

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 243 OF 2020

Shaikh Sayyed Ali Shaikh Badshan,
Age 75 years, Occu. Agril.,
R/o Kali Bodkha, Taluka Paithan,
District Aurangabad.

... Appellant
(Orig. Informant)

Versus

1. The State of Maharashtra,
Through the Police Station,
Gondi, Taluka Ambad,
District Jalna.
2. Prakash s/o Asaram Nandre,
Age 41 years, Occu. Labour,
3. Kakasaheb s/o Shamrao Vaidya,
Age 51 years, Occu. Labour,
4. Madanrao s/o Shamrao Vaidya,
Age 63 years, Occu. Labour,
5. Chaban s/o Baburao Nandre,
Age 63 years, Occu. Labour,
6. Asaramn s/o Shivram Vaidya,
Age 56 years, Occu. Labour,
7. Suryabhan s/o Vishwanath Nandre,
Age 69 years, Occu. Labour,
8. Mahadeo s/o Nivrutti Vaidya,
Age 41 years, Occu. Labour,
9. Laxman s/o Navnath Nandre,
Age 36 years, Occu. Labour,
10. Navnath s/o Baburao Nandre,
Age 61 years, Occu. Labour,

11. Balu s/o Suryanbhan Nandre,
Age 38 years, Occu. Labour,
12. Punjaram s/o Nivrutti Vaidya,
Age 41 years, Occu. Labour,
13. Kanta s/o Shankar Kakade,
Age 71 years, Occu. Labour,
14. Anil s/o Shankar Kakade,
Age 41 years, Occu. Labour,
15. Nagendra s/o Shamrao Vaidya,
Age 51 years, Occu. Labour,

All R/o village Karanjala,
Tq. Ambad, Dist. Jalna.

... Respondents

(Nos.2 to 15 -Orig. Accused)

...
Ms. Kajal P. Angarkhe h/f. Mr. P. P. Khandagale, Advocate for Appellant
Mr. A. M. Phule, APP for Respondent - State
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 14th JULY, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. By invoking 378(4) of the Code of Criminal Procedure, original informant is questioning the judgment and order of acquittal passed by learned Sessions Judge, Jalna, dated 01.01.2020, thereby acquitting respondent nos.2 to 15 from charges under sections 143, 147, 148 and 302 read with section 149 of Indian Penal Code (IPC).

2. Learned counsel for appellant would point out that, a year back, there was charge of committing murder of one Bandu Nandre against informant/appellant and his sons. Therefore, respondents were upset and annoyed. In above backdrop, on 24.07.2018, around 8:00 to 9.00 a.m., his deceased son Kadir had been to the field. Around 1:00 p.m., telephonic message was received from deceased that, he is taking halt at Karanjala. Again, around 6:00 p.m. informant again got call from deceased informing that present respondents were following him, getting armed with deadly weapons and they were issuing threats to kill. According to informant, he realized that Kadir was in frighten condition and all of a sudden telephonic line went dead. His other son PW2 Sk. Sayed Ali and brother-in-law Yousuf went to Karanjala and there they found Kadir lying in a pool of blood on Karanjala - Sukhapuri road. On being shifted to hospital, he was examined and declared dead, and therefore, it is pointed out that report was lodged at Gondi police station on 25.07.2018.

3. Taking us through the evidence, it is pointed out that, investigation revealed that Kadir was done to death by assaulting with deadly weapons. It is pointed out that there is recovery of weapons at the instance of accused persons. Statements of witnesses were recorded. Seizure was analyzed and therefore

there was ample evidence about involvement of respondents. That, however, learned trial Judge has not appreciated oral and documentary evidence and has acquitted accused persons from all charges. It is submitted that, there was hemorrhagic shock to the splenic rupture along with fracture injuries. Death was shown to be homicidal one. That, shortly before the assault, deceased had informed informant about accused following and threatening him. Such evidence has not been properly appreciated by the learned trial Judge. That, findings reached at are contrary to the record and therefore, aggrieved by the unwarranted acquittal, appellant is questioning the judgment passed by learned trial Judge.

4. In the light of above submissions, we have visited the evidence adduced by prosecution in the trial court. The sum and substance of the same are as under :-

PW1 Syed Latif, panch to inquest panchanama, gave evidence of about injuries noticed by him and about seizure of clothes of deceased (Exh.40 and 41).

PW2 Sk. Sayed Ali Sk. Badshah, informant in his evidence at Exh.42 stated that, two years back, there were accusations against him and his sons regarding murder of one Bandu Nandre. That, on 24.07.2018, he received phone call from

his son Kadir that, 10 to 15 persons armed with axes and sticks were following him and threatening to kill him and abruptly his such son's phone call got disconnected. He gave names of respondents herein. According to him, he, his other son and brother-in-law went to Karanjala and they found Kadir severely injured and therefore been taken to hospital and declared dead.

PW3 Jamir Sayeed Ali shaikh, brother of deceased, also in his substantive evidence named respondents saying that, they used to threaten to kill them. He also stated that, occurrence took place on 24.07.2018. On returned at around 6:00 p.m., he found his father crying and on inquiry he learnt about phone call received from Kadir, naming accused visiting their field, quarreling with him and thereafter phone call of his brother getting disconnected. He, his father and brother-in-law went to Karanjala and found Kadir in injured condition. In hospital at Ambad he was examined and declared dead.

