

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

**CRIMINALAPPLICATION NO. 5577 OF 2015**

The State of Maharashtra

...APPLICANT

(ori. Complainant.)

versus

1. Atmaram Punjaram Wagh,  
Age: 22 years, Occu: Agril.
2. Seetaram S/o Rusutm Kharat,  
Age: 40 years, Occu. Agril.
3. Tukaram S/o Rustum Kharat,  
Age: 50 years, Occu.Agril.
4. Punjaram Karbhari Wagh,  
Age: 50 years, Occup. Agril.,
5. Keshav S/o Karbhari Wagh,  
Age: 42 years, Occu.Agril.,
6. Uttam S/o Karbhari Wagh,  
Age: 57 years, Occu. Agril.,
7. Shivaji s/o Malhari Wagh,  
Age: 30 years, Occu: Agri.,
8. Pandharinath s/o Narayan Wagh,  
Age: 62 years, Occu.: Agri.,
9. Vishwanath S/o Narayan Wagh,  
Age: 35 years, Occu: Agri.,  
All r/o Village Gondegaon,  
Tq. And District Jalna.

...RESPONDENTS  
(Ori. Accused.)

.....

Mr. V.D. Sapkal Special Counsel along with

Mr. S.J. Salgare, APP for applicant

Mr. P.P. More, Advocate for respondents No. 1, 6 to 9

Mr. Swapnil S. Patunkar, Advocate for respondents No. 2 and 3

Mr. B.R. Kedar, Adv. for Respondent No. 4

Respondent No. 5 served.

**WITH  
CRIMINAL APPLICATION NO. 1795 OF 2016  
IN  
CRIMINAL APPEAL No. 866 of 2015  
WITH  
CRIMINAL APPEAL NO. 758 OF 2015**

Govind S/o Ambadasrao Pakhare,  
Age: 66 years, Occup. Agril.,  
R/o : Gondegaon, Tq. Jalna,  
District Jalna.

... APPLICANT  
(ori. Complainant.)

VERSUS

1. The State of Maharashtra,  
Through Police Station Officer,  
Police Station Jalna,  
Tq. And District Beed.
2. Atmaram Punjaram Wagh,  
Age : 27 years, Occu. Agriculture  
R/o Gondegaon, Tq. & Dist. Jalna
3. Seetaram Rustum Kharat,  
Age : 45 years, Occu. Agriculture  
R/o Gondegaon, Tq. & Dist. Jalna
4. Tukaram Rustum Kharat,  
Age : 43 years, Occu. Agriculture  
R/o Gondegaon, Tq. & Dist. Jalna
5. Keshav Karbhari Wagh  
Age : 47 years, Occu. Agriculture  
R/o Gondegaon, Tq. & Dist. Jalna
6. Uttam Karbhari Wagh,  
Age : 42 years, Occu. Agriculture  
R/o Gondegaon, Tq. & Dist. Jalna.
7. Shivaji S/o Malhari Wagh,  
Age: 35 years, Occup. Agrilcuture,  
R/o : Gondegaon, Tq. And  
District Jalna.
8. Pandharinath s/o Narayan Wagh,  
Age: 67 years, Occup.:Agriculture,  
R/o Gondegaon, Tq. And District  
Jalna.

9. Vishwanth s/o Narayan Wagh,  
Age: 40 years, Occup. Agriculture,  
R/o: Gondegaon, Ta. And  
District Jalna.

10. Sahebrao Karbhar Wagh (deceased)

11. Punjaram Karbhai Wagh,  
R/o Gondegaon, Ta. And  
Dist. Jalna.

.... RESPONDENTS  
(Ori. Accused.)

Mr. A.B. Jagtap, Advocate for applicant -Ori. Complainant

Mr. S.J. Salgare, APP for Respondent No. 1

Mr. P.P. More, Advocate for respondents No. 2, 6 to 9

Mr. Swapnil S. Patunkar, Advocate for respondents No. 3

Mr. B.R. Kedar, Adv. for Respondent No. 11

Respondent No. 5 served.

