

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 282 OF 2003

Sayed Pasha s/o. Wazir Patwari,
Age 35 years, Occu. Business,
R/o. Lohara, Tq. Lohara,
Dist. Osmanabad.

....Appellant.

Versus

1. The State of Maharashtra
2. Imam Jafar Hajisab Hiparge,
Age 56 years, Occu. Lohara,
Tq. Omerga, Dist. Osmanabad.
3. Shivayya Revayya Swami,
Age 48 years, Occu. As above.
4. Harshad Sudam Nalvade,
Age 30 years, Occu. As above.
5. Munna Karimsab Attar,
Age 31 years, Occu. As above.
6. Vinayak Saudagar Ghodake,
Age 31 years, Occu. As above.
7. Sadashavi Baburao Ghogare,
Age 28 years, Occu. As above.
8. Kishor Mallikarjun Mashaikar,
Age 31 years, Occu. As above.

....Respondents.

Mr. R.P. Bhumkar, Advocate for appellant.

Mr. A.P. Yengure, Advocate for respondent Nos. 3 to 8.

Mrs. R.K. Ladda, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 3rd August, 2015.

JUDGMENT :

1) The appeal is filed against the judgment and order of Sessions Case No. 73/2000, which was pending in the Court of Additional Sessions Judge, Osmanabad. The trial Court has acquitted the respondents of the offences punishable under sections 306, 342 r/w. 34 of Indian Penal Code. Both the sides are heard.

2) Deceased Samad was real brother of appellant Sayed Pasha. Deceased was in the business of selling lottery tickets and accused No. 1 is dealer of lottery tickets. Accused No. 1 had suspicion that deceased had committed theft of lottery tickets from his shop and so, on 27.10.1996 he and other accused visited the shop of appellant. Accused No. 1 expressed suspicion to the appellant and in presence of complainant search of the house of the appellant was taken by the accused. During search, some lottery tickets were recovered from the house and after that, the accused left the place. The dead body of the deceased was found in hanging condition in the godown of Mallikarjun on 28.10.1996.

3) Mallikarjun gave report and report of Mallikarjun was

treated as F.I.R., and the appellant gave statement to police on 4.11.1996. Post mortem came to be conducted and doctor gave opinion that it was a case of suicide. On the request made by the appellant, second post mortem was conducted, but the opinion remained the same. The complainant gave statement against the respondents on 4.11.1996. During investigation, Mansoor Shaikh, brother in law of the deceased gave statement on 30.1.1997. After completion of investigation, chargesheet came to be filed.

4) In the trial Court, the prosecution relied mainly on the evidence of appellant Sayad Pasha (PW 1) and Mansoor Shaikh (PW 2). The evidence of Sayad Pasha shows that after taking search of his place, the accused left his house and after that he had not seen the accused in the company of deceased and deceased had not said that he was proceeding to meet the accused. Mansoor Shaikh (PW 2) has given evidence that on 27.10.1996 he had seen the accused No. 1 in the company of deceased, but that was about 4.00 pm. After 4.00 p.m. the search of the house of Sayad Pasha (PW 1) was taken, at about 7.00 p.m. and so, the evidence of PW 2 is of no use to show that he had seen the deceased in the company of accused lastly. There is virtually nothing to show that anybody had seen any of

the accused taking the deceased with him after 7.00 p.m. on 27.10.1996. There is nothing on the record to show as to what happened on the night between 27.10.1996 and 28.10.1996. The place belongs to Mallikarjun, but he has also no clue about it.

5) The learned counsel for appellant submitted that there are many suspicious circumstances in the case. He took this Court through spot panchanama, Exh. 51. He submitted that the distance between the place where the ligature material was tied and floor was not much and the dead body was first noticed in a condition that legs of the dead body were very much touching the floor and so, it is not possible to infer that it is a case of suicide. This Court has carefully gone through the contents of the spot panchanama. The height of beam where the ligature material was tied was 8.4 fts. from the floor of the room. Though, it is true that the legs were touching the floor, this circumstance was there when police reached the spot. In such cases, the guess work is not possible. There is positive medical opinion that the death took place due to hanging.

6) The learned counsel for appellant drew the attention of this Court to some injuries which were found on the other

parts of the body. He showed to this Court that injury was found on scrotum also. Though there were some injuries on the limbs and other parts of the body, inference is not possible that it is the accused who had caused the injuries.

7) The learned counsel for the appellant submitted that there is possibility that murder was committed and the dead body was hanged. The said proposition cannot be accepted on the basis of evidence available. This Court holds that the trial Court has not committed any error in acquitting all the accused of the aforesaid offences. There is no reason to interfere in the decision.

8) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/