

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 248 OF 2019

Hemant Gopichant Patil, )  
Age : 32 years, Occ.: Private Service, )  
R/o. 93, Ekvira Nagar, Nakane Road, ) ...Appellant  
Deopur, Dhule. )

Versus

State of Maharashtra ) ...Respondent

WITH  
CRIMINAL APPEAL NO. 320 OF 2019

Rafiq Mehmood Pathan, )  
Age : 43 yrs, Occ: Private Service, ) ...Appellant  
R/o. Mulla Colony, Chalisgaon Road, ) (Orig. Accused No.2)  
Dhule, )

Versus

State of Maharashtra, )  
Through its P.S.O. Sungir Police Station ) ...Respondent

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Mr. S. P. Bramhe, Advocate h/f Mr. P. C. Mayure, Advocate for the appellant in Criminal Appeal No. 248 of 2019.

Mr. Masood Chand Syed, Advocate for the appellant in Criminal Appeal No. 320 of 2019.

Mr. R.V. Dasalkar, APP for the respondent-State.

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CORAM : R.G. AVACHAT &  
R.M. JOSHI, JJ.

DATE : NOVEMBER 14, 2022.

JUDGMENT (PER R.M. JOSHI, J)

1. These appeals are filed by the accused under Section 374 of Code of Criminal Procedure, 1973 on being convicted by the Sessions Judge,

Dhule in Sessions Case No. 200 of 2013 for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860.

2. The short case of the prosecution, as it reveals from the material on record, is as under:

On 21<sup>st</sup> August, 2013 accused took deceased Pandurang along with them in Indica Car in the morning at about 10.00 am and at about 05.30 pm they brought his dead body near the field of the deceased. It was apprehended by the informant that the deceased was killed by the accused at the instance of land mafias.

3. There is no eye witness to the incident which has led to death of deceased. Apart from proving homicidal death, prosecution has to prove circumstances from which the conclusion of guilt is to be drawn. It is settled position of law that in case where evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in first instance fully established and all the facts so established should be consistent only with hypothesis of guilt of the accused and so conclusive in nature that they should exclude every hypothesis but the one to be proved. That there must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with innocence of accused. Keeping in mind these principles the evidence on record is assessed.

4. In order to prove the guilt of the accused, prosecution has relied

upon evidence of Minabai (PW 4) who is the wife of deceased and who had witnessed deceased going along with accused in their car on fateful day at 10.00 am. She also deposed about getting information about deceased being brought to the field in the evening on the same day. Vasudeo (PW 3), who is the brother of deceased, gave report to the police on 22<sup>nd</sup> August, 2013 wherein similar information as deposed by Minabai (PW 4) was given to the police. This witness claims that he was informed by Hemant about accused bringing deceased to the field leaving him on the road. This witness went to the spot along with accused and took deceased to the hospital wherein he was declared dead. Hemant @ Sonya (PW 1) and Kiran (PW 2) were the persons who had seen accused bringing deceased near the field and leaving him on the road. For establishing homicidal death reliance is placed on inquest panchnama and post mortem notes coupled with evidence of medical officer.

5. As far as cause of death of deceased, evidence of medical officer Dr. Kapileshwar Maganlal Chaudhary (PW 8) shows that on 22<sup>nd</sup> August, 2013 he conducted autopsy on the dead body and had found 8 contused abrasions present over the dead body and one of them was over left parietal region. It was opined by the medical officer that the cause of death is “head injury associated with bronchopneumonia with chronic pyelonephritis”. In his examination-in-chief itself medical officer has deposed about the

deceased having chronic ailment of kidney. In cross-examination medical officer has admitted about the possibility of medical history of the deceased and that for 2-3 years prior to death and further accepted that deceased might be having chronic kidney ailment. He also candidly admitted that independently broncho-pneumonia and chronic pyelonephritis may cause natural death. He did not deny possibility of causing of injuries seen on the person of the deceased by accidental fall.

