

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 714 OF 2016**

Sachin Subhash Londhe, ... Appellant
Age – 25 yrs., Resident of Peth,
Taluka Walva, District Sangli.

V/s.

State of Maharashtra
At the instance of Islampur Police Station,
Tal. - Walva, Dist. Sangli in respect of
C.R.No.154/2014. ... Respondent

Mr. Prosper D'souza, appointed Advocate for the Appellant.

Ms. PP. Shinde, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 8th SEPTEMBER 2020.

JUDGMENT PRONOUNCED ON : 1st OCTOBER 2020.

JUDGMENT : PER SADHANA S. JADHAV, J.

1. The appellant herein takes exception to the judgment and order dated 7th April 2016 passed by the Additional Sessions Judge, Islampur in Sessions Case No.51 of 2014 thereby convicting him for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer RI for life and pay fine of Rs.2,000/-, in default, to suffer RI for three months.

2. The factual matrix of the case is as follows :-

On 22nd July 2014 at about 10.00 pm, an information was received by the Peth Naka Police Station that one male person is lying in a pool of blood in a shed. The Police Constable Rajendra Patil was deputed to verify the said information and thereafter Mr. Kamble and PSI Mali reached the spot. They saw one male person lying in a pool of blood in the shed of one Shivaji Hotel. They found him to be dead. An information was recorded in the Police Station. At that time, one Shamrao Tulshiram Pawar reached the spot and identified the dead person as his son Amol. The statement of Mr. Shamrao was recorded on the strength of which Crime No.154 of 2014 was registered for an offence punishable under section 302 of IPC against the unknown person. The investigation was set in motion. In the course of investigation, it had transpired that on 22nd July 2014 at about 7.00 pm the deceased Amol Pawar and his friends were consuming liquor. One Sachin Londhe had joined them. Sachin had left the liquor shop at 8.00 pm and had again visited the shop at about 9.15 pm. He was accompanied by Amol Pawar. They purchased liquor and then a quarrel had ensued between both of them. The cousins of Amol viz. Sudhir and Namdeo Kamble had seen the quarrel and had attempted to pacify them and asked them to return to their respective houses. Soon

thereafter, at about 11.00 pm, it was learnt that Amol is lying in a pool of blood. Hence, Sachin i.e. the present appellant was arrested on 24th July 2014.

3 It is further the case of the prosecution that while in Police custody, the accused had disclosed to the Police that after consuming Alcohol, Amol was abusing him by referring to his mother without any rhyme or reason and therefore, the accused had assaulted him with a stone lying nearby. The Police had also seized the blood stained clothes of the accused.

4 The prosecution, in order to substantiate the charge against the accused, has examined 10 witnesses.

5 The accused had admitted the scene of offence panchanama, inquest panchanama and post-mortem report under section 293 of Cr.PC. The material witnesses who would throw light on the prosecution are PW2 – Shamrao Pawar - first informant, PW4- Sudhir Kamble – brother-in-law of deceased Amol, PW6 – Pintu Pawar – person working in liquor shop of Suryakant Choudhari at Peth Naka, PW7 – Ananda Kamble – cousin of PW4, PW9 – Sanjay Patil and PW –

10 Rajendra Patil who was attached to Islampur Police Station on 22nd July 2014.

6 PW2- Shamrao Pawar happens to be the father of deceased Amol. He has deposed before the Court that on 22nd July 2014, Amol had left the house at 7.00 am with Nashir Kureshi and returned at 9.00 am after consuming liquor. At about 4.00 pm, he had again left the house with Nashir Kureshi. He did not return till 9.30 pm. PW2 had presumed that he must have gone to visit his wife who had gone to her maternal house. At about 10.45 pm, Sanjay Pawar informed PW2 that Amol was lying in front of Shivaji Hotel after consuming alcohol. On the spot, he saw Amol lying in a pool of blood and registered FIR which is at Exh.16. In the cross-examination, PW2 has volunteered that on 22nd July 2014, there was heavy rain and so some shops were closed. That the tourist buses halt at Manikandan hotel at night. It is elicited in the cross-examination that after the Police reached on the spot within no time Sudhir and Anand Kamble also reached on the spot. The Police had enquired with them but since nobody knew about the incident the complaint was lodged against unknown persons.

