

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

CRIMINAL APPLICATION NO.762 OF 2015

The State of Maharashtra,
through Police Station Officer,
Police Station, Ashti,
Tq. Ashti, Dist. Beed ..Applicant

Vs.

1. Ankush s/o. Bhimrao Jagtap,
Age 35 years, Occ. Driver,
r/o. Kapsi, Tq. Ashti,
Dist. Beed
2. Mahadev s/o. Baburao Garje,
Age 35 years, Occ. and
r/o. As above
3. Jalindar s/o. Vitthal Golhar,
Age 32 years, Occ. and
r/o. As above
4. Dadasaheb @ Mhatardeo s/o.
Uttam Golhar, Age 29 years,
Occu. Agri., r/o. Bavi,
Tq. Ashti, Dist. Beed ..Respondents

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Mr.S.W.Mundhe, Advocate for appellant

Mr.T.M.Tandale, Advocate for respondent nos.1, 3
and 4

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : OCTOBER 18, 2016
PRONOUNCED ON : OCTOBER, 2016**

ORDER (PER SANGITRAO S. PATIL, J) :

Heard the learned A.P.P. for the applicant. Perused the statements of the witnesses and the judgment in question, whereby the respondents have been acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code ("I.P.C.", for short)

2. Admittedly, the case is depending on circumstantial evidence. The only circumstance sought to be relied on by the applicant/prosecution is about seeing the deceased Pandit Shinde lastly in the company of the respondents.

3. The deceased Pandit was working as a driver with a transport company. In the fateful night of the incident, he was driving a truck loaded with the goods from Essar Steel Company at Sanaswadi, District Pune to Latur. He had left the said Company with the loaded truck at about 10:00 p.m. on 28.12.2012. He was supposed to reach Latur

on the next day. However, his whereabouts remained unknown till 31.12.2012. He was not responding to the phone calls as well. The truck driven by the deceased Pandit was noticed by one Deepak Sonawane, resident of Sheri (Bk), near Sheri (Bk) - junction on Nagar to Jamkhed road. The doors of cabin of the truck, which was bearing registration number MH-14-CP-6977, were closed. After opening the door of the cabin, the dead body of the deceased Pandit, which was almost decomposed, was found lying therein. Therefore, on the report of the said Deepak Sonawane, crime came to be registered for the offence punishable under Section 302 of the I.P.C.

4. The evidence on record does not show that either of the respondents was with the deceased Pandit when he was driving the above-numbered truck. As such, the theory of last seen, set up by the prosecution was not acceptable and

accordingly, the trial Court has rightly not accepted it.

5. A spanner and iron tommy are stated to have been recovered from the cabin of the truck, which were stained with blood. However, nothing was noticed thereon to connect any of the respondents with those articles. The clothes of the respondents also came to be seized. However, there is no report of the Chemical Analyst to show that the said clothes were stained with the same blood group which was that of the deceased Pandit.

6. The cell phones alleged to be in possession of respondent nos.1 and 4 would not be helpful to the prosecution to connect them with the incident in question for the simple reason that the registered subscribers thereof were some different persons. The prosecution did not examine those subscribers to establish that they had

handed over their cell phones to respondent nos.1 and 4.

7. The goods loaded in the above-numbered truck were not found to have been stolen away. Likewise, nothing was found to have been stolen from the cabin of the truck. As such, murder of the deceased cannot be said to have been committed with a view to commit theft of either the truck or anything that was loaded therein. The prosecution has totally failed to establish the motive on the part of the respondents, which would have prompted them to commit murder of Pandit.

8. The prosecution has failed to establish the complete chain of circumstances to connect the respondents with the incident of death of Pandit. The learned trial Judge has properly and correctly appreciated the facts of the case as well as the evidence on record and rendered the findings of

acquittal of the respondents of the offence punishable under Section 302 of the I.P.C. The judgment sought to be challenged is supported by the evidence on record.

9. In the circumstances, we are not inclined to allow this application seeking leave for filing appeal against acquittal. The application seeking leave to file appeal is, therefore, rejected. It is, accordingly, disposed of.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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