

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.692 OF 2013

Kaka Shankar Todkar

... Appellant
[Orig.Accused No.2]

Versus

The State of Maharashtra

... Respondent

....

WITH

CRIMINAL APPEAL NO.697 OF 2013

Baban Balaso @ Balo Patil

... Appellant
[Orig.Accused No.1]

Versus

The State of Maharashtra

... Respondent

....

WITH

CRIMINAL APPEAL NO.701 OF 2013

Ramchandra Raghunath Patil

... Appellant
[Orig.Accused No.3]

Versus

The State of Maharashtra

... Respondent

....

Mr. Jayant Bardeskar, Advocate for the Appellant in Criminal Appeal No.692/2013.

Mr. Abhishek Yende, Advocate for the Appellant in Criminal Appeal No.697/2013.

Mr. Hrishikesh Mundargi, Advocate a/w. Madan Gupta, for the Appellant in Criminal Appeal No.701/2013.

Ms. G.P. Mulekar, APP for the Respondent-State.

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**CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.**

RESERVED ON : 04th APRIL, 2022

PRONOUNCED ON : 12th APRIL, 2022

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1 All these Appeals are decided by this common judgment as they arise out of the same case challenging the same impugned judgment and order of the trial Court. The Appellant in Criminal Appeal No.692/2013 Kaka Shankar Todkar was the original accused No.2, the Appellant in Criminal Appeal No.697/2013 Baban Balaso @ Balo Patil was the original accused No.1 and the Appellant in Criminal Appeal No.701/2013 Ramchandra Raghunath Patil was the original accused No.3, in Sessions Case No.50/2009 before the Additional Sessions Judge at Islampur, District-Sangli. For the sake of convenience, the Appellants are referred to as per their original status in the trial Court.

2 By the impugned judgment and order dated 18.5.2013 passed by the Additional Sessions Judge, Islampur in Sessions Case No.50/2009, the Appellants were convicted and sentenced as follows :

- i. All the Appellants (accused Nos.1 to 3) were convicted for the offence punishable under Section 302 read with 34 of the

Indian Penal Code and they were sentenced to suffer imprisonment for life and to pay fine of Rs.2000/- each, in default to suffer simple imprisonment for two months.

- ii. Accused Nos.1 and 2 were convicted for the offence punishable under Section 7 read with 27 of the Arms Act and they were sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1000/- each, in default to suffer simple imprisonment for one month.
- iii. All the sentences were directed to run concurrently.
- iv. Accused No.1 was acquitted of the offence punishable under Section 201 of IPC. Accused Nos.1 & 2 were acquitted under Section 3 read with 25 of the Arms Act. Further, the Appellants along with other accused were acquitted of the offence punishable under Section 120B of IPC.
- v. The Appellants were given set off under Section 428 of Cr.P.C..

3 Apart from the three Appellants, there were three more accused, namely, accused No.4 Bhimrao Patil, accused No.5 Balu Patil and accused No.6 Dinkar Todkar. They were all acquitted from the charges of commission of offence punishable under Section 120-B of IPC, for which they faced the trial.

4 Heard Shri Jayant Bardeskar, learned counsel for the Appellant in Criminal Appeal No.692/2013, Shri Abhishek Yende, learned counsel for the Appellant in Criminal Appeal No.697/2013, Shri Hrishikesh Mundargi, learned counsel for the Appellant in Criminal Appeal No.701/2013 and Smt. G.P. Mulekar, learned APP for the State.

5 The prosecution case is about the murder of one Chandar Mahind. On 26.8.2009, in the evening, the accused No.3 on some pretext brought the deceased and his friend Vasant Mahind (PW-16) on his motorcycle at the spot between villages Girjawade and Shirshi. The time was about 7.15 p.m.. Accused Nos.1 and 2 stopped the motorcycle. Accused Nos.2 and 3 caught the deceased and accused No.1 fired two times at the deceased. After that accused Nos.1, 2 and 3 went away from the spot. Vasant Mahind came to the village Shirshi and informed the others about the incident. The police were informed. They went to the spot. FIR was given by Vasant Mahind. It was registered at 9.35 p.m. at Shirala police station vide C.R. No.40/2009. The deceased died at the spot. The inquest panchnama was conducted. On the next day,

