

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

CRIMINAL APPLICATION NO. 5847 OF 2016

The State of Maharashtra,
through Police Station Officer,
Ambajogai Police Station, Tq.
Ambajogai,
District. Beed.

Applicant
... (Orig. Complainant)

VERSUS

1. Shobha @ Sapana Suryakant Kapse,
Age : 32 years, resident of Modi Nagar,
Murud, Tq. And District. Latur.

2. Shivaji s/o Mallikarjun Belure,
Age: 32 years, resident of
Sanbgachwadi,
Tq. Chakur, District Latur.

Respondents
... (Ori. Accused)

...

Mr. V. S. Chaudhary, APP for the Applicant-State.

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CORAM

**:T. V. NALAWADE AND
K. L. WADANE, JJ.**

RESERVED ON : 30th July, 2018

PRONOUNCED ON : 07th August, 2018

JUDGMENT: (Per K. L. Wadane,J.):

1. This is an application filed by the applicant - State under the provision of Section 378 (1) (b) of Code of Criminal Procedure for leave to appeal.

Brief facts of the case may be stated as follows:

On 15.05.2013 cousin brother of the wife of the deceased namely Arun Sukhdev Mudgalkar informed Sangita (wife of deceased) that the dead body of the deceased Ramdas was found in the agricultural land of the Prakash Baswar in front of Tiranga Hotel, Jogaiwadi Shivar, Ambajogai. Immediately, Sangita and her son Rajnikant rushed to the spot and found the dead body of Ramdas. She identified the dead body of the deceased Ramdas and filed the first information report against the respondents accused. The allegations are that the accused No. 1 murdered Ramdas in order to avoid to repay an amount of Rs. 90,000/-. On the basis of the report given by the widow of the deceased, offence came to be registered for the offence punishable under Section 302 and 201 read with section 34 of the Indian Penal Code.

2. We have heard the arguments of the learned APP for the State and perused the oral as well as documentary evidence on record to establish the offence leveled against the respondents accused. The prosecution has examined in all 17 witnesses. From the evidence of P.W.1 – Arun Sukhadev Mudgalkar, it reveals that the P.W.3 Sangita Ramdas Kadam informed P.W. 1 that there are illicit relation between deceased Ramdas and accused No. 1 Shobha alias Sapna Suryakant Kapse. P.W.3 - Sangita also deposed that there was love affair between deceased Ramdas and Shobha. P.W.4 – Rajanikant Ramdas Kadam, the son of the deceased deposed that once accused No. 1 visited their house at Ambajogai. P.W.7 – Digambar Pralhad Mali a witness turned hostile. P.W.8 – Anup Kulkarni, deposed that he is a mechanic by profession and he has same relation with the accused No. 1. He executed a bond in favour of accused No. 1. In the cross-examination he admitted that he had physical relation with the Shobha @ Sapna. P.W.9 - Anuja Anup Kulkarni deposed that once the accused No. 1 informed that she is married with Anup. P.W. 10 - Kishor Balaji Chewale is a photographer who turned hostile. P.W.12 – Ashok Shivaji Aadsule, room boy and P.W. 13 Pavan Dhanraj Puri - receptionist of Lodge, alleged that the accused Nos. 1 and 2 stayed on the night of 13.05.2013. P.W.14 is Ravi

Khemraj Pardeshi and P.W.15 Chetan Shivaji Patel are the Nodal Officers of Mobile Police. They were examined in order to locate the location of the accused Nos. 1 and 2 on the basis of CDR. P.W.16 is Dr. Kailas Bhivaji Kanthekar, who examined the accused Nos. 1 and 2 on 17.05.2013 and one injury on the person of each of the accused was found, aged more than 72 hours. P.W.17 Mr. Pradeep Waman Tribhuvan is the Investigating Officer.

3. Looking to the evidence of the above witnesses, no circumstances are brought on record to establish the chain of the circumstances by which it can be said that the offence was committed by the accused persons and not other than them.

4. From the spot, the pair of chappal, banyan, pant, shirt, red odhani, mobile, spectacles and two passport size photos were sized. These two passport size photos were stated to be of P.W.8 Anup and wife of the deceased namely Sangita and according to the prosecution, the separate photographs were taken in one photo so as to create the impression that the P.W.8 and wife of the deceased Sangita have some relations, however, the photographer turned hostile. P.W.2 Sanjay Uttam

Lamtare is a Panch witness. On perusal of his evidence, it appears that in pursuance to the statement i.e. memorandum made by the accused No. 1 Shobha @ Sapna, a knife was recovered from her house at Murud and panchanama to that effect was prepared at Exh. 64-A. By another panchanama by Exh.64-B the following article seized from the house of the accused No. 1:-

Bond paper of Rs.100/- executed by P.W.8 in favour of accused No.1.

Xerox copy of photo I.D. of P.W.8 Anup.

Xerox copy of photo I.D. of deceased Ramdas.

Xerox copy of photo I.D. of Sangita.

Some donation receipts.

Three photographs of P.W.8 Anup and Shobha and I.D. Card of one Nisha Shinde.

5. These articles cannot be said to be incriminating articles connecting the accused No.1 with the alleged crime. It is brought on record that the deceased Ramdas had illicit relation with the accused No.1. Therefore, a recovery of the xerox of the voters I.D. of the Ramdas cannot be said to be the incriminating circumstances, because it is came on record that the deceased Ramdas visited the house of

accused No. 1 for number of times. The recovery of the knife having human blood on it is an incriminating circumstances. However, from the record it appears that the group of the blood detected on knife is not determine as its results are inconclusive. From the record it appears that blood group of the deceased was B Rh+.

6. By way of examination P.W.6 Deepak Jadhav, prosecution has tried to establish that this rickshaw driver taken an old man in his rickshaw from Ambejogai. On the way, one person and one lady were picked up in the rickshaw and all of them were dropped at Renapur. In the examination-in-chief, this witness had identified the accused Nos. 1 and 2, were the persons who boarded its rickshaw at Tiranga Hotel. However, during the cross-examination, he admitted that he has not seen the lady. In the cross-examination he has admitted that the woman before the Court is not the same lady who traveled in his rickshaw on 13.05.2013. After recording this evidence, the learned APP seeks permission to cross-examine the witness and further cross-examined. So the prosecution appears to be not in a position to establish that the accused Nos. 1 and 2 boarded the rickshaw of P.W.6 near Tiranga Hotel i.e. the place where the offence of murder took place. The rest and entire

evidence on record is not sufficient to complete the chain of circumstances to establish the offence leveled against the accused persons. We have gone through the reasons recorded by the learned Additional Sessions Judge and it appears that he is rightly acquitted the accused. Therefore, no case is made out to grant leave to appeal. Hence application is dismissed.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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