

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.615 OF 2023

Madhukar s/o Kisan Mirge,
Age: 42 years, Occu.: Agri.,
R/o. Malkheda, Tq. Bhokardan,
Dist. Jalna.

.. Appellant

Versus

1. The State of Maharashtra
Through Investigating Officer,
Bhokardan Police Station,
Bhokardan, Tq. Bhokardan,
Dist. Jalna.
2. Santosh s/o Hariba Mirge,
Age: 35 years, Occu.: Agril.,
3. Ganesh s/o Hariba Mirge,
Age: 33 years, Occu.: Agril.,
4. Vilas s/o Hariba Mirge,
Age: 30 years, Occu.: Agril.,
5. Kailas s/o Hariba Mirge,
Age: 28 years, Occu.: Agril.,
6. Ajinath s/o Sudhakar Sonawane
Age: 25 years, Occu.: Agril.,

Both R/o. Malkheda, Tq. Bhokardan,
Dist. Jalna.

.. Respondents

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Mr. Kishor J. Ghute Patil, Advocate for the appellant.
Mr. A. M. Phule, APP for the respondent – State.

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

**RESERVED ON : 28th August, 2023
PRONOUNCED ON : 5th September, 2023**

ORDER :-

. Present appeal has been filed under Section 372 of the Code of Criminal Procedure by the original informant challenging the acquittal of respondent Nos.2 to 6 i.e. original accused Nos.2 to 6 in Sessions Case No.54 of 2018 by learned Additional Sessions Judge, Jalna on 04.05.2023 from the offence punishable under Sections 302, 201, 120(B), 143, 147 and 148 read with Section 149 of Indian Penal Code. It will not be out of place to mention here itself that original accused No.1 – Hariba Sandu Mirge expired during the trial and, therefore, case stood abated against him.

2. The prosecution story is that the first informant Madhukar Kisan Mirge was staying with his father, brother P.W.3 Mukund and another brother Vinod and their family. P.W.5 Sumanbai is the widow of deceased Kisan. The family had 18 Acres of land. Accused No.1 Hariba was the real brother of deceased Kisan. Accused Nos.2, 3, 4 and 5 are the sons of accused No.1 and accused No.6 is the friend of accused No.4. There was dispute between the informant and accused Nos.1 to 5 on account of road passing through agricultural land

bearing Gut No.167, which the parties had taken up before the Court. Deceased Kisan used to go to his field at night time to guard it. As usual he went around 8.30 p.m. on 30.11.2017 to the field on his motorcycle, however, he did not return in the morning. Informant went to the field, but could not find father, therefore, made inquiry with Vinod who told him that father has not returned home. Therefore, all the relatives started searching Kisan, at that time, his motorcycle was found in the field of one Bhagaji Ghodke and then the missing report has been filed. On the next day i.e. on 01.12.2017, the dead body of Kisan was found near Power House of Wadod Bazar village, then the informant lodged the FIR.

3. After the dead body was found, inquest panchanama was prepared and dead body was sent for postmortem. Panchanama of the spot was carried out after the FIR was lodged and statements of witnesses were recorded. Accused came to be arrested. After the completion of the investigation, charge-sheet was filed.

4. After the committal of the case, prosecution has examined in all thirteen witnesses to bring home the guilt of the accused. After considering their evidence on record and hearing both sides, the learned Trial Judge has acquitted all the accused persons. Hence, the

present appeal.

5. Heard learned Advocate Mr. Kishor J. Ghute Patil for the appellant and learned APP Mr. A. M. Phule for the respondent – State.

6. Important point to be noted is that the case of the prosecution rests on circumstantial evidence in the nature of (i) accused were seen near the place of incident, (ii) discovery of clothes of accused No.4, (iii) the place where the dead body was thrown, (iv) discovery of belt used in the commission of crime, (v) discovery of sim card, money, (vi) seizure of clothes of accused Nos.5 and 6 and (vii) motive of commission of murder. The motive is stated to be enmity between the brothers on account of property. The learned Trial Judge has held that the chain of circumstances have not been proved beyond reasonable doubt.

7. With the able assistance of learned Advocate for the appellant, we have gone through the depositions and it can be seen that prosecution is relying on the testimony of P.W.4 Narayan Ghodke, who is stated to be the witness on the point of last seen together. P.W.8 is the worker on the petrol pump, where the accused had gone to fill the petrol in his motorcycle. The medical evidence in the form

of postmortem report Exhibit-96 has been admitted by the accused, so also the inquest panchanama Exhibit-72. Taking into consideration the contents of postmortem report Exhibit-96, especially column No.17 and the injuries noted therein, it can be certainly said that the death is homicidal in nature. In the said circumstance, then it was for the prosecution to prove the chain of circumstances, which should unerringly point out towards the accused persons as the culprits.

8. P.W.1 Madhukar, P.W.3 Mukund and P.W.5 Sumanbai are the son, son and widow of the deceased respectively. They have mainly stated about the enmity and what was the routine of deceased Kisan. They are not the witnesses on the point of last seen together or any other circumstance to connect the accused with the deceased or crime. Even P.W.6 Dwarkabai, who is the sister of the deceased, is on the same point. P.W.4 Narayan Ghodke is the person on the point of last seen together, however, if we consider his testimony, he appear to be the eye witness to the earlier dispute and he says that the son of Hariba had caused fracture to his hand at that time. Therefore, it can be seen that he had received injury when he had alleged to have gone for separating the fight between two brothers and the relatives. As regards the incident is concerned, he said that around 9.30 p.m. on

30.11.2017, he had gone to his agricultural land, which is situated near his village for walk, at that time, he noticed that accused Kailas and Ajinath were going on motorcycle and between them there was one thing like man which was kept in closed condition. They went speedily towards west side and he says that he had seen it in the light of his mobile battery. The presence of this witness appears to be unnatural, though he says that he had gone towards his own agricultural land, but then he says that he had gone for walk that too at 9.30 p.m. and not for any other work in the field. Even if for the sake of arguments we accept that he had seen both the accused going on motorcycle at the relevant time, yet he says that there was something like man in closed condition between the driver and the pillion rider. He was not sure in saying that it was deceased. The important factor of 'last seen theory' is that the deceased should be seen alive in the company of accused by a third person and then that third person is deposing about it can be made admissible. Here, there is no assertive statement that it was deceased sitting in between accused Kailas and Ajinath. Secondly, even if for the sake of arguments even it is considered that it was a man or woman (human), he or she was not alive. Therefore, we cannot give much importance to his testimony.

9. Thereafter, the prosecution appears to be relying on the testimony of P.W.7 Anil Wagh, who had witnessed the seizure of belt, P.W.9 panch witness to the seizure of clothes of deceased, P.W.10 Devidas panch witness to memorandum panchanama and seizure panchanama and P.W.12 Sominath from whom accused No.4 has purchased sim card. Only on the basis of discovery or recovery of articles, conviction cannot be awarded. P.W.11 and P.W.13 are the investigating officers in the entire process of investigation. Thus, it can be seen that there was absolutely no cogent, material and conclusive evidence, which can be said to be beyond reasonable doubt for convicting the accused and, therefore, the learned Trial Court had rightly acquitted the accused persons. No interference is required. Therefore, the appeal deserves to be dismissed at the admission stage itself. Accordingly, the appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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