at 9.00 a.m., the spot panchnama was conducted. The motorcycle, two caps of the cartridges and the mobile handset of the deceased were found at the spot. On 27.8.2009, accused No.3 was arrested. His clothes were seized under the panchnama. On the same day, accused Nos.4, 5 and 6 were arrested. On 29.8.2009, Rs.19,500/- were recovered at the instance of accused No.3 from his house. On 1.9.2009 accused No.5 Balu Patil showed the shop from where the cartridges were purchased. On 2.9.2009 accused Nos. 1 and 2 were arrested. On 4.9.2009, at the instance of accused No.1, the gun and two empties were recovered. The gun was dismantled into three parts. The articles were kept below the heap of leaves near the house of accused No.2. The clothes of accused No.1 were also recovered at his instance. On the same day, at the instance of accused No.2 four live-cartridges and his clothes were recovered. The statement of different witnesses were recorded. The articles were sent for forensic examination. After the investigation was over, the charge-sheet was filed and the case was committed to the Court of Sessions.

6 During trial, the prosecution examined nineteen

witnesses. Most of them were pancha witnesses. In the following paragraphs, the evidence related to the present Appellants is mainly discussed, as the evidence of the panchas related to the other acquitted accused does not have much bearing on the outcome of these appeals. The most important evidence in this case is that of the sole eye witness PW-16 Vasant Mahind.

7 There is medical evidence showing the injuries suffered by the deceased. There is evidence of the ballistic expert explaining the connection of the empties and the gun recovered at the instance of accused No.1. There is evidence of owner of the gun as well as the shop-keeper from whom the cartridges were purchased. The investigation carried out is explained by PW-19 - the investigating officer. There is one witness who had seen accused Nos.1 and 2 at the spot before the incident. The son of the deceased is examined, who has narrated as to how Vasant Mahind had rushed to Shirshi and had informed the others about the incident soon after its occurrence.

8 As mentioned earlier, the most important evidence in this case is that of PW-16 Vasant Mahind, who was the sole eye witness

in this case. He has stated that he was working at Dadar Railway Station, Mumbai, but, he originally belonged to Shirshi. The deceased was his cousin. The deceased was residing at Mahind Vasti towards East side of village Shirshi. About six days prior to the incident, PW-16 had come to Shirshi. He knew accused Nos.1, 2 and 3 as Chandar's friends. On 26.8.2009, at about 5.45 p.m., he and the deceased Chandar were going to village Girjawade for hiring agricultural labourers. While they had traveled some distance towards Girjawade from Shirshi, Chandar received a call from accused No.3 asking him where they were at that time. Chandar informed accused No.3 about their plan of going towards Girjawade. When they reached Girjawade, again accused No.3 called Chandar and again he made enquiries about their location. After completing their work, PW-16 and Chandar were returning and again Chandar received a call from accused No.3. At that time PW-16 and the deceased were near a stone-platform at Girjawade. Accused No.3 was informed accordingly. He, in turn, asked both of them to wait there. He came there on a motorcycle. The deceased asked the accused No.3 about his work. But the accused No.3 told

him that he would tell him when they returned to Shirshi. PW-16 and Chandar sat on the motorcycle driven by accused No.3. They proceeded towards village Shirshi. When they reached at a spot between Shirshi and Girjawade at around 7.15 p.m., accused Nos.1 and 2 stopped their motorcycle. PW-16 could see them in the light from the head-light of the motorcycle. Accused No.2 caught Chandar by the scruff of his neck and accused him of helping one Satya Chavan in commission of murder of accused No.2's nephew. Accused No.3 held Chandar's hand. PW-16 apprehended some serious danger. He went aside and stood near a bush. Accused No.2 told the accused No.1 to fire at Chandar. Accused No.1 fired two times at Chandar, who fell down. After that, all the three accused went in the direction of village Girjawade. PW-16 himself rushed to village Shirshi and told the incident to one Rajaram and other relatives of the deceased. They came back to the spot of incident. They saw that Chandar was lying dead at the spot in a pool of blood. PW-16 then went to Shirala police station and lodged his FIR. The FIR is produced on record at Exhibit-121. After about four months, his statement was recorded under Section

164 of Cr.P.C..