7 PW4- Sudhir Kamble in his deposition before the Court has stated as follows :

(i) That on 22nd July 2014 at about 9.00 pm he along with his cousin brother Ananda Kamble had been to Peth Naka to see off their relatives to Mumbai. They had gone on motor cycle. After the relatives had left they noticed that Amol and Sachin were quarreling near the shed of Shivaji Hotel. They pacified the quarrel and told them to go to their respective houses and at 11.00 pm, he had received a call that somebody had murdered Amol with a stone and therefore, he reached the spot. He saw the dead body. He acted as a pancha for inquest panchanama which is at Exh.9 (the same is admitted by the accused). According to him, Police had recorded his statement on the next day after the funeral. It is admitted in the cross-examination that when he reached Peth Naka it was raining heavily. That he had reached the scene of offence at about 12.30 am and had seen that his father-in-law and other relatives were present on the spot. There is a clear admission in his cross-examination which reads as follows :-

“It is true that the police told if I say I saw them quarreling, then case will be filed against the accused.”

8 This has to be read in consonance with the fact that at 11.00 pm on receiving a message that Amol had died in suspicious circumstances, PW4 had reached the spot. He had met his father-in-law but he had not disclosed that he had seen the quarrel between the deceased and the accused sometime ago and on the third day of the registration of the FIR, the name of the accused had surfaced.

9 PW5 - Vikas Dabhole is the proprietor of Shivaji Maratha Hotel and Lunch Home situated at Peth Naka. The tin shed where the deceased was found is adjacent to his Hotel. There is an electricity connection and sufficient light in the open shed. On 22nd July 2014 he had closed the Hotel at 7.00 pm as it was raining. At about 10.00 pm he had received a message on his cell phone that an unknown person is lying in the pool of blood in the open shed. He therefore reached the spot. The family members of the deceased had reached the spot and identified the deceased as Amol Pawar.

10 PW6- Pintu Pawar is in service of Suryakant Choudhari whose liquor shop is situated at Peth Naka. He has deposed before the Court that the friends of the present appellant viz. Amol, Santosh and Kumar had visited the liquor shop at about 7.00 pm. Sachin i.e. the

accused had also consumed alcohol but had left the premises of the shop at about 8.00 pm only to visit again at 9.15 pm. Amol was alone in the shop. Upon their demand, he had sold liquor and they left the shop at 9.30 pm. When they were leaving the shop the deceased Amol was abusing the accused. It is also admitted that the accused had not consumed alcohol along with the deceased. His statement was recorded two days after the occurrence of the incident.

11 PW7 – Ananda Kamble was in the company of PW4 – Sudhir i.e. his cousin brother on 22nd July 2014. He has deposed before the Court that he had seen the quarrel between the accused and the deceased and upon enquiry the deceased had informed that the quarrel was on a trifling issue. His statement was also recorded on the next day. It is elicited in the cross-examination that he did not know the name of Sachin i.e. the accused prior to the incident. It is also admitted that he had visited the place of incident for the first time. It is admitted that when the relatives had reached the spot after the incident the Police was inquiring with everyone as to whether they had any knowledge about the incident. In the presence of PW7, father of the deceased had informed the Police that some unknown person has caused homicidal death of his son Amol.

