

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 831 OF 2017**  
**WITH**  
**INTERIM APPLICATION NO. 1750 OF 2024**

Pandurang Rajendra Pawar  
Age : 21 Years, Occu.: Education,  
R/at. : Shindewadi, Taluka Phaltan,  
District Satara.

Presently lodged at Kolhapur Central  
Prison.

Appellant/  
.. Applicant

**Versus**

The State of Maharashtra  
Through Phaltan Police Station, District  
Satara.

.. Respondent

...

Mr. Anush Shetty i/b Dr. Yug Mohit Chaudhry, for the  
Appellant/Applicant.

Ms. M. M. Deshmukh, A.P.P. for the State/Respondent.

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**CORAM : BHARATI DANGRE &**  
**MANJUSHA DESHPANDE, JJ.**  
**DATED : 9<sup>th</sup> AUGUST, 2024**

**JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-**

1. The Judgment and order passed by the Additional

Sessions Judge, Satara, dated 18<sup>th</sup> August 2017, in Special Atrocity Case No.11 of 2016, for the offence punishable under section 302 of the Indian Penal Code (for short “the *IPC*”) alongwith Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short “the *SC ST Act*”), sentencing the Appellant to suffer rigorous imprisonment for life and pay fine of Rs.1,00,000/- and in default to suffer further rigorous imprisonment for one year and fine of Rs. 25,000/- for the offence punishable under section 3(2)(v) of the SC ST Act, has been challenged by the Appellant. It is against the Judgment of conviction the Appellant, has approached this Court under Section 374 of the Code of Criminal Procedure (for short “the Cr.P.C.”).

2. It is the case of the prosecution that PW-3 Savita Ramchandra Bansode has lodged complaint against the accused alleging that Anurag, the son of her predeceased niece Sarika, had come to stay with her after the death of Sarika. Anurag used to stay with his father Sachin Dattatray Ahiwale for few days and again return to her house and stay with her for few days. Though Anurag had been admitted in Boarding School at Village Tathawade, Tal. Phaltan in the year 2015, he

had left the school and used to wander in the village. Since he had left the school, PW-3 has taken him along with her at Shindewadi.

It is stated by the complainant that on 10.11.2015 at 8.00 p.m., she received a call from Police Station, Phaltan, informing her that dead body of Anurag Sachin Ahiwale, aged 14 years was found behind Shriram Sugar Factory, Phaltan. When she saw dead body of Anurag there was a head injury sustained by him and it was profusely bleeding. There was soil smeared on his face and his hair were covered with blood. Therefore she lodged the complaint with Phaltan City Police Station.

She has stated that she has been informed by one Rama Bhalerao (PW-6) that he had seen Anurag about 11.00 a.m. alongwith one unknown person on 10.11.2015. On the basis of the complaint, the accused Pandurang Rajendra Pawar has been arrested by the police and his Test Identification Parade was conducted, where PW-6 has identified him.

3. The statement of PW-3 Savitra has been recorded on 11.11.2015 and offence vide C.R. No. 212 of 2015, for the offence punishable under section 302 of the IPC and Section 3

(2) (v) of the SC ST Act, has been registered. The investigation was handed over to PW-9 Ramesh Nagnath Chopade and upon investigation the charge-sheet has been filed in the court of Judicial Magistrate First Class, Phaltan on 18/3/2016.

Since, the provisions of SC-ST Act were attracted, the Judicial Magistrate First Class, Phaltan has committed the case to Special Court, *vide* Committal Order dated 08.03.2016. The Special Court has framed charges *vide* Exh-6. The particulars of charges were read over and explained to the accused to which he pleaded not guilty.

After recording of evidence, the statement of the accused under Section 313 of the Cr.P.C. has been recorded. The accused claimed that, he has not committed any offence thereby taking the defence of total denial. The learned trial Judge after recording the evidence and statement of the accused under Section 313 of the Cr.P.C., has convicted the accused *vide* Judgment and Order, which is impugned in the present Appeal.

