

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

CRIMINAL APPEAL NO.665 OF 2021

. Pralhad Kathalu Shejul
Age: 67 years, Occu.: Agril.,
R/o. Warkhed,
Taluka and District Jalna. ..Appellant /
(Orig. Informant)

Versus

1. The State of Maharashtra,
Through the Police Station Incharge,
Sevli Police Station, Taluka and District Jalna.
2. Nitin Bhaskar Khade
Age: 29 years, Occu.: Agril.,
R/o. Warkhed, Taluka and District Jalna.
3. Rahul Bhaskar Khade
Age: 27 years, Occu.: Agril.,
R/o. Warkhed, Taluka and Dist.Jalna.
4. Rahul (Macchindra) @ Balu Maroti Khade
Age: 26 years, Occu.: Agril.,
R/o. Warkhed, Taluka and District Jalna. .. Respondents
(Resp. Nos.2 to 4 -
Orig. Accused)

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Advocate for Appellant : Mr.Amol S.Sawant
APP for Respondent No.1 - State : Mr.R.V.Dasalkar

...

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

DATE : 16th February, 2023

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

. Original informant Pralhad Kathalu Shejul is questioning the judgment and order of acquittal passed by the learned Additional Sessions Judge, Jalna by which present respondent nos.2 to 4 stood acquitted from commission of offence under Sections 302, 341 and 120B read with Section 34 of the Indian Penal Code.

BRIEF FACTS OF THE CASE OF PROSECUTION

2. Deceased Tushar Vishwanath Khade was nephew of the informant Pralhad Shejul. Tushar used to stay with the informant. He was unmarried. Once, he had disclosed informant that, he had illicit relations with wife of accused no.1 Nitin Khade and thus, accused nos.1 Nitin Khade, Sachin Khade, Maroti Khade and Datta Khade had threatened him with dire consequences.

On 15-12-2018, after taking bath, Tushar left home and he was going to Sevli on his motorcycle. The informant went to his field. After some time, son of his brother-in-law namely Pradip came to him and disclosed that Tushar met with an accident on Sevli road. The informant immediately rushed to the spot and found that motorcycle of Tushar was lying under bridge and Tushar was lying in pool of blood. Informant noticed several injuries on neck of Tushar. Thereafter, informant lodged report with Sevli Police Station alleging that accused no.1 Nitin Bhaskar Khade, Sachind Khade, Maroti Khade and Datta Khade assaulted Tushar with knife and committed his murder.

On the strength of this report, FIR no.125 of 2018 came to be registered. Investigation was carried out and after completing the same accused persons came to be charge-sheeted for the offence under Sections 302, 341 and 120B of IPC.

Trial was conducted against accused persons before learned Additional Sessions Judge, Jalna, who after appreciating oral and documentary evidence on behalf of prosecution, held that prosecution has failed to establish the guilt of the accused and thereby learned trial Judge vide judgment and order dated 25-10-2021 acquitted the accused / respondent nos.2 to 4 from all charges.

It is the above acquittal which is now questioned by informant by preferring instant appeal on the grounds raised in the appeal.

3. We have heard both the sides.

SUBMISSIONS ON BEHALF OF APPELLANT

4. Learned Advocate for the appellant would submit that deceased Tushar was nephew of the appellant. Tushar had disclosed appellant that he had illicit relations with wife of accused no.1 and therefore, accused no.1 was annoyed with him and he had issued threats.

On 15-12-2018, he learnt about Tushar met with an accident but when informant himself went to the spot and saw body of Tushar, he came across stab injuries and therefore, he set law into motion. That even autopsy Doctor

on post mortem concluded that death was not accidental but was rather homicidal. It is further submitted that prior to the incident, accused persons had issued threats to kill Tushar and had thereby finally executed the threats also. But learned trial Court failed to consider and appreciate the said fact.

5. It is next submitted that once homicidal death was proved, learned trial Court ought to have considered that there was testimony of informant **PW2** Pralhad and other witnesses **PW3** Sanjay, **PW4** Pandit, **PW6** Ranjana, who had seen accused persons in the company of deceased and **PW6** Ranjana had eye witnessed the assault, however, such testimonies are surprisingly not appreciated by the learned trial Court and has erred in doing so and further erred in acquitting the accused. Therefore, it is his submission that the findings and the reasons assigned by learned trial Court are against the oral and documentary evidence on record and so such judgment cannot be allowed to be sustained.

6. It is further submitted that there was motive behind the incident. Informant had deposed that prior to the occurrence, informant heard from deceased that accused persons had issued threats to kill him in the backdrop of his illicit relationship with wife of accused no.1 and thus he submitted that here motive was also forthcoming and therefore, case of prosecution ought to have been accepted and conviction ought to have been recorded but learned

trial Court failed to consider and appreciate this and passed erroneous order which is therefore, required to be set aside by allowing the appeal.

SUBMISSIONS ON BEHALF OF STATE

7. On behalf of State, it is submitted that learned trial Judge has not appreciated oral and documentary evidence on record. That there was sufficient and cogent evidence in support of case of prosecution, but the same has not been considered in proper perspective and learned trial Judge has rather acquitted the accused persons.

8. We have gone through the record. We have also gone through the testimonies of prosecution witnesses, which are placed before us. It seems that prosecution has examined as many as eight witnesses and has also sought reliance on FIR and various panchanamas. It seems that to prove death to be homicidal, prosecution has placed on record inquest panchanama and also adduced evidence of autopsy Doctor, who drew post mortem report Exh.51. Column no.17 shows that deceased had suffered five stab injuries, three incise wounds and two CLW wounds. Taking the same into account, autopsy Doctor seems to have opined that death was homicidal one. This is not seriously disputed by defence either in the trial Court or before this Court.