...  
**CORAM : S.S. SHINDE AND  
K.K. SONAWANE, JJ.**

**RESERVED ON : 28<sup>th</sup> APRIL, 2017.**

**PRONOUNCED ON: 5<sup>th</sup> MAY, 2017**

**Order :-**

1. The prosecution – State and the first informant, namely, Govindrao Ambadas Pakhare, father of the victim Kailas preferred these applications under section 378(3) of the Criminal Procedure Code( for short “Cr.P.C.”) seeking leave to file appeal against impugned findings of acquittal of respondents for the charges under sections 120-B, 364, 302 and 201 read with section 34 of the Indian Penal Code (for short “IPC”) and under sections 3(2) (v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)Act, 1989 (for short “Atrocities Act”). The prosecution-State also sought leave to file appeal for reappraisal of the

evidence against convicted accused No. 4 - Punjaram Karbhari Wagh, who has been acquitted by the learned Additional Sessions Judge, Jalna for the charges of Atrocities Act. Accused No. 4- Punjaram Karbhari Wagh is already convicted for the offence punishable under sections 302 and 201 of the IPC. He has also filed an Appeal No. 758 of 2015 against impugned findings of conviction expressed by the learned trial Court. The Appeal preferred by Accused No. 4- Punjaram Karbhari Wagh came to be admitted and pending for hearing on merits.

2. According to prosecution, victim Kailas Pakhare 21 years old went towards his field at about dusk for sleeping in the night. He had also taken tiffin with him. But, on the following day he did not return to home. Thereafter, father, Govindrao Ambadas Pakhare rushed to the field in search of his son Kailas. He made enquiry with labour Kailas Gunhale, who divulged that victim Kailas did not come to field during the night. The father made enquiry about his son with neighbour and other villagers, but he did not get clue. At last he filed missing report on 02-12-2008 to the Police of Jalna Police Station, for search of son Kailas. Police launched massive search of Kailas, however, all efforts found unavailing. During the enquiry villagers Gajanan Wagh and Ganesh Wagh disclosed that victim Kailas was last seen in the company of respondent- Atmaram Wagh, while proceeding

towards field. The first informant Govindrao Pakhare took search of Son, but he did not succeed in his attempt. After receiving information about his last seen with respondents - accused, father Govindrao preferred the First Information Report (for short "FIR") on 12-02-2008 for kidnapping of his son by the accused -Atmaram and others. Accordingly, crime bearing No. 290 of 2008 came to be registered for the offence under section 364 read with section 34 of IPC. Investigating Officer has recorded statements of witnesses acquainted with facts of the case and effected *panchnama* of the spot of scene of offence. The accused came to be apprehended for the sake of investigation. The accused No.4 - Punjaram Wagh confessed about the crime and shown willingness to point out the place where they buried the dead body of victim Kailas. Investigating Officer recorded memorandum statement of accused No. 4 - Punjaram Wagh and recovered the skeleton of victim Kailas after its exhumation at the instance of accused No. 4- Punjaram Wagh from his field. Rest of the articles of victim Kailas were collected under *panchnama*. The accused-Keshav produced other articles used for commission of offence. The seized muddamal properties were referred to Forensic Laboratory. The DNA and P.M. Reports were collected.

3. After completion of investigation, Investigating Officer preferred the supplementary charge-sheet against the accused. It

is to be noted that, initially, the charge-sheet was filed only against five accused. Later on, supplementary charge-sheet came to be filed against rest of the accused. After framing of charge, prosecution has adduced the evidence of in all (19) witnesses in this case. The learned Judge of the trial Court appreciated the entire evidence circumstantial in nature produced on record. Eventually, he arrived at the conclusion that prosecution succeed to prove the charges under sections 302 and 201 of the IPC against accused No. 4 Punjaram Wagh only for murder and attempted to disappear the evidence of crime by burial of dead body of the victim in his field. The learned Judge of the trial Court acquitted rest of the accused for want of evidence against them. In the result, the learned Judge of the trial Court passed the impugned judgment and order of conviction of accused No. 4-Punjaram and acquitted rest of the accused for the offences pitted against them.

4. Being dissatisfied with the impugned judgment and order of acquittal of rest of the accused the applicant and the State preferred present applications seeking leave to file appeal.

5. The learned Special Counsel for the State submitted that circumstantial evidence adduced on behalf of the prosecution was not appreciated in proper manner. The learned Trial Court did not appreciate the evidence of DNA test for the adverse inference

against accused/respondents. It has not been considered that respondents and the family of the victim were on inimical terms and there was a dispute on account of encroachment over the land of the first informant by accused/ respondent. The evidence of recovery of incriminating articles at the instance of respondent- Keshav was not appreciated by the learned Judge of the trial Court and committed error. There was a evidence of last seen together of respondent Atmaram and others with the deceased. The accused were seen going towards spot of incident in the field during relevant period. The learned Judge ought to have held that the prosecution has proved entire chain of circumstances to establish the guilt of the accused. Therefore, learned Special Counsel prays for grant of leave/ permission to file appeal for reappraisal of evidence of prosecution in the interest of justice.

