

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

Criminal Application No. 02549 of 2016

District : Dhule

The State of Maharashtra,
Through PSO Songir Police Station,
District Dhule.

.. Applicant
(Original
complainant)

versus

1. Prakash Pundlik Patil,
Age 32 years,
Occupation Agriculture.
 2. Premchand Pundlik Patil,
Age 31 years,
Occupation Agriculture.
 3. Anna Lala Shelar,
Age 37 years,
Occupation Labour.
- All R/o. Saitale,
Taluka & Dist. Dhule.

.. Respondents
(Original
accused
nos.02 to 04)

.....

*Mr. S.J. Salgare, Additional Public Prosecutor,
for the applicant.*

*Mr. Rahul O. Awasarmol, Advocate, for respondent
nos.01 and 02.*

Respondent no.03 served (Absent).

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**CORAM : T.V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 21ST AUGUST 2018

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :

01. Present application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure, 1973. The prosecution intends to challenge the acquittal of the respondents, who were original accused nos.02 to 04, by the learned Additional Sessions Judge, Dhule, in Sessions Case No. 41 of 2015, dated 30.01.2016, from the offence punishable under Sections 302, 203, read with Section 34 of the Indian Penal Code. It will not be out of place to mention here, that the case was abated against original accused no.01.

02. The prosecution had come with a case that the informant was the widow of the deceased. She got married to deceased in 2003. She has son by name, Manoj, aged 12 years and daughter by name, Jyoti, aged 10 years. Her husband was addicted to liquor and because of that, she was residing separately from her husband since about 04 - 05 years prior to 28.11.2014. She was residing with her parents and younger brother. Her elder brother Dagadu had informed at about 10.00 a.m. on 04.08.2014, that her husband Dnyaneshwar had jumped from the roof of his house under the influence of liquor at about 04.00 a.m. and he has expired. She had gone along with the parents, brother and other relatives at village Saitale. They reached there around 12.00 p.m. She had seen injuries caused to her husband. At that

place, she found her son Manoj crying. When she tried to make enquiry about the incident, he has not disclosed anything. *Post mortem* was done and the last rites were performed. After the incident, her father-in-law, brothers-in-law, husband of sister-in-law were not behaving with her as they used to behave with hatred in the past. They used to say that she should not worry. She has children to maintain and they would give her portion from the agricultural land. She used to ask them, as to whether her husband had really jumped from the roof of the house. Thereupon those persons used to avoid. But they used to then pacify her by saying that he was not looking after her properly since 04 - 05 years and used to raise chaos in the house under the influence of liquor. Therefore, she was under the impression that whatever they were saying was a true fact. After the rites were over, she took her son Manoj with her and had sent her in boarding school. He used to make her in vacations and at that time, he used to cry in the memory of father. Manoj had come 8 - 10 days prior to 28.11.2014 and at that time, he was crying. She asked him about the reason. At that time, he told that she should leave, uncle and grandfather would kill us and he is under fear. Thereafter, he disclosed that Dnyaneshwar was asking for his share in the agricultural land from his brothers. Such demand was made by him at about 08.00 p.m. on 03.08.2014. There was quarrel between them.

Dnyaneshwar got annoyed and he damaged the household articles like T.V. etc. and thereupon uncle Premchand had assaulted him by iron rod and uncle Prakash had assaulted him by stick. Grandfather had given kicks and fist blows to Dnyaneshwar. One Annamama also came and he dragged Dnyaneshwar. When Dnyaneshwar became unconscious, all of them left. Dnyaneshwar was lying on the ground outside the house throughout the night. He was not moving when it was noticed in the morning. At that time, the grandfather and uncle had threatened Manoj that he should not disclose the fact to anybody. Thereupon the informant Sarlabai went to police station and lodged the report and also stated that a false report about accidental death of Dnyaneshwar has been lodged.

03. On the basis of her report, offence vide Crime No. 95/2014 was registered and investigation was undertaken. Prior to that, Prakash Pundlik Wagh (Patil) i.e. present accused no.02 had lodged the accidental report on 04.08.2014. At that time, inquest *panchanama*, spot *panchanama* was carried out and photographs of the incident were taken. After registration of the offence, statements of witnesses were recorded. Accused came to be arrested. After completion of the investigation, charge-sheet was filed.

04. After committal of the case, all the accused

persons appeared before the learned Additional Sessions Judge. Charge was framed. They pleaded not guilty. Trial has been conducted. Prosecution has examined in all 10 witnesses in order to bring home guilt of the accused. Taking into consideration the evidence of the prosecution and hearing both sides, learned Additional Sessions Judge, Dhule, has acquitted accused nos.02 to 04 from the charge on 30.01.2016. The case was abated against original accused no.01. Present application has been filed challenging this acquittal.

