

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

CRIMINAL APPLICATION NO. 5670 OF 2013

THE STATE OF MAHARASHTRA. ... **APPLIICANT.**

VERSUS

SHARANBASAPPA APANNA MARPALLI. ... **RESPONDENT.**

...
APP for Applicant/State : Mrs.S.G. Chincholkar.
Advocate for Respondent : Mr.Wakure Sanjay A.
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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: 17th February, 2015.

COURT ORDER: (Per Badar,J)

1. By this application, the State is seeking leave to challenge the judgment and order dated 3.8.2013 passed by the Sessions Judge, Osmanabad in Sessions Case No.3/2012 thereby acquitting the respondent - accused of the offences punishable under Sections 302 and 201 of the Indian Penal Code.

2. Heard learned APP for the State. She vehemently argued that the evidence of the prosecution is sufficient to

come to the conclusion that respondent – accused had committed murder of Basavraj Vanale and having knowledge that murder of Basavraj has been committed, with an intention to screen himself from legal punishment, he destroyed evidence of commission of that offence. According to the learned APP, evidence of P.W.5 Gundappa Vanale shows that his deceased son Basavraj was lastly seen in the company of the respondent – accused. Forensic evidence led by the prosecution also supports the prosecution case as human blood of “O” group was found in the Cabin of the truck driven by the respondent – accused.

3. Per contra, according to the learned Counsel for the respondent – accused, evidence adduced by the prosecution is not sufficient to infer guilt of the accused in this serious offence as the chain forming the circumstantial evidence is not complete. According to the learned Counsel for the respondent – accused, by proving some of the circumstances, guilt of the accused cannot be established.

4. With the assistance of the learned Counsel for both the parties, we have perused the record & proceedings

including deposition of the witnesses as well as documentary evidence adduced by the prosecution. The charge levelled against the respondent is that on 18.6.2011 at *Dhangarwadi Paati* on National High Way No.9 within the jurisdiction of Naldurga he committed murder of deceased Basavraj Gundappa Vanale, by intentionally or knowingly causing his death by assaulting him by means of tommy. The another charge is to the effect of destroying evidence of this crime by concealing the dead body in the Cabin of truck driven by respondent – accused.

5. We may note few facts leading to prosecution of the accused. According not the prosecution case, on 18.6.2011, accused Sharanbasappa Apanna Marpalli was driving the truck bearing registration No.AP-29/T-5090 from Hyderabad to Pune. It is case of the prosecution that P.W.14 Jayprakash Manik was also traveling by the truck with respondent – accused. That truck gave dash to the Indica Car driven by P.W.3 Sarafraj Usufali Jamadar causing quarrel between P.W.3 Sarafraj and respondent – accused. P.W.8 Mahadeo Birajdar Assistant Police Inspector was on patrolling duty. He noticed the quarrel

between accused and P.W.3 Sarafraj and intervened. According to the prosecution case, P.W.8 Birajdar, A.P.I. Suspected behaviour of the respondent – accused and ordered driver of his jeep to search truck. During that search, dead body of Basavraj was found wrapped in a blanket, concealed in the cabin of the truck. P.W.8 Birajdar, A.P.I. then lodged report leading to registration of crime and on completion of routine investigation, accused was charge-sheeted.

6. During course of the trial, prosecution has examined as many as 17 witnesses including alleged eye witness P.W.14 Jayprakash. The entire case of the prosecution, leaving apart evidence of P.W.14 Jayprakash, is based on circumstantial evidence. In a case where evidence is circumstantial in nature, the circumstances from which conclusion of guilt is required to be drawn, need to be established firmly and cogently. All facts so proved should be consistent with the sole hypothesis of guilt of the accused and inconsistent with his innocence. Last seen theory is also propounded by the prosecution by contending that P.W.5 Gundappa Vanale – father of the deceased Basavraj

had seen respondent – accused and deceased Basavraj alive and thereafter, Basavraj was found dead. This theory comes into play with the time gap between the accused and deceased when lastly seen alive and when the deceased was found dead is so small that in all probability, any person other than accused committing crime becomes impossible.

7. Keeping in mind these principles, let us examine whether the view taken by the learned Sessions Judge in acquitting respondent – accused is a possible view or the same appears to be a perverse one, requiring interference.

8. At the outset, it needs to be noted that P.W.14 Jayprakash, who is alleged eye witness in this case, has turned hostile. Despite searching cross-examination by the learned APP, nothing has come on record from his evidence which may incriminate respondent – accused. It may also be noted that this witness was detained for three days by police and then his statement u/s 164 of Cr.P.C. came to be recorded. Suffice it to say that evidence of this witness is of no use to the prosecution.

9. Then comes evidence of P.W.5 Gundappa Vanale – father of the deceased Basavraj. He deposed that on 17.6.2011, accompanied by him, deceased Basavraj went to National Highway and from a place known as Sastapur Bangala, deceased Basavraj boarded the truck bearing Number APT-5090. P.W.5 Gundappa was not knowing respondent – accused and had not identified him. The reason for noting the number of the truck in which Basavraj traveled has not come on record from evidence of this witness. He seems to be an agriculturist. During cross-examination, he was unable to point out registration number of the bus in which he traveled to Osmanabad for adducing evidence. In the light of these facts, the learned Sessions Judge has not believed his evidence and we see no illegality in such appreciation of evidence by the learned Sessions Judge.

10. The next circumstance relied by the prosecution is finding of human blood in the cabin of the truck driven by the respondent – accused. Sample of the blood from the cabin of the truck came to be seized and C.A. report shows that human blood was detected in this sample. As against

this, there is evidence on record coming from mouth of P.W.3 Sarafraj to the effect that dead body was lying on the road and respondent – accused took a sudden right turn in order to save that person who he thought was an injured one. Due to this the truck gave dash to the Indica car. With this evidence, it is hard to believe that the dead body was found in the cabin of the truck. The theory of extra-judicial confession allegedly made by respondent – accused to P.W.3 Sarafraj is totally absurd. According to the prosecution case, respondent – accused and P.W.3 Sarafraj were quarreling because of dash by truck of respondent – accused to the Indica car of P.W.3 Sarafraj. In such circumstances, one cannot believe that during the course of that quarrel, respondent – accused will confess commission of murder to the person with whom he was quarreling at that time.

11. The learned Sessions Judge, upon inspecting alleged weapon of offence, gave finding that the incident in question cannot happen in the cabin of the truck as it is not possible to hit a person with the tommy of such a length in a small place like cabin of the truck. This view cannot be said to be

unreasonable or impossible.

12. Rest of the witnesses examined by the prosecution, except departmental witnesses, turned hostile. As such, though evidence of P.W.1 Dr.Rahul Khandekar shows that Basavraj died homicidal death because of head injury with evidence of alcohol consumption. Respondent - accused cannot be held liable for this homicidal death as the evidence adduced by the prosecution is laconic and is not forming the chain so complete in order to infer that it was the respondent – accused and nobody else who must have committed this crime.

13. As such, we find that the view taken by the learned Sessions Judge, Osmanabad is a possible view in the matter and therefore, the order:

: ORDER :

Application is rejected.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)