12 PW9 – Sanjay Patil was attached to Islampur Police Station on the date of incident. At about 10.00 pm he was informed by PSO Kamble that an unidentified dead body was lying in the shed of Shivaji Hotel. He therefore, rushed to the spot and saw a male person lying in a pool of blood and that there were blood stains on a stone nearby. By the time PW9 reached the spot, the first informant was present. PW 9 recorded the statement of PW2 – Shamrao Pawar and on the basis of the same registered Crime No.154 of 2015 against unknown persons. He had taken steps in the course of investigation. On 24th July 2014, he recorded supplementary statement of all witnesses in which it had transpired that at the relevant time there was a quarrel between the accused and the deceased in front of Shivaji Hotel and the appellant was arrested on 24th July 2014 at 9.25 pm. According to the investigating officer, on the day of arrest itself i.e. 24th July 2014 at about 3.45 to 4.00 pm, memorandum of accused was recorded. The accused had shown the spot of incident to the investigating officer and it is marked at Exh.13. On 25th July 2014 the accused had disclosed that he had concealed the clothes which he was wearing at the time of incident and therefore, after recording the memorandum which is at

Exh.18 the accused had handed over his blood stained clothes which he was wearing at the time of incident. It is also admitted that it has transpired in the investigation that deceased was hurling abuses to the accused and therefore, the accused had assaulted the deceased with a stone.

13 The Forensic Science Laboratory reports have established that blood group of the accused is "A". The blood group of the deceased could not be determined as the results were inconclusive. The blood group on the stone and other articles seized in the course of investigation are inconclusive.

14 PW10 – Rajendra Patil is attached to Islampur Police Station. He has also learnt from Kamble about the said incident. He had rushed to the spot and had seen the dead body of unknown person. A stone stained with blood was lying nearby and on the basis of the information of PSI Mali, PI Patil i.e. PW9 had reached the spot. The post-mortem was done in between 8.00 to 9.00 am on the next day and the clothes of the deceased were handed over to PW10. It is the contention of the PW10 that he had inquired with the shop owners adjacent to Shivaji Hotel.

15 PW11 – Ramji Patil had taken the photographs of the deceased and the scene of offence by his digital camera which are at Exh.44 to 48. The admitted facts in the present case are as follows :-

- (I) On 22nd July 2014 at about 10.45 pm, Sanjay Pawar informed PW2 – Shamrao Pawar that Amol is lying in a tin shed of Shivaji Hotel;
- (II) PW1 reached the spot. Soon thereafter, the Police had also reached the spot;
- (III) PW4 and PW7 had also reached the spot along with other relatives;
- (IV) The genesis of the incident and the perpetrator of the offence was not known to anyone and hence, Crime No.154 of 2014 was registered under section 302 of Indian Penal Code against unknown person for causing homicidal death of Amol;
- (V) On 24th July 2014, supplementary statements of 17 persons were recorded. PW4 and PW7 disclosed that at about 11.30 pm they had seen that accused and deceased were quarreling with each other. They pacified them. The deceased had disclosed to PW4 and PW7 that quarrel was

over a trifling issue;

(VI) On 24th July 2014, the accused – appellant was arrested.

The statement of PW6 – Pintu Pawar who was working in the liquor shop was recorded by the Police and he had disclosed that although the accused and the deceased did not consume alcohol together, but while leaving the liquor shop the deceased was abusing the accused. The witnesses had no knowledge what happened thereafter;

(VII) On 25th July 2014, the scene of offence was shown to the

Investigating Officer by the accused. On 25th July 2014, blood stained clothes were seized by the Police at the instance of the appellant. The appellant had kept the clothes in a cupboard in his house;

16 The learned counsel for the appellant submits that there is no material on record to show that the appellant is the author of the injuries sustained by the deceased or that he has caused the homicidal death of deceased Amol.

17 As against this, the learned APP submits that there is enough material to show that the accused was lastly seen in the

company of the deceased. That the evidence of PW6 – Pintu would show that while leaving the liquor shop the deceased was abusing the accused and that there is a recovery of blood stained clothes of the accused. According to the learned APP, there is no explanation regarding concealment of the blood stained clothes of the appellant.

