



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO.4 OF 2024 AND
CRIMINAL APPEAL ST. NO. 49 OF 2024

The State of Maharashtra, through
Police Station Officer, Police Station,
Kardi, Tq. Mohadi, Dist. Bhandara.

**... APPLICANT/
APPELLANT.**

VERSUS

1. Arjunsingh Dilipsingh Chouhan, aged
about 23 yers, Occ. Cultivator.
2. Smt. Seema Dilipsingh Chouhan,
aged about 23 years, Occ. Cultivator,

Both r/o Dhiwarwada, Tq. Mohadi,
Dist. Bhandara.

3. Mahadeo Hiranman Wadhiwe, aged
about 38 years, Occ. Cultivator, R/o
Dongardeve, Tq. Mohadi, Dist.
Bhandara.

**... NON-APPLICANT/
RESPONDENTS**

Shri A.R. Chutake, Additional Public Prosecutor for the applicant/State.
Ms Chaitali Bhute, Advocate for non-applicants/respondents.
(Appointed)

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE : 01.04.2025.

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

Heard.

2. This application is filed by the State against the acquittal. The case of the prosecution is that on 18.12.2018 accused no.1 Arunsingh Dilipsingh Chauhan lodged a missing report of his father namely Dilipsingh. Thereafter on 06.01.2019, dead body of his father was found in the sand near river at Diwarwada village in buried condition. On 07.01.2019, Omsing Harisingh Chauhan lodged a report with the Police Station Karadi. On the basis of report, the Police registered a crime bearing No.1/2019 for the offence punishable under Sections 302, 201 of the Indian Penal Code ('IPC') against unknown persons.

3. On the same date, the Police have arrested accused nos. 1 to 3 alleging that accused no.1 along with other co-accused committed murder of deceased Dilipsingh Chauhan. On completion of investigation, the charge-sheet was filed and since offence punishable under Section 302 is exclusively triable by the Court of Sessions after

necessary compliance, vide order dated 20.04.2019, the learned Judicial Magistrate First Class, Mohadi, committed the case to the Court of Sessions, Bhandara for trial.

4. The learned Sessions Judge framed the charges at Exhibit 41 for the offences punishable under Sections 302 and 201 read with Section 34 of the IPC against the accused. Thereupon the charges were explained to the accused in vernacular. The accused pleaded not guilty, hence the trial was conducted.

5. The prosecution in support of its case, examined in all five witnesses. Accused no.1 is the son of accused no.2 and, accused no.3 is the servant of accused no.1.

6. PW1 Shubham Chauhan is the step brother of accused no.1 an eye witness. PW1 was declared as hostile and he was cross-examined. However, nothing could be brought on record in support of the prosecution case.

7. PW2 Dr. Sandip Gajbhiye is the Medical Officer, who conducted the Postmortem.

8. PW3 Giridhari Nagargoje is the Panch witness, who draw

the Panchnama at Exhibit 98.

9. PW4 is the Sarpanch of the village and PW5 is the Investigating Officer.

10. It is the case of the prosecution that some bones with Jurkin and weapon were recovered at the instance of accused no.1. However, Chemical Analyzation Report as regards the bones, does not support the case of the prosecution though it supports of the Jurkin and the weapon.

11. However, the same is not sufficient to establish the guilt of the applicant in absence of any evidence against the accused.

12. The learned Trial Court has held that the prosecution failed to prove the motive behind the crime and in absence of such motive, the guilt of the accused cannot be recorded.

13. In the case of *Ranganayaki vs. State by Inspector of Police (2004) 12 SCC 521*, the Hon'ble Supreme Court has an occasioned to consider a question whether merely because motive proved is a weak one, that by itself sufficient to make an adverse inference against the prosecution. The Hon'ble Supreme Court has held thus :

"10. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murder has been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in Red v. Palmer (Shorthand Report at page 308 May, 1856) thus :

"But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties".

Though, it is a sound presumption that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailants. In Atley v. State of U.P., AIR 1955 SC 807, it was held:

"That is true, and where there is clear proof of motive for the crime, that lands additional support to the finding of the court that the accused was guilty, but absence of clear proof of motive does not necessarily lead to the contrary conclusion".

In some cases it may be difficult to establish

motive through direct evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead to an inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to aid of the accused. These principles have to be tested on the background of factual scenario.”

14. Similarly, it is beneficial to refer the judgment of the Hon’ble Supreme Court in the case of ***Sheo Shankar Singh vs. State of Jharkhand and anr. (2011) 3 SCC 654***. The Hon’ble Supreme Court has held thus :

“15. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eyewitnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible,

absence of evidence to prove the motive is rendered inconsequential. Conversely, even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eyewitnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eyewitness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eyewitnesses. See Shivaji Genu Mohite v. The State of Maharashtra, (1973) 3 SCC 219, Hari Shanker v. State of U.P. (1996) 9 SCC 40 and State of U.P. v. Kishanpal and Ors. (2008) 16 SCC 73.”

15. It is further beneficial to refer the judgment of the Hon’ble Supreme Court in the case of ***Palani vs. State of Tamil Nadu (2020) 16 SCC 401***. The Hon’ble Supreme Court has held thus :

“21. Where the case of the prosecution is based on the evidence of eyewitnesses, the existence or non-existence of motive, sufficiency or insufficiency of motive will not play such a major role as in the case which is based on circumstantial evidence. If the prosecution is able to prove its case or motive, it will be a corroborative piece of evidence; but if the prosecution had not been able to prove its case or motive or the motive suggested is too slender, that will not be a ground to doubt the prosecution case. When other evidence against the accused is clear and cogent as in the present case, absence of motive or insufficiency of motive is of no importance.”

16. It is, thus, evident from the above referred observations that

though, it is a sound presumption that every criminal act is done with a motive, it is not sound to suggest that no such criminal act can be presumed unless motive is proved. It is further evident that where the case of the prosecution is based on evidence of eyewitness, the existence or non-existence of motive, sufficiency or insufficiency of motive will not play a major role as in the case which based on circumstantial evidence, i.e. because if the Court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely, even if the prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of eyewitnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused.

17. In the teeth of above referred well settled principles of law and considering the fact that there was only one eyewitness to the incident i.e. PW1, who was declared hostile and nothing could be brought on record by the prosecution in support of its case in cross examination and in absence of any other evidence direct or circumstantial, we are of the view that it is inconsequential whether

the motive is proved or not proved. Hence, in the circumstances, we are of the considered view that the Trial Court though committed error on the point of motive, did not commit any error in acquitting the accused. In the circumstances, we hereby dismiss the appeal.

18. Fees of the appointed Counsel be paid as per Rule.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)

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