PW4 Shivaji, PSO, testified about PW2 Sk. Sayed Ali Sk. Badshah visited police station lodging report against 14 persons.

PW5 Abhijit, a Talathi who has acted as panch to spot panchanama; memorandum of disclosure and seizure of articles (Exhs.51, 52 and 53 respectively).

PW6 Vijay, Investigating Officer, who deposed about all steps taken by him till filing of charge-sheet.

5. On carefully analyzing the above evidence, here, it is emerging that on autopsy on the person of deceased Kadir, he was found to have suffered following injuries :-

- “1. CLW in right popliteal fossa of six, 2 x 1 x bone deep;
2. Small abrasion on left knee joint;
3. CLW on right ankle joint medially, size : 3 x 2 x bone deep;
4. CLW on nasal bridge, size : 2 x 1 x 1 cm.
5. CLW on right cheek, size : 2 x 1 x 1 cm.
6. clinically detected fracture, right tibial fibula.”

Taking into account the nature of injuries, site of injuries and the opinion about cause of death, there is no hesitation to hold that death of Kadir is unnatural and as a result of grievous injuries.

6. Therefore, it is to be seen whether present respondents who are named as accused are responsible for the said injuries to fasten the charges. It is emerging that, amongst the 6 witnesses only evidence of father and brother of deceased Kadir assumes importance and therefore such evidence is required to be scrutinized.

PW2 Sk.Sayed Ali Sk. Badshah, informant spoke about receiving phone call twice from his deceased son on that day on 24.07.2018. He claims that, at around 6:00 p.m., deceased informed about accused 10 to 15 persons following and threatening to kill him. That, after such talk itself phone call of Kadir got disconnected.

In the cross-examination on the material point, this witness admitted that on Sukhapuri road he found his son lying on main road, but he denied that there was vehicular traffic on the said road. He answered that, he had informed police mobile number of his son, but he denied about handing over mobile handset of his son to the police, i.e. on which she received last call from Kadir. He answered that, he informed about call only to his son and brother-in-law. He stated that at the spot, they noticed mobile phone lying near body of Kadir, but he volunteered that, it was in broken condition and police took it to the possession. In para 12 of the cross-examination, he admitted that he did inform the names of 13 accused for threatening with dire consequences. He denied false implication.

7. PW3 Jamir Sayeed Ali Shaikh, brother who spoke about incident learning from his father. In cross-examination, he answered that, call was not received from deceased Kadir in his

presence. He answered that, police did not seize his mobile handset, but according to him, they merely noted down the information. He answered that, when they reached Karanjala at around 8.00 p.m., police were already present there. He answered that, police seized one jacket, wooden stick and handkerchief as well as deceased brother's mobile handset, i.e. by preparing panchanama.

8. Both, father and brother of deceased are speaking about phone call being received by informant father from deceased Kadir in the afternoon as well in the evening. This aspect could have been established by way of CDR. However, unfortunately, there is no evidence on this aspect. Father in spite of receiving call at 6:00 p.m. has not reported police immediately. Rather he seems to have waited till arrival of his son and brother-in-law. Brother-in-law is not examined. It was expected of father to rush to the spot and promptly report occurrence or atleast on mobile to the police. Having not done so, it amounts to unnatural conduct on his part. Admittedly, PW3 Jamir Sayeed Ali Shaikh, son has mere hearsay information.

9. It is also pertinent to note that, when informant and his son, both claimed about mobile of deceased Kadir lying on the spot

near his dead body, such article ought to have been amongst the other article allegedly seized from the spot. PW5 Abhijit, a Talathi and a panch did not testify about coming across mobile lying on the spot and its seizure.

10. In trial court, prosecution attempted to link accused on the point of recovery and discovery. Prosecution further claims that blood on the seized article carried blood group of deceased. It is found that though there is scientific evidence, suggesting article 16 and 18 carrying AB blood group, blood group of accused no.1 is also AB. It is to be noted that, articles are shown to be seized from accused after almost 8 days of arrest. CA report shows that, seizure was sent on 02.10.2018. Therefore, in absence of chain of custody of article being not established, possibility of planting evidence cannot be ruled out.

11. Therefore, in the light of above discussion, here, evidence of PW2 Sk. Sayed Ali Sk. Badshah and PW3 Jamir Sayeed Ali Shaikh not being consistent, it is unsafe to rely on the same. Regarding motive there is no reliable evidence. Alleged motive is stale. There is no cogent evidence to link accused with the death of Kadir. Apparently, there is previous enmity, therefore false implication cannot be ruled out. Here, there was a case of

homicide. Therefore, prosecution was expected to prove charges against accused persons beyond reasonable doubt. There is no evidence to suggest which of the accused played what role. Mere seizure of article is itself not sufficient. It has to be demonstrated that the articles were possessed by accused and the same were put to use also. Evidence to that regard is missing in the case in hand.

12. Therefor, in our considered opinion, there being weak or no evidence in support of the charges and accusation, learned trial Judge has committed no error whatsoever in rejecting the case of prosecution and acquitting accused. The view taken by learned trial Judge is the only possible view that could emerge on re-appreciation of the evidence. Therefore, there being no illegality or perversity, we refrain to grant the relief. Hence, we proceed to pass following order :-

ORDER

- (i) The criminal appeal is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)