



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPEAL NO. 187 OF 2020

Vitthal Shankar Pimpre,
Aged about 39 years,
R/o Aapti, Tq. Relegaon, District Yavatmal
(Presently lodged at Amravati Jail) ...Appellant

// VERSUS //

The State of Maharashtra,
through Police Station Officer,
Police Station, Ralegaon, District Yavatmal ... Respondent

Ms. F.N.Haidari, Advocate for the appellant.
Shri Sagar Ashirgade, APP for the respondent/State.

**CORAM : NITIN B. SURYAWANSHI &
PRAVIN S. PATIL, JJ.**

DATED : 29th JANUARY, 2025.

ORAL JUDGMENT : (PER : NITIN B. SURYAWANSHI, J.)

This appeal assails the judgment of the learned Sessions Judge, Yavatmal dated 19th November, 2019 in Session Trial No. 55 of 2018 thereby convicting the appellant under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.500/-.

2. Prosecution case in short is that : Manohar Pimpre and appellant-Vitthal were real brothers. Appellant-Vitthal used to stay with

the family of Manohar which consist of Manohar's wife, father and daughter, at village Aпти. From April, 2018 onwards accused Vitthal started residing at the old ST Bus Stand of village Zadgaon as Manohar was not allowing him to stay at his house and was not providing him food. There was dispute between Manohar and Vitthal as Manohar was not allotting share of agricultural land to the Vitthal. Vitthal used to sleep under Wad tree near old S.T. Bus Stand of village Zadgaon. On 12th June, 2018 in the afternoon at 12.00 noon Manohar came to village Zadgaon for bringing ration, but he did not return to his house. On 12th June, 2018 in the mid night Vitthal gave blow of wooden log (Ubhari) on the vital part of his brother Manohar, near Wad tree of old S.T. bus stand of village Zadgaon, due to which Manohar died on the spot. Sheikh Asif came to old S.T. Bus Stand in the midnight and at that time Vitthal gave him extra judicial confession. He went to his maternal uncle Sk. Rasul Sk. Mohammad and they both went to the house of Police Patil Prashant Wani and informed him about the incident. Police Patil Prashant Wani, President of Tanta Mukti and first informant Gajanan Eknore came to the old S.T. Bus Stand of village Zadgaon and accused Vitthal gave extra judicial confession to them that he has killed his brother. Police Patil

Prashant Wani made phone call to P.W.7 P.I. Eknath Khandade of Ralegaon Police Station. Police Inspector Khandade then came on the spot. Report of the incident was lodged by Gajanan Eknore on 13th June, 2018 at about 1.03 am. Accordingly, Crime No. 216 of 2018 under Section 302 of Indian Penal Code was registered against the Vitthal. Police Inspector Khandade carried out the investigation and submitted the charge-sheet.

3. Vitthal was charged under Section 302 of Indian Penal Code. He pleaded not guilty. In support of prosecution case, eight witnesses were examined. Defence of the accused was that of total denial. After recording evidence and hearing parties, trial Court found Vitthal guilty and convicted him. Hence, the appeal.

4. Heard learned advocate for the appellant and learned Additional Public Prosecutor for the State.

5. Learned counsel for the appellant assailed the conviction submitting that the extra judicial confession relied upon by the trial Court is not voluntary. In support of this submission, she relied on judgment of Co-ordinate Bench of this Court in the case of *Ishwar S/o Pandurang*

Masram Vs. The State of Maharashtra reported in 2013 ALL MR (Cri) 2750. There is no corroboration to the extra judicial confession. Evidence of Sheikh Asif Sheikh Nazir (P.W.2) and Prashant Wani (P.W.4) before whom the alleged extra judicial confession is made, is not reliable. Police had already received the information about the murder of deceased Manohar. On receipt of the said information, Investigating Officer visited the spot and there he arrested the accused/appellant. But till arrest of accused neither Sheikh Asif Sheikh Nazir (P.W.2) nor Prashant Wani (P.W.4) have disclosed about the alleged extra judicial confession made by the Appellant-Vitthal to them. Therefore, the said confession is not reliable. Prashant Wani (P.W.4) read previous statement, without obtaining permission of the Court. Therefore, by relying on the judgment of Co-ordinate Bench of this Court in the case of *Suresh S/o Purushottam Ashtankar Vs. The State of Maharashtra and another* reported in 2015 ALL MR (Cri) 4243, she submits that since the statement was read by Prashant Wani (P.W.4) without permission of the Court, his evidence is liable to be discarded.