It is the contention of the Appellant that he is an innocent person and he has been unnecessarily dragged in the present offence. There is no cogent and reliable evidence which

will point only towards his guilt.

4. The case of the prosecution is based on circumstantial evidence. There is no eye witness who has seen the incident, in which the deceased Anurag was assaulted, which has resulted in his death.

The prosecution has examined 13 witnesses. Though 13 witnesses have been examined the material witnesses are very few. Such as the witness who has last seen the accused accompanying the deceased; the witness to the recovery panchnama; the witness for Test Identification Parade and the Investigating Officer are some of the relevant witnesses.

5. Learned Advocate Mr. Shetty for the Appellant/accused has raised challenge on various grounds. According to him, findings of conviction are contrary to the settled principles of criminal jurisprudence, when the case of prosecution is based on the statement of PW-6, who claimed to have last seen the accused with the deceased, it was for the prosecution to prove the identification of accused. Contrary to that, the Test Identification Parade itself is not proved in such

situation, the rest of the evidence becomes inconsequential. Therefore, according to the Appellant, since his identification is not proved, the sentence of conviction recorded against him is unsustainable in the eyes of law. Therefore, he has prayed to quash and set aside the sentence of conviction.

6. Ms. Deshmukh, the learned A.P.P. on the other hand opposed the Appellant contending that, though the case is based on circumstantial evidence, the prosecution has led cogent evidence to prove the complicity of the accused. The PW-6 had last seen the accused with deceased, it is proved in his testimony, and PW-6 has identified the accused in the Test Identification Parade. The clothes of the accused have been seized vide memorandum panchanama. The CA Report discloses blood of human origin on the pant worn by the accused. The above evidence is sufficient to prove the complicity of the accused, which is proved beyond reasonable doubt. Since, the Judgment is based on well reasoned findings, finding of conviction does not deserve any interference.

7. PW-3 Savitra Ramchandra Bansode, is the complainant. According to the said witness, the deceased was staying with her, on account of death of his mother, who was

her niece. Though the deceased used to visit his father occasionally; but his father used to beat him, therefore would return back to the said witness after few days. According to her, in the Diwali holidays, deceased Anurag had gone to Phaltan, and she was waiting for his return. While she was waiting for his return, she received a call from police, summoning her to the Government Hospital. When she reached there, she was informed that Anurag is no more. When she saw Anurag in the hospital, she noticed that Anurag has sustained injury on the back side of his head and face. His face was smeared with soil and blood. Therefore, she had lodged complaint to the police. The said complaint is at Exh-37. She has registered complaint against unknown person. She has stated that after registration of offence, her statement came to be recorded by the police after eight days. She was informed by one Rama Bhalerao (PW-6) that, he had seen deceased Anurag in the company of Panda Pawar, therefore she suspected that Panda Pawar had killed Anurag. She was summoned in the police station, after Pandurang Pawar was arrested. She admits that when she reached the police station, Rama Bhalerao PW-6 was present in the police station.

8. Since there is no eye witness in order to prove the

complicity of the accused, prosecution has heavily relied on the last seen theory. Therefore, the testimony of the witness who has seen the accused accompanying the deceased on the date of incident assumes importance. It is claimed that the deceased was last seen accompanying the accused by PW-6.

9. PW-6 Rama Bhalerao, is the witness who had last seen the accused with the deceased. According to the said witness, he is peanut vendor, selling peanuts at Phaltan Bus Stand. According to him on 10.11.2015 while he was returning from bus stand and proceeding towards his house for lunch at about 11.00 a.m., he has seen the deceased accompanying one unknown person proceeding towards the Nana Patil Chowk. When he returned to Phaltan bus stand at about 3:00 p.m., he came to know about assault on Anurag and his resultant death.

He has stated that he was called for Test Identification Parade by the police in Satara Jail, where the Tehsildar and two panch witnesses were present. During the Test Identification Parade, he has identified the accused, upon which he came to know that his name is Pandurang Pawar.

