

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.951 OF 2019

Kisan s/o Sopanrao Dhok
Age: 36 years, Occu.: Labour/Hamal,
R/o. Kumbhari, Tq. & Dist. Akola,

.. Appellant

Versus

1. Namdeo s/o Waman Dhok
Age: 49 years, Occu.: Agri.,
R.o. Maherkheda, Tq. Sengaon,
Dist. Hingoli.
2. Bhanudas s/o Waman Dhok
Age: 60 years, Occu.: Agri.,
R/o. As above,
3. Vithal s/o Vishramji Dhok
Age: 50 years, Occu.: Agri.,
R/o. As above.
4. Jaijairam s/o Rajaram Dhok
Age: 38 years, Occu.: Agril.,
R/o. As above.
5. Trimbak s/o Waman Dhok,
Age: 49 years, Occu.: Agri.,
R/o. As above.
6. Madhav s/o Vishramji Dhok
Age: 49 years, Occu.: Agri.,
R/o. As above.
7. Deorao s/o Motiram Pawar
Age; 49 years, Occu.: Agri.,
R/o. Warud (Samad), Tq. Sengaon,
Dist. Hingoli.
8. Parasram s/o Rajaram Dhok

Age: 29 years, Occu.: Agri.,
R/o. Maherkheda, Tq. Sengaon,
Dist. Hingoli.

9. Dnyanoba s/o Vishramji Dhok,
Age: 69 years, Occu.: Agri.,
R/o. As above.

10. The State of Maharashtra
Through Police Station Narsi,
(Namdeo), Tq. Sengaon,
Dist. Hingoli.

.. Respondents

...
Mr. A. S. Ghdhamgaonkar, Advocate for appellant.
Mr. S. D. Ghayal, APP for respondent No.10 – State.

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

RESERVED ON : 11th August, 2023

PRONOUNCED ON : 6th September, 2023

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

1. Present appeal has been filed by the original informant under Section 372 of the Code of Criminal Procedure, challenging the acquittal of respondent Nos.1 to 9 by learned Additional Sessions Judge, Hingoli on 24.07.2019 in Sessions Trial No.39 of 2012 from the offence punishable under Sections 143, 147, 302, 201, 364, 120(B) read with Section 149 of Indian Penal Code.

2. Heard learned Advocate Mr. A. G. Godhamgaonkar for the appellant and learned APP Mr. S. D. Ghayal for respondent No.10 – State at the time

of admission. We have gone through the record and proceedings.

3. It has been vehemently submitted on behalf of the original informant that the learned Trial Judge has not appreciated the evidence properly. The prosecution had led evidence to prove that deceased Sopan Dhok, father of the appellant had gone to village Paheni on 31.03.2012 to meet his maternal uncle and thereafter he went to Warud (Samad) to meet his brother-in-law and stayed there overnight. He then left around 8.00 a.m. on 01.04.2012 for his return journey to Akola. He went to Pusegaon bus stand where he met his paternal uncle and brother-in-law around 9.30 a.m. There he was kidnapped by accused Namdev, Trimbak, Bhanudas, Dnyanoba and Jaijairam. They had tied the hands of deceased Sopan and made him to sit on motorcycle forcibly. They took him at a distance, strangled him and then set him to fire. The evidence that was placed was in respect of persons witnessing the abduction of deceased from the S.T. bus stand. In fact, when such incident takes place in a public place, then proper weightage ought to have been given to the evidence led in the form of examining eye witnesses. They were the persons, who had seen the deceased alive in the company of the accused lastly. Thereafter, when the accused Parasram and Dnyanoba showed the spot of incident i.e. agricultural land of accused No.2 situated at Maherkheda where there were ashes, burn pieces of bone and teeth were found. In fact, all the accused

were present at the spot and they had assaulted Sopan. Though incident has taken place in the broad day light and Sopan was abducted, the learned Trial Judge ought to have given proper weightage to the testimony of eye witnesses. The scrutiny of evidence is not proper and, therefore, interference is required by admitting the appeal.

4. Before we turn to the evidence that is led in this matter, the prosecution story was that the present appellant – informant lodged report on 06.04.2012 stating that his native place is Maherkheda, where his family has 10 Acres of agricultural land. The accused persons are also having agricultural land in the same village and they are unlawful possessing 8 Acres of land out of those 10 Acres of land. He has given the story as regards the enmity between the family members of the accused and his family and the frequent attempts by the accused to falsely implicating the deceased. His father was residing with him at Akola, but went to village Pahini on 31.03.2012 to meet his maternal uncle. After meeting the uncle Sopan went to Warud (Samad) to meet his brother-in-law Deorao and Bharat. He stayed with them overnight and left Warud (Samad) around 8.00 a.m. on 01.04.2012 for return journey to Akola. For that purpose, he was required to go to Pusegaon bus stand. He reached Pusegaon bus stand around 9.30 a.m. where accused Namdev, Trimbak, Bhanudas, Dnyanoba, Vitthal, Madhav and Jaijairam abducted his father, tied his hands and made

him to sit on motorcycle. After the FIR was lodged vide Crime No.8 of 2012 for the offence punishable under Sections 363, 365, 367, read with Section 34 of Indian Penal Code, the accused Parasram and Dnyanoba gave discovery, showed the spot of incident, where the ashes and burn pieces of bone were found.

