

The State of Maharashtra
Through: The Police Inspector,
Jawaharnagar Police Station, Aurangabad ... **Applicant**
(Original complainant)

1. Sachin s/o Suresh Pagare
Age: 23 years, Occupation: Private Service,
R/o. Milind Nagar, House of Wakte
Osmanpura, Pirbazar, Aurangabad
2. Anil S/o Pralhad Badade
Age: 20 years, Occu. Painter work
R/o Gut No.3, Milind Nangar,
Near Shop of Hivrale,
Osmanpura, Pirbazar, Aurangabad

... Respondents
(Orig. accused)

.....
Mr. R. D. Sanap, APP for applicant – State
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**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 24.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

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respondents/accused for the offence punishable under Sections 302 read with Section 120B of the Indian penal Code.

2. With the help of learned APP Mr. R. D. Sanap, we have considered the evidence which was before the learned trial Court on the point as to whether the leave can be granted to the prosecution to file appeal.

3. In nutshell, the prosecution case is that, PW-5 Tukaram Pawar, the Police Naik attached with Jawaharnagar Police Station lodged a report on 25.03.2014 alleging that, he was on patrolling duty with Police Constable Subhash Pawar on 24.03.2014. At about 10.30 p.m. to 10.45 p.m., when they were proceeding from Darga Chowk to Sutgirni Chowk, at that time they saw that one person was lying in pool of blood in front of Plot No.C-12-A. Motorcycle bearing No.MH-20-AC-862, hilt of knife and motorcycle chain were also lying near the injured. Thereafter, the inquiry pertaining to name of injured was made. The injured told his name as Raju Jadhav (deceased) and on inquiry with him about who assaulted him, he disclosed that accused No.1 Sachin Pagare and by showing two fingers disclosed that two other persons assaulted him with knife. Thereafter, the injured was removed at Ghati Hospital for medical treatment.

However, the injured was declared dead at about 1.30 a.m. and M.L.C. No.5983/PPC/2014 dated 25.03.2014 came to be issued. On the basis of said report Crime No.84/2014 registered against the accused No.1 Sachin Pagare and his two associates for the offence punishable under Section 302 read with Section 34 of Indian Penal Code. In the meantime, PW-8 Hemant Kadam, Police Inspector had recorded the spot panchanama at Exh.15. The Investigating Officer recorded inquest panchanama on dead body and referred it for autopsy.

4. Accused No.1 and his two associates arrested under panchanama Exh.81 and 82 at about 15.15 hours on 25.03.2014. However, one of them was juvenile in conflict with law. Therefore, he was produced before the Juvenile Justice Board. The Investigating Officer seized blood stained clothes of accused Nos. 1 and 2 under seizure panchanama. The blood sample of accused was collected with the help of Medical Officer. Thereafter under the memorandum statement of accused No.1 on 27.03.2014, the knife was discovered and seized under Section 27 of the Evidence Act. The Investigating Officer had seized clothes of deceased under seizure panchanama. All seized articles were sent for Chemical Analysis (C.A.) and recorded statements of witnesses. On completion of investigation, charge-sheet came to be filed

against the accused.

5. Learned trial Court framed charge at Exh.3 against the accused for the offences under Section 120B, 302 read with Section 34 of Indian Penal Code on 11.09.2014. Both the accused pleaded not guilty and claimed for trial. In order to bring home guilt of the accused the prosecution had examined in all thirteen (13) witnesses. The statement of accused was recorded under Section 313 of the Code of Criminal Procedure. The defence of the accused that they have been falsely implicated. Learned trial Court passed the judgment and order on 29.09.2018 and acquitted the accused for the said charges.

6. The learned APP Mr. R. D. Sanap submits that it has come in evidence that, the deceased Raju Jadhav left his house after dinner on his motorcycle at about 9.45 p.m. on 24.03.2014. Thereafter, the PW-5 Tukaram Pawar, Head Constable who was on patrolling duty had reached near Plot No.C-12-A of Chanakyapuri and found one person was lying in pool of blood at about 10.30 to 11.45 p.m. PW-5 Tukaram had noticed one chain of motorcycle, handle of knife, small piece of cloth and one piece of paper nearby said injured, so also one motorcycle bearing No.MH-20-AC-862 was standing near the injured. Therefore, PW-5 Head Constable

Tukaram Pawar immediately gave information to the control room and Jawaharnagar Police Station by wireless. Thereafter, within 5 - 10 minutes the PW-11 Ramesh Narwade, the Police Head Constable with his colleague reached at the spot. PW-8 Hemant kadam, Police Inspector of Jawaharnagar Police Station came at the spot and on inquiry, the injured disclosed his name Raju Jadhav and name of assailant Sachin Pagare and two other persons by showing his fingers. Thereafter, the injured Raju Jadhav was shifted to Ghati Hospital, but at about 1.30 a.m., on 25.03.2014 injured succumbed due to injuries.