9. Therefore, it fell upon prosecution to prove that accused facing trial i.e.

present respondent 2 to 4 are only the authors of above injuries. To establish such aspect, **PW2** Pralhad, **PW3** Sanjay, **PW4** Pandit and **PW6** Ranjana are made to step in witness box.

EVIDENCE ON BEHALF OF PROSECUTION

10. **PW2** Pralhad seems to be informant and deceased Tushar seems to be his nephew. According to this witness, as stated by him in FIR, he seems to be speaking in witness box about deceased Tushar informing him about his alleged illicit relations with wife of accused no.1. However, in examination-in-chief, he states that after visiting the spot and seeing the dead body, he **suspected** accused to be assailant and therefore, he lodged report.

In **cross**, he has admitted that prior to the incident, his nephew did not tell him that Sachin Bhaskar Khade, Maroti Balu Khade and Datta Bhanudas Khade had issued him any threats or about dire consequences. Therefore, to that extent, his version in the witness box is improvised, which is not finding place in the FIR. In witness box, he admitted that he did not give the names of any person to the Police. He also admitted that prior to the incident, there was no complaint against accused persons for issuing life threats.

11. **PW3** Sanjay testified that deceased was his cousin and he was staying with **PW2** Pralhad. According to him, once deceased disclosed him that he had illicit relations with wife of accused no.1 and he too stated that accused no.1

threatened him with dire consequences. According to him, on the date of incident, he saw accused nos.2 and 3 standing on the bridge and accused no.1 was grazing buffalo. Then he stated that he came to know from villagers that Tushar was killed by somebody. Thus, he stated that after seeing the dead body, he concluded that accused persons **might have killed** Tushar.

12. **PW4** Pandit has stated that Tushar was his grandson. According to him, Tushar used to tell him that accused persons want to eliminate him. That while he was in his agricultural land, **he saw accused nos.2 and 3 were standing on road and accused no.1 was grazing buffalo.** That accused no.2 assaulted Tushar by knife and accused no.3 assaulted Tushar by axe on his head. Accused no.3 threw the motorcycle of Tushar in brook and thereafter, accused persons ran away. This witness stated that he was frightened and therefore, he did not tell about incident to anybody.

In **cross-examination**, he answered that he did not question accused nor he raised shouts and screams. He further admitted that Police was frequently visiting the village after the incident but he did not inform them. Answers given by him in paragraph no.3 in the cross, renders his evidence doubtful. His answers show that he is not sure about number of blows allegedly inflicted on deceased as he is merely using the words might have.

13. **PW6** Ranjana stated that while she was returning home and she was

proceeding towards bridge, she saw accused no.1 was grazing buffaloes and accused nos.2 and 3 were sitting on bridge. She stated that she heard sound from backside and so when she looked back, she saw accused no.3 assaulting Tushar with axe on his head and accused no.2 assaulting Tushar by knife and therefore, out of fear, she hid herself in crop of "Jawar". Accused no.2 kept body of Tushar in pipe. She being alone, she did not disclose the incident to anybody.

While in **cross-examination**, she has admitted that she was very well aware of the FIR that was lodged but she admitted that she did not go to the Police and disclosed the incident. She also admitted that she did not talk to anybody. She is unable to assign reason as to why the fact of she witnessing the assault is not finding place in her statement.

Therefore, from above discussed testimonies of **PW2** Pralhad, **PW3** Sanjay, **PW4** Pandit and **PW6** Ranjana, it is emerging that **PW2** Pralhad and **PW3** Sanjay are merely attributing suspicion and they have apparently reached the scene of occurrence after hearing about Tushar lying in injured condition. **PW4** Pandit and **PW6** Ranjana, though claim that they had seen occurrence, their conduct of not going to the rescue, raising shouts or immediately lodging report, is apparently unnatural. Had they seen occurrence, they would have promptly reported and the same not being done, there testimonies about eye witnessing the occurrence, are not worthy of credence. The answers given by them in cross-examination further renders their versions in witness box false,

afterthought and hence, doubtful.

ANALYSIS AND CONCLUSION

14. Here case of prosecution was entirely based on circumstantial evidence, there being no direct evidence. Therefore, it was expected of prosecution to establish motive and other circumstances leading into homicidal death of deceased. However, unfortunately here prosecution has not examined the wife of accused no.1 nor has gathered material in support of allegation of illicit relations between deceased and wife of accused no.1. Testimonies of **PW2** Pralhad, **PW3** Sanjay, **PW4** Pandit and **PW6** Ranjana are not found free from doubt on the point of motive or actual assault on deceased.

15. Here, though there is charge under Section 120B of IPC, the very aspect of conspiracy and evidence to that extent is completely missing from prosecution evidence.

Under such circumstances, in our opinion, learned trial Judge has committed no error in refusing to accept the case of prosecution. Therefore, there being no trustworthy evidence, prosecution case has rightly been rejected and acquittal has been recorded.

16. We have also re-examined and re-assessed entire oral and documentary evidence on record. There is nothing in support of prosecution case regarding

assault on deceased by accused persons. Though, death is shown to be homicidal, unfortunately there is no circumstance suggesting involvement of accused. Therefore, we are also of opinion that prosecution has failed to establish their case and are therefore not entitled for the relief sought in the appeal. Hence, we proceed to pass following order :

ORDER

(i) Criminal Appeal No.665 of 2021 stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT