

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

CRIMINAL APPLICATION NO. 3930 OF 2015

The State of Maharashtra, Through
Police Station Officer, Police Station Talwada,
Tq. Georai, Dist. Beed.

...APPLICANT
(Ori. Complainant)

versus

1. Ram Baburao Chavan, Age : 40 years,
Occu. Labour, R/o Doiphodwadi, Tq. Georai,
Dist. Beed, presently at Nasik, Tq. & Dist. Nasik.
2. Kaushalyabai Laxman Mane, Age : 50 years,
Occu. Agri., R/o Doiphodwadi, Tq. Georai,
Dist. Beed, presently at Nasik, Tq. & Dist. Nasik.
3. Ambhrushi alias Nana Balbhim Barkul,
Age : 40 years, Occu. Labour, R/o Yermala,
[Upalai], Dist. Osmanabad, Presently at Nasik,
Tq. & Dist. Nasik.

...RESPONDENTS
(Ori. Accused)

.....
Mr. S.Y. Mahajan, APP for Applicant
Mr. R.G. Hange, Advocate for Respondent No. 1 to 3
.....

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

DATE : 7th MARCH, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] By this application, the applicant State of Maharashtra is seeking leave to prefer an appeal under Section 378 of the Cr.P.C. against the judgment and order of acquittal passed in Sessions Case No. 39 of 2014 dated 24.4.2015, by the Sessions Judge, Beed for re-appraisal of the evidence of the prosecution adduced on record against the respondents for the charges under Section 302, 120B, 201 r/w. 34 of IPC.

2] It has been alleged that on 13.6.2012, one Rakhmaji Paburao Pawar r/o. Rohital, Taluka Georai District Beed filed a report to the police of Talwada Police Station and asserted that in the morning, he had been to the field for agricultural operations. When he went near the well to start the electric motor for watering the crops, he saw one dead body floating on the water of the well. There were no clothes on the dead body except the nicker. The person - Rakhmaji Pawar immediately passed on the information to the other villagers including the police patil Shri Sakharam Pawar of village Rohital. Thereafter, they came to the police station Talwada and lodged the report. Pursuant to the report of Rakhmaji Pawar, the concerned PSO registered the A.D. No. 15 of 2012 under Section 174 of the Cr.P.C. and set the enquiry in motion to ascertain the exact cause of death. The police personnel visited to the spot and fished out the dead body from the well. Police drawn the spot panchanama, as well as inquest panchanama, on the dead body and it was referred to Primary Health Center, Talwada for autopsy. The medical officer conducted the Post Mortem and opined that the cause of death of the decease was "cardio-respiratory arrest owing to head injury".

Considering the post mortem report, the Police Head Constable Sonaji Shinde filed the report against unknown culprits for homicidal death of the deceased.

3] In view of the report of the Police Head Constable Sonaji Shinde, Crime No. 56 of 2012 under Section 302, 201 of IPC came to be registered and police swung into action. The I.O. recorded the statements of the witnesses acquainted with the facts of the case including the wife and sons of deceased. The deceased was identified as Govind Pandurang Tayade. It was transpired that the deceased Arjun had immoral relations with the accused No.2 Kausalyabai. They both used to sell bananas for livelihood. He had also developed a habit of drinking the liquor. He used to demand money from the accused Kausalyabai. The deceased Govind also harassed and tortured the accused No.1 Rama, who is the son-in-law of accused No.2 - Kausalyabai. Fed up with the daily torture and quarrelsome conduct of the deceased Govind, the accused persons hatched a conspiracy to eliminate him. Therefore, they took the deceased within the vicinity of village Rohital under the pretext that the accused Kausalyabai would sell her plot and the consideration amount will be given to deceased Govind. When they reached near the scene of occurrence, the accused persons attacked deceased Govind. Accused/respondent No.4 - Shriram @ Mahadeo Laxman Mane (who is absconding) and accused/respondent No.3 Ambarish Barkul dealt a blow of wooden log on his head. Accused No.4 Shriram pressed the neck and committed his murder. Thereafter, the accused smashed the face by

boulder and tied the limbs with Nylon String and thereafter thrown the dead body in the well. in order to screen themselves from the offence of murder, the accused thrown the dead body in the well to disappear the evidence of the crime.