6. The learned counsel appearing for the applicant - Govindrao Pakhare stepped into the shoe of learned Special Counsel on behalf of prosecution and submitted that the learned trial Court did not appreciate evidence on record in its proper perspective. The dead body of the victim Kailas was recovered at the instance of accused No. 4 - Punjaram Wagh in his field. The witnesses had seen the victim Kailas prior to the incident lastly in the company of accused/respondents. There was previous enmity in between

family of the victim and accused/respondents. But, the circumstances were not considered by learned trial Court and committed error by acquitting rest of the respondents-accused for the charges pitted against them. Hence, he prayed to allow the application seeking leave to file appeal against the judgment and order of acquittal passed by learned Judge against respondents - original accused.

7. The learned counsel appearing for the respondents-accused raised objection to the arguments canvassed on behalf of applicant-Govind Parkhe and the State. He submitted that learned trial Court has appreciated prosecution evidence in proper manner as per the provisions of law. Absolutely there is no evidence available on record against respondents. The entire case of the prosecution is based on circumstantial evidence. The prosecution has failed to establish chain of circumstances to connect the respondents-accused with the alleged crime. There is no substantive evidence to nail respondents in this crime. Therefore, he prayed that it would not be appropriate to allow the application for permission to file appeal. In support of the submission Mr. More, learned counsel appearing for respondents – accused placed reliance on the judgment of the Supreme Court in the case of ***Subhash @ Dhillu Versus State of Haryana***<sup>1</sup>, ***Sangili alias Sanganathan Vs State of Tamil Nadu***

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<sup>1</sup> 2015 DGLS (SC)232 : 2015 AIR (SCW) 3691

***represented by Inspector of Police<sup>2</sup>, Nizam and another Vs. State of Rajasthan<sup>3</sup>, State of Karnatka Vs. Chand Basha<sup>4</sup> and Maleshappa Vs. State of Karnataka<sup>5</sup>.***

8. We have heard learned Special Counsel appearing for State and learned counsel appearing for applicant - Govind Pakhare and learned counsel appearing for respondents-accused. We have also perused the record and proceedings of the Special Case No. 18 of 2010. Admittedly, there was in all ten accused persons who put on trial in the present case for the charges under sections 120-B, 364, 302 and 201 read with section 34 of the Indian Penal Code and under section 3(2) (v) of the Atrocities Act. The prosecution adduced evidence of in all 19 witnesses to bring home the guilt of the accused/respondents. P.W.1 Ganesh Wagh, who had seen victim Kailas in the company of accused Atmaram prior to his disappearance from the village made volte-face and did not support the prosecution case. P.W.2- Kishan Gaikkwad, Panch witness of scene of occurrence of the spot also turned hostile and refused to support the prosecution case. Prosecution has examined D.W. 8 –Dr. Ravindrakumar Tukaram Ghute, Medical officer, who conducted post mortem report. But,

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<sup>2</sup>(2015) 1 SCC (cri) 71,

<sup>3</sup>(2016)1 SCC (Cri)386

<sup>4</sup>.(2016)1 SCC (Cri. 368

<sup>5</sup>.2008 All MR (Cri.) 280 (S.C.).

the mortal remains of the deceased Kailas was found highly decomposed, therefore, there was no evidence of injuries on the dead body of the deceased. Separated bones of human skeleton were sent to Anatomy Department, Government of Maharashtra for medicological test. There was DNA test for identification of the dead body of victim Kailas. No doubt, it appears that the skeleton recovered at the instance accused No. 4 - Punjaram Wagh from his field was of victim Kailas only. But, pivotal issue is to be determined in regard to complicity of respondents-accused for the alleged death of victim Kailas. During the Investigation, police recovered incriminating articles i.e. weapons, spade, rope Basket etc. at the instance of accused Keshav. Prosecution has examined P.W.3 Mahesh Rantparkhi to prove recovery of articles at the behest of accused Keshav under section 27 of Evidence Act. But, admittedly, as per principles of law the recovery of incriminating articles at the behest of accused/respondent Keshav would be an corroborative piece of evidence and could not be an sole base for conviction of respondent - Keshav. In support of this sort of corroborative evidence, there is no any substantive evidence of witnesses to prove nexus and proximity of these respondents-accused with alleged death of victim Kailas.

