

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

APPLN. FOR LEAVE TO APPEAL BY STATE NO. 2 OF 2018

The State of Maharashtra	... Applicant
Versus	
Dhiraj @ Anil Dharmaraj Labade	... Respondent

....
Mr. R. V. Dasalkar, APP for applicant - State
....

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 20.03.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

By the present application under Section 378 (1)(b) of the Code of Criminal Procedure, the prosecution seeks leave to file appeal to challenge the judgment and order of acquittal of the respondent/accused, passed on 03.11.2017 by the learned Sessions Judge, Osmanabad in Sessions Case No.51/2016.

2. With the able assistance of the learned APP, we have gone through the record.

3. The prosecution story is that the informant Sanjay Angadrao Lohar lodged a report with Tuljapur Police Station, District Osmanabad alleging that when he was in Tuljapur bus

stand around 7.00 p.m. on 13.04.2016, received a call on his mobile from his cousin brother Balish Lohar. His brother informed him that, his father Angad Lohar was weighing Tamarind with one Kantabai Lohar and Mannabee Tamboli at about 6.00 p.m. in village and at that time the respondent/ accused went there and asked Angad as to why he is allowing him to do the work with him. Accused has assaulted Angad with wooden log all of a sudden and committed his murder. On the basis of said report, Crime No.122/2016 was registered against the respondent/accused for the offence punishable under Section 302 of the Indian Penal Code.

4. The Investigating Officer has drawn spot-cum-inquest panchanama of dead body of Angad Lohar and referred the same for postmortem. Accused came to be arrested on 14.04.2016. The Investigating Officer seized the clothes of deceased under seizure panchanama, so also seized the clothes of the accused and recorded statements of the witnesses. Investigating Officer has collected the postmortem report Exh.34 and on completion of investigation, filed the against the accused before the Judicial Magistrate, First Class, Tuljapur on 07.07.2016.

5. The learned trial Court framed the charge at Exh.5 against the accused, after the committal of the case. The accused pleaded not guilty and claimed for trial. In order to bring home the guilt of the accused for the offence under Section 302 of the Indian Penal Code, the prosecution examined PW-1 Sanjay Angadrao Lohar, the informant at Exh.11, PW-2 Chetan Prakash Kamble at Exh.13, PW-3 Mannabee Amin Tamboli at Exh.17, PW-4 Balish Limbaji Lohar at Exh.19, PW-5 Sushil Popat Shinde at Exh.21, PW-6 Nitin Rajendra Mali at Exh.24, PW-7 Dr. Pravin Subhashrao Rochkari at Exh.33, PW-8 Kantabai Balish Lohar at Exh.38, PW-9 Shivshankar Raghunath Phole at Exh.41, PW-10 Amrat Shankar Salgar, PW-11 Amol Subhashrao Ganesh at Exh.48, PW-12 Mahesh Haribhau Kachre at Exh.50 and PW-13 Investigating Officer Pradip Arun Powar at Exh.51. The incriminatory evidence was explained to the accused under Section 313 of the Code of Criminal Procedure. The defence of the accused is that he is innocent and he has not committed any such offence. After considering the evidence and hearing both sides, the learned trial Court has passed the impugned judgment and order and acquitted the accused.

6. The learned APP canvassed that the prosecution examined eye witness, PW-3 Mannabee who deposed that on the day of incident at about 6.00 p.m., deceased Angad was weighing the plucked and cleaned Tamarind. At that time accused Dhiraj came and told the victim Angad that he would finish him. Thereafter, the accused assaulted the victim Angad twice with a wooden log on his head and face. Thereafter one Kantabai who was present there, called her grand-son Balish on phone and the injured Angad was taken to Tuljapur for hospitalization and thereafter Balish made phone call to the informant- son of Angad. On medically examination, the victim Angad was declared dead. It further canvassed that, the evidence of eye witness PW-8 Kantabai is in corroboration with another eye witness PW-3 Mannabee. Therefore, the prosecution discharged its burden and proved the case beyond reasonable doubt. The ocular evidence is corroborated by medical evidence. PW-7 who has conducted the postmortem, has found lacerated wounds at nose having 5 cm x 3 cm, at mouth 4 cm x 3 cm and at vertex 6 cm x 4 cm, described in column 17 at postmortem report at Exh.34. Probable cause of the death of deceased is 'due to asphyxia due to cardio respiratory arrest due to head injury with multiple trauma (hemorrhage)'.

There was sufficient evidence to prove that the death was homicidal in nature. Therefore, the learned trial Court ought to have held guilty to the accused. The impugned order is perverse, illegal, bad in law and as such, prayed for leave to file appeal.

