Both the appeals are disposed off.

(BHARAT P. DESHPANDE, J.) (SARANG V. KOTWAL, J.)

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