

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

**CRIMINAL APPEAL NO. 659 OF 2022
WITH
CRIMINAL APPLICATION NO. 3010 OF 2022**

1. Santosh Lashya Ravtale
Age : 30 years, Occu : Labour
2. Prakash Shivaji @ Bisha Ravtale,
Age : 25 years, Occu : Labour,
3. Sandip Madan Tadvī (Pawara)
Age : 28 years, Occ : Labour
All R/o. Lakkadkot, Tq. Shahada,
District – Nandurbar. ... APPELLANTS

VERSUS

The State of Maharashtra
Through Police Inspector,
Mhasavad Police Station, Shahada,
Tq. Shahada, Dist. Nandurbar. ... RESPONDENT

Mr. A. R. Syed, Advocate h/f Mr. Sushil P. Pandit, Advocate for
the appellants
Mr. R. V. Dasalkar, APP for the respondent/State

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.
RESERVED ON : 25th NOVEMBER, 2022
PRONOUNCED ON: 30th NOVEMBER, 2022**

JUDGMENT (PER- R. M. JOSHI, J.):-

1. Appellants/accused being aggrieved by the
impugned judgment and order convicting them for the offence

punishable under Section 302 read with Section 34 of the Indian Penal Code for preferred this appeal under Section 374 of the Code of Criminal Procedure Code.

2. At the time of hearing of application for suspension of sentence learned counsel for the appellants as well as learned APP apprised this Court about involvement of short evidence in this case and by their consent, appeal is heard.

3. Short case of the prosecution as it appears from material on record shows that on 26th January, 2013 deceased Bula came home and after having dinner at around 8.00 pm he went on Mhasavad-Ranipur road and started babbling under the influence of liquor. Thereafter at about 9.00 pm three persons came there on motorcycle and started having conversation with Bula as if they had acquaintance with him. During the talk their occurred quarrel between them and one of the person on the motorcycle said to Bula as to why he is behaving like this with them as they were from the same school. In spite of this Bulla was abusing them and thereafter these persons took Bula on their motorcycle. Bulla did not

return home in the night and on the next day his dead body was found in the dry nala to the side of the road. Information was given to the police on 27th January, 2013 against three unknown persons. Offence came to be registered vide Crime No. 7 of 2013. During investigation statements of the witnesses were recorded from which it was revealed that the persons who took deceased along with them were accused herein. Inquest and spot panchnamas were done and dead body was sent for autopsy. There were recovery of blood stained clothes at the instance of accused persons. Seized muddemal was sent to the Chemical Analyzer for examination. On conclusion of investigation charge-sheet came to be filed against accused.

4. Learned Trial Court framed charge vide Exhibit 24. Prosecution examined in all 7 witnesses to bring home guilt of the accused.

5. Learned Advocate for the accused submitted that there is no evidence in order to connect accused with this crime and in absence of establishing their identity to be the

same persons who had taken deceased with them, judgment of conviction cannot sustain. He also assailed testimonies of Asha (PW-1) and Gulab (PW-6) by submitting that these witnesses had no acquaintance with the accused and hence in absence of identification parade it cannot be conclusively held that accused were only last seen together with the deceased. As far as evidence of recovery of clothes is concerned, it is pointed out that there is no evidence of sealing of the clothes and which makes the said recovery not incriminating against the accused.

6. Learned APP supported impugned judgment by submitting that evidence of Dr. Valvi (PW-5) shows that cause of death is fatal crush to the skull and brain contents. He relied upon evidence of Asha (PW-1) and Gulab (PW-6) in order to submit that their testimonies are sufficient to prove identity of the accused to be the persons who took deceased with them.

7. Asha (PW-1) is wife of deceased Bulla who had stated about addiction of Bulla to the liquor and his quarrel some attitude. According to her on 26th January, 2013 at 8.00

pm after dinner as usual Bula sat on road and three persons came there and started chitchatting with deceased and there occurred altercation between them. She further states that they were advising deceased as to why he is behaves abnormally and thereafter took him for a ride. On the next day she came to know about finding of a dead body lying near the field of Ishwar Bhil and on going to the spot she identified the dead body to be of her husband Bula. She lodged report in respect of the said incident. It is her claim that she came to know names of the said persons from villagers. In the cross-examination she admitted that there was dark at the spot and was unable to say which clothes were worn by the said persons. From her testimony it does not appear that she had any acquaintance with the persons who took deceased with them on motorcycle and that there is also doubt whether she could identify the said persons.

