



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

CRIMINAL APPEAL NO.5 OF 2010

APPELLANT : State of Maharashtra,
Through Police Station Officer, Police Station
Kurkheda, Distt. Gadchiroli.

..VERSUS..

RESPONDENTS : 1. **Avinash S/o Keshav Bhagat**,
aged about 24 years,
2. **Anjirabai w/o Keshav Bhagat**,
aged about 59 years,
Both R/o. Shripur, Dist. Gadchiroli.

Mr N. Joshi, Addl. P. P. for Appellant.
Mr B. M. Kharkate, Advocate for Respondent Nos.1 and 2.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 7th NOVEMBER, 2025.

PRONOUNCED ON : 14th NOVEMBER, 2025.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

. Heard.

2. This is an appeal challenging the judgment passed by the Sessions Judge, Gadchiroli in Sessions Case No.111 of 2006 thereby, acquitting the respondents herein for the offences punishable under Sections 302 and 203 read with Section 34 of

the Indian Penal Code, 1860 (hereinafter referred to as “the I.P.C.”).

3. Facts in nut-shell as per the case of the prosecution and as depicted from the record are as under :

The original accused No.1 i.e. respondent No.1 herein is step brother and original accused No.2 i.e. respondent No.2 herein is step mother of deceased – Prashant Bhagat. They faced trial for committing murder of one Prashant Keshav Bhagat in furtherance of their common intention. Keshav Bhagat was the father of deceased. He had two wives. Deceased Prashant and Sumant are the sons from first wife whereas, respondent No.1 is the son from second wife. Late Keshav was serving in forest department and he was the owner of the agricultural land which was partitioned. However, there were certain disputes in between deceased Prashant and accused persons. There is one house (Wada) having certain rooms and in one part of it, deceased Prashant was staying and in the remaining part, the accused are residing. It is further stated that the deceased and original accused No.1 are addicted to liquor and they were

quarreling frequently. Priyanka who is the widow was staying with deceased – Prashant in the part of that house (Wada). On 22.08.2006, she had been to her parents house at Waghada on the eve of Pola festival. Deceased Prashant was alone in his house. On 24.08.2006, the deceased and accused No.1 being in drunken condition were quarreling and there was exchange of words due to which scuffle ensued. The original accused No.1 was beating the deceased while sitting on the chest and giving fists and kick blows. Thereafter, both of them went inside the house and after some time, deceased was found hanging and his body was removed from the same condition. The mother had called the panchas, Police Patil and thereafter, an information was given to widow i.e. Priyanka.

4. On the basis of these facts, an accidental death (A.D.) was registered. During enquiry, the statements of witnesses were recorded and the spot panchanama and enquiry were conducted. On 25.08.2006, dead body was referred to the postmortem wherein doctors noticed multiple abrasions bruise and swelling over left ear bruise as well as mark of a rope mark.

Since, there was multiple hemorrhage below the left temporal frontal region, brain matter was congested resulting in bleeding from cerebral arteries which led the doctors to opine that the cause of death was intra cranial hemorrhage due to head injury. Because of these facts, the enquiry officer came to the conclusion that the death of the deceased was not suicidal but, it was a homicidal one and was in fact a murder having committed by the accused for land dispute which led him to file a complaint and then submit a charge-sheet.

5. The Magistrate thereafter committed the case and charge was framed by the Sessions Court at Exhibit – 21. Since the accused refuted the charge and pleaded denial, the matter was tried in accordance with law.

6. In support of the prosecution case, nine witnesses were examined. Details of which are as under :

- i) P.W.1 - Priyanka Prashant Bhagat, widow of deceased – Prashant.
- ii) P.W.2 - Laharidas Boarkar, Panch on spot panchanama and seizure panchnama.

- iii) P.W.3 - Reshim Gaikwad, panch of seizure memo.
- iv) P.W.4 - Sumant Keshavrao Bhagat, real brother of deceased.
- v) P.W.5 - Vistari Motiram Sahare, neighbor of deceased.
- vi) P.W.6 - Dhananjay Nanuji Meshram, eye witness of the incident.
- vii) P.W.7 - Anil Shankar Gopal, Investigating Officer.
- viii) P.W.8 - Dilip Shrihari Bode, Head Constable and
- ix) P.W.9- Ramkrushna Namdeo Pawar.

