

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.815 OF 2018

MADHAVRAO S/O. SONBAJI LINGADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.S.Choudhari h/f Ms.R.M.Mohale-Choudhari and K.S.Patil,
Advocates for the appellant.

Mr.S.J.Salgare, AGP for respondent No.1.

Mr.V.V.Bhavthankar, Advocate for respondent Nos. 2 and 3.

(CORAM : DIPANKAR DATTA, CJ AND
RAVINDRA V. GHUGE, J.)

DATE : JANUARY 21, 2021

PER COURT :

1. Respondent Nos. 2 and 3 were tried by the learned Additional Sessions Judge for committing, *inter alia*, the murder of one Pandhari (hereafter, the victim). Upon consideration of the evidence led at the trial, the learned Judge returned the finding that the prosecution had utterly failed to prove the charges against the accused and that they deserve acquittal. It was ordered accordingly.

2. This appeal is at the instance of the father of the victim.

3. The dead body of an unidentified male was recovered in the State of Andhra Pradesh. The prosecution claimed that such dead body was that of the victim. The prosecution version was that the victim was aged around 43 years and stood 5 ft.tall. The post mortem report, however, revealed that the cadaver was of a male aged between 25-30 years and measured 5 ft. and a half. Further, starvation was opined as the cause of death, which was contrary to the claim of the prosecution that the victim had been strangled by the accused. No external injury mark was detected in course of post mortem. Based on the post mortem report, the Judge returned the finding that the prosecution failed to prove that the dead body, which was recovered, was that of the victim.

4. An acquaintance of the victim deposed at the trial. According to him, a photograph of a decomposed body was shown to him. It was he, who identified the victim from the said photograph. We have looked into the photographs that are part of the records and have no hesitation to hold that having regard to the decomposed condition of the dead body, it was difficult, if not impossible, for anyone to convincingly say about the identity of the person photographed.

5. Since the basic fact of the victim's death has not been proved, the learned Judge was justified in acquitting the accused.

6. We find no substantial ground to entertain the appeal; hence the same stands dismissed.

(RAVINDRA V. GHUGE, J.)

(CHIEF JUSTICE)