

RMA

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 233 OF 2019

Bandu Hanmant Mane

Age : 32 Years, Occ. : Agriculture,
Residing at Dhumma Vasti, Laxmi Peth,
Solapur.

Appellant
(Orig. Complainant)

Vs.

1. Laxman @ Deepak Vithal Mane.
Age : 55 Years, Occ.:Business,
Residing at Dhumma Vasti,
Laxmi Peth, Solapur.

2. Dattatraya Vithal Mane,
Age : 52 Years, Occ.:Business,
Residing at Dhumma Vasti,
Laxmi Peth, Solapur.

3. Kumar Vithal Mane,
Age : 44 Years, Occ.:Business,
Residing at Dhumma Vasti,
Laxmi Peth, Solapur.

4. Shashikant Narayan Nichal,
Age : 40 Years, Occ.: Rickshaw
Driver,
Residing at Manohar Nagar
Zopadpatti, Solapur.

5. Premnath Vilas Jadhav,
Age : 37 Years, Occ. : Service,
Residing at Ganesh Nagar, 273,
Solapur.

6. Shantinath Bhimrao Aland,
Age : 38 Years, Occ. : Driver,
Residing at 20, Bhavani Peth,
Solapur.

Respondents
(Respondent Nos. 1 to 6 /
Original Accused Nos. 1 to
.. 4, 6 & 7)

7. The State of Maharashtra.

Mr. Rushikesh Kale i/by Mr. Viresh V. Purwant for Appellant
Mr. H.J. Dedhia, APP for State

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 25th August 2022.

ORAL JUDGMENT (PER A.S. GADKARI, J.) :-

. This is an Appeal under Section 372 of the Code of Criminal Procedure (for short, “*Cr. P.C.*”) by First Informant.

2. At the outset, it is to be noted here that, the learned APP has produced on record a communication dated 02.08.2022 signed by Under Secretary (Legal), Law and Judiciary Department, Government of Maharashtra addressed to the Public Prosecutor, High Court (A.S.), Mumbai. It is stated therein that, after scrutinizing the proposal forwarded by the Additional Public Prosecutor, Solapur to challenge the impugned Judgment and Order herein, the Government of Maharashtra has reached to the conclusion that, the present case is not fit to prefer an Appeal in the High Court. Therefore, the State did not prefer the Appeal against the impugned Judgment and Order. The said communication dated 02.08.2022 is taken on record.

3. Heard Mr. Rushikesh Kale, learned Advocate for Appellant and Mr. H.J. Dedhia, learned APP for State. Perused entire record.

4. The case of the prosecution in nut shell is that, the daughter of Respondent No. 1 namely Ms. Shubhangi was having love affair

with Somnath Mane (deceased). That, on or about 23.08.2005 or 24.08.2005, accused persons in conspiracy with each other abducted Somnath, committed his murder and with a view to cause disappearance of evidence, threw his dead boy in the river Bhima near Solapur. That, after Ms. Shubhangi disclosed the fact to the brother of deceased that, on or about 23.08.2005, accused persons abducted deceased Somnath. Crime Report bearing No. 211/2005 was registered on 29.08.2005 under Section 302 of IPC with Foujdar Chawadi Police Station, Solapur.

5. It is an admitted fact on record that, the dead body of Somnath was never traced by the prosecution and a skeleton of a human being was found on 22.01.2006 in the river Bhima near Begumpur which is about 50 kms away from the alleged place of occurrence of offence i.e. abduction of Somnath by the accused persons. DNA analysis on the said skeleton was conducted by the Investigating Agency and as per the forensic analysis report, it did not match with the DNA profile of parents of Somnath. Thus, the entire case of the prosecution is based on the theory of absence of *corpus delicti*.

6. It is to be noted hear that, the prosecution has called upon the accused persons to face charge under Section 302 of the IPC for allegedly committing murder of Somnath Mane. That, at first instance, the prosecution has utterly failed to prove the basic fact that,

Somnath Mane has in fact died or murdered. Perusal of evidence on record further indicates that, there is no evidence at all on record to infer that, the accused persons in fact, had conspired with each other to commit the murder of Somnath. Prosecution has further failed to prove that, Somnath was last seen together in company of the accused persons or any of the accused persons wrongfully restrained Somnath in any manner on the date and time of commission of present crime as alleged.

7. After perusing the entire evidence on record, it clearly appears to us that, the view taken by the trial Court is a probable view of the matter. The trial Court has scrutinized the entire evidence available on record in its proper perspective. There is no error either in law or on facts committed by the trial Court.

There are no merits in the Appeal.

8. Appeal is accordingly dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]