

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

...
CRIMINAL APPLICATION NO. 1673 OF 2014
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The State of Maharashtra, through
Balu Machhindra Bharti,
age 55 years, Occ. Labour,
R/o Labour, R/o Nagoba Lane,
Bhoom Dist. Osmanabad.

..Applicant..
(Orig. complainant)

VERSUS

Kalyan Bhanudas Pawar
and others.

..Respondents..
(Orig accused.)

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Mr. S.G.Karlekar APP for applicant State.
Mr. N.B.Suryawanshi Advocate for Respondents no.1,2,4,5
Mr K.C.Sant Advocate for Respondent No.3.

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WITH
CRIMINAL APEAL/438/2014
...

Chhaya w/o Bandu Bharti,
age 34 yrs, Occ. Household,
R/o Laxminagar, Zilla Parishad,
High School, At Post Bhoom,
Tq. Bhoom, Dist Aurangabad.

..Appellant..
(victim wife of deceased.)

VERSUS

Kalyan Bhanudas Pawar
and others.

.Respondents.
(no.1 to 5 orig. accused)

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Mr. Rajendraa S. Deshmukh, Advocate for appellant.
Mr. N.B.Suryawanshi Advocate for respondents No.1,2,4,5.
Mr. K.C.Sant Advocate for respondent No.3.
Mr. S.G.Karlekar APP for Respondent No.6

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.**Dated: November 23, 2015**

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PER COURT :-

1. This criminal application is filed by the State seeking leave to file an appeal. Even original complainant has also filed the appeal. Appeal filed by the State will have to be heard alongwith the appeal filed by the complainant. As such, present application seeking leave to file appeal is allowed. Appeal filed by the State is taken up for hearing alongwith Criminal Appeal No.438/2014. Record and Proceedings is received. As such, we have heard the appeals finally.

2. Mr. Deshmukh, the learned counsel for the appellant i.e. Original complainant in Criminal Appeal No.438/2014 and Mr. Karlekar, the learned APP has taken us through the evidence recorded by the Sessions Judge. The learned counsel submits that, the Sessions Court has failed to appreciate the evidence led in its correct perspective. Evidence of P.W.1 - Dr. Vijaykumar Rohidas Sul, P.W.5 - Baby Vishnu Gosawi, P.W.15 - Prakash Sambhaji More and P.W.17- Shesherao Tanaji Gaikwad have not been appreciated in correct perspective. The motive is established. The accused

no.5 had illicit relations with PW 5. Deceased had got knowledge of the said relations. PW 5 is sister in law of the deceased. As deceased got knowledge about said illicit relations, accused no.5 gave threats to the deceased. This has been brought on record by the evidence of P.W.2. According to the learned counsel, evidence of P.W. 15, P.W. 17 is sufficient to bring home the guilt of the accused persons. Last seen theory ought to have been considered. P.W.15 by his deposition, has clearly put forth the case of the prosecution that, deceased was lastly with the accused no.5. It is accused no.5 whose brain is behind the crime. Now, it is for the accused no.5 to explain in view of section 106 of the Evidence Act.

3. Learned counsel further submits that, evidence of PW 15, if read in its entirety, would clearly suggests that, it is accused no.5, who asked deceased to board Tata Safari and accused nos. 1 to 4 with whom deceased was traveling in Tata Safari Jeep have killed the deceased on its way. Evidence of P.W. 15 cannot be said to be improvisation as minor contradictions and omissions would not harm whole case. According to the learned counsel, P.W. 17 has also proved the case of the prosecution. Recovery has been made

from the accused persons of the amount. They have also said that other amount has been spent by them. Jack is recovered from the accused no.1. All these aspects have been ignored by the learned Sessions Judge.

4. Mr. N.B.Suryawanshi learned counsel for respondents no.1,2,4 and 5 and Mr. K.C.Sant learned counsel for respondent no.3 support the Judgment and order passed by the Sessions Court.

5. We have considered the evidence, so also, the judgment delivered by the Sessions Court. Case is solely based on circumstantial evidence.

6. PW 1 Dr. Vijaykumar Rohidas Sul has opined that injury found on the head of the deceased was possible by jack. He also admitted that, it may be possible by fall. He has not opined that death of the deceased was homicidal. Case of the prosecution is that, on 20.7.2010 deceased had reached the office of accused No. 5 where Prakash More and S.T.Gaikwad were present, and at that time accused Rajendra Bharti had introduced the witnesses to the deceased in the home and thereafter, left the office. There is

absolutely no evidence worth the name to show that accused no.5 left the deceased in the custody of accused nos. 1 to 4. None of the witnesses have even deposed that they and so also accused nos. 1 to 4 had been to Beed and more particularly in the vicinity of accused no.5. In absence of any evidence in that regard, chain is missing. It has been observed by the Sessions Court that, even if, it is assumed that, deceased was traveling with four persons in Safari jeep it is nowhere proved that accused nos. 1 to 4 were the only said four persons traveling in the said Safari Jeep. Evidence of Investigating Officer shows that he had collected evidence, but not a single document is proved to show that phone numbers referred in the prosecution case were used by the deceased or his wife while traveling from Beed to Mumbai. The evidence is there about relation of accused no.5 with PW 5. However, PW 5 and wife of deceased have deposed that it is accused no.5 who had borne all educational expenses of the nursing course of P.W. 5. Accused no.5 had taken all pains to see that wife of the deceased Chhaya gets her lost job. These facts are accepted by the wife of the deceased and P.W. 5. There is no evidence to even remotely suggest that accused no.5 had entered into criminal conspiracy with accused nos. 1 to 4.

7. When the case of the prosecution is based on circumstantial evidence, then, in such a case, chain should be so complete that not a single chain is missing. In the present case, there is nothing on record to suggest that accused no.5 left deceased with accused nos. 1 to 4 and that accused nos. 1 to 4 were traveling in the Safari Jeep and that, it is a case of homicidal death.

8. Considering the aforesaid aspects of the matter, Sessions Court has taken a plausible view. In light of that, Criminal Appeals are dismissed.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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