7. Learned APP submitted that as per the postmortem report Exh.59, about forty (40) incised and stab wounds were found on dead body of deceased Raju Jadhav. The internal and external injuries were corresponding to each other. As per the medical expert's opinion, death of deceased was "due to shock and hemorrhage due to multiple stab injuries". Further evidence adduced by the prosecution shows that during the course of investigation, the accused Nos. 1 and 2 came to be arrested under arrest panchanama Exh.81 and 82 at about 15.50 hours on 25.03.2014 and their blood stained clothes are seized under panchanama Exh.32 and 33, as well as blood contained knife was seized under Section 27 of the Evidence Act on disclosure

statement of accused No.1, which connects the accused with the murder of deceased.

8. It is further canvassed that as per the testimony of PW-3 Sunil Dhanedhar he himself, deceased Raju Jadhav and Pratap Dabhade were consuming liquor in Hotel Ashoka PW-3, prior to incident at about 5.00 5.30 p.m. Accused No.1 with his friend Sandip Magare who were sitting at adjoining table had joined them. Thereafter, the leg of accused No.1 Sachin, hit deceased Raju Jadhav and therefore, Raju told the accused No.1 Sachin about it. Raju Jadhav had asked Sandip Magare to bring petrol as it was exhausted in his vehicle. This shows that dispute arose between accused No. 1 and deceased prior to the incident. Therefore, all the circumstantial evidence brought on record finds out towards accused Nos. 1 and 2 about committing murder of deceased Raju. However, the learned trial Court recorded perverse finding. Learned trial Court failed to appreciate the evidence in positive manner and acquitted the accused. Therefore, it is necessary to re-appreciate the evidence.

9. At the outset, we like to narrate the circumstantial evidence and motive which implied the accused persons to conspiracy to commit murder of deceased Raju Jadhav. Testimony

of PW-6 Rupali Gautam Roptakke would reveal that she is the niece of deceased. She has deposed that, one Shital Pagare is the sister of accused No.1 and she was her college friend. The accused No.1 Sachin used to follow PW-6 and express his one-sided love. The accused No.1 Sachin had intention to marry with PW-6 Rupali, but she had not conceded his request. Despite refusal of marriage proposal, the accused No.1 Sachin was insisting her to marry with him. As per the testimony of PW-6, on 20.02.2014, she was fetching water, at that time the accused No.1 met with her and expressed similar request of marriage. Due to which, she became fed up and had narrated said incident to her maternal uncle deceased Raju Jadhav. Consequently, the deceased Raju Jadhav gave understanding to the accused No.1 not to harass PW-6 Rupali. Further it is deposed by her that, the parents of accused No.1 had gone to Raju's house on 23.03.2014 and had put marriage proposal between accused No. 1 and PW 6 before her maternal uncle Raju Jadhav. However, Raju had refused said proposal. Due to which, there were altercations and quarrel between accused No.1 and deceased Raju Jadhav in Hotel Ashoka in presence of PW-3 Sunil.

10. The fact that, the PW-5 Police Head Constable Tukaram Pawar had found the deceased in pool of blood at the

spot of incident at about 10.30 p.m. to 10.45 p.m. on 24.03.2014 has not been shaken by the defence. One chain of motorcycle Article-7, handle of knife Article-4, a small piece of cloth Article-6 and one piece of paper Article-5 and motorcycle Article-7 were also found at the spot. The spot-cum-seizure panchanama Exh.15 supports the said fact.

11. PW-9 Dr. Bujare conducted autopsy along with his team members Dr. Sushim Waghmare, Dr. Balaji Falke and Dr. Vijay Kamble. During the course of postmortem, PW-9 Dr. Bujare found 40 incised and stab wounds on dead body of Raju Jadhav. The internal and external injuries were corresponding to each other. Accordingly, PW-9 Dr. Bujare issued postmortem report Exh.59 and opined that cause of death is due to shock and hemorrhage due to multiple stab injuries. PW-9 collected blood-soaked clothes for the purpose of blood grouping. PW-9 Dr. Bujare opined that the injuries described in Exh.59 postmortem report are possible due to knife Article 18. Though the defence has taken lengthy cross examination of the Medical Officer PW-9, but nothing contrary has been transpired. Therefore, considering the nature of injuries and opinion of Medical Officer, no room of doubt is left in our judicious conscious to hold that the death of deceased was homicidal in nature.

