

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 483 OF 2004

1. Vandanabai W/o Gangadhar Gadhave,
Age : 30 Years, Occ. Household,
R/o. Talkalas, Tq. Purna,
Dist. Parbhani.

..Applicant/
Petitioner

V E R S U S

1. The State of Maharashtra
2. Hanumant Dadarao Gadhave,
Age : 25 Years, Occ. Agriculture,
3. Ankush S/o Dadarao Gadhave,
Age : 25 Years, Occ. Agriculture
4. Sukhadeo S/o Dadarao Gadhave,
Age : 23 Years, Occ. Agriculture
5. Maroti S/o Manika Madne,
Age : 45 Years, Occ. Agriculture

..Respondents

All resident of Talkalas, Tq. Purna,
Dist. Parbhani.

Mr. A. R. Borulkar, Advocate for Applicant;

Mr. K. S. Patil, A.P.P for Respondent No.1/State;

Mr. P. B. Rakunde, Mr. S. B. Bhapkar, Advocate for respondent Nos. 2 to 5

CORAM : S. G. MEHARE, J.

DATE : 14.03.2023

ORAL JUDGMENT :

1. Heard the learned counsel for the applicant, the learned A.P.P for
State and learned counsel for the respondent Nos. 2 to 5.

2. The present applicant is the first informant who has impugned the judgment and order of acquittal of learned Sessions Judge, Parbhani in Sessions Case No. 147/1997, dated 30.10.2004. The respondents Nos. 2 to 5 who were accused.

3. The learned counsel for the petitioner would argue that the learned Sessions Judge, without justifiable reasons, discarded the eye witness PW. No.5 barely on the ground that he kept silent for sufficient time. He has referred to the finding recorded by the learned Sessions Judge in the impugned judgment and order. The alleged eye witness has also been doubted for suppressing the fact that he was the relative of one of the witnesses Bansidhar. The conduct of the applicant has been observed. It is also irrelevant to appreciate his evidence on the material point. *Prima facie* the learned Sessions Judge failed to appreciate the evidence in proper perspective. Therefore, revision is liable to be allowed and the matter be remitted to the Sessions Court for re-writing a judgment.

4. Per contra, the learned counsel for Respondent Nos. 2 to 5 has vehemently argued that the learned Sessions Judge has correctly appreciated the evidence. Limbaji Pole, P.W.No.5, was a got up witness. His silence for sufficient period raises a serious doubt about

his veracity. The offence was under Section 302 of the Indian Penal Code, hence strict proof was required. The conduct of P.W.No.5/the eyewitnesses was doubtful. There is no possibility of two views. The impugned judgment and order is explicit and well reasoned. Hence, the petition is liable to be dismissed.

5. Perused the papers and the impugned judgment and order. The learned Sessions Judge discarded the evidence Limbaji Pole (P.W.No.5) who was introduced as an eye witness, for the reason that he did not disclose the incident immediately to anybody. He had been to the police station. The police had recorded his statement, but Investigating Officer of the matter denied that they ever recorded his statement. It has also been observed that during the investigation of accidental death, the parents of the deceased never raised the suspicion over the respondent Nos. 2 to 5. The theory of previous enmity appears to have no connection with the present crime.

6. Under Section 397 read with Section 401 of the Code of Criminal Procedure, the Court has limited scope to warrant interference in the order against the judgment of acquittal. The applicant has to show *prima facie* error on the face of record, that the Judge has committed in passing the judgment and order. Appreciation

of the evidence is one of the prime duties of the Court to arrive at a proper conclusion. It is a settled principle of criminal jurisprudence that the more serious offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused. (*Mousam Singha Roy & Ors. Vs. State of West Bangal, (2003) 12 SCC 377*). The prosecution has to prove the case beyond reasonable doubt.

7. The conduct of the accused as well as the witnesses is material to weigh the evidence. Limbaji Pole, P.W. No.5, had deposed that he witnessed the incident from about 500 feet away from the spot of the incident. He saw the accused chasing the deceased and pushed him into the well. The evidence of Limbaji Pole, P.W. No.5, who came before the Court after a reasonable period definitely raises a doubt. It was also transpired that he is one of the relatives of one witness but he has suppressed. Therefore, the learned Sessions Court has correctly raised doubts over his testimony. It is also the evidence that the injured has multiple injuries but the opinion is not clear that those were caused by the act of a man. If a person falls into the well he may get such type of injuries due to wall of the well and other articles in the water. Dead body was seen lying in the well. There were no other signs on the body of deceased to believe that it was human act against

the human. In the circumstances possibility of drowning can also not be ruled out.

8. Besides the alleged eyewitness, there were no circumstances to prove the nexus of the applicant in the crime. Considering the scope of revision under Section 397 read with Section 401 of the Code of Criminal Procedure, the Court is of the view that the applicant could not point out *prima facie* error on the face of record in impugned judgment and order. Therefore, the Court is of the view that this is not fit a case to interfere with the impugned judgment and order. In the result, petition fails. Therefore, the petition stands dismissed.

9. Record and proceeding be returned to the learned trial Court.

(S. G. MEHARE)
JUDGE

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