The Test Identification Parade was conducted on

17.11.2015. Thereafter his statement under Section 164 of the Cr.P.C. has been recorded in the Court.

In his cross-examination he has admitted that he has never given any description of the person who was accompanying Anurag. He has also admitted that after getting knowledge about the murder of Anurag, he had visited the police station. He has admitted that before the test identification parade, he was summoned in Phaltan Police Station; and he was also summoned when the accused was arrested. He has admitted in his cross-examination that accused was shown to him by the police. The credibility of the testimony of PW-6 is lost, due to the admission given by PW-6 who claims to have last seen the accused with the deceased.

Initially he has claimed that he has seen the accused accompanying the deceased going towards the Nana Patil Chowk. However, he has admitted that he has not seen face of the accused. He also admits that he has not given description of the accused to the police. In absence of description of the accused, the arrest of the accused itself becomes suspicious. Since PW-6 is the only person who had seen the accused accompanying the deceased. Lack of

description of the accused makes the arrest of the accused doubtful.

PW-6 has stated that deceased Anurag and one boy were going ahead, meaning thereby the said witness has seen the accused from his back. He also admitted that there was a distance about 100 feet between him and the accused. In no uncertain terms he has admitted that police have shown him the accused in the police station, in order to identify him during the test identification parade. This statement itself makes the test identification parade inadmissible in the evidence.

10. The witness further admits that the police had informed him that the test identification parade, was to be conducted in Satara jail and before going to the jail, he was summoned in Phaltan Police Station. He also admits that when the accused was arrested, he was summoned in the Phaltan Police Station. This leaves no doubt that, before the test identification parade when he was called by the police authorities he had seen the accused before the test identification, so that the accused can be identified by the witness. Hence, the testimony of PW-6 about identifying

accused is not trustworthy and reliable in view of his admission that, he was called in the police station so that he can identify the accused in the Test Identification Parade.

This categorical admission renders the Test Identification Parade inadmissible and unreliable. The very basis of the prosecution case, is the statement of PW-6 who had last seen the deceased with the accused. The admissions by PW-6 in his cross-examination, vitiates the Test Identification Parade.

11. The prosecution has claimed that the accused had shown his willingness to show the place where the incident has occurred, and to produce the clothes worn by him, during the offence.

PW-4 Achyut Palande is a panch witness for the said test identification parade. He has stated in his testimony that on 19.11.2015, he was called for memorandum panchanama in Phaltan City Police Station by the police authorities. He along with another panch witness was present in the police station. The accused disclosed his name as Pandurang Rajendra Pawar and he informed them that, he is willing to produce the clothes worn by him while committing

the offence. Accordingly, police have prepared the disclosure statement which has been read over to the accused, signed by him alongwith the two panch witnesses and thereafter they have proceeded in the Government Jeep to Shindewadi, as per the directions given by the accused.

When the accused instructed to stop the jeep, they all alighted from the jeep, the accused proceeded ahead towards his house. They entered in the house of the accused alongwith him and went towards room No.3. The clothes kept below the cot, were produced before them by the accused. One blue coloured jeans pant having blood stains was seized in his presence and marked as Article 'E'. A pista coloured shirt having black coloured linings with blood stains was also seized in their presence and marked Article 'F', which has been identified by the witness. The seizure panchanama was prepared in his presence and read over to him which is endorsed by putting his signature. Thereafter, the accused has shown his willingness to show the spot where the offence was committed, therefore, they proceeded to the place where alleged offence has been committed.

12. In his cross-examination the PW-4 has deposed

that the house from where the clothes were seized was having six rooms. He admits that he does not know whether the rooms were locked. According to him, the police have not made any inquiry with the other persons present in the house.

In the memorandum statement Exh-40 and 41, the description of articles seized is given and it is marked as portion 'A', which does not refer to any blood stains on the clothes. The PW-4 admits in the cross-examination that the marked portion 'A' in the panchanama has not been stated in the police statement. He also admits that the police have not made any inquiry with the other persons who were present in the house.