7. Thereafter, the prosecution had closed the evidence but again summons was issued to the doctor namely Nilesh Chandekar who was examined as witness No.10 at Exhibit – 56. The witnesses were cross-examined by the defence and the learned Sessions Judge after evaluating the entire material on record vide its judgment dated 18.09.2009 found the accused not guilty and therefore, acquitted them. It is this judgment which is impugned in the present appeal on the following grounds among others by the State.

8. We have heard Mr. Nikhil Joshi, learned Additional Public Prosecutor for the appellant/State and Mr. B. M. Kharkate, learned counsel for the respondents.

9. The learned Additional Public Prosecutor submitted that the Trial Court committed grave error in acquitting the accused persons as there was sufficient material on record to convict them had the evidence been appreciated in its proper prospective. He also submitted that P.W.1 - Priyanka w/o Prashant Bhagat clearly stated in her deposition that it was the accused persons who were responsible for the death of her husband Prashant and therefore, the Trial Court ought not to have acquitted the accused persons. It is further stated that PW-5 Vistari Motiram Sahare had corroborated the fact that the accused and deceased were at enimical terms and there were frequent quarrel between them. It is further submitted by the learned A.P.P. that the time gap between quarrel and the death is barely two hours and therefore, as per Section 106 of the Indian Evidence Act, this circumstance was within the special knowledge of the accused as the body was found in their house.

Thus, the learned A.P.P. submits that the judgment of the Trial Court in acquitting the accused is perverse and warrants interference in appellate jurisdiction. The learned A.P.P. places his reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Rajasthan vs. Thakur Singh*, reported in *2014 AIR SCW 4479* to buttress his submission.

10. Per contra, Mr. B. M. Kharkate, learned counsel appearing on behalf of the respondents submits that the Trial Court has correctly appreciated the evidence and the supporting material on record and since there is no material which would support the prosecution story has rightly acquitted the accused persons. To buttress his submission, he places reliance on the the following decisions :

- a) *Bhupatbhai Bachubhai Chavda and Another vs. State of Gujarat, 2024 SCC OnLine SC 523,*
- b) *Roopwanti vs. State of Harayana and Others, AIR 2023 SC 1199,*
- c) *Mohan alias Srinivas alias Seena alias Tailor Seena vs. State of Karnataka, (2022) 12 SCC 619,*
- d) *Mohinder Singh vs. State of Punjab, (2018) 18 SCC 540,*
- e) *Mohan Singh vs. Prem Singh and Another, AIR 2002 SC 3582,*

- f) Thanedar Singh vs. State of M. P., AIR 2002 SC 175 and
g) State of Maharashtra vs. Smt. Satyabhama Pandurang Raipure, 2003 ALL MR (Cri) 946.

11. In the light of these facts, we have appreciated the matter and went through the record with the help of the learned counsels appearing for the parties.

12. It is a settled proposition of law that the scope of interference in appeal against acquittal is minimal since there is a presumption of innocence in favour of the accused which has been fortified by the judgment of the Trial Court in their favour. Beneficial reference can be made to the judgment of the Hon'ble Supreme Court in the case of Babu Sahebagouda Rudragoudar vs. State of Karnataka, (2024) 8 SCC 149 wherein, the Hon'ble Supreme Court has held which reads as under :

"39. This Court in Rajesh Prasad v. State of Bihar encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in

the following words: (Chandrappa case³, SCC p. 432. para 42)

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. "

13. It is a settled principle of law that the Appellate Court cannot overturn the order of acquittal only on the ground that another relief is possible. Thus, a judgment of acquittal can only be interfered with when it is found to be perverse. Unless the Appellate Court records such finding, no interference can be made with the order of acquittal. In the light of this settled law, we have appreciated the controversy involved.

14. P.W.1 - Priyanka who happens to be the first informant is admittedly not an eye witness to the incident. She has stated in her evidence that on 22.08.2006, she had gone to her parental house at Waghada and on 24.08.2006, she learned about the death of her husband. She further states that when she came home on 25.08.2006, she found her husband was lying dead. In the cross-examination, nothing concrete has been elucidated by the defence. In the enquest panchanama at Exhibit – 30 which is exhibited through P.W. 2 – Laharidas Namdeo

Borkar, there is a clear finding that there is no injury on the head and even there is no mark of any injury.

