

**IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISCELLANEOUS APPLICATION NO.36 OF
2016.**

IN

STAMP NUMBER MAIN 205 OF 2016.

State of Goa,
Through Police Inspector,
Panaji Police Station,
Panaji Goa.

..... Applicant.

Versus

1. Shri Babulal S/o Maleram Sutra,
Major in age, Indian National,
R/o C/o Rajesh Gereyajkala,
H. No. 16/190/1,
Vodlembhat, Taleigao-Goa,
N/o Post Bahgega, Vill-Shirol,
Tal-Neem Ka Thana,
Dist. Sikkar, Rajasth.
 2. Shri Nanu S/o Rambali Yadav,
Major in age, Indian National,
R/o C/o Rajesh Gereyajkala,
H. No. 16/190/1,
Vodlembhat, Taleigao-Goa,
N/o Post Rampur, Karkhana,,
Tal-Davereya Dist. Davereya.
Uttar Pradesh
-Respondents.

Mr. M. Amonkar, Addl. Public Prosecutor for the Applicant.

**Coram:-F. M. REIS,
NUTAN D. SARDESSAI,JJ.**

Reserved on:-6th June, 2016.

Pronounced on:- 15th June, 2016.

ORDER (Per Nutan D. Sardessai, J)

Shri M. Amonkar, the learned Addl. Public Prosecutor

came to be heard on behalf of the State who submitted that this was a fit case to grant leave to file an appeal against the judgment and order passed by the learned Sessions Judge, Panaji which had acquitted the two respondents for the commission of the offence punishable under Section 302 read with Section 34 of IPC.

2. Briefly it was the case of the State that the two respondents were charge sheeted under Section 302 read with 34 of IPC on the premise that on 2.3.2013 between 03.00 hours to 07.30 hours at Vodlembhat, Taleigao, they had, acting in furtherance of their common intention killed one Omprakash by compressing his neck, mouth and nose as he was causing nuisance to them during the odd hours under the influence of alcohol while residing in the rented room alongwith him. The State had examined 6 witnesses to prove their guilt while the respondents accused had denied the prosecution case as false and one of false implication.

3. Shri Amonkar, the learned Addl. Public Prosecutor contended that the impugned judgment of acquittal was contrary to the evidence on record, perverse and there was an error committed by the learned Sessions Judge in arriving at a conclusion that the circumstantial evidence was incomplete and

incapable of establishing the guilt of the accused and the circumstances proved were not consistent with the guilt of the accused. It was also his contention that the learned Sessions Judge had erred in holding that there was absolutely no link even on the basis of suspicion that the accused had played any role in connection with the cause of death. Rather the trial Court ought to have considered that the deceased had died between 03.00 hours to 07.30 hours, that the cause of death being due to violent asphyxia and that it were nowhere the case of the accused in defence that they were not in the room in which he died. The State had therefore to be granted leave to file an appeal against the judgment of acquittal and as it had a good chance to succeed in appeal.

4. We have examined the judgment of the learned Sessions Judge pursuant to which he had acquitted both the accused. Primarily the case of the State was that both the accused were instrumental in causing the death of the deceased during the early hours of 2.3.2013 in a room occupied by them alongwith the deceased. However, although there were 18 witnesses listed by the prosecution in support of its case, the prosecution had examined 6 witnesses since the case was based on circumstantial evidence. The learned Judge had observed that the main important witnesses had not been examined by the

prosecution without giving any sufficient reason and found that there were material discrepancies in the case of the prosecution while giving them the benefit of doubt and acquitting them of the charge under Section 302 read with 34 IPC.

5. The learned Sessions Judge had recorded his findings that the son of the deceased being the complainant was not examined as he was not found when the matter came up for trial. Besides another material witness had also not been examined and the evidence available was that of the owner of the house apart from the panch witnesses to the inquest panchanama and the scene of offence panchanama and the doctor who had examined the deceased. The learned Sessions Judge had therefore, found from the material on record that the evidence was cryptic and there was no material to show that the accused were occupying the room on the said night alongwith the deceased. The impugned judgment on the face of it reflects that the learned Sessions Judge had properly appraised himself to the material on record, found it scanty and that it nowhere proved the case of the prosecution beyond reasonable doubt against the accused and gave them the benefit of doubt.

6. There is no scope or latitude available to the State to carve out a case against the accused and to substantiate the

contention that it had a good case to succeed on merits. We, therefore do not find any merit in the application and hence no leave is granted to file an appeal and the application is accordingly dismissed.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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