

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 189 OF 2014

Subhash Dattatray Jalgire & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr. Manoj Mohite i/b Amit M. Shete, Advocate for the applicants
Mr. V.B. Konde-Deshmukh, APP for the respondent-State.
Mr. D. B. Nighot, P.I. (I.O.) Solapur Police Stn. - present.

CORAM:-M.L. TAHALIYANI,J.
DATED : -24/02/2015

P.C.

Heard the learned counsel for the applicants and
learned APP for the respondent State.

2 The applicants impugn the order passed by the learned
Addl. Sessions Judge, Pandharpur, in Sessions Case No. 15/2009,
directing that the applicants and Murlidhar Maruti Jundale be
impleaded as accused in the said sessions case.

3 In this regard it may be mentioned here that the
accused namely Rekha Kamble, her husband Laxman Kamble and

their son Sharad Kamble are facing trial for the offence punishable u/s 302 r/w 34 of IPC, for having committed murder of deceased Ankush Jundhale on the ground that the deceased had illicit relations with the accused Rekha. It is in the pending charge-sheet against these accused that the names of applicants have been added as accused u/s 319 of Cr. P.C. The applicants are, therefore, aggrieved by the order of the learned trial Judge. As far as the original three accused named herein above are concerned, the case of prosecution is based on the evidence of none else than Mrs. Jyoti Shinde, daughter of accused Rekha and Laxman Kamble.

4 Before I proceed further, it may be noted here that the dead body of the deceased was found lying in the agricultural field of the deceased. It was first spotted by his father, who lodged the complaint against the applicants and one Murlidhar Maruti Jundhale. During the course of investigation of the said FIR, statements of two witnesses namely Uttam Jundhale and Babasaheb Jundhale were recorded. In the meantime, statement of Jyoti Shinde, daughter of accused Rekha and accused Laxman was recorded. Since Jyoti has made specific allegations against her

parents and brother, the police did not proceed against the persons named in the FIR. There is one more story to be described here, which was based on the statement of Rekha recorded by police immediately after the incident. The accused Rekha (Before she was made accused) in her statement before the police had stated that one Satish Ghule and Nandu Gaikwad had come to her house and they had taken away the deceased Ankush Jundhale with them. It was also stated by her in her statement that Nandu Gaikwad said that Ankush Jundhale had 'gone' and that now Rekha would have to maintain relations with Nandu Gaikwad. On the basis of this statement of Rekha, Satish Ghule and Nandu Gaikwad were also arrested. However, the investigation revealed that Satish Ghule and Nandu Gaikwad had nothing to do with the death of the deceased. They were, therefore, discharged by the police u/s 169 of Cr. P.C.

5 As already stated, charge-sheet had been filed against Rekha Kamble, her husband Laxman Kamble and her son Sharad Kamble. The learned trial Judge framed charge against the three accused and proceeded further. During the course of recording of evidence, Testimony of Uttam Jundhale was recorded by the judge.

Uttam Jundhale had named the applicants and Murlidhar to be the persons who assaulted the deceased. It is on the basis of this testimony of Uttam Jundhale, that the learned public prosecutor made an application u/s 319 of Cr. P.C., to add the applicants and Murlidhar as accused in the pending charge-sheet. The said application was allowed. It is this order which is being challenged in the present revision application by the applicants. At this stage, it may be mentioned here that applicant Murlidhar Maruti Jundhale is dead and, therefore, there are only six applicants before this Court.

6 The learned counsel Mr. Mohite has submitted that after filing of the charge-sheet against Rekha, her husband and her son, the father of deceased had moved this Court by way of filing a writ petition seeking further investigation of the case and accordingly further investigation was taken up. During the course of further investigation, statement of Uttam Jundhale and Babasaheb Jundhale were recorded. However, the police came to the conclusion that their statements were not reliable and were inconsistent to the four investigations carried out by the police earlier. Therefore, further report u/s 173(8) of Cr. P.C. was

submitted before the learned trial Judge stating *inter alia* that no case could be made out against the persons named by father of the deceased. The grievance of the applicants is that despite this report of police, the learned prosecutor has chosen to examine Uttam Jundhale as prosecution witness. It is submitted by Mr. Mohite that, even if, the applicants are added as accused in the pending sessions case, it will be impossible for the prosecution to reconcile the whole case as the two stories are totally different and cannot be reconciled in any manner.

7 The learned Addl. PP Mr. Konde-Deshmukh, has supported the view expressed by the learned counsel Mr. Mohite. The learned Addl. PP has submitted that the investigating officer is of the view that the alleged murder was committed by Rekha, her husband Laxman and their son Sharad. The application was made by the learned public prosecutor without instructions from the investigating officer.

8 After having examined the prosecution case and the evidence of Uttam Jundhale, it is very apparent that the evidence of Uttam Jundhale does not in any manner support the charge framed

by the learned Judge against the three accused namely Rekha, Laxman and Sharad. It is not clear from the order as to how the learned Judge is going to frame a fresh charge there being two divergent stories against the existing accused and newly added accused. It is also strange that the learned public prosecutor should have chosen to make such an application which may prove to be detrimental to the prosecution case itself.

9 In my opinion, learned sessions Judge should not have granted the application filed by the prosecution, in view of the chequered history of the case described by me herein above. The order passed by the learned trial Judge, in my view, cannot be sustained. In addition to this, it also needs to be mentioned here that the complainant/father of the deceased, has also in his further statement dated 17th March, 2009 withdrawn the allegations against the applicants.

10 For all these reasons, revision application is allowed. The order passed by the learned Addl. Sessions Judge, directing impleadment of the applicants as accused in Sessions Case No. 15/2009, is set aside.

11 Revision application stands disposed of accordingly.

(JUDGE)

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