6. Further submission is that though accused was arrested on the spot, his clothes were seized late, alleged weapon used in the crime, was not stated to be sealed and was belatedly forwarded to the forensic lab, therefore, the said evidence cannot be relied upon. There is inconsistency in the evidence of the prosecution witnesses in respect of seizure of the weapon allegedly used in the crime. Though homicidal death of Manohar was not disputed by the defence, by pointing out serious lacunas in the prosecution case, it is submitted that appeal may be allowed and the appellant may be acquitted.

7. Per contra, learned Additional Public Prosecutor supported the impugned judgment of conviction. He states that prosecution has proved the extra judicial confession of the accused in the evidence of P.W.2 and P.W.4. Accused is arrested on the spot and there is recovery of murder weapon at the instance of the accused. In the extra judicial confession, accused has admitted that he has killed his brother, as he was not given share of agricultural land and house and he was not allowing him to stay at his house. It is submitted that trial Court has properly

appreciated the evidence and has rightly convicted the appellant. There is no merit in the appeal and the same may be dismissed.

8. With the assistance of the learned counsel for the appellant and learned Additional Public Prosecutor, we have perused the record.

9. Admittedly, this is a case of circumstantial evidence. While convicting the appellant, the trial Court has relied upon the extra judicial confession, it is held that appellant had motive to kill his brother, subsequent conduct of the appellant is taken into consideration, so also the circumstance of finding of human blood on the weapon (wooden log) and shirt of the accused are relied upon.

10. Homicidal death of Manohar is not disputed by the defence. To prove extra judicial confession, prosecution has examined Sheikh Asif Sheikh Nazir (P.W.2). He has deposed that he was knowing deceased Manohar. Earlier Appellant-Vitthal was residing at village Apti and prior to the incident Appellant-Vitthal started residing at village Zadgaon. Appellant-Vitthal was addicted to liquor and he used to sleep under the Wad tree situated near old bus stand of village Zadgaon. On 12th June, 2018 at about 11.30 to 12.00 night he came to village Zadgaon. At that

time, he saw Appellant-Vitthal seating near the hotel of Borkute. He met Appellant-Vitthal near the hotel of Borkute and asked him as to when he is coming on his tipper vehicle as a cleaner. Appellant-Vitthal told him that from tomorrow morning he would join. Appellant-Vitthal then forcibly demanded Rs.50/- from him. He handed over Rs.50/-. Thereafter, Appellant-Vitthal brought bottle of liquor worth Rs.50/- from hotel of Borkute. Appellant-Vitthal consumed half bottle of liquor and gave half bottle of liquor to him. Thereafter, Appellant-Vitthal said to him that he had done one work. P.W.2 asked as to what work he has done. Appellant-Vitthal asked him to come alongwith him at the Wad tree to see as to what work he had done. Appellant-Vitthal said that he has assaulted his brother. He said that accused should take his brother to hospital. Thereupon, Appellant-Vitthal asked him to see at once. Appellant-Vitthal forcibly took him near the Wad tree. On reaching there he saw Manohar was lying under the Wad tree and blood was oozing from his head. He put his hand on the chest of Manohar, at that time his heart beats had stopped. Thereafter, he asked Appellant-Vitthal to wait for five minutes as he wanted to take his vehicle to his house. Thereafter, he took his vehicle to his house and parked it and went to the house of his

