



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

CRIMINAL APPEAL NO. 655 OF 2020

1. Sunita d/o Sudam Devkate,
Age : 28 years, Occu.: Agril.,
R/o Radhesham Vasti, Kaudgaon,
Ghoda, Tq. Parli, Dist. Beed.
2. Sarjerao s/o Gyandeo Devkate,
Age : 55 years, Occu. : Agril.,
R/o Radhesham Vasti, Kaudgaon,
Ghoda, Tq. Parli, Dist. Beed.

.. Appellants

Versus

1. The State of Maharashtra
Through Police Station,
Shirsala, Tq. Parli (V.),
Dist. Beed.
2. Ankush s/o Mahadeo Kolekar,
Age : 27 years, Occu.: Agril.,
R/o Radhesham Vasti, Kaudgaon Shivar,
Tq. Parli (V), Dist. Beed.

.. Respondents

- * Mr. Hanmant V. Patil, Advocate for the Appellants.
- * Mr. N. S. Tekale, APP for Respondent No. 1.
- * Mr. Pratik Bhosle holding for Mr. S.G. Kawade, Advocate for Respondent No. 2.

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ..**

RESERVED ON : 19th SEPTEMBER 2025

PRONOUNCED ON : 25th SEPTEMBER 2025

J U D G M E N T [Per Mehroz K. Pathan, J.] :

. The Appellants have filed the present appeal against acquittal under Section 372 of the Code of Criminal Procedure, thereby challenging the judgment and order dated 09.11.2020 passed by the learned District Judge-1 and Additional Sessions Judge, Ambejogai in Sessions Case No.47/2019, thereby acquitting the accused/Respondent No.2 for the offence punishable under Sections 302 and 201 of the Indian Penal Code .

2. The case of the prosecution is as under :-

That the complainant - Manik Bhagwan Kolekar who owns an agricultural land at village Kaudgaon Ghoda, has alleged that on 02.03.2019 at about 08:00 pm., the deceased Sudam Namdeo Devkate had been to his agricultural land as he was working as Agricultural Labourer at his field . At about 09:00 pm, he went to attend the Bhajan programme at the agricultural field of Pandurang Bapurao Khandekar and after attending the said programme when he came back at 11:30 pm, the complainant, Manik, found his two bullocks and one cow wandering in the field, and were not tied by the deceased Sudam. The complainant-Manik therefore started searching for his servant Sudam Devkate. however, he was not found in the field. He, thereafter searched the place where the deceased used to sleep on a cot. He was surprised to see some blood stains on the bed-sheet and the cot, on which the deceased Manik used to sleep.

3. The complainant got frightened and rushed to the house of Pandurang and called upon Pandurang and Ramnath in his field

and showed them the blood stains present on the bed-sheet and the cot on which the deceased used to sleep. The complainant called upon Bhagwan Kolekar and uncle Baliram Kolekar in the agricultural field and showed them the blood stains and also informed that deceased is not found, though he searched for a long time. After some further search, deceased Sudam's pair of shoes was found near the well. Hence they searched in the well by torch and found the dead body of deceased Sudam Kolekar which was floating in the water of the well. The complainant therefore visited Shirsala police station and lodged complaint which was registered as Crime No.35/2019 under Sections 302, 201 of IPC.

4. The prosecution has completed the investigation and filed a charge-sheet and the case was registered as Sessions Case No.704/2019. The prosecution has examined in all ten witnesses to prove the guilt of the accused and relied upon the documentary evidence, spot Panchanama , seizure Panchanama and memorandum panchanama including the First Information Report. The learned Sessions Judge, Ambejogai after going through the evidence led by the prosecution and the cross-examination by the defense/accused was pleased to acquit the Respondent/ Ankush for the offences punishable under Sections 302 and 201 of IPC. The Appellants are thus before this Court, challenging the said judgment of acquittal under Section 302.

5. The main thrust of arguments by the Appellants is that the prosecution has been successfully able to prove the homicidal death of deceased Sudam Devkate . The prosecution has also

proved the circumstances which unerringly point out towards the guilt of the accused . The learned Counsel for the Appellants therefore submits that the finding recorded by the learned trial Court is therefore perverse to the evidence led by the prosecution which is not shattered by the defense.

6. The learned Counsel submits that the last seen theory, the motive, the discovery of weapon at the instance of the accused, the failure to give explanation by the accused as to how he departed the company, is sufficient enough an evidence to bring home the guilt of the accused and no other view was possible than the guilt of the accused .

7. The learned Counsel for the Respondent No.2 has also filed his appearance and made submissions that the learned trial Court has examined the entire evidence and has found the evidence to be not sufficient so as to rest the conviction. The learned counsel submits that at the most the evidence of prosecution can establish the suspicion , and the suspicion however strong cannot establish the guilt . There are several omissions and contradictions brought in the prosecution story . It is therefore submitted that the learned Trial Court has taken a possible view of the case after considering the evidence in detail and therefore the judgment may not be interfered with as the scope of interference of this Court in the matters pertaining to appeal against acquittal is very limited .

8. The learned APP also supported the arguments of the Appellants and further stated that the State has not filed any

appeal against acquittal, challenging the judgment acquitting Respondent No.2 herein for the offences punishable under Sections 302 and 201 of the IPC.

9. We have considered the submissions made by the learned Counsel for the Appellants and has also gone through the record and proceedings which were called while issuing notices in the present matter. The Hon'ble Supreme Court in the landmark judgment in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra** reported in AIR 1984 SC 1622 , has laid down the five golden principles for establishing the guilt of an accused in the case resting upon circumstantial evidence, which are as follows :

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

10. Thus it is almost a settled law now that each and every circumstance has to be fully established , the same should be of conclusive nature and should exclude all other hypothesis except the guilt of the accused and the circumstances should not only be

consistent with the guilt of the accused but also should be inconsistent with his innocence.

11. To establish the guilt of the accused, the prosecution has relied upon the testimony of PW-6 Sunita Sudam Devakate, who happens to be the daughter of the deceased who was allegedly having the affair with the accused. The evidence of Sunita is considered by the learned trial court in detailed, wherein It is found that, during her cross-examination, certain portions of her testimony contain omissions, and that her conduct before and after the alleged incident does not reflect that of a natural or prudent person. It is found that if the accused had threatened to kill her father, she would have disclosed the same either to the father or to the police patil or to her mother and brother who are the close relatives of the witness - PW-6/Sunita. It is further recorded by the learned trial Court that she did not even disclose the threat even to the police patil of the village or to the concerned police station i.e. Shirsala police station. The learned trial Judge has further considered that she recorded statement on 04.3.2019 after two days of the incident, she did not disclose the fact of alleged threatening of the accused any time prior to the recording of statement dated 04.3.2019 and therefore the said conduct of the witness Sunita was suspected and thus PW-6 Sunita is disbelieved.

12. PW-5 Bhujang Bapurao Satpute, who is one of the prime witness on the last seen theory relied upon by the prosecution has also turned hostile. Initially PW-5 had recorded a statement with the police during the investigation that he had phone call with the

accused/Ankush and asked him not to have faral as he is bringing some Khichdi and after taking the faral, he went towards the agricultural land of Bhagwan Ramrao Kolekar. The learned trial Court has rightly rejected the testimony of PW-5 Bhujang who had already been declared as hostile. The learned trial Court has also considered that even after putting questions in the cross-examination by the prosecution, all that is brought on record on 02.03.2019, accused had contacted him on phone. However he asked him whether he had taken faral. Except that, the witness had thereafter turned hostile and nothing fruitful is brought in the cross-examination to prove that the Respondent/accused was last seen with the deceased Sudam Kolekar. Thus the prosecution has failed to prove even the last seen theory. The prosecution has further relied upon the statement of PW-5 Bhujang recorded under Section 164 Cr.PC. However the learned trial court has considered that the statement under Section 164 Cr.P.C. alone cannot be a substantive piece of evidence.

13. The brother of the deceased PW-1 was also examined by the prosecution to establish the last seen theory and motive . PW-1 Sarjerao Gyandeo Devkate (real brother of deceased Sudam Devkate) had seen deceased Sudam passing from the road situated near his house followed by the accused on the date of incident at about 09:00 to 09:15 pm. After about sometime when he had done the milking of she-buffalo and had faral and was trying to sleep in the courtyard near the road, at that time accused alone passed from nearby the road. He further stated that at about 11:00 to 11:30 pm., Manik, Bhagwan and Pandurang

came towards him and intimated him that they had seen the blood stains present on the cot and bed-sheet of deceased Sudam and that Sudam was missing from the field. On the point of motive, the witness states that the house of accused and his brother Sudam are situated adjacent to each other and accused was having love affair with Sunita. There were frequent quarrels between Sudam and accused on account of love affair between Sunita and accused. He further states that Sudam was working as an agricultural laborer (Salgadi) in the agricultural land of Bhagwan Kolekar and used to sleep in the field after having his food at his house.

The learned trial Court has considered that there were several omissions in the testimony of the PW-1 Sarjerao inasmuch as in the statement recorded by the Investigating Officer, PW1 did not state about the love affair between the accused and Sunita which he came to know because of the quarrels between deceased Sudam and the accused. Another omission brought on record is that in the statement recorded on 04.03.2019 by Investigating Officer, the witness did not state to the Investigating Officer that he was present at his house at 09:00 to 09:15 pm. and that deceased Sudam initially passed from nearby the road followed by the accused. Thus the prime witness PW-1 who was relied upon by the prosecution to prove the last seen theory, was disbelieved by the learned trial Court because of the discrepancy and omissions in the testimony of PW-1. Thus the three witnesses relied upon by the prosecution are rightly disbelieved.

14. Another important witness relied upon by the prosecution is the Informant PW2 namely Manik Kolekar who had initially lodged the FIR after finding the dead body of deceased Sudam in

the well situated in his agricultural land. The perusal of the testimony of PW-2 Manik Kolekar, would show that in the cross-examination the witness Manik had turned hostile in as much as he has stated that he has not seen the pair of shoes near the well and also did not see the blood stains on the cot. The portion marks A, B, C and D in the supplementary statement dated 04.03.2019 has been denied by the present witness no.2 – Manik Kolekar, which is specifically considered by the learned trial Court in its impugned judgment. The learned trial Court found the testimony of PW-2 to be doubtful and therefore could not be relied upon to base the conviction of the accused.

15. The panch-witness PW-7 though had supported the prosecution case initially, however was later declared as hostile by the prosecution, wherein he states that the Respondent/accused was taken out for recording a memorandum, wherein he has shown willingness to produce the weapon used in the offence. However in the cross-examination, PW-7 Maruti has admitted that in the police station itself, Investigating Officer Mr. Puri has disclosed the place which they were required to visit for recovery of wooden bar and that accused never stepped out from the police jeep. The learned trial Court has therefore disbelieved the witness on memorandum and seizure panchanama of recovery of weapon.

16. PW-8 Rameshwar, is a panch-witness on seizure panchanama, wherein the accused has produced one *baniyan* and *jeans pant* having blood stains from the house of the accused. The learned trial Court has thereafter considered that the effect of

such recovery alone would not be sufficient enough to prove the guilt of the accused as there is no evidence on record to show that on 02.03.2019 from 06:00 pm. to 11:00 pm., the accused was present in the land of Manik Kolekar or was found to be in the company of the deceased Sudam. Though the Chemical Analyzer Report speaks about the blood stains on the clothes produced by the accused, however that alone cannot be relied upon to base the conviction of the accused on the mere suspicion of him committing the crime. The suspicion, however grave can never replace the proof required for convicting an accused of the crime. Moreover the Chemical Analyzer Report does not show the blood group of the blood found on the *baniyan* and *jeans pant* of the accused seized under the seizure panchanama Exhibit-54.

17. Thus, considering the entire evidence led by the prosecution and the cross-examination of the relevant witnesses, we are of the considered opinion that the view taken by the learned trial Court is a possible view, wherein it has come to the conclusion that the prosecution has failed to establish the chain of circumstances, necessary to prove the guilt of the accused/Respondent – Ankush of committing murder of deceased Sudam.

18. Insofar as the scope of interference of the Appellate Court in the appeal against acquittal is concerned, the Hon'ble Supreme Court in the judgment in the case of **H.D. Sundara and Others Vs. State of Karnataka**, reported in 2023 (9) SCC 581, was pleased to lay down the guidelines as under for an appeal against acquittal :

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5 The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

19. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles :

- (a) That the judgment of acquittal suffers from patent perversity;
- (b) That the same is based on a misreading/omission to consider material evidence on record;
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

20. The prosecution has failed to prove the foundational facts or the complete chain of circumstances which would unerringly point towards the guilt of the accused . The view taken by the learned trial Court is a possible view and the same cannot be interfered with as the scope for interference is very limited. Even after re-appreciating the oral and the documentary evidence, we do not feel that a case is made out for interfering with the judgment of

acquittal passed by the learned Sessions Judge, Ambejogai. As a result thereof, we pass the following order :

ORDER

a) The Criminal Appeal against acquittal of the respondent no 2 is hereby dismissed.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

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