4] After completion of investigation, I.O. preferred the charge sheet against the accused before the learned JMFC, Georai, Dist. Beed. The matter came to be committed to the Sessions Court for trial of the accused within the ambit of law. Learned Sessions Judge framed the charges against the accused Nos. 1 to 3, whereas, accused No.4 Shriram @ Mahadeo Laxman Mane, was shown absconding since the commission of crime. The accused persons denied the charges pitted against them and claimed for trial.

5] In order to bring home guilt of the accused, prosecution adduced the evidence of in all 19 witnesses in this case. The learned Sessions Judge recorded the statement of accused under section 313(1)(b) of Cr.P.C. to afford an opportunity to the accused to explain the incriminating circumstances brought on record against them. The accused opposed the incriminating circumstances and claimed their innocence. The learned Sessions Judge, after hearing both sides, arrived at the conclusion that the prosecution miserably failed to prove the charges against accused beyond all reasonable doubt. Therefore, the learned Sessions Judge, proceeded to acquit all the accused for the charges pitted against them in this crime. Being aggrieved by the findings of acquittal of the accused, expressed by the learned trial court, the prosecution is intending to prefer an appeal to

redress its grievances. Hence, the prosecution has filed the present application seeking leave to file appeal against the judgment and order of acquittal passed by the learned Sessions Judge in this case.

6] Learned APP for the applicant/State fervidly contended that the death of victim Govind was homicidal in nature. There were head injuries received to him. His hands and legs were tied with Nylong string as well as face was found smashed by the impact of boulder. Since the wife of victim Govind categorically stated that there were immoral relations in between the accused No.2 Kausalyabai and the deceased Govind. He was residing with the accused Kausalyabai since last four years. According to learned APP, wife of deceased, PW-7 Maltibai and his sons PW-8 Arjun and PW-9 Siddharth, had been to the house of accused Kausalyabai and made enquiry about deceased Govind but they did not receive proper reply from her. In contrast, she advised not to file any missing report of deceased Govind in the police station. Thereafter, PW-7 Maltibai waited for about two and half months. Eventually, she was informed that her husband was murdered. She identified the articles of her husband which were recovered from his dead body. Learned APP submitted that the learned trial court did not appreciate the circumstances on record in its proper perspective and committed error while acquitting the accused for the charges pitted against them. There is evidence of “last seen together”. The deceased Govind was in the company of the accused during the relevant time and, therefore, the prosecution has proved the case beyond all reasonable doubt. The learned

APP prayed to grant leave to file the appeal against the judgment and order passed by the learned Sessions Judge, Beed, for re-appraisal of evidence of prosecution in the interest of justice.

7] In refutal, learned counsel appearing for respondents assailed that the prosecution miserably failed to prove the charge against the accused beyond all reasonable doubt. There is no direct evidence available on record. The prosecution case is totally based on the circumstantial evidence. The dead body of the victim Govind was traced out at village Rohital far away from the residence of the accused at village Doiphodwadi, Taluka Georai. There are no circumstance incriminating in nature available on record sufficient to draw adverse inference against the accused. The learned counsel for respondents vehemently submitted that the panch witnesses of seizure panchanama turned hostile. There is no clinching and cogent evidence on record to nail the accused in this case. The evidence of police personnel also not sufficient to render assistance to the prosecution to prove the charge against the accused. Hence, he requested not to nod in favour of the applicant/State of Maharashtra for filing any appeal against the impugned judgment and order passed by the learned Sessions Judge. According to him, it would be a futile exercise as there is no possibility of success of the prosecution in this case. Hence, he prayed to reject the application.