7. The informant PW-1 has supported his FIR, but he is not the eye witness to the incident. His testimony is rather hearsay witness as the fact of assault on his father was intimated to him by his cousin brother Balish Lohar.

8. The prosecution has alleged that incident of assault took place in presence of PW-8 Kantabai and PW-3 Mannabee, they have been examined. It is therefore necessary to scrutinize the evidence of PW-3 and PW-8. The PW-3 Mannabee has deposed that she used to go to the house of deceased Angad for cleaning Tamarind and separating its seeds daily from 11.00 a.m. to 6.00 p.m. in the season. On the day of incident at around 6.00 p.m., while they were weighing separated Tamarind, accused Anil Labade came there and told Angad that he would finish his life. Accused then assaulted the Angad with a wooden log twice on head and once on face, as a result of which Angad fell down. Kantabai (PW-8), who was present at the spot gave phone call to her grand-son and called him at the spot. Angad was thereafter

taken to the hospital at Tuljapur, but the Medical Officer declared him as he is dead.

9. PW-8 Kantabai has deposed that deceased Angad was doing business of Tamarind and she was working with him. On the day of incident at about 6.00 p.m., after completing work when she was leaving the said place, accused came there and assaulted the Angad on his head with wooden log twice on head and once on face. Therefore, she and another witness made hue and cry and the accused ran away. Thereafter her husband Balish and one Babalal Mulani came there and Angad was taken to the hospital at Tuljapur in a rickshaw, however, he was declared dead.

10. The prosecution examined PW 4 Balish Lohar, who deposed that the grand-daughter of his brother by name Shivani had informed him on phone that the accused has assaulted Angad with wooden log. Therefore, he went to the spot and saw that Angad was lying in pool of blood. Witness has then called mini-door (vehicle) and took Angad to Tuljapur, but he was declared dead by the Medical Officer. Thereafter, inquest panchanama and dead body was drawn by the Investigating Officer. Dead body of Angad was referred for autopsy.

11. PW-7 Dr. Pravin deposed that, he conducted postmortem, at about 8.30 a.m. on 14.04.2016, of the dead body of Angad Lohar. He found lacerated wound at nose having 5 cm x 3 cm, at mouth 4 cm x 3 cm and at vertex 6 cm x 4 cm. So also he found injuries 5 cm x 3 cm on base of nose and injury 6 cm x 4 cm at vertex. Brain tissues were congested. There were internal injuries also. PW-7 opined the death of deceased was “due to asphyxia due to cardio respiratory arrest due to head injury with multiple trauma (hemorrhage)”.

12. PW-13 Investigating Officer has given the details of the investigation carried out by him.

13. It would be worthwhile to mention here that the incident appears to be occurred on 13.04.2016 at about 6.00 p.m. however, PW-13 has seized the clothes of the accused under seizure panchanama on 16.04.2016 Exh.42. The said panchnama shows that the accused was wearing the clothes containing blood stains. It is highly impossible that from the day of incident i.e. 13.04.2016 to 16.04.2016 accused would have been in the same cloths. Therefore, recovery of bloodstained clothes of the accused while he was in custody, does not appear probable.

14. Prosecution has examined two eye-witnesses, but they both have not stated as to why accused wanted to kill Angad. They have not stated that accused used to work with Angad earlier and then he was removed from his service by the deceased. Informant has also not stated anything about it. Angad used to stay alone in the village. If he was doing such business of Tamarind and engaging the workers, his accounts could have been produced. Therefore, prosecution has not proved that there was motive for the accused to commit murder of Angad. Certainly, there was no motive for the alleged eye-witnesses also to implicate the accused; but, the testimony of the eye-witness should be trustworthy. It is unimaginable that without there being any exchange of dialog, the accused would have assaulted deceased by saying that he wants to kill Angad. There is overwriting in inquest panchnama and also the dates on the postmortem, registration of the crime, do not match. Nonetheless the prosecution has not examined witnesses Shivani to prove that she had informed the PW-4 Balish on mobile in respect of alleged incident. How Shivani got the knowledge about the incident is a mystery. Therefore, all these lacunae certainly create doubts on allegation about accused is author of scene of crime. Benefit of this doubt has to be given to the

accused. We therefore, arrive at the conclusion that prosecution has failed to prove that accused has caused homicidal death of deceased Angad.

15. The learned trial Court passed the impugned judgment and order and acquitted the accused on 03.11.2017, which itself justifiable and it does not warrant any interference in the said findings at the hands of this Court. We do not find substantial grounds to grant leave to the prosecution to file appeal.

16. In view of above discussions, we are not inclined to allow the present application and proceed to pass following order:

ORDER

The application is hereby dismissed.

[Y. G. KHOBRAGADE, J.] [SMT. VIBHA KANKANWADI, J.]

SMS