In the cross-examination, he was asked about the criminal antecedents and different trials faced by the deceased Chandar. He stated that the deceased used to take his cattle to a particular land for grazing. This statement was elicited to suggest that there were other times when the deceased was alone and at that time he could have been murdered. This was also a submission made by Shri Bardeskar with reference to this answer given by PW-16. Then, this witness was cross-examined about the three telephone calls. He further stated that there was only one mango tree in the area. The incident lasted for five minutes. Accused No.1 was at a distance of 10 to 15 feet from the deceased when the gun was fired. He admitted that in his statement before the Magistrate he had not stated that accused No.3 had caught left hand of Chandar. He was aware that the mobile handset of the deceased was lying at the spot but he did not use it to inform anybody from the village. He took about twenty minutes to reach the village after the incident and then within five to seven minutes he collected others at the village Shirshi. He went back to the spot with Bhaskar

Mahind on a motorcycle. When they were at the spot, the police came there. He denied the suggestion that he reached the police station about 11.00 p.m. to 11.30 p.m. The distance between Shirala police station and the spot of incident was 12 to 13 kms. He denied the suggestion that the FIR was actually lodged by one Rajaram Mahind and he had only signed the FIR.

The FIR mentions that it was registered at 9.35 p.m. on 26.8.2009.

9 The prosecution has examined the son of the deceased as PW-14. His name is Rahul Mahind. He has stated that all the three accused were on visiting terms with his deceased father and that is how he was knowing them. On 26.8.2009, in the morning, the accused No.3 met the deceased. They had lunch together and then they had gone to village Wategaon for purchasing fertilizers. When this witness returned home from school at 5.00 p.m., the deceased was in his house. PW-16 Vasant Mahind and the deceased then went to village Girjawade, as deposed by PW-16. PW-14 went to his uncle Rajaram's house at village Shirshi at about 7 O'clock. At about 7.45 p.m., PW-16 came to Rajaram's house. He was

frightened and he narrated the incident of firing on the deceased. PW-16 described the roles of all the accused. After that, all of them went to the spot.

In the cross-examination, he has narrated about the routine of the deceased. The deceased used to take his cattle for grazing at 6.00 a.m. everyday; and then used to take bath in the lake situated at a distance of half a kilometer from Mahind Wasti. The defence wanted to suggest that during that period the deceased could have been murdered if the Appellants really wanted to commit his murder without anybody knowing about it. PW-14 further denied any knowledge about involvement of the deceased in other cases.

10 PW-15 Balasaheb Mahind has deposed that he had seen two persons near the spot in the evening. He had identified accused Nos.1 and 2 at the identification parade. He had seen them holding a plastic gunny bag containing something.

In his cross-examination, he deposed that there were small shrubs on both sides of the road near the spot of incident.

This corroborates PW-16's version that there was a shrub near the spot and at the time of the incident he had stopped near that shrub.

11 PW-17 Dr. Kishor Patki had conducted the postmortem examination. He has stated that the cause of death of the deceased Chandar was due to acute cardio-respiratory arrest due to head injury with multiple bone fractures with haemopneumo thorax with polytrauma with hemorrhagic shock due to firearm injuries. He had seen two entry wounds : the first one was on the lateral side of the neck; and the other was on the right supra-scapular and right scapular region. There were corresponding two exist wounds.

He was cross-examined on the nature of entry and exit wounds and what would be the close range of firing. However, his cross-examination does not really support the defence. He did not agree with the suggestion that the injuries could be caused accidentally while hunting an animal.

12 PW-18 Gautam Ghadage was examined as a Ballistic expert attached to Forensic Science Laboratory, Mumbai. He has produced the Ballistic Examination report. His evidence and the

ballistic report shows that the empties found with the shotgun, which were recovered at the instance of accused No.1 matched with each other, meaning thereby the empties found concealed with the shotgun were actually used in the same shotgun. He has further deposed that two plastic air cushion wads and two cardboard wads, which were found at the spot, could have been fired from the 12 bore shotgun.

13 PW-19 Sanjay Gorle was in-charge of Shirala police station. He had conducted the investigation. He has stated that on 26.8.2009, at about 8.45 p.m. to 9.00 p.m., Vasant Mahind i.e. PW-16 had come to Shirala police station and had lodged his FIR. It was registered vide C.R. No.40/2009 under Section 302 read with 34 of IPC and under various sections of Indian Arms Act. He went to the spot. Carried out the inquest panchnama. On the next day, at about 9.00 a.m., the spot panchnama was drawn. At the spot, a motorcycle, two caps made of paper of empty cartridges were found. On 27.8.2009 accused No.3 was arrested. His clothes were seized. On 2.9.2009 accused Nos.1 and 2 were arrested. As mentioned earlier, at their instance various articles, including a

shotgun, the cartridges, empties etc were found and seized.