The admission about marked portion 'A' of Exh-41 panchanama, makes the recovery of the said article, inadmissible and unreliable. The statement of other persons present in the house of the accused also has not been recorded. The room from where recovery was made was accessible to all those residing in the house and anybody visiting from outside. On going through the memorandum panchanama Exh-41, it does not disclose any blood stains on the clothes of the accused.

13. In a recent decision of the Hon'ble Apex Court, in case of *Darshan Singh V/s. State of Punjab, reported in (2024) Live Law (SC) 13*, the Hon'ble Supreme Court has been pleased to observe that, prosecution cannot seek to prove a fact during trial through a witness, about a fact that he has not stated to the police during investigation. His subsequent statement during trial cannot be relied on.

The testimony of this witness is an improvement to his statement recorded under Section 161 of the Cr.P.C. Therefore, the said statement of the witness will not be admissible.

14. This corroborative evidence in form of memorandum statement of accused and the seizure of his clothes worn at the time of the offence, suffers from infirmities gives a serious dent to the case of prosecution.

15. PW-2 Pradip Dnyaneshwar Kakade, has been examined to prove the inquest panchanama and the spot panchanama, marked as Exh-28 and 29 respectively. It is stated by him that the body of the deceased was found in the barren land towards the northern side behind of the factory. There was a serious injury on the rear side of his head. The

skull was broken and the blood was oozing from the said injury. His face was smeared with earth. After completion of the 'inquest panchanama', 'spot panchanama' was conducted.

According to hm, the spot is behind Shreeram Sugar Factory in a barren open place. There was one stone with blood stains. A piece of skull stained with blood was also lying nearby. The said piece of skull was seized alongwith the sample of soil with blood. The Articles seized were sealed and affixed with signatures and lables. The said witness has identified the Articles which were seized during the said spot panchanama. PW-2 has stated in his testimony that there was full sleeves shirt of blue colour having red strips on the person of deceased which was removed by cutting it. It was also stained with blood. The baniyan of sando company which was removed by cutting at the time of Post-Morterm was also stained with blood.

All these Articles alongwith stone seized from the spot, were sent by the Investigating Officer for Chemical Analysis, vide communication Exh-66. In the said communication opinion was sought, whether stains of blood on Exh-C-1 and C-2 i.e. the clothes of the accused matched with

the blood from Exh-D, i.e. the blood of the deceased which was drawn from the body of deceased during the Post-Mortem.

16. The report of the Chemical Analyzer is at Exh-73. The report regarding Exh-C-1 i.e. the full pant of the accused was inconclusive, it only confirmed that the blood was of human origin. As regards the half shirt i.e. Exh-C-2 is concerned, the report stated that no blood is detected on the said article. This report in no way supports the case of the prosecution. The prosecution claims that there were blood stains on the clothes of the accused and his clothes were therefore sent to the Chemical Analyzer. However, the reports are inconclusive, which does not support the prosecution in any way to prove the complicity of the accused.

17. PW-13 Ravindra Chandrarao Pisal is the Police Inspector, who conducted the investigation from 12.11.2015. According to him, the accused was arrested by him on 13.11.2015 vide panchanama Exh-92. During the investigation he has gathered information that due to the previous enmity the accused has committed murder of the deceased. Though he has stated that during the investigation it transpired that there was enmity. He has not corroborated the reason for

enmity between the accused and deceased. Merely alleging previous enmity is not sufficient to prove the motive for committing the offence, unless the reasons for enmity are proved by producing cogent evidence.

18. Having gone through the Judgment and evidence led by the prosecution, we find that the chain of circumstantial evidence is not proved by the prosecution beyond reasonable doubt, which would point only towards the guilt of the accused. Though it is the settled position of law that in the case of circumstantial evidence, the chain of events should be well connected, there should be no missing link in the chain of evidence. Even a single missing link makes the case of prosecution vulnerable.