12. The edifice of the prosecution rest on five incriminating evidences as under:

- (i) Motive of one-sided love of accused No.1 for PW-6 Rupali.
- (ii) Oral dying-declaration by deceased Raju Jadhav before police officers PW-5 Tukaram, PW-8 Hemant and PW-11 Ramesh disclosing name accused No.1 Sachin and other two persons (by sign).
- (iii) The blood-stained knife has been recovered on the basis of memorandum statement made by accused No.1 under Section 27 of the Evidence Act.
- (iv) Blood stained clothes of accused Nos. 1 and 2 have been recorded and seized.
- (v) A motorcycle with blood stained tail lamp has been recovered at the instance of accused No.1.

13. In order to establish circumstances of one-sided love of the accused No.1 for PW-6 Rupali, the prosecution examined PW-3 Sunil, PW-6 Rupali and PW-7 Vandana, the widow of deceased Raju. As per testimony of PW-6 Rupali, on 20.02.2014, the accused No.1 met her in lane when she was fetching water. He told her that he likes her and he wants to marry with her. Thereafter, PW-6 Rupali had disclosed said fact to her maternal uncle deceased Raju Jadhav, who had tried to convince and desist accused No.1. Therefore, there was some dispute between them. Parents of accused No.1 had been to the house of deceased Raju

with proposal of marriage of accused No.1 with PW-6 on 23.03.2014. However, the deceased Raju refused said proposal and they were told to go out of the house. In cross examination, the suggestion was given to PW-6 that she had accompanied accused No.1 Sachin on his motorcycle to Buddha caves, but said suggestion has been denied by the PW-6. The defence has tried to bring on record that there was love affair between the accused No.1 and PW-6, but said suggestion denied by PW-6.

14. In order to establish second circumstances in respect of oral dying declaration by deceased Raju to the police officers, PW-5 Tukaram, PW-8 Hemant and PW-11 Ramesh. As per the testimony of PW-5 Tukaram, he with Police Head Constable Subhash Pawar were on patrolling duty on Bear-Marshall and they noticed that Raju Jadhav was lying in pool of blood in front of Plot No.C-12-A at Chanakyapuri. Thereafter he immediately gave information to control room and Jawaharnagar Police Station by wireless. At the same time PW-11 Ramesh - Police Head Constable who was on patrolling duty on Mobile-II along with Police Constable Moraskar, Police Constable Nikam, Police Constable Pagare, reached at the spot and after some time PW-8 Hemant, Police Inspector of Jawaharnagar Police Station reached at the spot.

15. As per the testimony of PW-8 Hemant, he inquired with the injured about his name and the injured disclosed his name Raju Jadhav. On inquiry as to what had happened, the injured Raju Jadhav disclosed that Sachin Pagare (accused No.1) and showed two fingers of his hand and assaulted him by means of knife. As per the testimony of PW-5 Tukaram, PW-8 Hemant, they came at the spot within 5 - 10 minutes and thereafter PW-8 inquired with the injured Raju Jadhav about his name and the incident. However, as per the testimony of PW-5 Tukaram and PW-11 Ramesh, though they were present at the spot, but they did not make inquiry with the injured about his name and incident. Further, even after receipt of alleged information, the PW-8 did not immediately lodge the FIR. But the FIR Exh.52 lodged was lodged at about 3.45 a.m. on 25.03.2014, only after receipt of message of death of deceased at about 1.30 a.m. The prosecution failed to produce medical papers to show that the deceased Raju was conscious when he was admitted in Ghati hospital.

16. It is well settled principle of law that the evidentiary value of an oral dying declaration is weak type of evidence. It was considered by the Hon'ble Supreme Court in the case of ***Darshana Devi Vs. State of Punjab – 1995 SCC, Supl. (4) 126; 1996 SCC (Criminal) 38***, holding that even though on oral dying declaration

can form the basis of conviction in a given case, but such dying declaration has to be trustworthy and free from every blemish and inspire confidence.

17. In case in hand, the testimony of Medical Officer PW-9 appears that forty (40) injuries were caused to the deceased Raju Jadhav, which were so grave and condition of patient was serious. The prosecution failed to bring any evidence on record to show that when the deceased/injured Raju Jadhav was admitted in Ghati Hospital, at that time he was conscious. Since all 40 injuries inflicted by various angles and considering the injuries appearing on neck, it is highly improbable that the deceased could have utter any words. Therefore, theory of oral dying declaration is falsified by medical evidence.

