

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

Criminal Application No. 1729 of 2014

The State of Maharashtra,
Through Police Station, Pimpaldari,
District : Parbhani.

.. Applicant
(Original complainant)

versus

1. Pralhad s/o. Suresh Jadhav,
Age : 35 years,
Occupation : Labour,
R/o. Ranisawgaon,
District : Parbhani.

2. Vaishali @ Vidya w/o. Pralhad Jadhav,
Age : 30 years,
Occupation : Household,
R/o. as above.

.. Respondents
(Original accused)

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*Mrs. M.B. Gangwal (Patni), Additional Public Prosecutor,
for the applicant - State.*

Mr. P.D. Bhosale, Advocate, for respondent nos.1 and 2.

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

**Date of reserving the
Order : 30th January 2015.**

**Date of pronouncing the
Order : 04th February 2015.**

ORDER *(Per A.M. Badar, J.)* :

1. This is an application under Section 378(1)(3) of the Code of Criminal Procedure, 1973, by the State, praying for leave to file appeal challenging the judgment and order dated 18-12-2013, passed by the Additional Sessions Judge, Gangakhed, in Sessions Trial No. 34/2012, thereby acquitting both the respondents / accused of the offences punishable under Sections 364, 302 and 201, read with Section 34 of Indian Penal Code, 1860.

2. The facts, in brief, are thus :

Respondent no.1 - Pralhad s/o. Suresh Jadhav is husband of respondent no.2 - Vaishali @ Vidya Jadhav. The informant PW 1 Balasaheb s/o. Suresh Jadhav is his brother. PW 2 Jyoti is wife of informant PW 1 Balasaheb. Deceased Master Vinayak, aged about 1½ years, was son of the informant PW 1 Balasaheb and PW 2 Jyoti.

According to the prosecution case, initially informant PW 1 Balasaheb and respondent - accused no.1 Pralhad were residing jointly. Subsequently, they separated and respondents / accused started residing separately. Both brothers viz. respondent no.1 Pralhad and informant PW 1 Balasaheb were owning a she-buffalo. On 26-3-2012, there was quarrel between sisters-in-law viz. respondent / accused no.2 Vaishali @ Vidya and PW 2 Jyoti over the issue of feeding, maintaining and milking the she-buffalo, as well as removal of dung. In the quarrel, it is alleged that the respondent / accused no.2 Vaishali @ Vidya threatened to kill son of PW 2

Jyoti. Thereafter, on 27-3-2012, Master Vinayak was reported missing at about 2.30 p.m. On 28-3-2012, missing report came to be filed by Madhav s/o. Namdev Jadhav - relative of respondents and prosecuting party. On 29-3-2012, dead body of Master Vinayak was found by PW 6 - Sushilabai w/o. Ramesh Jadhav, hidden in a bag lying on the heap of manure. The matter was then reported to Police. On 29-3-2012 itself, informant PW 1 Balasaheb lodged report suspecting murder of his son Master Vinayak who was then aged about 1½ years. Accordingly, Crime No. 19/12 under Sections 364, 302 and 201 of the Indian Penal Code came to be registered at Police Station, Pimpaldari, District : Parbhani.

During investigation, the spot was inspected. Dog squad was summoned, spot Panchanama came to be recorded. Clothes on the person of dead body as well as a bag in which the dead body was found, came to be seized. Post mortem examination of dead body was conducted. Upon investigation, the Investigating Officer came to the conclusion that the respondents, in furtherance of their common intention, kidnapped Master Vinayak and committed his murder. He further concluded that both the accused persons, in order to screen themselves, burnt T.V. cartoon in which dead body of Master Vinayak was kept; in order to cause disappearance of evidence of offence of murder.

3. The trial commenced by explaining charges for the offences punishable under Sections 364, 302 and 201 read with Section 34 of the Indian Penal Code, to both respondents / accused by the learned Ad hoc Additional Sessions Judge, Gangakhed. As both respondents / accused pleaded not guilty, the prosecution, in order to prove the offences allegedly

committed by the respondents / accused, has examined as many as 11 witnesses. After hearing the parties, learned Additional Sessions Judge, Gangakhed, by the impugned judgment and order dated 18-12-2013, in Sessions Trial No. 34/2012, was pleased to acquit respondents / accused of the offences punishable under Sections 364, 302 and 201, read with Section 34 of the Indian Penal Code, 1860.

4. We heard the learned Additional Public Prosecutor appearing for the applicant - State. The learned Additional Public Prosecutor vehemently argued that the prosecution has proved the offences alleged by adducing evidence on record, to prove each and every circumstance which cumulatively gives the sole hypothesis of guilt of respondents / accused persons. According to the learned Additional Public Prosecutor, evidence of PW 1 Balasaheb and PW 2 Jyoti, coupled with dog tracking evidence, is sufficient to hold that both accused persons had committed murder of Master Vinayak after kidnapping him and destroyed evidence of that offence.

5. Per contra, according to the learned defence Counsel, in this case of circumstantial evidence, the prosecution has failed to prove motive. Similarly, the chain of circumstances is also not fully established by the prosecution and, therefore, the view taken by the learned trial court is perfectly correct and needs no interference.

6. With the assistance of the learned Counsel appearing for the parties, we have minutely perused the record and proceedings, including deposition of witnesses and the documentary evidence placed on record.

7. After finding of dead body of Master Vinayak on 29-3-2012, inquest memorandum Exhibit 36 was prepared and it was sent for autopsy. PW 9 Dr. Suresh Gingine, an Autopsy Surgeon, upon post mortem examination, came to the conclusion that Master Vinayak died due to '*asphyxia consequent to manual strangulation*'. The post mortem report at Exhibit 66 corroborates the version of PW 9 Dr. Suresh Gingine. As such, the prosecution has proved that Master Vinayak died homicidal death.