8. Similarly, as per the evidence of Gulab (PW-6) who is father of the deceased, he witnessed the incident of quarrel having taken place between deceased and the persons came to the spot. Though he names the said persons but in the cross-

examination it was asked to him about making a statement to the Investigating Officer of getting knowledge of the names of these persons from villagers and though he denied the said suggestion but the same has been proved through Investigating Officer. This indicates that he had no acquaintance with said persons. According to this witness he has heard shouting of the deceased while he was taking dinner and which also makes it doubtful whether really he had occasion to see them.

9. Both aforesaid witnesses do not specifically claim previous acquaintance with accused or with the persons who had taken deceased with them. There is nothing on record to show that any identification parade of the accused is conducted during the course of investigation. Evidence of Asha (PW-1) shows that the incident has occurred at 9.00 pm and it was dark at that time. Thus, in such circumstances it was incumbent on the part of the Investigating Officer to ascertain the identity of the person who were at the spot to be accused herein. In absence of the said exercise of conducting parade of identification it cannot be said with certainty that the accused

only were present at the spot for taking deceased with them. In the result the theory of accused herein having been last seen in the company of the deceased must fail.

10. Dr. Valvi (PW-5) is the Medical Officer who conducted postmortem on the dead body of Bula and has opined cause of death as fatal crush to skull and brain contents. In the cross-examination he admitted that head injury is not possible by stone article 'A' which was seized from the spot. According to him the injuries caused to the deceased are possible if a drunken person falls on the road and any vehicle runs over his head. Thus, the evidence led by the prosecution is not conclusive in nature to hold that it is the case of homicidal death because the possibility of accidental death of deceased cannot be ruled out completely, which gets strengthened in view of the fact that the dead body was found in the dry nala adjacent to the road.

11. The prosecution is relying upon the circumstance of recovery of clothes at the instance of accused vide panchnamas (Exhibit 46, 47 and 48). Panch witness Pandit

Thakre (PW-3) though states about its seizure at the instance of the accused but he does not specifically states about sealing of those articles at the spot. Investigating Officer's evidence is also silent on this aspect. CA reports (Exhibit 93, 94 and 95) show that blood group of all accused is 'O' and blood group of deceased is inconclusive. The blood group seen on the seized articles clothes of accused Santosh is also inconclusive. Thus, there is no evidence to show that clothes of this accused were stained with blood of the deceased. As far as other accused except accused Santosh (accused No.1) are concerned their clothes are not found stained with human blood. The evidence of recovery of clothes at their instance therefore is not sufficient to connect them with crime in question. Even otherwise in absence of evidence of sealing of the clothes of Santosh of the spot and keeping them intact till the time of sending them for chemical examination, it would be unsafe to consider the said recovery incriminating against this accused.

12. It is pertinent to note that Investigating Officer has candidly admitted about not conducting any investigation to ascertain the possibility of deceased meeting with vehicular

accident. He further admitted that there is no description even in the FIR of the persons who took deceased with them and that the FIR was lodged against unknown persons. According to him accused were called to the police station and thereafter they were arrested which also indicates that they never attempted to flee after the incident. Finally, non conducting of test identification parade has resulted in to a situation where there is no assurance that the accused were the same persons who had taken deceased with them and thereafter he was not seen alive by anyone else. Further there is no iota of evidence to show that accused had any motive to kill deceased.

13. In the light of aforesaid evidence on record none of the parameters required for proving the guilt of accused in case based on circumstantial evidence can be said to have been proved by prosecution. Hence conviction recorded against accused cannot sustain. In the result following order.

ORDER

(ii) Criminal Appeal No. 659 of 2022 is allowed.

(iii) The impugned judgment of conviction and order of

sentence dated 6th August, 2022 in Sessions Case No. 29 of 2013 passed by the Additional Sessions Judge, Shahada, Dist. Nandurbar is hereby set aside. All accused stand acquitted.

(v) All accused be released forthwith, if not required in any other case.

(vi) Fine amount deposited by accused, if any, be refunded to them.

(vii) Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)