In the cross-examination, he admitted that the deceased was not an accused in the murder case of accused No.4 Bhimrao Patil's son who was also accused No.2's nephew.

All the panchanams, in respect of which the panchas had turned hostile; were produced on record through this witness (PW-19). The clothes of the accused No.3 were seized under panchnama at Exhibit-150. The money recovered at the instance of accused No.3 was recorded in the panchnama at Exhibit-151. The arrest panchnama in respect of accused Nos.1 and 2 was produced on record at Exhibit-155. The gun and two empties as well as the clothes of accused No.1 were recovered under the memorandum statement and the panchnama at Exhibit-157. The clothes of accused No.2 and four live cartridges were recovered at the instance of accused No.2 under panchnama at Exhibit-158. The CDR was produced on record at Exhibit-163. That CDR shows four phone-calls, referred to by PW-16, between 6.48 p.m. to 7.26 p.m. on that day i.e. on 26.8.2009.

14 Besides this oral evidence, the C.A. reports were produced on record. As per the C.A. reports, the blood group on the clothes of the deceased was “AB” and the blood of same “AB” blood group was found on the clothes of accused Nos.1, 2 and 3. The blood groups of the accused were also determined. Accused No.2’s blood group was “O”, Accused No.1’s blood group was “B” and accused No.3’s blood group was “B”. Thus, the blood group of none of the accused was “AB” and yet, that blood group was found on the clothes of all three of them. This is also a seriously incriminating circumstance against them.

15 The prosecution examined PW-13 Pandurang Patil, who was the owner of the gun. He has stated that the original accused No.5 Balu Patil had approached him on 18.7.2009 and had borrowed this witness’s gun on the pretext that he needed that gun to control the menace of wild pigs who were damaging his crops. At that time, PW-13 did not have cartridges. Therefore, both of them went to Kolhapur and purchased twenty cartridges and a rod for cleaning the gun. Accused No.5 Balu Patil had borrowed the gun and six cartridges. On 25.8.2009, again accused No.5 Balu Patil

approached this witness and borrowed two more cartridges, which were given by this witness to him. Subsequently PW-13 came to know that his gun and the cartridges were used in commission of this offence.

16 PW-8 Ashok Pawar was the shop owner who had sold those cartridges and the cleaning rod on 18.7.2009. He has produced the bill on record.

Submissions on behalf of the Appellants :

17 Learned counsel for the Appellants submitted that the motive is not established. There is nothing to show that the deceased was involved in the murder of nephew of the accused No.2. The evidence of PW-16 Vasant Mahind is not reliable at all. There are too many infirmities in his evidence. His conduct is not natural. There was no reason for the accused to leave an eye witness while committing this offence. The evidence shows that there were many opportunities when the deceased used to go alone at secluded places and the accused could have committed his murder at those places without anybody knowing about their

involvement.

18 PW-16 Vasant Mahind is not a natural witness. His conduct after the incident is also unnatural. Instead of helping the deceased who was lying at the spot, he would not have gone to village Shirshi. His first reaction should have been to make an attempt to save the deceased. The motorcycle was lying there. He could have used that motorcycle to rush back to the village. There was no shrub to hide behind. The assailants would not have left him unharmed, if he really was there at the time of incident. There is no reliable evidence to show how the gun came in possession of accused Nos.1 and 2. The nature of entry and exit wounds do not support the prosecution theory of firing from a distance of 10 ft to 15 ft. This suggests that the gun was fired, from a very short distance. This indicates that PW-16 had not really seen the incident.

Submissions of learned A.P.P. :

19 As against these submissions, learned APP submitted that the evidence of the sole witness PW-16 Vasant Mahind does not

suffer from any infirmity. It is sufficient to base the conviction of the accused beyond all reasonable doubt. His evidence is supported by other corroborative pieces of evidence in the form of C.A. reports. The gun and the empties were recovered at the instance of accused No.1 and the ballistic expert has proved their connection. The FIR was lodged immediately. The others were informed immediately. The C.A. report of the clothes of the accused is also an incriminating piece of circumstance. Thus, the oral and the circumstantial evidence clearly establish that the appellants/accused have committed the offence.