19. The case of the prosecution is based on the last seen theory, which is corroborated by supporting evidence. PW-6 has been examined to prove that the accused was last seen in the company of the deceased and to prove the complicity of the accused.

It is the first link in the chain of circumstantial evidence. The admission of PW-6 about, being summoned in the police station after the arrest of accused makes the Test

Identification Parade inadmissible. The Test Identification Parade was conducted in order to identify the accused, as PW-6 has seen him with the deceased just before the incident. The admission of PW-6 about having seen the accused before the Test Identification Parade makes the foundation of the prosecution itself shaky.

20. The other corroborative evidence to prove the complicity of the accused is the recovery at the instance of the accused.

The recovery of the clothes of the accused is also doubtful since the recovery panchanama does not refer to any blood stains on the clothes of the accused worn during the offence. It is admitted by the PW-4 panch witness in his cross-examination.

21. The next link in the chain of corroborative evidence relied by the prosecution to prove the complicity of the accused is the CA Report. However the CA Report about the blood stains on the shirt of the accused is also inconclusive. There is no positive report of Exh-C-2 about the blood stains on the said article, to support the prosecution and connect the link in the chain of circumstantial evidence.

22. It is the settled position of law that, mere suspicion cannot be a substitute to the evidence is proved beyond reasonable doubt. The accused cannot be convicted merely on the ground of suspicion, no matter how strong it might be. Unless proved guilty the accused is presumed to be innocent, presumption is always in the favour of the accused and burden is on the prosecution to prove the guilt of the accused.

23. While convicting the accused on the basis of circumstantial evidence, the Court have be mindful of the golden rules, applicable to the case of circumstantial evidence. The five golden principles which are referred as 'Panchsheel', are required to be followed while deciding a case based on circumstantial evidence. Few of them that can be broadly summarized are thus :

(i) The facts established should be consistent only with the guilt of the accused and there should be not other hypothesis except that the accused is guilty.

(ii) The circumstances should exclude every several other possible hypothesis except the one which is proved.

Right from the Judgment of **Sharad Sarda Vs. State**

of Maharashtra reported in 1984 (4) SCC 116 followed by Mustakeem alias Sirajudee V/s. State of Rajasthan, reported in 2011 (11) SCC 724 the principles governing the case of circumstantial evidence have been followed by the Hon'ble Apex Court, and all other Courts in India.

In view of the evidence produced by the prosecution and the material which is relied upon, does not prove the complicity of the accused beyond reasonable doubt. In fact, there are glaring inconsistencies, omissions and infirmities in the testimony of the witnesses, which creates doubts about the complicity of the accused. The prosecution has utterly failed to prove the chain of circumstantial evidence. The foundation of the case itself could not be proved due to the admission of PW-6 about the accused being shown to him before the Test Identification Parade. The other corroborative evidence also does not inspire confidence, for drawing conclusion about the complicity of the accused.

The presumption is always in the favour of innocence of the accused and the burden is on the prosecution to prove the complicity of the accused beyond reasonable doubt. The standard of proof in case of circumstantial evidence

is more stringent. Unless the evidence produced points only towards the guilt of accused, finding of conviction cannot be recorded against the accused, who is presumed to be innocent.

In the vitiating circumstances, which are observed here-in-above, the conviction of the accused cannot be sustained. The learned Sessions Judge, Satara, has failed to appreciate the evidence led by the prosecution in its proper spirit, by applying golden rules applicable to the cases based on circumstantial evidence, making the Judgment and Order unsustainable.

As a result, the Appeal is allowed. The Judgment and order passed by the Additional Sessions Judge, Satara, dated 18<sup>th</sup> August 2017, in Special Atrocity Case No.11 of 2016, is quashed and set aside and Appellant herein is directed to be released from the custody forthwith.

The seized muddemal be destroyed after appeal period is over.

24. In view of disposal of the Appeal, Interim Application No. 1750 of 2024 also disposed off.

**(MANJUSHA DESHPANDE, J.)**

**(BHARATI DANGRE, J.)**

Chaitanya