maternal uncle Sk. Rasul Sk. Mohammad. His maternal uncle was sleeping in his house. He woke him up and they both went to Prashant Wani, Police Patil. Prashant Wani told him to go ahead and he would follow them. Appellant-Vitthal was sitting near the dead body of his brother. Thereafter Prashant Wani and Avi Bhoyar reached near the Wad tree. People had gathered there. Prashant Wani asked Appellant-Vitthal as to why he had assaulted Manohar. Thereupon, Appellant-Vitthal said that Manohar was harassing him, he was not allowing him to come to his house, he was not providing food to him and he was not permitted to sleep in his house and hence he has assaulted Manohar by wooden log (Ubhari). Thereafter, Prashant Wani made a phone call to Ralegaon Police Station and informed them about the incident. Thereafter, police arrived on spot and took Appellant-Vitthal in custody from the spot.

11. In cross-examination, he admitted that on 12th June, 2018 in between 11.30 to 12.00 night, he saw Appellant-Vitthal sleeping in the hotel of Borkute. He again said that Appellant-Vitthal was seating outside hotel of Borkute. He denied the suggestion that quarrel took place between the maternal uncle and Manohar and when his maternal uncle

felt that his name will be involved in the offence, he asked him to depose false before the Court.

12. It is pertinent to note here that he has not deposed as to what information was given by him to the Police Patil. It is also necessary to mention here that though he was present on the spot, he has not disclosed to the police that accused has given extra judicial confession. His statement was recorded on 15th June, 2018 i.e. 3 days after the incident.

13. P.W.4-Police Patil, Prashant Wani has deposed that he was acquainted with Manohar and Vitthal. Vitthal Pimpre was addicted to liquor. Since prior to two months of incident Vitthal Pimpre used to reside at Apti and since few days prior to the incident he used to reside beneath the tree of Zadgaon. On 12th June 2018, he was present at the house. In the mid night Rasul Shaikh and Sheikh Asif came to his house and told him that Manohar was lying dead under the Wad tree. Thereafter, he went to house of President of Tanta Mukti namely Avinash Bhoyar and alongwith him he went to old bus stand of Zadgaon near Wad tree. There he saw Manohar Pimpre was lying dead. There were injuries on his face and head and blood was oozing from the injuries. At

that time accused Vitthal Pimpre was standing near bus stand, spot of incident. He asked Appellant-Vitthal as to why he killed Manohar. Vitthal told that since seven years, Manohar was troubling him. He was not providing food to him and was not giving share of his land. Appellant-Vitthal also told that he assaulted Manohar by means of Ubhari. He saw Ubhari when the police arrived on the spot. There were blood stains on Ubhari. He made a phone call to police of Ralegaon Police Station from the spot of incident. Thereafter, 15-20 minutes police reached on the spot of incident. At that time also Appellant-Vitthal was present on the spot of incident. Police asked him to make arrangement of light as there was dark on the spot of incident. He showed the spot of incident. Police followed the procedure on the spot of incident. Police called photographer. Thereafter, police had taken custody of the accused and referred the dead body of Manohar for postmortem examination.

14. In cross-examination, he stated that Manohar Pimpre, Manohar's wife and accused Vitthal used to reside together in the house of Satish Pal, on rent basis. Thereafter, he started to reside in the house of Amrut Kubde on rent basis. For some days, Manohar Pimpre was also

doing the business of liquor along with brother of Amrut Kubade namely Datta Kubade. Police had registered crime against Manohar. At that time accused Vitthal got Manohar released on bail. Manohar was doing the business of selling liquor in Wardha District. Thereafter three of them jointly resided at Village Apti peacefully. Sheikh Asif (P.W.2) used to consume liquor. On 12th June, 2018 at about 12 night, Sheikh Asif and his maternal uncle came to his house. He denied that at that time they told him that someone has killed Manohar. He admitted that vicinity of bus stand is open place and any one can come and go there. On reaching to the spot of incident, he made phone call to the police station and informed that Manohar was lying in dead condition. Police Khandade did not make any inquiry and arrested Vitthal from the spot of incident. He started investigation and referred the dead body for further action.

