

Uday S. Jagtap

(Corrected as per Speaking order dt.29.10.2021)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 221 OF 2016

Ramesh @ Chhotu Ramchandra Prajapati .. Appellant
Prisoner No. 10181, Circle No. 3/1
Nasik Road Central Jail,
Nasik Road 422 101

V/s.

The State of Maharashtra
(Through the Waliv Police Station,
Vasai) .. Respondent

.....

Ms. Vaishali V. Thorat, for the appellant
Ms. S.V. Sonawane, APP for respondent – State

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, J.J.**

**RESERVED ON : 23rd SEPTEMBER, 2021
PRONOUNCED ON : 26th OCTOBER, 2021**

JUDGMENT :- *(Per Prithviraj K. Chavan)*

1. Challenge in this appeal is to the conviction and sentence of the respondent / accused, handed over by the learned Additional Sessions Judge, Vasai, of an offence punishable under Section 302 of the Indian Penal Code.
2. Factual matrix can be summarized as follows;
3. It is a bitter and sordid story of two friends turning foes on

account of money, costing in losing life for one of them.

4. Incidentally, both are "Ramesh". The deceased is Ramesh Gupta whereas the respondent accused is Ramesh Prajapati.
5. PW-2 Jitendra Paswan runs a small buffing company at Mira Estate, Nala Sopara. He had four employees. Deceased Ramesh was one of them. Deceased Ramesh had brought respondent / accused Ramesh and recommended PW-2 Jitendra Paswan to give him an employment as he (accused) is his friend. Accused Ramesh was accordingly employed by PW-2 Jitendra Paswan.
6. Accused Ramesh worked for only 5 days with the company. PW-2 Jitendra Paswan allowed him to stay in the company and handed over the keys to him.
7. It is the case of the prosecution that deceased Ramesh had taken / grabbed some amount (money) from the accused over which there was a wordy duel.
8. The incident occurred in the dawn of 23rd June, 2012 at Vasant Patil chawl where deceased Ramesh used to stay with his wife, brother-in-law (informant - Ramchandra Gupta) and son of his sister. On the day of incident, his wife had been to her natal house.
9. The accused came to the house of the deceased around 12.00 p.m. The informant – Ramchandra Gupta, brother-in-

law of the deceased and son of his sister were at home. Deceased was not at home at that time. Accused again visited the house of the deceased at 9.00 p.m. on the same day. Deceased returned home after some time. They chatted and thereafter all of them had dinner at around 10.30 p.m.

10. As it was too hot, deceased Ramesh and accused Ramesh decided to sleep outside the house abutting the front door. Accordingly, deceased arranged mattress and bed sheets for both of them. The brother-in-law and nephew of the deceased slept inside the room.
11. Around 4.00 p.m. Ramchandra Gupta (informant) woke up to urinate. He was shocked to notice deceased Ramesh lying in a pool of blood. However, accused Ramesh was missing. He immediately called PW-1 Vasant Patil, the owner of the chawl and others. They searched for the accused but in vain. Obviously, they strongly believed that it was none other than the accused Ramesh who had brutally murdered deceased Ramesh by hitting on his head with some weapon and fled the spot.
12. A complaint came to be lodged by Ramchandra Gupta (**Exh.38**) promptly on 23rd June, 2012. An FIR came to be registered vide no. 171 of 2012 under Section 302 of the Indian Penal Code with Waliv Police Station. PW-7 Pradeep Mane, who was attached to Waliv Police station as a police inspector, conducted investigation into the crime. He visited

the scene of occurrence. An inquest panchanama was drawn (**Exh.10**). The dead body of the deceased Ramesh was sent for post mortem. Spot panchanama was drawn by summoning two panch witnesses which is proved (**Exh.19**). He seized the bed sheet, mattress etc. in the presence of panch witnesses. He had also summoned PW-6 Amol Ghag, a photographer to snap the photographs of the scene of occurrence and the deceased.

13. He drew a sketch of the spot through a circle officer which is proved at **Exh.40**. A seizure panchanama was drawn.
14. On 31st July, 2012, API Mr. Wakode arrested the accused. It is the case of the prosecution that while in police custody, the accused voluntarily made a statement pursuant to which, a Stone weighing about 8 to 9 kg came to be discovered, which was duly sealed under a panchanama **Exh.21**. By virtue of another voluntary statement of the accused Ramesh, clothes which were on his person at the time of incident also came to be seized under a panchanama **Exh.41**.
15. The seized muddemal was sent to the Forensic Science Laboratory. After receiving the report from the Forensic Science Laboratory and after recording the statements of the witnesses, a charge sheet came to be filed against the accused Ramesh in the Court of Judicial Magistrate, First Class. The case was committed to the Sessions Court, Vasai.