05. Heard learned Additional Public Prosecutor Mr. S.J. Salgare appearing for the applicant. Heard learned Advocate Mr. R.O. Awasarmol appearing for respondent nos.01 and 02. Respondent no.03 was served. Perused the record and proceedings.

06. At the outset, it is to be noted that when the fact of death was reported by original accused no.02, case of accidental death was registered. In the accidental death case, it was mentioned that Dnyaneshwar used to be under the influence of liquor all the time and he used to damage the property. Accordingly, on 03.08.2014 at about 08.00 p.m., Dnyaneshwar came under the influence of liquor and started damaging the household articles. All the family members were trying to persuade him. Then all of them left the house in order to attend a function.

Only Dnyaneshwar and his son Manoj were at home. Around 04.00 a.m. on 04.08.2014, Manoj went to Prakash and told that his father has jumped from the roof of the house. Even statement of the present informant was recorded on 04.08.2014 in the enquiry under Section 174 of the Cr.P.C. At that time, she had not disclosed anything. From the FIR, as it is, it can be seen that the alleged disclosure by her son Manoj is 08 - 10 days prior to 28.11.2014. When the alleged incident had taken place on 04.08.2014, it is hard to believe that when after Manoj was taken by her, he would not have disclosed the real reason behind the death of his father. At that time, he was not under the influence of accused persons.

07. PW 06 Manoj is the son of the deceased. He has stated that all the accused had murdered his father. His father was demanding share to his grandfather and uncles and all of them were saying that he will not get any share. According to him, his grandfather had put him in fear and, therefore, he had not narrated the incident. Such story itself is unbelievable. In the cross examination, further fact has come on record, that his both uncles are residing separately. Though he has denied the suggestion that his grandfather had allotted 01 Acre land to his father, the fact appears to be true because he has admitted that his father used to consume liquor. It appears that the said portion of

land would have been disposed of by Dnyaneshwar and thereafter again he was demanding share. He has also admitted that when his mother had come to village Saitale, at that time, he had narrated her that father had jumped from the roof of the house. When there is so much of gap between the narrations, it raises doubt and for that purpose, benefit should go to the accused.

08. PW 02 Sarlabai is the widow of the deceased. In her cross examination, she has stated that she has admitted Manoj to school at Deur after she had taken him along with her after death of Dnyaneshwar. She gave the FIR 08 - 10 days after the alleged incident was disclosed by Manoj. She had a discussion with her brother and father before lodging the report. Though she has denied that her father-in-law had instituted suit for cancellation of sale deed against her, she has admitted that she got the sale deed executed for consideration of Rs. 4,33,000/-. The said amount was given to her by her brother and his friends. Thus, it appears that the real reason behind the FIR is money or property which would have come to the share of Dnyaneshwar.

09. Prosecution has also relied on PW 03 Suresh Wagh who is said to be eye witness. He has stated that he had seen accused persons assaulting Dnyaneshwar. However, it is to be noted that he says

that he had voluntarily gone to the police station after 03 to 03½ months of the incident. The question is that, why he did not go to police station immediately. In spite of knowledge, he has kept mum for so many days. He has also not disclosed that he had ever tried to disclose the said fact to the informant. In clear words, he has stated that on the next day of the incident, police had visited the place of incident. He had not stated to the police, that there was assault on Dnyaneshwar by accused. Thus, with knowledge, if he has kept mum, then such witness cannot be believed.

10. The *post mortem* report Exhibit 37 shows that the probable cause of death was cardio-respiratory arrest due to haemorrhagic shock due to subdural haematoma due to head injury and multiple compound fracture injuries. PW 08 Dr. Surekha Borde is the Medical Officer who had conducted autopsy. She has clearly stated that if a person under influence of liquor jumps from a roof and falls on tree and then on ground, then abrasions, cutting wounds and simple fractures are possible. Further, she has also admitted that if a person under the influence of liquor falls on a stone, then injuries to forehead and nose are possible. Articles no.02 and 03 i.e. wooden stick and iron rod were shown to her and she has stated that cutting wounds are not possible by these two weapons. She has also stated that there

was smell of alcohol to the meals. There were no external injuries corresponding to internal injuries. Thus, it can be stated that the medical evidence does not rule out the possibility of accidental death. In other words, it does not conclusively prove that death of Dnyaneshwar was homicidal in nature. Taking into consideration this evidence, the learned trial court has rightly taken the possible view and, therefore, acquitted the accused persons. No interference is required. No case is made out for grant of leave.

11. In the result, the application fails and the same is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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Bhagwan
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Puranik

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