6. In this regard, it is also pertinent to note that witnesses of the prosecution who are known to the deceased have not denied the fact that deceased used to consume alcohol with accused. Vasudeo (PW 3) has admitted that when he saw deceased near the filed his mouth was smelling liquor.

7. It is the case of the defence that on the fateful day the deceased consumed liquor and under the influence of liquor he fell down and sustained superficial injuries. The said injuries are apparent from the inquest panchnama (Exh. 37) wherein it is seen that there were number of abrasions but no bleeding injury caused to the deceased. It is also pertinent to note that as per the spot panch Kailas Chintaman Wani (PW 6) the spot where deceased was found lying is on Mumbai – Agra road near Songir Phata where number of vehicles are parked and there exists handcarts doing various business. It is thus clear that the spot where deceased found lying

with accused persons was within public view. There is absolutely no evidence on record to show that any incident of assault or even scuffle took place at the said place. Even at the said spot no blood stains were found.

7. Aforesaid evidence does not indicate occurrence of any incident involving physical abuse to the deceased and in the facts and circumstances brought on record, there is reason to believe that the deceased after consuming liquor fell down resulting into his unconsciousness and superficial injuries on his person.

8. Admittedly, accused were friends of deceased and there was no dispute of whatsoever nature between them in order to provide accused any motive to commit his murder. Though the informant has raised suspicion about the death on account of accused committing murder of the deceased at the behest of land mafias, but there is absolutely no evidence on record to hold so. On the contrary, it is admitted by the Vasudeo that after the incident the agricultural field is sold.

9. The entire case of prosecution is based on the premise that the accused were in the company of the deceased and they tried to dispose of dead body near the field and that after deceased was taken to the hospital they ran away without intimating to anyone. In this regard, it is material to note that Vasudeo (PW 3) has clearly admitted that the said statement that accused ran away without informing them is false. Even otherwise when

other relatives of deceased were present in hospital, accused leaving hospital is not unusual circumstance. Definitely it cannot be taken as incriminating circumstance against accused. Moreover it does not stand to any reason as to why accused would bring the deceased near his field if they had assaulted him instead of disposing dead body at some other place. Act of the accused if were guilty would have been different than seen herein, and that would be consistent to natural conduct of any human being. On the other hand, from testimonies of Minabai and Vasudeo it is clear that accused were claiming about drunkenness of the deceased and they were hopeful about he regaining consciousness subsequently. The said conduct of the accused of bringing deceased to the field indicates that since deceased was drunk and lost consciousness, he was brought to the field.

10. Net result of evidence on record, even if accepted as it is, would be that the prosecution was unable to establish that the death of deceased is homicidal and there is reason to believe the case of the accused that deceased was drunk and fell down which resulted in abrasion over his body. Similarly, the cause of death as indicated by the medical officer about the head injury is not supported by the substantive material on record. On the other hand, the possibility of deceased dying because of chronic kidney ailment cannot be ruled out. Failure on part of prosecution to establish motive of accused to kill deceased and their conduct of bringing deceased to

field, their conduct is consistent with their innocence.

11. In view of above discussion, the conviction recorded by the learned Trial Court cannot sustain and accused persons deserve to be acquitted. Hence, the following order:

### **ORDER**

- i) Criminal Appeal Nos. 248 of 2019 and 320 of 2019 are allowed.
- ii) The impugned judgment of conviction and order of sentence dated 27/02/2019 passed by learned Sessions Judge, Dhule in Sessions Case No. 200 of 2013 for the offences punishable under Sections 302 & 201 read with Section 34 of the Indian Penal Code, is set aside.
- iii) The appellants are acquitted for the offences punishable under Sections 302 & 201 read with Section 34 of the Indian Penal Code.
- iv) The appellants be released forthwith, if not required in any other case.
- v) Fine amount deposited by the appellants, if any, be refunded to them.

**(R.M. JOSHI, J.)**

**(R.G. AVACHAT, J.)**

Malani