5. After the investigation was over, charge-sheet was filed. Offence under Section 302 and 201 of Indian Penal Code came to be added. The trial was conducted and prosecution has examined in all fifteen witnesses. The prosecution relied on various documents also. After considering the evidence and hearing both sides, the learned Trial Judge has acquitted all the accused persons from all the charges.

6. From the record, it can be seen that testimony of P.W.8 Kishan i.e. present appellant would disclose that there was enmity between his family and the family of the accused. It can be also gathered from his testimony that his father had left on 31.03.2012 from Akola, but thereafter what has happened is not within his personal knowledge and for that purpose, he depends on the information supplied by the others. We cannot take into account the said hearsay evidence.

7. The learned Trial Judge has divided the incident in different events depending on the time and place and its occurrence. It is said that P.W.13

Ashok has stated about the fact that Sopan had come to his house, but Sopan left his house for going to Warud (Samad) and at that time, it was disclosed to him that he want to settle the dispute in respect of agricultural land. The testimony of this witness cannot be of much more importance than the same, but then surprisingly he says that on the next day around 9.00 to 10.00 a.m., he himself and one Vishwanath went to Pusegaon for purchasing clothes for marriage. They had gone near the bus stand to have tea and he found that the brother of Sopan was quarreling with him beating him. He tied the hands and legs of Sopan and made him to sit on a vehicle, but then he says that he did not know the names of the persons, who were beating Sopan. He has identified the accused Madhav and Vitthal. Important point to be noted is that his self presence is raising doubt and also the subsequent conduct. He does not say that when the incident was happening, he had tried to rescue Sopan. Same is the case with P.W.14 Vishwanath. The inconsistency or variance between the testimony of P.W.13 Ashok and P.W.14 Vishwanath, who were in the company of each other, is required to be considered. P.W.14 Vishwanath has given names of all the accused, whereas P.W.13 Ashok's testimony is silent about the presence of other accused persons. Likewise, the evidence of P.W.5 Sattarkhan, who was allegedly present, is also doubtful. When the witnesses have allegedly stated that they were watching Sopan being taken away, the question arises as to why they had not intervened. Merely by

saying that the incident has taken place at bus stand is not sufficient but then the rush at the said place can be imagined and in spite of the rush of people, whether such incident would take place and whether the accused would have been allowed to take Sopan forcibly with them. The surprise or doubt gets more intense when none of them had lodged any report with the police station on the same day. The incident has taken place on 01.04.2012 and the FIR came to be lodged on 06.04.2012. The delay has not been explained at all.

8. Another fact to be noted is that there appears to be no independent investigation to prove that deceased was murdered. Here, in this case the corpus was not found and therefore, there was no question of postmortem. The investigating officer says that he had seized bones, ashes and teeth from the spot, which was allegedly shown by the accused. There is no attempt on the part of the prosecution by sending the samples for DNA test to prove that those bones were that of the deceased. Even if for the sake of arguments it is accepted that the panchanama under Section 27 of the Indian Evidence Act have been proved in this case, yet the connecting evidence that those bones were that of the deceased has not been conclusively proved. Further, the testimony of investigating officer would show that ashes, bones and teeth were sent for DNA analysis to Forensic Laboratory at Kalina, Mumbai. The sample of blood of PW.5 – the informant

appellant was taken. As per report below Exhibit-124, the blood sample was the control sample of informant, whereas Exhibit-125 says that no amplifiable DNA is obtained from burnt bone and teeth. Under the said circumstance, the DNA report is negative and, therefore, in the nutshell, on the basis of crucial evidence, the learned Trial Judge has come to the conclusion that prosecution has failed to prove that Sopan has been murdered. The bones and the teeth were not concluded to be that of Sopan.

9. We cannot even consider the case of the prosecution for the offence under Sections 143, 147, 364 of Indian Penal Code, as the evidence that is adduced is untrustworthy. The alleged eye witnesses are not corroborating to each other. As aforesaid, it is not established that Sopan has been murdered. All those variances have been taken on record by the learned Trial Judge. A detailed and well reasoned judgment has been given, which requires no interference. Hence, the appeal stands dismissed at the threshold.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm