



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

CRIMINAL APPEAL NO. 844 OF 2023

Dnyandeo Namdeo Hanwate

....Appellant

VERSUS

Pandharinath Laxman Hanwate And Others

.....Respondents

.....

Mr. V.B. Patil, Advocate for Appellant

Mrs. Uma Bhosale, APP for State

Mr. K.A. Pathade h/f Mr. P.P. More, Advocate for respondent No. 1

Mr. Shadab Faheem Shaikh, Advocate for respondent No. 2

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**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 28th JULY, 2025

ORDER :

1. By this appeal filed under Section 372 of Code of Criminal Procedure, appellant/original informant challenges judgment and order of acquittal dated 15.06.2023 passed by learned Sessions Judge, Jalna in Sessions Case No. 78 of 2018.

2. Accused were charged for commission of offence under Section 302, 201 r/w 34 of IPC for causing death of Namdeo Hanwate and his wife Janabai Hanwate. On 29.01.2017, their dead bodies were found in the well in their field at village Talani. Informant (PW8) lodged FIR (Exhibit-51) alleging that

accused had illicit relations with each other. Since their illicit relations were seen by deceased, they murdered both the deceased.

3. In support of its case prosecution has examined 09 witnesses. Trial Court after going through evidence and hearing arguments, acquitted the accused. Hence, the appeal.

4. Heard learned advocate for appellant, learned advocates for accused and learned APP for State.

5. Learned advocate for the appellant has assailed the impugned judgment and order of acquittal stating that Trial Court has failed to appreciate evidence properly. The prosecution has proved chain of circumstances which points out to the accused and the Trial Court ought to have convicted the accused.

6. Learned advocates for the accused, on the other hand, supported the impugned judgment and order of acquittal.

7. Learned APP submitted that appropriate orders may be passed as per the record.

8. With the assistance of learned advocate for appellant, learned advocates for accused and learned APP we

have perused the documents placed on record.

9. Admittedly, the case is based on circumstantial evidence and prosecution relied on three circumstances; (i) deceased were last seen with Accused No. 1, (ii) Extra judicial confession by accused and (iii) Accused had illicit relations and therefore they had motive to kill the deceased.

10. In support of last seen theory prosecution has examined PW2 and PW3. PW2 has stated that on 28.01.2017 at about 4.00 pm while he was going to his field from his house, he saw deceased Namdeo and Accused No. 1 talking to each other. In the cross examination, he admitted that a dispute was pending between Adalkars and the deceased in the Court since the year 2012. In the FIR son of the deceased had named Adalkars as suspect and they were arrested in the matter. Statement of this witness was recorded on 18.03.2017 i.e. about one and half month after the incident. He has also admitted that there were dispute between him and deceased regarding fields and the matter is pending in Mantha Court.

11. PW3 stated that on 28.01.2017 at about 2.00 pm he had gone to the boundary of their village, that time he had seen

deceased going towards her house and after 5-10 minutes he saw her coming to the field and Accused No. 1 followed her.

In the cross examination he admitted that his three friends were chatting along with him and they were chatting when he saw deceased Janabai and Accused No. 1. Several people had passed by that time but he did not remember them. He has stated that his statement was recorded 08 days after the incident. From the above it is clear that his evidence does not prove last seen theory of the prosecution.

12. The prosecution has failed to bring on record exact time of death of deceased. From the aforesaid evidence, it is clear that the prosecution has failed to prove last seen theory.

13. It is well settled that extra Judicial confession is weak type of evidence. PW4-Sanjay Ambekar has stated that after the funeral was conducted on 30.01.2017 all the relatives were present at the house of deceased. At that time, accused had confessed to him that they have committed murder of the deceased. Nobody had heard accused making confession to him. He did not disclose the said fact to any of the relatives. He deposed that he had taken accused to Police Station on 30.01.2017 and police recorded his statement on the same day.

Record reveals that accused were arrested on 02.02.2017 and statement of PW4 was recorded on 04.04.2017. Therefore his evidence on the point of extra judicial confession appears to be unreliable

14. Prosecution has alleged that illicit relations of Accused No. 1 and 2 was the motive to kill the deceased. However, there is absolutely no evidence to show that both the deceased were knowing about illicit relations between the accused. PW5 is examined on this point. She has stated that six months prior to the incident, she had gone to her parental house and at that time she found both the accused on the bed. She shouted at them. They apologized to her and she accepted the apology.

In the cross examination she admitted that since the next day of incident she had suspected that due to their illicit relations accused had killed her parents. Statement of PW5 is recorded on 04.04.2017. If really this witness had found accused in compromising position, then she would have definitely disclosed the same to the police at earlier point of time. Therefore, this witness cannot be believed.

15. It is thus clear that the prosecution has failed to prove the chain of circumstances against accused beyond reasonable doubt. The Trial Court has properly appreciated the evidence and has given cogent reasons while acquitting the accused. There is no illegality or perversity in the impugned judgment and order of acquittal. Appeal being devoid of merit is dismissed.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)