

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

CRIMINAL APPEAL NO.541 OF 2021
(State of Maharashtra vs. Firoz Khan Akbar Khan and others)

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

Shri M.J. Khan, Additional Public Prosecutor for
appellant.

CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.

DATED : JUNE 13, 2022

Heard Shri Khan, learned Additional
Public Prosecutor for the appellant. Nobody appears
for the respondents though duly served.

2) The respondents were prosecuted for the
offences punishable under Section 302 read with
Section 34 of Indian Penal Code, Section 3(2)(v) of
the Scheduled Castes and the Scheduled Tribes
(Prevention of Atrocities) Act, 1989, Sections 8 and
10 of the Protection of Children from Sexual
Offences Act, 2012, Sections 3 and 14 of the Child
Labour (Prohibition and Regulation) Act, 1986 and
Sections 23 and 26 of the Juvenile Justice (Care and
Protection of Children) Act, 2000.

3) By the judgment and order dated
6/7/2021 passed in Special Case No.15/2019, the

learned Additional Sessions Judge, Akot acquitted the respondents of all these offences recording a finding that even though the death of child Krushna Jambhekar was proved to be homicidal in nature, it was not proved beyond reasonable doubt by the prosecution that the homicidal death of Krushna was committed by nobody else, but accused persons, i.e. respondents.

4) Although the learned Additional Public Prosecutor made a brave attempt to justify filing of this appeal by the State, we must say that the learned Additional Public Prosecutor could not record any success. In fact, in a case like this, prosecution could not have done anything more than what it did while trying the respondents. In spite of taking all good efforts by the prosecution, the guilt of the accused persons, i.e. respondents for commission of the offences with which they were charged herein could not be established by the prosecution.

5) Except for the evidence of P.W.9 Dr.Bhushan Rathod, Medical Officer, who conducted post mortem examination, P.W.1 Anuradha Patekhede, Investigating Officer and P.W.10 Sunil Sonwane, Investigating Officer for investigation under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act,

1989, all the deposing witnesses, who were in fact eye witnesses, turned completely hostile to the prosecution. P.W.3 Rajesh Rakshaskar, P.W.4 Ganesh Nagapure, P.W.5 Umesh Shirsat, P.W.6 Faruk Khan, P.W.7 Gajanan Telgote and P.W.8 Ranjit Kahar all were eye witnesses and all of them turned hostile to the prosecution. In fact, these witnesses had the opportunity of seeing the entire incident - they being the employees of respondents rendering their services either at Fiza Hotel or Fiza Puncture Centre of respondent no.4 and, therefore, could have become star witnesses of the prosecution, if they had assisted the prosecution, but that was not to be. P.W.8 Ranjit Kahar had nothing to do with the respondents and was the independent eye witness, but he too turned hostile to the prosecution. With recusal from the Police statements by all these witnesses, nothing remained in the prosecution as there was no other evidence worth the name, which was collected by the Investigating Officer during the course of investigation. The trial Court, therefore, in a helpless manner observed that except for proving homicidal death of Krushna, the prosecution did not prove that it was caused only by the respondents.

6) The view taken by the trial Court that the prosecution failed to establish guilt of the accused/respondents for the offences with which they were charged in the trial, therefore, cannot be

said to be perverse or impossible, rather the view so taken is the logical outcome of the evidence correctly appreciated. There is no scope for interfering with the impugned judgment and order. The leave of the Court sought under Section 378(3) of the Criminal Procedure Code is, therefore, rejected and the appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands dismissed.

JUDGE

JUDGE

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