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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.759/2015

Sunil Asaram Bagal,
age 45 yrs., occu.Legal Practitioner,
r/o Vaibha Nagar, Parbhani.
Tq. & Dist.Parbhani.

...Appellant..
Applicant
(Org.complainant)

Versus

- 1] Shankar s/o Chandrakant Gore,
age 45 yrs., occu.labour,
r/o Kumbhar Galli, Osmanabad.
Tq. & Dist.Osmanabad.
- 2] Uday @ Dada Manmath Shete,
age 49 yrs., occu.business,
r/o Samarth Nagar, Osmanabad.
Tq. & Dsit.Osmanabad.
- 3] The State of Maharashtra,
through Police Station Officer,
Osmanabad City Police Station,
Osmanabad. Dist.Osmanabad.

...Respondents..
(Nos.1 & 2 org.accused)

.....

Shri Mahesh P. Kale, Advocate for appellant / applicant.
Shri P.K. Ippar, Advocate h/f Shri K.B. Dhengle, Advocate
for respondent nos.1 & 2.
Shri S.J. Salgare, APP for the State.

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**CORAM: R.M. BORDE &
K.L. WADANE, JJ.**

DATE: 18.04.2016

ORAL JUDGMENT : (Per Wadane, J.)

1] Present appeal is preferred by the original complainant against the judgment and order passed by the learned Sessions Judge, Osmanabad, in Sessions Case No.181/2014 dated 8.7.2015 by which both the accused were acquitted for the offence punishable u/s 302 r/w 34 and 120-B of the Indian Penal Code.

2] The brief facts of the case may be stated as follows:-

a] The informant PW15 Mr.Sunil Bagal is a lawyer by profession. Deceased Chandrashekhar Munde was also a lawyer. The deceased was the brother-in-law of the informant. The deceased Chandrashekar Munde was unmarried and was residing in Munde Lane at Osmanabad. The deceased had 11 Acres of land at village Devalali and there was dispute between the deceased and one Bhagwat Deshmukh and the civil litigation was

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pending before the Court.

b] On 1.7.2014, the informant received a telephone call from his friend Mr.Sudhakar Munde Advocate. He disclosed that Chandrashekhar Munde passed away and his dead body was kept in Civil Hospital, Osmanabad. Accordingly, PW15 Sunil Bagal alongwith his wife and mother-in-law rushed to Osmanabad. He saw the dead body of the deceased Chandrashekhar. There was injury on his neck.

c] On enquiry, the informant came to know that the death of Chandrashekhar was due to throttling. Then the informant also came to know from the neighbours that on 13.6.2016, the deceased had taken drinks in Guru Beer Bar, Osmanabad, at 10-00 p.m. and thereafter he was found in dead condition in a scrapped car in front of Guru Beer Bar.

3] We have heard the arguments of Shri Mahesh P. Kale, Advocate for appellant / applicant; Shri P.K. Ippar, Advocate h/f Shri K.B. Dhengle, Advocate for respondent nos.1 & 2 and Shri S.J. Salgare, APP for the

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State.

4] We have also perused the evidence on record and the reasons recorded by the learned Sessions Judge, Osmanabad. On scrutiny of the same, it appears that in order to bring home the guilt, the prosecution has examined in all 17 witnesses. We have minutely gone through the evidence of each and every witness. From the evidence of PW15 Sunil Bagal – the informant, it reveals that he has no personal knowledge about the actual incident, who assaulted or throttled the neck of the deceased Chandrashekhar. He arrived at Osmanabad only on the information given by one Sudhakar Munde Advocate. To establish the case of the prosecution, the prosecution has examined waiter from Guru Beer Bar and one Pan shopkeeper and his friends. PW6 Sampat Solankar deposed that the deceased Chandrashekhar used to visit Guru Beer Bar. However, rest of the waiters have turned hostile and have not supported the case of the prosecution. One of the customers namely Arjun Deshmukh PW16 has also turned hostile. All the panch witnesses except the panch of the spot panchanama have turned hostile. Kishor Isake PW5 – Pan shopkeeper has also turned hostile. PW3

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Pushkraj Wakadkar and PW4 Mayur Ingale were examined by the prosecution to establish conversation between the accused no.2 and the accused no.1 and as per the case of the prosecution, the accused no.2 instructed the accused no.1 to kill Chandrashekhar Munde. However, both these witnesses have turned hostile. The prosecution has examined PW8 Subhash Kachare stated to be the panch witness to establish the recovery of the articles u/s 27 of the Indian Evidence Act i.e. cell phone and cash amount of Rs.1600/- belonging to the deceased Chandrashekhar. However, this witness has also turned hostile. In fact, there is absolutely no evidence on record against the accused.

5] On appreciation of the evidence on record, we are of the opinion that no different view could be possible than the one taken by the learned Sessions Judge.

6] The appellant / applicant in paragraph no.11 of the appeal memo has sought leave to file the appeal and in fact presented the appeal itself, we have considered both the prayers simultaneously on merits. We do not find any merit in the challenge raised by the appellant.

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Hence, leave to file the appeal is refused. Accordingly,
the appeal is rejected.

(K.L. WADANE, J.)

(R.M. BORDE, J.)