

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4342 OF 2013

The State of Maharashtra,
Through PSO Police Station,
Nanalpeth, Parbhani ..Applicant

Versus

- 1] Sk. Amim Sk. Maheboob,
Age 55 years, Occ. Service,
R/o. Swachhchata Colony,
Parbhani
- 2] Govind Krushnaji Kumbhojkar,
Age 51 years, occ. Service,
R/o. Sadguru Nagar, Parbhani
- 3] Vitthal Vyenkatrao Mahadar,
Age 52 years, Occ. Service,
R/o. Beleshwar Nagar,
Parbhani ..Respondents

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Mr.R.P.Phatake, APP for applicant – State

Mr.S.V.Mundhe, advocate for respondent nos.1 to 3

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CORAM : M.T. JOSHI, J.
DATE : JUNE 30, 2015

PER COURT :

Heard both sides.

2] Leave to file appeal is hereby granted. The application for grant of leave to file appeal, stands allowed. The appeal be registered.

3] The appeal is hereby admitted. Mr.Mundhe, learned counsel waives notice for the respondents.

4] By consent of the parties, the appeal is taken up for final hearing.

5] Present respondents were acquitted by learned 7th Judicial Magistrate F.C., Parbhani in S.C.C. No.92 of 2012 from the offence punishable under Section 304-A of Indian Penal Code.

6] The prosecution case, in short, was that, present respondents were employees of M.S.E.D.C.L. and one Gayasoddin, was the Lineman. On 26th September, 2011, the respondents and said

Gayasoddin made deceased – Imran, who was labour, to climb the electric pole and disconnect the electricity supply of the defaulter customers. The electricity supply to the said pole, however, was not switched off and therefore, deceased – Imran was electrocuted and died. Thereafter, all the respondents had fled away from the spot of occurrence.

7] The record would show that learned Judicial Magistrate F.C. held that the complaint was based on hearsay information.

8] As regards the eye witnesses i.e. Badar Chaus and others, it appears that they were served with summons. The record would further show that as learned Judicial Magistrate F.C. was on tour, said eye witnesses were discharged and thereafter, fresh summons were issued to them. However, since fresh summons were not served on the said eye

witnesses, learned Judicial Magistrate F.C. has closed the evidence and for want of evidence, acquitted the present respondents.

9] The material on record would show that the case was not that much old, which might have constrained learned Judicial Magistrate F.C. to close the case. Even sufficient efforts for service of summons on the eye witnesses were not made. Learned A.P.P. ought to have tried to brought the said fact to the notice of learned Judicial Magistrate F.C. when he ordered closure of the evidence without examining the eye witnesses.

10] In that view of the matter, I am compelled to remand the case for decision afresh on merit. At the same time, it is duty of the prosecution to secure presence of the witnesses in the Court and mere statement that the summons were not served,

would not be enough when the summons serving agency is with the State.

11] Hence, the following order :-

A] Criminal Appeal is, therefore allowed.

B] The judgment and order dated 16th May, 2013 passed by learned 7th Judicial Magistrate F.C., Parbhani in S.C.C. No.92 of 2012, is quashed and set aside.

C] Instead, concerned learned Judicial Magistrate F.C. is directed to issue summons to the concerned witnesses afresh and thereafter to conclude the trial.

D] The State is directed to make endeavour for service of the summons on the concerned witnesses and to see that the witnesses would be examined

within a period of six months from the date of appearance of the parties before learned Judicial Magistrate F.C.

E] Upon recording of the evidence, learned Judicial Magistrate F.C. shall hear the parties and decide the case on merit.

F] Parties are directed to appear before the concerned learned Judicial Magistrate F.C. on 12th August, 2015.

G] Parties to act upon authenticated copy of this order.

[M.T. JOSHI, J.]