18. As per the evidence of PW-13 Nagnath, who was attached with Police Chowki of Ghati Hospital in the intervening night of 24.03.2014 and 25.03.2014, he had received information at about 1.45 a.m. from C.M.O. Ghati Hospital about admission of Raju Jadhav to casualty ward in injured condition and he died at about 1.30 a.m. Accordingly he made entry in register and gave information to Jawaharnagar Police Station. PW-13 Nagnath has specifically stated that he has not written the word "unconscious"

in report Exh.99 after the word "injured". He did not make "tick" mark above the word "unconscious". As per the report Exh.99 written by PW-13 Nagnath, the word "unconscious" is appearing in the margin, however, the prosecution failed to lead evidence as to how and why the tick marks above the word "injured" and "unconscious" are appearing. It rather creates confusion as to in which state, the Raju was brought to the Hospital.

19. In order to establish circumstance No.3 about discovery of blood-stained knife at the instance of accused No.1 on the basis of memorandum statement Exh.22 and seizure panchanama Exh.23, prosecution has examined Panch and Investigating officer. As per the testimony of PW-2, the accused made statement about throwing knife in one bungalow while proceeding towards Garkheda. The testimony of PW-2 Shrimantrao appeared that accused No.1 Sachin took the police and panchas to Gurukrupa Housing Society in bungalow at Plot No.5. At that time one Degloorkar, the owner of plot was present. The accused No.1 entered inside of the campus of said bungalow and blood stained knife was found in grass nearby the compound wall. The Investigating Officer has not recorded statement of said Degloorkar, the owner of bungalow. It is significant that the seized article was sent to Forensic Science Laboratory. As per the C.A.

report Exh.93, human blood was detected, but the group of blood not been determined. Therefore, alleged recovery of knife at the instance of accused No.1 is not connected to the crime in question.

20. Further, PW-9 Dr. Bhujare had collected blood of deceased Raju in cotton gauze for the purpose of blood grouping. The C.A. report Exh.96 does not reveal about determination of blood group on the cotton gauze. Therefore, the circumstances about recovery of knife with blood stains does not establish complicity of the accused while committing crime.

21. Further it appears that soon after arrest of accused No.1 and 2, their blood stained clothes were seized under seizure panchanama Exh.32 and 33. Blood stained clothes of accused were sent for C.A. medical examination, however, C.A. report Exh.93 does not appear about detection of blood group on clothes of accused persons. It would be appropriate to mention here that as per arrest panchanama Exh.81 and 82, the accused Nos. 1 and 2 were arrested on 25.03.2014 at about 3.15 p.m., but the seizure panchanamas does not reflect about wearing blood-stained clothes by both the accused. As per the testimony of PW-4 Sk. Kasam, the clothes of both the accused seized under seizure panchanama Exh.33 and 34 by Jawaharnagar Police Station. The evidence of

PW-4 Sk. Kasam does not reveal that the accused Nos. 1 and 2 had produced their clothes. Therefore, seizure of blood-stained clothes of accused appears to be doubtful.

22. In order to prove discovery of blood-stained tail-lamp of motorcycle bearing No.MH-20-CD-1794 by accused No. 1, the evidence of PW-10 Sominath, the panch witness has been relied. However, why accused No. 1 would take tail lamp with him and conceal it is a question. When motor-cycle was left at the spot, why tail lamp would have been taken by him. Therefore, the said evidence is undigestable. Further, as per testimony of PW-5 Sunil Dhanedhar, at about 5.00 to 5.30 p.m., he, Pratap Dabhade and Raju Jadhav (deceased) consumed liquor in Hotel Ashoka, while the accused No.1 Sachin Pagare and Sandip Magare came at their table. Thereafter leg of accused No.1 hit to deceased Raju Jadhav. However, the prosecution failed to examine said Pratap Dabhade and Sandip Magare or waiter to prove any altercation between the accused No.1 and deceased Raju. The said fact about allowing accused No. 1 to join the table of deceased on that day for consuming liquor is doubtful. When two days earlier, Raju had refused the proposal of marriage and there was altercation at that time also, why he would allow accused No. 1 to join his table? There appears to be a concocted story.

23. The evidence of prosecution was based on circumstantial evidence. After considering the material on record, it can be concluded that the prosecution has failed to complete the chain of circumstantial evidence to establish that the accused are the authors of the crime.

24. Learned trial Court passed the Judgment and Order on 21.09.2018, after considering the evidence on record and acquitted the accused, which is itself justifiable. The prosecution has not set out the substantial grounds to interfere or re-appreciate the evidence and to interfere with the findings. Accordingly, the present application deserves to be dismissed.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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