8] We have heard the learned APP and learned counsel for the

respondents at length. We have also perused the record and proceedings of Sessions Case No. 39 of 2014 as well as the findings expressed by the learned Sessions Judge. Admittedly, the prosecution made attempt to adduce evidence of in all 19 witnesses in this case. PW-1 Rakhmaji Baburao Pawar was the informant, who had seen the dead body of deceased Govind floating on the water of the well. Therefore, he immediately filed the report to the Police of Talwada police station. Pursuant to his report, A.D. No. 15 of 2012, came to be registered under Section 174 of the Cr.P.C. to ascertain the exact cause of death. The PW-2 Sonaji Shinde was the police personnel of Talwada police station who visited the spot for enquiry on 15.12.2012 and conducted the spot panchanama, inquest panchanama and referred the dead body for autopsy to ascertain the exact cause of death. After receipt of post mortem report, he filed the complaint against unknown culprits for murder of the deceased Govind and set the criminal law in motion for investigation into crime.

9] PW-3 Rajkumar Gaikwad, PW-4 Dyandeo Gore, PW-5 Manu Qureshi as well as PW-6 Arjun Thorat are the panch witnesses of the spot and Seizure of articles etc. They turned hostile and did not support the prosecution case. PW-10 Salauddin Bhagwan was also the panch witness but he had made volte-face and found reluctant to support the prosecution Case. In view of the evidence of PW-11 Dr. Arun Lokre, there is no doubt that victim Govind met with an homicidal death. But, there is no cogent, verifiable and dependable evidence available on record to prove the

complicity of the accused for the murder of victim Govind. The prosecution made an abortive attempt to adduce the evidence of PW-7 Maltibai, PW-8 Arjun and PW-9 Siddharth (the wife and sons of victim Govind). These witnesses identified the articles of deceased Govind recovered from his dead body at the time of panchanama of scene of occurrence etc. They have also verbalized about the immoral relations of the deceased with accused No.2 Kausalyabai as both were indulged in the business of selling Bananas.

10] Pw-7 Maltibai stated about the incident of her visit to accused Kaysalyabai in search of her husband Govind and at that time, accused Kausalyabai gave evasive answers as well advised her not to file any complaint to the police. But this sort of evidence appears not sufficient to bring home the guilt of the accused. There may be possibility of immoral relations of deceased Govind with Kausalayabai but the sole circumstance of immoral relations and suspicious conduct and demeanour of accused No.2 Kausalyabai cannot be the basis for conviction of the accused in this case. There is absolutely no evidence of prosecution witnesses available on record, which could inspire confidence to draw adverse inference against the accused. Admittedly, there is no direct evidence available on record. The entire prosecution case rests on circumstantial evidence. It is incumbent on the part of the prosecution to prove each and every circumstance which would establish a complete chain for inescapable inference of guilt of the accused. The evidence of PW-7 Maltibai, PW-8 Arjun and PW-9 Siddharth

cannot be appreciated on the point of victim Govind was seen last together in the company of accused No.2 Kausalyabai. There was considerable time gap in between the visit of these prosecution witnesses to the house of the accused No.2 Kausalyabai and occurrence of incident resulting into death of victim Govind. Moreover, it has been brought on record that the victim Govind developed a habit of drinking liquor. He always used to borrow money from others. He used to demand money and he also extracted money from other villagers under the pretext of allotment of Gharkul etc. In such circumstances, it would be hazardous to draw any adverse inference against the accused. There may be a possibility of involvement of other persons in this crime. In absence of any cogent, dependable and variable evidence, it is unjust and improper to fasten the guilt on the accused.

11] In absence of substantive evidence in regard to complicity of the accused in this crime and their proximity and nexus with the alleged cause of death of victim Govind being author of injuries received to him, rest of the evidence of discovery and recovery loses its significance. Therefore, we are of the considered opinion that the findings recorded by the learned trial Judge appear just, proper and reasonable. There is no propriety to grant leave to the prosecution to file an appeal against the impugned judgment and order of acquittal of the respondents in this case. Considering the overall evidence adduced on record on behalf of prosecution, it appears that in case the leave is granted for hearing of appeal on merit, it would be a futile effort and abuse of process of law.

There is no possibility of success of the prosecution, even remotely, to bring home the guilt of the accused. In such peculiar circumstances, we are not inclined to nod in favour of prosecution. There is no perversity or error in the conclusions drawn by the learned Sessions Judge. Therefore, the application being devoid of any merit deserves to be dismissed.

12] In sequel, the application stands rejected.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-