18 In view of the above, the question which falls for determination is as to whether the prosecution has brought on record convincing and cogent material to implicate the appellant in the alleged homicidal death of Amol Pawar. Firstly, on the date of incident, the deceased had left his house in the company of Nashir who is not examined by the prosecution. Witnesses PW4 and PW7 have candidly agreed in the cross-examination that the Police had told them that only if they would say that there was a quarrel between the accused and the deceased they could proceed to file a case against appellant. It is in the light of this, that the witnesses had disclosed that upon seeing the altercation between the accused and the deceased they had pacified both of them. It cannot be overlooked that the father of the deceased had learnt about the incident at about 10.30 pm and by 11.30 pm, the witnesses PW4 and PW7 had reached the spot, however, they had not

disclosed to anyone nay the Police who was present on the spot. Silence of PW4 and PW7 from 22nd July 2014 to 24th July 2014 speaks volumes for itself. The statement of PW6 - Pintu was recorded much later and even if the evidence of PW6 is taken without addition or subtraction, it would show that it was the deceased who was abusing the accused. It is clear that there was no enmity between the accused and the deceased. Neither there was any motive to eliminate the deceased. The evidence is otherwise. It would show that they were in the liquor shop at the same time but the accused had left the liquor shop even before the deceased and after he had returned he was accompanying the deceased who was waiting alone in the shop.

19 The memorandum of the accused showing the scene of offence is totally misplaced for the simple reason that the scene of offence was already known to the investigating agency and the witnesses. A stone was also lying on the spot. In fact, the scene of offence panchanama is dated 23rd July 2014 and it was recorded during the period 2.50 am to 5.10 am i.e. a day prior to the arrest of the accused – appellant. FIR was recorded at midnight of 23rd July 2014 and therefore, disclosure of the scene of offence at the instance

of the accused – appellant needs no consideration. The scene of offence panchanama shows that the said shed was being used as a kitchen platform. There were three iron tables and two wooden benches and the door of the Hotel was locked and that there was trail of blood at a distance of 3 ft. from the kitchen door and it appeared that there was a splash of blood.

20 The recovery of blood stained clothes coupled with the Forensic Science Laboratory report does not show that the blood on the clothes of the accused were that of the deceased. Blood group of the deceased could not be determined and therefore, finding of the blood stains on the clothes of the accused would not be an incriminating circumstance.

21 Since the evidence of PW4 and PW7 does not inspire confidence, it can be held that the prosecution has utterly failed to bring on record any clinching material against the accused. The evidence of last seen is also infirm and cannot be relied upon.

22 In the case of *Kanhaiya Lal Vs. State of Rajasthan (2014) 4 SCC 715*, the Hon'ble Apex Court has held as follows :-

“The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.”

23 Much weight cannot be attached to the alleged recovery of blood stained clothes and knife as the blood group of the deceased on his clothes and knife is inconclusive.

24 The case of the prosecution is not supported by credible evidence which would eliminate the innocence of the accused and establish that it is none other than the accused who must have caused the homicidal death of the deceased Amol. All this would show that the death of Amol Pawar is shrouded with mystery.

25 Hence, taking into consideration the totality of the facts and evidence, in our view, the circumstances relied upon by the prosecution are not established by convincing evidence and they do not form a complete chain pointing to the guilt of the appellant and hence, the appellant deserves to be acquitted. Hence, we pass the following order :-

ORDER

- (i) Appeal is allowed;
- (ii) The conviction and sentence imposed upon the accused/appellant - Sachin Subhash Londhe vide judgment and order dated 7th April 2016 passed by the Additional Sessions Judge, Islampur in Sessions Case No.51 of 2014 is hereby quashed and set aside;
- (iii) The accused be released forthwith, if not required in any other offence;
- (iv) Fine amount, if paid, be refunded;
- (v) Appeal is disposed of.

26 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J.)

(SMT. SADHANA S. JADHAV, J)