8. The motive for killing nephew Master Vinayak, attributed to the respondents - accused, is domestic quarrel between sisters-in-law viz. accused no.2 Vaishali @ Vidya and PW 2 Jyoti over maintenance of she-buffalo jointly owned by both the families.

9. In a case relating to circumstantial evidence, proof of motive assumes importance in inferring guilt of accused persons. No doubt, even without proof of motive, the prosecution can certainly establish guilt of accused persons by adducing cogent and trustworthy evidence establishing chain of circumstances which must unerringly establish that none else but accused persons had committed the crime in question. As the motive plays important role in cases relating to circumstantial evidence, let us examine whether the prosecution has established motive with accused persons who are none else but uncle and aunt of deceased Master Vinayak.

10. For proof of motive, the prosecution has relied on evidence of PW 3 Shantabai, PW 4 Rekha, and PW 6 Sushilabai. In cross

examination, PW 3 Shantabai and PW 4 Rekha have categorically stated that so called quarrel between accused no.2 Vaishali @ Vidya and PW 2 Jyoti had not taken place in their presence. PW 6 Sushilabai, in her cross examination, has stated that it was father-in-law of respondent - accused no.2 Vaishali @ Vidya, and PW 2 Jyoti, who used to feed the she-buffalo and carry its milk for sale. She further stated that PW 2 Jyoti neither used to milk the she-buffalo now used to feed it. In the wake of this evidence, particularly when PW 2 Jyoti was not doing any work relating to the maintenance of she-buffalo, it is hard to believe the prosecution case that there was domestic quarrel between accused Vaishali @ Vidya and PW 2 Jyoti, over maintenance of the she-buffalo impelling respondent - accused Vaishali @ Vidya and her husband Pralhad to eliminate Master Vinayak. As such, in our view, the learned trial court was right in holding that motive attributed to accused persons is not proved by the prosecution.

11. Though PW 2 Jyoti has deposed that on the day on which dead body of her son Master Vinayak was found, she saw respondent - accused no.2 Vaishali @ Vidya taking down a bag of fertilizer from the terrace, but PW 2 Jyoti; while in the witness box, she has not identified the seized bag in which dead body of Master Vinayak was found to be a bag allegedly carried by respondent - accused no.2 Vaishali @ Vidya from the terrace. As such, it cannot be said that the bag in which dead body of Master Vinayak was found, was the same bag which was handled by respondent - accused no.2 Vaishali @ Vidya, soon before finding of dead body of Master Vinayak. Thus this circumstance is not proved by the prosecution.

12. The prosecution has also relied on dog tracking evidence. PW 11 Madhav Pandharinath Ghuge, PSI, who investigated the crime, has stated in his evidence, that dog squad was called and after smelling the bag in which the dead body was found as well as nicker of deceased Master Vinayak, the dog went to the house of respondents / accused and even up to terrace of that house. The prosecution has not examined handler of the dog nor the report of dog tracking was proved. Cross examination of PW 2 Jyoti shows that the dog had even gone in the house of PW 4 Rekha, PW 6 Sushilabai and others. It is well settled, that evidence regarding tracking by a dog is a very weak piece of evidence. In the case in hand, evidence on record shows that the dog has not only pointed out the house of respondents - accused, but some other houses also. The deceased - Master Vinayak was nephew of respondents - accused and, as such, no overbearing importance can be given to such evidence.

13. The prosecution has also relied on evidence of conduct of respondent - accused no.2 Vaishali @ Vidya to demonstrate that she was under fear during the days when Master Vinayak went missing. However, that evidence is also sketchy and insufficient to infer culpability of the respondents / accused persons. At this juncture, it is worthwhile to note that it was on 28-3-2012, relatives of informant PW 1 Balasaheb lodged report of missing of Master Vinayak. That report is at Exhibit 33. It is not pointing finger of suspicion to anybody including respondents / accused. Upon finding dead body of Master Vinayak on 29-3-2012, his father PW 1 Balasaheb lodged FIR which is at Exhibit 32. In this FIR also, PW 1 Balasaheb has not suspected anybody in kidnapping or murdering his minor son Master Vinayak. If really there was quarrel between

respondents / accused no.2 Vaishali @ Vidya, and wife of PW 1 Balasaheb, in which a threat of murder of Master Vinayak was allegedly extended, then this fact ought to have been reflected in the missing report Exhibit 33 as well as FIR Exhibit 32. Absence of suspicion against respondents / accused in the FIR at Exhibit 32 lodged after finding of dead body of Master Vinayak, is a circumstance which creates doubt in the prosecution case.

14. Similarly, evidence regarding alleged burning and destroying T.V. Cartoon, in order to screen themselves from punishment of offences alleged by accused persons, is also untrustworthy and unreliable. There was no bleeding injury found on the dead body and as such, the question of having stains of blood on T.V. Cartoon does not arise. Moreover, when the prosecution has failed to prove that those were respondents - accused who murdered Master Vinayak, the offence punishable under Section 201, read with Section 34 of the Indian Penal Code cannot be said to be proved against them.

15. Upon re-appreciation of the entire prosecution evidence, in order to ascertain whether any of the accused persons is proved to have committed any offence, or not, we are of the considered view that the prosecution has failed to prove offences alleged against the respondents - accused. As such, there are neither compelling nor substantial reasons for taking other view then the view taken by the learned trial court, in acquitting the respondents - accused of the charges levelled against them. Plausible view is taken by the learned trial court upon considering the evidence on record and, therefore, present Application deserves to be

rejected.

16. Accordingly, the Criminal Application is rejected.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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