15. On careful scrutiny of evidence of Sk. Asif Sk. Nazir (P.W.2) and Prashant Wani (P.W.4), it is clear that there are inconsistencies in their evidence about the alleged extra judicial confession of Appellant-Vitthal. Sk. Asif Sk. Nazir (P.W.2) claims to have heard the extra judicial confession of Appellant-Vitthal and then along with his maternal uncle

went to inform Prashant Wani (P.W.4) about the incident, but Prashant Wani (P.W.4) has categorically deposed that Sk. Asif Sk. Nazir (P.W.2) came to him and informed that “beneath the Wad tree, Manohar is lying dead”. If Appellant-Vitthal had really made extra judicial confession to Sk. Asif Sk. Nazir (P.W.2) then he would have definitely disclosed the same to Prashant Wani (P.W.4), which is not done and hence this creates serious doubt about the version of Sk. Asif Sk. Nazir (P.W.2) about the extra judicial confession having been made by the Appellant-Vitthal.

16. Prashant Wani (P.W.4) on receipt of the information from Sk. Asif Sk. Nazir (P.W.2) went to the spot. He saw the dead body and he asked the Appellant-Vitthal as to how incident took place and thereafter Appellant-Vitthal allegedly made extra judicial confession to him that he killed Manohar and on asking by Prashant Wani (P.W.4) he disclosed the reason behind killing. He has also deposed that he saw Ubhari when police arrived on the spot. He made a phone call to police of Ralegaon Police Station from the spot of incident. In this phone call also he has not disclosed about the oral extra judicial confession of the Appellant-Vitthal.

17. As per the version given by Prashant Wani (P.W.4) even before his disclosure about alleged extra judicial confession to police, Appellant-Vitthal was arrested by police. His further admission that police Khandade did not make any inquiry further creates doubt about the alleged extra judicial confession given by the Appellant-Vitthal.

18. To prove the motive, prosecution has examined Asha (P.W.5) wife of deceased-Manohar. She has deposed that accused Vitthal always used to raise dispute on account of agricultural land and house. Her husband used to say that he is ready to allot the land in the name of Appellant-Vitthal. Prior to two to three years from the incident, Appellant-Vitthal went to Nagpur for work. Thereafter, he returned to Aпти. Since two months prior to the incident, Appellant-Vitthal was residing at village Zadgaon.

19. In cross-examination, she admitted that crime was registered against Manohar at Wadner Police Station. At that time Appellant-Vitthal remained surety for Manohar. At that time Manohar, Vitthal and Shankar used to reside together.

20. It is clear from her evidence that her husband was ready to give share to Appellant-Vitthal and when her husband was arrested accused stood surety for him. She has not deposed that her husband was not allowing accused to stay in their house. In this view of the matter, prosecution has failed to prove motive behind commission of murder of Manohar.

21. The circumstance of recovery of wooden log (ubhari) at the instance of appellant is not reliable. Prashant Wani (P.W.4) has categorically deposed that he had seen the wooden log (ubhari) at the spot of incident. As per spot panchanama (Exhibit 32), wooden log (ubhari) is recovered at the instance of appellant from a 'Bail Bandi' (small bullock cart) which was parked on the western side next to tar road going to the village, at a distance of 150 feet from the spot of incident. Ubhari is seized vide seizure panchanama (Exhibit 31). No memorandum statement of the appellant under Section 27 of the Evidence Act is recorded while recovering the Ubhari. Prosecution has not proved that the said bullock cart belonged to appellant. Therefore, it is not possible to believe that at the instance of appellant Ubhari was seized. Admission of

Prashant Wani (P.W.4) that he saw Ubhari at the spot of incident creates serious doubts about the seizure of Ubhari at the instance of appellant, that too from a distance of 150 feet from the spot of incident in western side. This circumstance, therefore, cannot be relied upon for convicting the appellant.