15. P.W.4 – Sumant Bhagat has stated that when he found the body of deceased Prashant, it was lying in the backyard of the house and there were no ligature marks around his neck. He also states that he only learned after the incident that there was a quarrel between Prashant and Avinash in the afternoon. Thus, he also does not corroborate the theory put forth by the prosecution.

16. Furthermore, P.W.5 - Vistari Sahare states in his evidence that the quarrel between the original accused No.1 and deceased was going on from 03:00 p.m to 05:00 p.m. wherein, deceased was abusing the accused and accused was threatening him of death. In the cross-examination, even nothing incriminating against the accused has been extracted.

17. P.W.6 – Dhananjay Meshram, who is an electrician, also corroborates that there was a quarrel on 24.08.2006 between accused No.1 and deceased. He also states that the

accused No.2 Anjirabai had slapped Prashant. Thereafter, even according to him, he had left the work and was not witnessed to the incident.

18. P.W.7 - Anil Gopal is the person who has lodged a complaint and registered the First Information Report which is at Exhibit – 39.

19. P.W.8 - Dilip Bode, who is the Head Constable, took the body for postmortem. He states in his evidence that when he noticed dead body, he found there was a rope mark on one side of neck and not around the neck. He also noticed that from the left side of the chick upto the ear, there was a black spot which is of clotting of the blood.

20. In the light of this evidence, the Trial Court has recorded a finding that the prosecution has failed to prove that the accused has committed an offence punishable under Section 302 of the I.P.C. and since there is no cogent or incriminating material beyond reasonable doubt to bring home the guilt of the accused. It has therefore went on to acquit the accused persons

from the said offence. In paras 9 to 14, the Trial Court after discussing the mode of suicidal death etc. has recorded the finding that the prosecution has failed to substantiate its theory.

21. From the material on record, it can be safely inferred that except for beating by fists and kicks, nothing has been attributed even by the eye witnesses to the incident. Except P.W.5 – Vistari, none has witnessed the fighting or assault inter-se between the accused and deceased. Thus, in view of the judgment of the Trial Court and in our view also, in absence of these facts, it cannot be said that because of fists and kick blows, there was intra cranial haemorrhage to the head. It is noteworthy to mention that the said witness never stated that the accused No.1 had given blows on the head so as to sustain intra cranial haemorrhage to the head. Thus, there is clear absence of nexus in the so called beating and sustaining of the said intra cranial haemorrhage.

22. Furthermore, as can be seen from the medical evidence, there was no cervical vertebra fracture negating the possibility of suicide. Since there was multiple haemorrhage,

which was the cause of death, then the question is whether such haemorrhage was due to assault or because of fall.

23. There is nothing on record to infer that the haemorrhage was because of fists and kick blows. It is noteworthy to mention that even P.W.5 does not state anywhere that the accused No.1 gave blow on the head of deceased, so as to sustain intra cranial haemorrhage. Doctor has opined that the injuries may be due to hard and blunt object. Therefore, when doubt is crept regarding nature of death, then it cannot be said that the death was homicidal.

24. The Trial Court has also discussed in detail the cross-examination of doctor in which suggestion was given that the injuries are possible by fall but the same has been denied. Even if it is assumed for a moment that there was some dispute regarding the partition of the immovable property yet that cannot be *ipso facto* lead to an interference that would be a cause of committing murder of accused. The overt act on the part of the accused must be proved by the prosecution but it has utterly failed to do so. Furthermore, the accused No.2 had no role

attributed to her even in the First Information Report and the supporting charge-sheet nor did any witness has made any incriminating statement against her.

25. As far as the judgment relied upon by the learned Additional Public Prosecutor is concerned, the proposition in the same is not disputed. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts. In the said matter, the accused and deceased were residing in one room and there was no evidence that anybody else entered the room. However, the facts in the case in hand are totally different in as much as even as per prosecution, the accused and deceased were staying in different parts of the house. In addition to this, there were other family members. Furthermore, even as per P.W.5, nothing more than beating by fists and blows has been

attributed to the accused. Thus, in our view, the judgment cited by the learned Additional Public Prosecutor can be distinguished on facts.

26. In that view of the matter, we are of the opinion that the Trial Court has correctly appreciated and evaluated the material on record and therefore, in view of the parameters laid down above, we are of the view that there is no scope for interference in the well reasoned judgment of the Trial Court. In that view of the matter, we pass the following order :

The appeal is **rejected**.

(NANDESH S. DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)