

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

CRIMINAL APPEAL NO.382 OF 2019

(Jaibhagwan Manful Subhedar . Vs. State of Maharashtra and Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri P P Kotwal, Advocate for Appellant.
Shri N. S. Rao, APP for the Respondent No.1/State.
Shri. M. S. Gupta, Advocate for the Respondent No.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 1st JULY, 2022.

. The order dated 29.06.2022 records as under :

“3. Shri Kotwal, learned Counsel for the Appellant submits as under:

a) That, statements of as many as twelve persons were recorded by the Police, however, only three witnesses were examined PW-1- Jaibhagwan Manful Subhedar-Appellant the father of the deceased Jyoti (Exh-28 Page no. 1 of Pursis dated 28.12.2018) : PW-2 Soniya Sudhirsingh Sivach sister of the deceased (Exh-35 Page no.14 of Pursis) and PW-3 Baleram Mirsingh Dhankad maternal uncle of the deceased (Exh-37 Page no.23 of Pursis). It is his contention, that material witnesses who speaks about the harassment and specifically Shabnam Ara and Neelam Bhupendra Tiwari the immediate neighbors were not examined.

b) The postmortem report was not exhibited by examining the Doctor. The postmortem report

indicates nine antemortem injuries, which are indicated in column 17.

c) The spot panchanama has also not been proved by examining the panch witness.

d) The Investigating Officer also has not been examined.

e) By inviting my attention to question no.26 in the statement, under Section 313 of the Cr. P. C., of Sukhbirsingh Ajmersingh Sivach (Accused no.1), he points out, that the answer to the question is in the affirmative, which would indicate that the death of Jyoti was homicidal. Similar is the answer to question no.26 in the statement of Accused no.2-Ajmersingh Dharasingh Sivach (Exh-51 Page 48 of Pursis) and the Accused no.3-Birmatidevi W/o Ajmersingh Sivach and Sudhirsingh S/o Ajmersingh Sivach Accused no.4.”

2. Shri N. S. Rao, learned Additional Public Prosecutor appearing for the Respondent no.1/State fairly concedes, that he is unable to justify the impugned judgment and the lacunas as have been pointed out in Para 3(a) to (e) of the order dated 29.06.2022 and submits, that a case for remand is made out.

3. Shri Gupta, learned Counsel for the Respondent no.2 vehemently opposes the Appeal contending that sufficient opportunities were granted to the prosecution, in spite of which, the

prosecution having failed to procure the presence of the witnesses, the learned Sessions Court was left with no option than to decide the matter on the basis of the material, which was available on record.

4. Having heard the learned Counsel for the parties, I am of the considered opinion, that the lacunas which are recorded in Para 3(a) to (e) of the order dated 29.06.2022, leave no wrong room for doubt, that this is a fit case in which, the impugned judgment cannot be sustained and a reasonable and fair opportunity has been denied. A perusal of the impugned judgment would indicate, that even the admission given in question no.26 in their statement under Section 313 of the Code of Criminal Procedure by the Accused persons, has been ignored by the learned Sessions Court, which goes to show the manner in which, the material on record has been marshaled. That apart, considering that the sessions trial was of the year 2016, a reasonable opportunity ought to have been granted to the prosecution to procure presence of the witnesses and there clearly appears to be an absence of such an opportunity considering the date of the impugned judgment, which is of 04.03.2017. The evidence of PW-1 was completed on 15.11.2016 and that of PW-3 was completed on 07.01.2017. The statements of the Accused persons under Section 313 came to be recorded on 28.02.2017, which in

itself would indicate the absence of any reasonable opportunity to the prosecution to secure the presence of witnesses. Even as recorded earlier, even the Medical Officer, who has given the postmortem report nor the Investigating Officer have been examined. Merely because the summons was issued that itself, would not indicate a justifiable reason for their absence as it was open for the learned Sessions Court, to procure their presence by various means in exercise of the powers available to it. A trial cannot be decided in default, for that would be a travesty of justice, but has to be decided on the basis of evidence, for which all efforts need to be demonstrated on record as the purpose of the trial is to bring out the truth.

5. Considering the above position, in my considered opinion, the impugned judgment cannot be sustained and the same is hereby quashed and set aside and the matter is remanded back to the learned Sessions Court for trial as per law after giving full opportunity to the prosecution to procure the witnesses. It is made clear that the witnesses who have already been examined, shall not be reexamined and the trial shall proceed from the stage subsequent to their evidence.