22. One more reason to disbelieve the recovery of Ubhari is that neither Investigating Officer (P.W.7) nor panch (P.W.3) to its recovery have stated that after seizure of Ubhari it was sealed. Fact remains that though Ubhari was seized on 13th June, 2018, it was sent for forensic lab on 18th June, 2018, why there was a delay of five days in forwarding the same to FSL, is not explained by the prosecution. On this ground also, the evidence of recovery of Ubhari at the instance of appellant is liable to be discarded.

23. As per CA report (Exhibit 63) blood group of deceased Manohar was 'AB'. CA report (Exhibit 61) shows that blood stains of 'AB' blood group were found on Ubhari (Article C). However, no blood group is detected on Jeans pant of the appellant (Article G). Human blood is detected on full shirt of the appellant (Article 'F'). Since, we have

disbelieved the recovery of Ubhari at the instance of appellant, CA reports also do not corroborate the prosecution case.

24. As per prosecution, appellant was arrested by the Investigating Officer from the spot of incident and Investigating Officer reached to the spot, on receipt of the information of Prashant Wani (P.W.4) who had informed that the appellant is present on the spot. However, appellant is shown to be arrested at 5.28 am on 13th June, 2018 and as stated in the arrest panchanama, his clothes are shown to have been seized at 19.35 hours on 13th June, 2018. When appellant was arrested at 5.28 am, why his clothes were not seized immediately is not explained by the prosecution. Therefore, seizure of blood stained of clothes of appellant becomes doubtful.

25. First Information Report (Exhibit 25) is lodged by Gajanan (P.W.1) on 13th June, 2018 which is registered at Ralegaon Police Station at 13.03 hours cannot be said to be First Information Report. Evidence on record indicates that Prashant Wani (P.W.4) gave oral information about the murder of Manohar to P.I. Khandade (P.W.7), Khandade (P.W.7) has admitted this fact. Khandade (P.W.7) has stated that he

received phone call from Police Patil that murder of Manohar has taken place at village Zadgaon, near Wad tree at old bus stand. He informed this incident to his superior office then he made phone call to Tahsildar Gangurde and requested him to provide two Government servants to act as panchas. Thereafter, he went to police station and made entry in the station diary. Thereafter, he went to the spot with police staff. As there were no lights on the spot of incident, he instructed police patil to make arrangement of Halogen light. Prashant Wani (P.W.4) showed him spot of incident.

26. From evidence of Khandade (P.W.7) PI, it is clear that Prashant Wani (P.W.4) gave him information about the commission of murder of Manohar. While giving said information, Prashant Wani (P.W.4) has not disclosed about the alleged extra judicial confession of appellant. Though PI Khandade (P.W.7) has taken entry of the information in the station diary, station diary is not produced by the prosecution, hence, adverse inference needs to be drawn against the prosecution. For all these reasons, we hold that First Information Report

(Exhibit 25) lodged by Gajanan (P.W.1) cannot be treated as First Information Report.

27. Trial Court has failed to appreciate the evidence properly and convicted appellant by over looking serious lacunas in the prosecution case. Impugned judgment of conviction is therefore unsustainable. For the aforesaid reasons, we hold that prosecution has failed to prove charge against the appellant beyond reasonable doubt. Appellant is therefore entitled for benefit of doubt. Hence, the following order.

- i. Criminal Appeal No.187 of 2020 is allowed;
- ii. Impugned judgment and order of conviction and sentence dated 19th November, 2019 passed by Sessions Judge, Yavatmal in Sessions Trial No.55 of 2018 is quashed and set aside.
- iii. Appellant is acquitted of the offence punishable under Section 302 of Indian Penal Code.
- iv. Appellant be set at liberty forthwith, if not required in any other cases. Fine amount, if any, paid by the appellant be refunded to him.

v. Appellant to execute the bail bond under Section 437-A of the Code of Criminal Procedure.

[PRAVIN S. PATIL, J.]

[NITIN B. SURYAWANSHI, J.]