9. Prosecution has examined P.W. 5-Punjaram Ambadas Pakhare, P.W.-6 Ramesh Kondiba Kamble and P.W. 7- Ashok

Eknath Kelavane, who have stated that prior to four to five years on 30-11-2008 accused-Uttam and Shivaji came on their motor bike and after parking the vehicle in front of the Hotel, they went to cattle shed of accused No. 4-Punjaram Wagh. Thereafter, accused Sitaram and one unknown person came there on another motor-bike and proceeded towards the field of the accused No. 4-Punjaram Wagh, who has been convicted in this case. P.W.6-Ramesh Kamble stated that victim Kailas was last seen in the company of accused-Atmaram, while proceeding towards field. The evidence of P.W.5-Punjaram Pakhare appears cryptic and slender in nature. He did not disclose other detail about activities of alleged accused in the field during relevant period. It would fallacious to draw adverse inference against accused/respondent, bare on the statement of P.W.5 -Punjaram that he had seen accused going towards the field of accused No. 4-Punjaram Wagh. The evidence of P.W.6-Ramesh Kamble also would not advance the case of prosecution to attribute guilt of accused Atmaram in the case. The inference of nexus and proximity of respondent – Atmaram from bare version of P.W.6-Ramesh appears improper and incomprehensible one.

10. P.W.7- Ashok Kelvane stated about extra judicial confession of accused No. 4-Punjaram Wagh about murder of victim Kailas. It is to be noted that accused No. 4-Punjaram Wagh has already

been held guilty of the murder of victim Kailas. Therefore, evidence of P.W.7 -Ashok render no assistance to the applicants for adverse inference against rest of the accused / respondent.

11. P.W.9 – Govindrao Pakhare filed FIR and set criminal law in motion, but, he had no any personal knowledge about actual participation and involvement of respondents in the murder of his son Kailas. He stated about enquiry made with the villagers in search of his son Kailas. He has stated about discovery of dead body of son Kailas in the field of accused No. 4-Punjaram Wagh. But, evidence of P.W.-9 Govindrao Pakhare did not unfurl circumstances to prove complicity of respondents-accused in this case. Except P.W. 6- Ramesh Kondiba Kamble, no any witness stated about incriminating circumstances, which are against respondents-accused. P.W.6-Ramesh Kamble disclosed about respondent -Atmaram, when he was in the company of victim Kailas. But, this sole evidence of last seen together would not be sufficient to draw adverse inference in the serious charges of murder of victim Kailas.

12. In the evidence, P.W. 6-Ramesh Kamble stated that on 30-11-2008, while he was proceeding to his house, he had seen victim Kailas and Atmaram were proceeding together towards the field. But, it would hazardous to accept version of P.W.-6 Ramesh Kamble against respondent - Atmaram. It would difficult to

positively consider that the deceased was last seen with respondent – Atmaram when there is time gap and possibility of other persons came in contact with victim Kailas cannot be ruled out. Therefore, it would unsafe to fasten guilt on respondent – Atmaram merely on the version of P.W.-6 Ramesh Kamble that he has lastly seen the victim Kailas in the company of respondent - Atmaram. Rest of the witnesses are police personnels, who carried out the investigation and filed the charge-sheet against the respondents-accused.

13. The overall assessment of entire evidence adduced on behalf of prosecution in the light of judicial pronouncement relied upon on behalf of respondents reflects that there is no cogent and dependable evidence available on record against present respondents, to prove their involvement and participation in the alleged incident resulting into death of victim Kailas. The learned trial Court has correctly appreciated the circumstantial evidence on record in its proper perspective. There is no error or any imperfection in the conclusion drawn by the learned trial Court. In contrast, findings expressed by the learned Special Judge in regard to acquittal of respondents/original accused required to be confirmed. In case, the permission is granted to file appeal for reappraisal of evidence against the respondents/accused, it would be an exercise of futility. Therefore, there would not be

any propriety to grant permission to file appeal against the impugned judgment and order of acquittal of respondents-accused. Hence, the applications being devoid of merits deserve to be rejected. In sequel, applications stand dismissed. Consequently registration of appeals are hereby refused. The appeal No. 758 of 2015 filed by accused No. 4-Punjaram Karbhari Wagh, already admitted to proceed further in accordance with law.

Sd/-

**[ K. K. SONAWANE, J. ]**

Sd/-

**[ S.S. SHINDE, J.]**

MTK