16. A charge was framed against the accused under Section 302 of the Indian Penal Code (**Exh. 4**). It was read over and explained to him in vernacular to which he pleaded not guilty and claimed a trial. The defence of the accused is one of denial of the commission of an offence alleged and false implication. No defence evidence has been adduced on his behalf.
17. The prosecution examined in all 7 witnesses coupled with some documentary evidence.
18. The learned Additional Sessions Judge having considered the evidence on record, which is in the form of circumstantial evidence found the accused guilty of the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life *inter alia* fine of Rs.500/- in default R.I. for 15 days.
19. We heard the learned Counsel for the appellant and the learned APP for the respondent State.
20. With the assistance of the learned Counsel for the appellant, we have meticulously scanned the evidence of the prosecution witnesses *vis-a-vis* documentary evidence.
21. The learned APP would argue that the prosecution has duly established its case on the basis of circumstantial evidence *sans* any eye-witness and the entire chain of circumstances

connecting the appellant with the crime. Our attention has been drawn to the evidence of PW-1 Vasant Patil - the owner of the chawl, PW-2 Jitendra Paswan - employer of the deceased Ramesh and accused Ramesh as well as the discovery under Section 27 of the Evidence Act at the behest of the accused Ramesh. In short, the learned APP has supported the impugned judgment of conviction and sentence rendered by the learned Additional Sessions Judge.

22. *Per contra*, the learned Counsel for the appellant highlighted various lacunae in the prosecution case more particularly, the evidence of the prosecution witnesses by emphasizing the fact that the prosecution has not examined the complainant / first informant - Ramchandra Gupta, on whose behalf the criminal law has been set into motion and he was the one, who had first alleged to have noticed deceased lying in a pool of blood. It is further submitted that the evidence *qua* discovery as well as the employment of the deceased with PW-2 Jitendra Paswan has also not been proved and, therefore, it is the case of at least giving a benefit of doubt to the accused - Ramesh.
23. There is no much dispute on the fact that the deceased Ramesh died a homicidal death. PW-3 Dr. Soham Dhanger, who had conducted an autopsy over the dead body of the deceased, in his evidence testified that he conducted the autopsy between 12.10 p.m. to 1.20 p.m. and noticed following antemortem external injuries :-

- “1. *Cut lacerated wound on the right side of forehead oblique 7 cm x .5 cm x 05 cm with sharp edges.*
2. *Cut lacerated wound 4 cm x .5 cm x .5 cm anterior side of forehead.*
3. *Cut wound on the right side of head 4 cm x .5 cm x .5 cm.*
4. *Fracture of skull on the anterior side of the head.”*

24. His evidence further indicate that there were corresponding external injuries, which have been recorded in column 19 of the post mortem notes, as follows :-

- “1. *Cut wound on the right side 4 x 0.5 x 0.5 cm anterior side of head.*
2. *Cut cound on the right side near wound 4 x 0.5 cm x 0.5 cm*
3. *Cut wound on the right side near (R) wound 4 x 0.5 cm x 0.5 cm*
Skull fracture on the anterior side.”

25. The autopsy report is proved at **Exh.15**.

26. According to this witness, the Investigating Officer had sought his opinion on a stone alleged to have been recovered by the agency. He gave his opinion, which is at **Exh.16** by contending that the injuries on the person of the deceased Ramesh are possible with the said stone, which was weighing about 10 to 12 kg. Nothing could be elicited from his mouth, which would render his testimony unbelievable as his evidence is restricted only to the extent of an opinion of expert as to the probable cause of death. The inquest

panchanama drawn before conducting the autopsy also corroborates the external injuries.

27. Once it has been established that deceased Ramesh died a homicidal death, next important question would be as to whether, by circumstantial evidence, the prosecution has established beyond reasonable doubts that it was none other than the appellant - accused, who was responsible for causing such intentional grievous injuries to deceased Ramesh, resulting into his instantaneous death. For that, one has to delve deep into the circumstances sought to be produced by the prosecution.
28. The prosecution mainly revolved around the following few circumstances, they are:- (a) the deceased was last seen alive together with accused Ramesh; (b) the deceased Ramesh and accused Ramesh were acquainted with each other; (c) the accused Ramesh had voluntarily discovered blood stained stone as well as blood stained clothes; and (d) abscondence of the accused Ramesh immediately after the incident.
29. In reference to the cases where there is no direct evidence and the decision has to rest on circumstantial evidence, the Hon'ble Supreme Court in a catena of decisions has consistently held that such evidence must satisfy the following tests :-
 - (a) The circumstances from which an inference of guilt is

sought to be drawn must be cogently and firmly established;

(b) Those circumstances should be of a definite tendency or unerringly pointing towards the guilt of the accused.

(c) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; and

(d) The circumstantial evidence in order to sustain conviction, must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence.

30. To elucidate the various circumstances appearing in the evidence, we have analyzed and discussed each of the circumstances.

“Deceased Ramesh was last seen alive together in the company of accused Ramesh” :-

31. Most crucial and important evidence of the complainant Ramchandra Gupta, who is the brother-in-law of the deceased Ramesh is missing, in the sense, no plausible and satisfactory explanation has been offered by the prosecution for his non-examination. It is more astonishing that even nephew of the deceased Ramesh could not be traced by the Investigating Agency, which is something unfathomable. The best evidence of complainant - Ramchandra Gupta, who alleged to have, first in point of time, noticed that deceased Ramesh was lying in a pool of blood around 4.00 a.m. on

23rd June, 2012 and missing accused Ramesh from the spot when he (Ramchandra Gupta) woke up for urination, indeed gives big jolt to the prosecution *qua* first circumstance of “last seen together”. Merely stating that despite due diligence the Agency could not find out their whereabouts merits to be laughed at and wept over. No sincere efforts appears to have been made in that regard. Instead, PW-1 Vasant Patil, who is the owner of the chawl has been examined by the prosecution. Due to absence of Ramchandra Gupta, serious prejudice has been caused to the defence to contradict and test the veracity of the first information report.

32. The sum and substance of the evidence of PW-1 Vasant Patil (**Exh.9**) indicates that deceased Ramesh was staying in one of the rooms of his chawl. There are 16 rooms in the chawl. Deceased Ramesh was staying with his wife, nephew and brother-in-law since last 1½ years. At the time of incident, wife of the deceased had gone to her natal place. However, his nephew and brother-in-law were residing with the deceased.
33. His evidence further indicates that on 22nd June, 2012 accused Ramesh had been to the house of the deceased Ramesh at about 10.00 p.m. to 10.30 p.m. The deceased Ramesh introduced accused Ramesh as his friend. PW-1 Vasant Patil had seen that there was some discussion between accused Ramesh and deceased Ramesh on account

of money. He did not say that there was a quarrel. This is crucial. Thereafter, he noticed two beds laid down in front of their house. Around 3.30 a.m. to 4.00 a.m. when PW-1 Vasant Patil was in the gallery of his house, he witnessed accused Ramesh going towards toilet, which was situated backside of the chawl. He thought that accused might be going for attending nature's call. However, around 5.00 a.m to 5.30 a.m. he heard shouts of brother-in-law of the deceased - Ramesh i.e. Ramchandra Gupta - the complainant. Ramchandra Gupta had seen deceased Ramesh in an injured condition. PW-1 Vasant Patil had noticed severe head injuries sustained by deceased Ramesh and that accused Ramesh was not found over there. This witness had identified accused Ramesh during the trial in the Court. Interestingly, he also acted as a panch over the inquest panchanama, **Exh.10**.

34. It is pertinent to note that the complaint **Exh.38** lodged by Ramchandra Gupta reveals that he woke up around 4.00 a.m. for urination only to notice deceased Ramesh lying in a pool of blood and the accused Ramesh was missing. Thereafter, he called one Ajay. The prosecution has not examined said Ajay. Thereafter, Ramchandra Gupta, the complainant / first informant went to PW-1 Vasant Patil and told him about the incident. Evidence of PW-1 Vasant Patil and FIR is quite inconsistent. Ramchandra Gupta had stated that he had not witnessed the accused Ramesh. What he had witnessed is only deceased Ramesh lying in the pool of blood

whereas PW-1 Vasant Patil says that he had witnessed the accused Ramesh but he did not whisper anything about the deceased Ramesh. If both of them woke up at around 4.00 a.m. how there could be such an inconsistency in their respective statements. Only inference which can be deduced is either PW-1 Vasant Patil has falsely testified about witnessing the accused Ramesh going towards the toilet or there might be some element of truthfulness in the complaint of Ramchandra Gupta that he did not notice accused Ramesh but noticed deceased Ramesh lying in a pool of blood. In any case, both statements cannot go hand-in-hand. In any case, the theory of deceased "last seen together" with the accused Ramesh is quite inconsistent and doubtful and, therefore, it would be unsafe to place implicit reliance upon the evidence of PW-1 Vasant Patil.

35. The evidence of PW-1 Vasant Patil has to be discarded for one more reason. His evidence is to be accepted only with a pinch of salt, for, in his cross-examination he admits that his statement was recorded 1½ months after the incident only when accused Ramesh was arrested on 31st July, 2012. This assumes significance in light of the fact that if he had already acted as a panch over the inquest panchanam (**Exh.10**), what prevented the Investigating Officer PW-7 Pradeep Mane from recording his statement immediately after the incident on the spot itself? This speaks volumes and needs no further elaboration that he is a got up witness, otherwise, the Investigating Officer - PW-7 Pradeep Mane could have

promptly recorded his statement.

36. Another interesting aspect of the case is that as per PW-7 Pradeep Mane, Investigating Officer, the dead body was lying in an open space which was accessible to the general public from various directions. There are chawls surrounding the open space. The spot panchaname **Exh.19** substantiate the said fact.
37. Under such circumstances, the possibility of a third element entering into the scene could not be totally ruled out in the light of the fact that this case is based on circumstantial evidence wherein it is incumbent upon the prosecution to prove that all the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.
38. For the reasons stated hereinabove, we are not inclined to accept that the prosecution has established the first circumstance namely, "last seen together".
39. On the aspect as to whether deceased Ramesh was, in fact, working with PW-2 Jitendra Paswan is also something which is difficult to digest. We say so for the following reasons.
40. It has come in the evidence of PW-2 Jitendra Paswan that it was deceased Ramesh, who had brought accused Ramesh to him recommending his appointment in his company since

they were friends. Accused Ramesh was appointed by PW-2 Jitendra Paswan on the recommendation of deceased Ramesh. His evidence reveals that accused Ramesh worked with him only for 5 days and that he allowed him to stay in the company. He handed over the keys of the company to the accused Ramesh. He further testified that he used to pay weekly salary to his workers on every Thursday. According to him on the day of incident, he had paid Rs.5,000/- to deceased Ramesh and Rs.2,000/- to accused Ramesh. On Saturday morning he came to know about the death of deceased Ramesh. He had identified accused Ramesh during the trial. This is all about what has been testified by him in his examination-in-chief. From the evidence of PW-2 Jitendra Paswan and even from the evidence of PW-1 Vasant Patil, it is difficult to construe that the motive behind commission of the offence by accused Ramesh was money.

41. It is not the evidence of PW-2 Jitendra Paswan that he had noticed some quarrel between accused Ramesh and deceased Ramesh on account of money. The fact that he had paid Rs.5,000/- on Thursday has been proved to be an omission. Interestingly, he admits in cross that at the time of appointing accused Ramesh, neither he had obtained his bio-data nor has kept any record, which is quite strange. It is doubtful as to whether accused Ramesh was, in fact, appointed by this witness. If he had not paid Rs.5,000/- to deceased Ramesh as his weekly salary, then, the question would arise as to whether he had really paid Rs.2,000/- to

the accused Ramesh. Thus, even the evidence of this witness does not further the prosecution case any more, rather, it creates a doubt as to whether the deceased Ramesh, in fact was a friend of accused Ramesh and had recommended his appointment.

42. Thus, the evidence on the aspect of “last seen together” is obviously unsatisfactory, unbelievable and that the trial Court erred in ignoring the aforesaid material inconsistencies and lacunae while appreciating the evidence of the aforesaid witnesses.
43. Now turning to the important aspect of discovery of the weapon of offence i.e. a stone and the clothes on the person of the accused Ramesh at the time of incident. PW-4 Narendra Patil is a panch on the memorandum panchanama of the accused Ramesh, who had also acted as a panch to the scene of occurrence. He testified that on the day of incident, he was present on the spot and, therefore, was asked by the police to act as a panch witness. There were stones in front of the house of PW-1 Vasant Patil. He testified that there were mat, towel and bed-sheet stained with blood. Those articles were packed and sealed in his presence. The soil stained with blood was also seized. A panchanama was drawn which is proved at **Exh.19**. He had identified those articles in the Court.
44. It is pertinent to note that the incident in question occurred

on 23rd June, 2012 and this witness was summoned by the police again on 1st August, 2012 at the police station directing him to listen the statement of the accused Ramesh. He testified that accused Ramesh had stated before the police as to how the offence had been committed by him which was reduced into writing and is proved at **Exh.20**. Thereafter, he accompanied the police staff along with accused Ramesh in a police vehicle and they proceeded in the direction as given by the accused Ramesh.

45. They reached near a tamarind tree. Accused Ramesh pointed towards a stone which was kept near tamarind tree. It was sealed by the police in his presence under a panchanama, which is at **Exh.21**. The learned Counsel for the accused Ramesh made an attempt to rebut the testimony of this witness in cross by giving usual suggestion that whatever he has testified is not correct. However, certain important facts have been surfaced in his cross-examination.
46. First of all, he admits that place from where the stone was pointed out by accused Ramesh was an open place and there were no bushes around that place. Where the recovery was made is an open place accessible to all, in such an eventuality, exclusive knowledge of that stone could not be attributable to accused Ramesh alone. The secret of it must have been known only to the person who had used the place to that purpose. Thus, it was not the exclusive knowledge of accused Ramesh and, therefore, this

circumstance also is not helpful to the prosecution in linking the accused Ramesh with the murder of the deceased Ramesh.

47. This admission is sufficient to disbelieve the alleged discovery under Section 27 of the Evidence Act. It connotes that a concocted story has been engineered by the prosecution.
48. There are two essential requirements for the application of Section 27. They are (i) the person giving information must be an accused of any offence; and (ii) he must be in police custody. This provision is based on the view that if a fact is actually discovered in consequence of an information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because such an information is further fortified and confirmed by the discovery of any such article or instrument of crime.
49. The first thing is that finding of the stone in an open place itself falsifies that it is a discovery of fact as contemplated in Section 27 of the Evidence Act. There were several stones and, therefore, it cannot be conclusively said that it was the same stone by which the accused Ramesh alleged to have killed the deceased Ramesh. It could not be said to be a fact discovered pursuant to what had been deposed to by accused Ramesh while in police custody. It is doubtful as to

whether the same stone was the weapon of offence used to commit the murder of deceased Ramesh. It is for the simple reason that the C.A. report **Exh.54** *qua* the stone and even the pant and shirt of the accused Ramesh indicate that though it were stained with human blood, the ABO grouping has been inconclusive. The incident occurred some where in the month of June, 2012 which is admittedly a season of monsoon. The alleged discovery was made in the month of August, 2012. It is quite difficult to believe that despite such a long period, blood stains could be noticed over the said articles.

50. As regards abscondence of accused Ramesh after the incident in question, what has been testified by PW-7 Pradeep Mane - Investigating Officer is that he could be nabbed from the State of Gujarat by API Wakode on 31st July, 2012. The prosecution has not examined API Wakode to substantiate its contention that, in fact, the accused Ramesh was absconding and was arrested from Gujarat. Merely because he was absconding, does not *ipso facto* mean that he was the author of vital injuries on the person of deceased Ramesh in light of the discussion made hereinabove.
51. There is one more unsolved mystery in this case as to how PW-7 Pradeep Mane could identify accused Ramesh for the simple reason that neither complainant - Ramchandra Gupta nor the nephew of the deceased could be traced in order to identify accused Ramesh. The evidence of PW-2 Jitendra

Paswan, PW-1 Vasant Patil and PW-4 Narendra Patil does not inspire confidence for the reasons as already stated hereinabove. Nobody knew even the full name of accused Ramesh till he was arrested by the police. Even PW-7 Pradeep Mane admits in his cross that he had no clue about the accused Ramesh except his first name. Interestingly, he even could not recollect as to from whom and where he gathered about the full name of the accused Ramesh. He had not recorded the statement of that person from whom he gathered the name of the accused Ramesh till he was arrested. He did not possess any photograph of the accused Ramesh. What has been testified by PW-7 Pradeep Mane, afterwards, is that one Farid Baloch had informed him about the name of the accused Ramesh. However, no such person by name Farid Baloch has been brought before the Court to substantiate the said fact. As such, abscondence of accused Ramesh would not be an additional link as sought to be argued by the learned APP before the trial Court. In fact, there is no chain at all in this case.

52. The impugned judgment is based on surmises and conjectures without appreciating the evidence in its correct perspective on the touch stone of law of evidence.
53. To sum up, the prosecution has failed to establish the complicity and nexus of the accused Ramesh in connection with the homicidal death of deceased Ramesh. It is needless to reiterate that there is no chain of circumstances pointing

towards the guilt of the accused Ramesh and, therefore, the impugned judgment needs to be quashed and set aside. Consequently, the following order is passed :-

ORDER

- i) Appeal is allowed.

- (ii) The judgment and order of conviction and sentence passed by the Additional Sessions Judge, Vasai in Sessions Case No. 20 of 2013 on 18th August, 2015 is quashed and set aside and the accused is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

- (iii) He shall be released forthwith, if not required in any other case.

- (iv) Fine amount, if paid, be refunded to him.

- (v) The order as regards disposal of muddemal is maintained.

- (vi) The appeal stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)

(SMT. SADHANA S. JADHAV, J.)