

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, orders or Registrar's	Court's or Judge's orders.
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CRIMINAL APPLICATION NO. 4556 OF 2014
IN APPLN/4555/2014

THE STATE OF MAHARASHTRA
VERSUS
MOHAN SHANKAR DHERE AND OTHERS

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APP for Applicant : Mr. B. L. Dhus.
Advocate for Respondent No.1: Mr. Mahesh B. Bharaswadkar.
Advocate for Respondent No.2 Mr. S. S. Jadhavar.
Advocate for Respondent No.3: Mr. M. R. Sonawane,
Advocate for Respondent Nos.4 to 6: Mr. U. S. Malte.

CORAM: T. V. NALAWADE &
SMT. I. K. JAIN, JJ.
DATED: 24th MARCH, 2015.

PER COURT:

1. The application is filed for grant of leave to file appeal against judgment and order of acquittal in Case No. 192 of 2006. The judgment of acquittal is given by learned Additional Sessions Judge, Ahmednagar in a case filed for offence punishable under section 302 and 34 of I.P.C. and 3 (i) (x) etc. of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. Learned A.P.P. is

heard. Some hearing was given to learned counsel for Respondents also.

2. It is a case of custodial death. As per the case of the prosecution the deceased Vilas Gawade, Cook working in Bajrang Hotel was taken in custody by officers of Forest Department like Mohan Shankar Dhere and he was kept in the Forest custody on 29th July, 2003 after 03.00 p.m. On 30th July, 2013 Vilas Gawate was shifted to civil hospital as the officers felt that he had become unconscious. He was already dead and so no treatment was required to be given to Gawade in the government hospital.

3. Postmortem examination was conducted on the death body and the P.M. report shows that as many as 5 external injuries were found on the dead body which included circular abraded contusion on scalp in middle of occipital region slightly to the left having diameter of 2.5 c.m. This injury had caused haematoma under scalp at fronto parietal region. There was linear midline vertical fracture extending from mid point of the frontal bone to occipital bone (mid point) of 16 c.m. of length. The other injuries were on other parts of the body which included limbs. The death took place due to head injury.

During investigation specific information was obtained as to whether such injuries are possible during accidental fall. Doctor had given opinion that such injuries cannot be caused due to accidental fall.

4. In respect of aforesaid record the learned Additional Sessions Judge has held that the evidence is not sufficient to prove homicidal death. The circumstances that the medical officer who conducted the postmortem examination was not available is considered against the prosecution even when the postmortem report was duly proved in the evidence of other medical officer.

5. It appears that the trial Court has lost sight of the circumstance that it is a custodial death and the homicide was committed when the deceased was in forest custody. There is a record like arrest record, the A.D. Report etc. showing that the deceased was under the control of the two forest employees like Respondent Nos.1 and 2. The other respondents are employees of the hotel and the owner of the hotel where the deceased was working. They were also present in the same room on that night. Apparently whatever happened on that night must have happened in the presence of these persons but they did not come forward to give report

and it is brother of the deceased who was required to approach the police to raise grievance about the murder of his brother. A poor person from scheduled caste community died in custody and the aforesaid observations are made when no plausible explanation has come from the other side. There is very good arguable case for the State in appeal. Leave is granted.

6. Appeal is admitted.

7. Comply with the provisions of Section 390 Cr.P.Code.

[SMT. I. K. JAIN, J.] [T. V. NALAWADE, J.]

Dt.24/03/2015

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