

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) 162 OF 2021
IN
CRIMINAL APPEAL 336 OF 2023

State of Maharashtra,
through Police Station officer,
Police Station, Bramhapuri,
Tahsil Bramhapuri, District Chandrapur **.....APPELLANT**

...V E R S U S...

1. Pramod Shamrao Bankar,
aged about 43 yrs, occ. Cultivation,
r/o. Khandala, Tahsil Bramhapuri,
District Chandrapur
2. Sunil Shriram Bankar,
aged about 44 yrs, Occ. Cultivation,
r/o. Khandala, Tahsil Bramhapuri,
District Chandrapur
3. Ravindra Baliram Satibawane,
aged about 47yrs, Occ. Cultivation,
r/o. Khandala, Tahsil Bramhapuri,
District Chandrapur
4. Manohar Baliram Satibawane,
aged about 67yrs, Occ. Cultivation,
r/o. Khandala, at present Khed(Makta)
Tahsil Bramhapuri, District Chandrapur
5. Dhanpal @Dhannu Nanaji Talmale,
aged about 48yrs, Occ. Cultivation,
r/o. Khandala, Tahsil Bramhapuri,
District Chandrapur

6. Gajanan Namdeo Dahikar,
aged about 43yrs, Occ. Cultivation,
r/o. Sonsari, Presently Kumbhitola,
Tahsil Kurkheda, District Gadchiroli

..RESPONDENTS

Mr. T.A. Mirza, APP for appellant/State.

Mr. Y.B. Mandpe, counsel for respondents 1 to 5.

CORAM:- ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.

DATED :- 19.12.2022

ORAL JUDGMENT (Per: Rohit B. Deo, J.)

The State of Maharashtra is in appeal challenging the judgment dated 31.10.2020, rendered by the Additional Sessions Judge, Chandrapur, in Special (SC/ST Act) Case 26/2018, whereby the accused – respondents 1 to 6 herein are acquitted of offence punishable under Sections 143, 302 read with Section 149 of the Indian Penal Code (“IPC”), Sections 364, 201 read with Section 34 of IPC, Section 120-B of IPC and Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act and accused-respondents 3 to 6 are also acquitted of offence punishable under Sections 3(2)(v), 3(2) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act (“Atrocities Act”).

2. The prosecution case is that Master Yug Ashok Meshram, aged 2 years and 3 months went missing from village Khandala at 3.00 p.m. on 22.8.2018. His father lodged report at Police Station, Bramhapuri on the basis of which, offence punishable under Section 363 of the Indian Penal Code was registered against unknown accused. Two residents of village Khandala were apprehended on suspicion and one of them accused 1 - Pramod Bankar made disclosure leading to the discovery of the missing child’s body from the haystack of one Mukhru Bankar in front of the residence of the said accused. The body was decomposed when the same was sent for postmortem. During the investigation, it was revealed that the child was kidnapped in the quest of discovering secret treasure. One self proclaimed mantrik Sunil Bankar and other accused were involved. The accused were arrested, certain articles were seized from the residence of the accused. Accused Pramod made another disclosure

which resulted in discovery and recovery of the jivti and tok wore by the victim in a black thread when he was kidnapped. The said articles were recovered and seized from under a papaya tree on the rear side of the house of accused Pramod and the father of the victim identified the said articles as those of the victim.

The investigation took the usual course. Statements were recorded, autopsy report was obtained, seized articles were sent for forensic examination and on completion of investigation, the final report was submitted. The learned Special Judge framed charge Exhibit 8. The accused abjured guilt and claimed false implication. The Charge Exhibit 8 was amended at the stage of final arguments. The altered charge was explained to accused, who pleaded not guilty.

3. The learned Special Judge held that the death of the child was homicidal. However, the learned Special Judge acquitted the accused of the charge of having kidnapped the child and caused his death by smothering, whilst performing

black magic rituals.

4. We have heard the learned APP Mr. T.A. Mirza for the appellant/State and the learned counsel Mr. Y.B. Mandpe for the acquitted accused, and with their able assistance, we have scrutinized the record and the reasons recorded by the learned Special Judge.

5. The body of the child was discovered in haystack which was 14 fts. in length, 10 fts. in width and 7 fts. in height. The body was highly decomposed. PW 9 – Dr. Shital Kamble was not able to definitely opine about the cause of death. However, PW 9 opined that the child might have died due to sudden death syndrome. It is elicited in the cross-examination of PW 9, who conducted the autopsy that the death of the child may be due to natural or accidental causes. Considering the limitations of the medical evidence on record, we do not derive any assistance from the autopsy report in view of non ascertaining the cause of death. The learned Special Judge has however, given several reasons

why the death of the child is homicidal. Illustratively, the learned Special Judge considered the location and dimensions of the haystack and reasoned that a child aged 2 years and 3 months will not hide in the haystack, as was the defence suggestion, and remain there till he ultimately succumbs. The learned Special Judge noted the location and the state of the body when the same was discovered in the haystack and found that at the first sign or hint of danger or experience of discomfort, the natural instinct of self prereservation would have taken over and the child would have got out from the haystack. The reasons which are recorded by the learned Special Judge for holding the death homicidal cannot be branded as perverse and is a reasonable view and we are not inclined to disturb the finding that the death is homicidal, particularly, since the learned counsel appearing on behalf of the acquitted accused has not challenged the said finding nor has argued anything to the contrary. We, therefore, proceed on the premise that the child was killed.

6. The crucial question is the authorship of the crime.

7. We note that the prosecution case is entirely based on circumstantial evidence. Neither PW 2 – Tanuja Meshram, who is the mother of the child nor the villagers, who are examined by the prosecution PW 3 – Ganesh Meshram, PW 4 – Ankush Waghdhare, PW 10 - Vinayak Radke and PW 11 - Siddharth Mate have told the learned Special Judge that any of the accused was seen with the victim in any proximity with the time when the child was kidnapped. The learned Special Judge has observed that the only circumstance on which reliance is placed by the prosecution is the alleged disclosures of accused 1 - Pramod on 29.8.2018 and 7.9.2018 pursuant to which body of the child and the jivti and tok wore by him in thread came to be recovered and seized. We have independently scrutinized the evidence on record, and we find that the said observation of the learned Special Judge is consistent with the record. The learned APP Mr. T.A. Mirza, with his usual fairness, agrees that the incriminatory material which is pressed in service by

the prosecution is the discovery and recovery pursuant to the disclosures made by accused 1- Pramod.

8. It is well settled that while conviction can be based on circumstantial evidence, the chain of circumstances must be so complete and confidence inspiring as would exclude any other possibility other than guilt of the accused. We need not burden the judgment by referring to the plethora of precedents which have enunciated that every circumstance from which the conclusion of guilt is to be drawn must be fully established and every hypothesis except the guilt of the accused stand excluded. In the present case, the only circumstance which is pressed in service is the alleged discovery and recovery of the body and certain articles belonging to the deceased child. Assuming that the said circumstance is sufficient to hold that the offence is proved, the alleged discovery and recovery at the behest of accused Pramod is not an incriminatory material against the other accused, and it would be safe to assume that as against the other accused, the challenge to the acquittal is formal and

not serious.

9. The learned Special Judge has held that since the place where the dead body of the child was kept or hidden was already known to the police, the alleged discovery made by accused 1 Pramod is of no significance. This finding of the learned Special Judge is unexceptionable. The memorandum of disclosure Exhibit 53 is recorded from 2.30 p.m. to 3.40 p.m. on 29.8.2018. It is elicited in the cross-examination of PW 7 – Damodhar Madavi, who is examined as panch to the memorandum of disclosure that the police had written request letter to the Tahsildar seeking two panchas and acting on the said letter, the Tahsildar had directed him and one Sudhakar Choudhari to act as panch. The letters are at exhibits 61 and 62. PW 12 – PI Deepak Khobragade admits that letter Exhibit 61 was issued by him to the Tahsildar, Bramhapuri. The recital in the letter Exhibit 61 is that the two public servants were required to act as panch for preparation of spot panchanama and inquest panchanama of the body of the deceased boy. The letter

records the request that the panch be sent to Police Station, Bramhapuri by 1.30 p.m. on 29.8.2018. It is in response to Exhibit 61 that the Tahsildar issued letter Exhibit 62 to the Bramhapuri Police Station intimating the names of the persons, who would be acting as panch. Pertinently, PW 12 PI Deepak Khobragade admits that letter Exhibit 61 prepared by him at 12.30 p.m. in Police Station Bramhapuri. PW 12 further admits that the question of preparing the inquest panchanama arises only after the dead body is found. It is in the light of such evidence on record, that the learned Special Judge has held that the police already knew the place where the body was hidden much prior to the alleged disclosure made by accused 1 Pramod. We see no reason to take a different view.

10. In so far as the recovery and seizure of the articles allegedly belonging to the deceased child, the prosecution relies on the evidence of PW 8 – Ishwar Digore and PW 12 – PI Deepak Khobragade to prove that on 7.9.2018, i.e. eight days after the arrest, accused 1 – Pramod disclosed that the

panchdhatu tok and gold jivti were hidden in the earth near the papaya tree at the rear side of his house. The seizure panchanama is proved by the said witnesses. The disclosure is not believed by the learned Special Judge, who noticed certain overwriting and scoring of the day and time in the disclosure memorandum. Further, the learned Special Judge was of the view that the evidence of PW 12 – Deepak Khobragade, would have to be scrutinized with caution since it was PW 12 Deepak Khobragade, who manipulated the record to show that the recovery of the body was on the basis of memorandum of disclosure of accused 1 - Pramod. The fact that the alleged disclosure was made eight days of the arrest and certain other circumstances are considered by the learned Special Judge to disbelieve the alleged recovery of the articles.

11. In our considered view, it would not be necessary to delve deeper in the said aspect. The reasons recorded by the learned Special Judge for disbelieving the disclosure and recovery of the articles are sound. That apart, even if we

assume that the evidence is believable, it would not be permissible to convict accused 1 - Pramod only on the basis of alleged discovery and recovery of the articles.

12. We cannot but be alive to the position of law that an acquittal only strengthen the presumption of innocence. Nothing brought to our notice as would impel us to overturn the judgment of acquittal.

13. We find no merit in the criminal application and criminal appeal, which are consequently dismissed.

14. The bail bond which may have been executed by the accused shall stand discharged.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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