



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

CRIMINAL APPEAL NO.1081 OF 2024

Datta s/o Lambaji Naiknavare,
Age : 34 years, Occu.: Agrilculture,
R/o.: Jawala Zuta, Tq. Pathari,
District : Parbhani

.... APPELLANT
(Original Informant)

VERSUS

1. Angad s/o Ashroba Zute,
Age : 36 years, Occu.: Agril.,
2. Shaikh Khadir @ Fattu Shaikh Ismail,
Age : 36 years, Occu.: Agril.,
3. Laxman s/o Babasaheb Zute,
Age : 37 years, Occu.: Agri.,
4. Ganesh s/o Sopanrao Surwase,
Age : 34 years, Occu.: Labour,

All R/o.: Jawala Zuta, Tq. Pathari,
District Parbhani

....(Resp.No.1 to 4 are
Original accused)

5. The State of Maharashtra,
Through : P.S.O., Pathari
Police Station, Tq. Pathari,
District : Parbhani

.... RESPONDENTS

.....
Mr. P. D. Digaskar h/f Mr. M. C. Ghode, Advocate for the Appellant
Mr. N. B. Patil, APP for Respondent No.5-State
.....

**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

RESERVED ON : 02/02/2026

PRONOUNCED ON : 02/04/2026

JUDGMENT : (PER : SANDIPKUMAR C. MORE, J.) :

1. The appellant, i.e., the informant – Datta Limbaji Naiknavare, has challenged the acquittal of respondent Nos. 1 to 4, who are the accused in Sessions Case No. 116 of 2018, for the offences punishable under Sections 120B, 364, 302, and 201 read with Section 34 of the Indian Penal Code, as recorded by the learned Sessions Judge, Parbhani (hereinafter referred to as “the learned Trial Judge”), vide judgment and order dated 16.10.2024 in the said case.

2. According to the prosecution, the deceased Digambar, who was the younger brother of the appellant, received a phone call at about 9:00 p.m. on 15.08.2018. After responding to the caller by saying “साहेब मी आलोच”, he left the house. However, Digambar did not return on the next day, i.e., 16.08.2018. Therefore, on 17.08.2018, the informant lodged a missing report at Pathari Police Station. The informant and other family members also searched for Digambar, but in vain.

On 18.08.2018, at about 1:00 p.m., one Chakradhar Ugale informed Santosh Manwatkar that a dead body wearing a saffron shirt was found floating in the water of the Jaikwadi canal in Simurgavan Shivar. When the informant, along with family members, went to the spot, it was found to be the dead body of Digambar, bearing injury marks on the head, neck, face and chin, caused by a sharp weapon. Accordingly, Crime No. 172 of 2018 was registered under the aforesaid sections.

During the course of investigation, the alleged involvement of the respondents-accused was disclosed. Thereafter, certain discoveries were also made at the instance of the accused. Upon completion of the investigation, the respondents/accused were charge-sheeted. The learned Trial Judge, after conducting the trial and examining nine witnesses, acquitted the respondents/accused.

3. Heard learned counsel for the appellant – informant at the admission stage and also perused the impugned judgment along with the notes of evidence of witnesses.

4. The learned counsel for the appellant-informant vehemently argued that the learned Trial Judge failed to properly appreciate the evidence on record and ignored vital evidence in the form of the discovery of incriminating articles at the instance of the

respondents/accused. He further submitted that the deceased used to refer to respondent No.4, Ganesh Surwase, as “Saheb”. Therefore, since the deceased left the house immediately after receiving a call from respondent No.4 and did not return thereafter, it can be inferred that the respondents/accused must have killed him.

5. Upon going through the impugned judgment as well as the evidence on record, it is evident that the case of the prosecution is entirely based on circumstantial evidence. According to the prosecution, the respondents/accused hatched a conspiracy to eliminate the deceased and committed his murder by cutting his throat with a knife and assaulting him with a tommy and thereafter, in order to cause the disappearance of evidence, threw his dead body into the Jaikwadi canal. However, there is no direct evidence against the respondents/accused and their alleged involvement in the crime is primarily based on the last phone call allegedly received by the deceased from accused No.4, Ganesh Surwase. The evidence on this aspect is also not convincing. Though the informant, Datta (PW-5), has stated about such a call, there is nothing on record to establish that the word “Saheb” uttered by the deceased was in fact a reference to accused No. 4. Moreover, Radha (PW-6), the wife of Datta, though has made a similar statement, but it has come on record that she was at her parental home on the occasion of the

festival of Nagpanchami when the said call was allegedly received. It is also significant to note that there is absolutely no evidence in the form of Call Detail Records (CDR) or Subscriber Detail Records (SDR) to conclusively prove that the said call was made by accused No.4 to the deceased. Further, there is no evidence of the deceased having been last seen in the company of the accused. Under such circumstances, the fact of receiving call from accused is not established by the prosecution.

6. Further, though the prosecution has claimed that accused No.1 – Angad had purchased a Scorpio vehicle in the name of the deceased and that a quarrel had arisen between them due to non-payment of the vehicle's instalments by Angad, there is no supporting evidence on record to substantiate this claim. Admittedly, the death of Digambar was homicidal. The case of the prosecution is that the respondents/accused murdered Digambar with the help of a knife, a tommy and a cable wire. In support of this allegation, the prosecution has heavily relied upon the discovery of a knife at the instance of accused No. 1 – Angad, the recovery of a tommy at the instance of accused No. 3 – Laxman and the recovery of three pieces of cable wire at the instance of accused Shaikh Khadir. The evidence of PW-2, Mangesh Malve, pertains to these alleged discoveries. However, though this witness stated that

on 22.08.2018 Angad made a disclosure regarding the production of a tommy, wire and knife, in fact, only a knife, a wristwatch, a mobile phone and a pair of chappals were recovered at that time. No tommy or wire was discovered pursuant to the said disclosure. Further, though the witness stated that on 24.08.2018 a tommy was recovered at the instance of accused No.3 – Laxman, in his cross-examination he has clearly admitted that on 22.08.2018 the articles, namely the tommy, wire and knife, were already lying on the table of PW-9, PI Shrimanwar. In view of this admission, the entire evidence relating to the alleged recovery at the instance of the accused becomes doubtful and unreliable. An inference of false implication of the accused by showing fabricated recoveries can safely be drawn from the testimony of PW-2.

7. The prosecution has also attempted to establish another motive by alleging that the deceased, Digambar, was having illicit relations with the wife of accused No.3. However, there is no convincing evidence on record in support of this allegation. On the contrary, PW-8 Jyoti, who allegedly saw Digambar with the wife of accused No.4, has not supported the prosecution's case. Therefore, in light of these aspects, it is evident that the theory of "last seen together" is not established in the present case. The alleged recovery of weapons used in the commission of the offence at the

instance of the respondents/accused is also doubtful. Further, there is absolutely no evidence on record to prove that the accused had hatched any criminal conspiracy to commit the murder of Digambar. Thus, the prosecution has miserably failed to establish a complete chain of circumstances pointing towards the guilt of the accused.

8. The learned Trial Judge, after considering all the aforesaid facts, has rightly acquitted the respondents/accused. Further, having regard to the limited scope of an appeal against acquittal, a judgment based on proper appreciation of evidence cannot be interfered with merely because another view is possible. Accordingly, we find no merit in the present appeal and the same stands dismissed.

(ABASAHEB D. SHINDE, J.) (SANDIPKUMAR C. MORE, J.)

VS Maind/-