

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 CRIMINAL APPEAL NO.565 OF 2021

SHASHIKANT GAUTAM KAMBLE
VERSUS
ESA S/O. RAHAMATULLA TAMBOLI AND OTHERS

.....
Advocate for Appellant : Mr. S. J. More
APP for Respondent No.3-State : Mr. K. S. Patil
.....

**CORAM : SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.
DATED : 22nd JUNE 2022**

PER COURT:-

1. This is criminal appeal filed by son of the victim, challenging the judgment and order of acquittal passed in favour of respondent No.1 Esa s/o Rahamatulla Tamboli by the Additional Sessions Judge, Ahmedpur in Sessions Case No. 9 of 2020 on 23.9.2021.

2. Learned counsel for the appellant submitted that the evidence on record was not properly appreciated by the learned Judge. He submitted that the appeal should be admitted and respondent No.1 be convicted or the matter be remanded back for fresh trial.

3. Learned A.P.P. relied on the evidence and left it to the decision of the court.

4. We have considered the submissions of the learned counsel. We have perused the judgment as well as the copy of depositions annexed to this appeal memo.

5. The prosecution case is that on 8.12.2019 at about 10.00 a.m. deceased Gautam Kamble had left his house to attend his duty at Bhagirathi Lodge at Ahmedpur, but he did not return. Instead, his dead body was found in the morning at about 7.00 a.m. on the next day. Meanwhile, at Ahmedpur, the appellant, who is son of the deceased, lodged the F.I.R. Investigation was carried out. Respondent No.1 was arrested. Charge-sheet was filed. The case was committed to the Court of Sessions.

6. During trial, the prosecution examined the appellant as P.W.1, who had lodged the F.I.R. P.W.2 Rasika was the wife of deceased Gautam Kamble. P.W. 3 Dhirendra Chandrashekhar Dhele was the owner of Hotel Bhagirathi Lodge. P.W.4 Shivaji Keshavrao Bhosale was the panch for seizure of clothes. P.W.5 Dr. Nathrao Govind Karad had conducted post mortem examination. P.W. 6 P.S.I. Gajanan Vijay Ansaupure had conducted investigation.

7. Deceased had suffered two head injuries and three abrasions on shoulder, elbow and back. The cause of death

was due to head injuries. There was no eye witness to the incident. It was a case of circumstantial evidence and there is no motive brought on record.

8. There are hardly any circumstances against respondent No.1. The only circumstance was about recovery of his clothes at his instance. However, C.A. report does not support the prosecution case. Therefore, even that circumstance was not held against respondent No.1 by the learned Judge. Apart from that, there was absolutely no case against respondent No.1. Thus, the learned Judge of the trial court has rightly acquitted respondent No.1. We do not find any reason to take different view and therefore the appeal cannot be entertained and is accordingly dismissed.

(BHARAT P. DESHPANDE, J.)

(SARANG V. KOTWAL, J.)

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