Reasons and the conclusion :

20 We have considered these submissions. The prosecution case rests heavily on the evidence of PW-16 Vasant Mahind. He was cousin of the deceased. He had come to the village about seven days prior to the incident. He described the events in the evening of 26.8.2009. Both PW-16 and the deceased had gone to village Girjawade and during that time three phone calls were received one after the other from accused No.3. This version is corroborated by the CDR produced on record. Though the phone

number from which those phone calls were made was not shown to be that of the accused No.3, the fact remains that 3 to 4 calls were received and the accused No.3 had immediately gone to village Girjawade to pick up the deceased. This corroborates PW-16's version to that effect. The mobile phone was lying at the spot when the spot panchnama was carried out and from there the link of these three phone calls is established. The CDR is admitted in the evidence by the defence.

21 Accused No.3, because of a definite preplanned design was imploring the deceased to accompany him towards village Shirshi. The time was in the evening after sunset and the spot was secluded. Accused Nos.1 and 2 already were at the spot. When they reached that particular spot, the accused No.3 showed his real intentions. He had caught hold of the deceased. The other two had come prepared with a firearm. PW-16, out of fear, went away from the spot, but, he was in the vicinity and was able to see the incident. We do not find that his conduct was unnatural. The assailants were carrying a firearm and he could have been an easy target after the deceased. Therefore, he would naturally look after

his own safety. He ran back to the village Shirshi and immediately informed the relatives of the deceased.

22 The chain of events shows that after the incident, the eye witness PW-16 had reached the village. Then, all of them had come to the spot. The police had also arrived; and at about 9.45 p.m. the FIR was lodged immediately. There is no delay or interval in these events. The FIR was lodged promptly and immediately. Therefore, possibility of concocting false story to implicate the accused falsely is practically ruled out. The evidence of PW-16 to that extent is supported by the evidence of the deceased's son PW-14 Rahul Mahind. The inquest was carried out immediately and the body was shifted for postmortem examination.

23 The ocular evidence is supported by the medical evidence which showed that two shots were fired at the deceased. This supports the evidence of PW-16 Vasant Mahind. The medical evidence shows that it is a homicidal death and the injuries were caused by firing from 12 bore firearm which was carried by accused Nos.1 and 2.

24 On the other hand, the conduct of accused No.3 was unnatural. He had actually helped the accused Nos.1 and 2. After the incident he ran away from the spot with accused Nos.1 and 2. If he had nothing to do with the assault, he should have helped the deceased and should have taken him to hospital on his two-wheeler. He could have at least informed the villagers, if not the police, about the incident. But he had not done any of these things; instead, he was unavailable till the next day when he was arrested by the police with the blood stained clothes on his person. PW-16 Vasant Mahind has ascribed a definite role to him not only in his deposition, but, even at the first instance when he had lodged the FIR. The accused No.3 had facilitated commission of this offence.

25 There are other strong corroborative incriminating circumstances. The gun and the two empties were recovered at the instance of accused No.1. They were concealed behind the heap of leaves near the house of accused No.2 and it was within the exclusive knowledge of accused No.1. The gun, empties and the cover of the empties found at the spot were sent for ballistic

examination. The empties matched with the gun, as mentioned earlier. The ballistic expert has opined that the plastic cover found at the spot could be that of the empties of 12 bore gun.

26 All these are the linking pieces of evidence. They complete the other chain of circumstances, which corroborates the direct evidence of the eye witness. Other four live cartridges were recovered at the instance of the accused No.2.

27 There is one more serious circumstance about finding blood of the same blood group, as that of the deceased, on the clothes of all the three accused. There is absolutely no explanation offered by any of them. Their own blood group was different.

28 There is one more witness PW-15 Balasaheb Mahind, who had seen the incident. However even leaving aside his evidence, we are satisfied that the evidence of the eye witness PW-16 Vasant Mahind is sufficiently reliable and can form sole basis of the conviction. But in this case his evidence is supported by other circumstances, as mentioned earlier. Thus, the prosecution has successfully proved the case against the present appellants beyond

all reasonable doubt. The learned Judge has rightly convicted the appellants considering these aspects. Therefore, there is no reason to interfere with the impugned judgment of conviction and the order of sentence. Hence, the Appeals are dismissed.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)

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