

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 8 OF 2020

The State of Maharashtra,
Through Police Inspector,
Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahmednagar

... Applicant.

Versus

Bhanudas Sonyabapu Mahandule
Age : Major, Occu. : Agri.,
R/o. Ruikhel, Tq. Shrigonda,
Dist. Ahmednagar.

... Respondent
(Orig. Accused)

...
Mrs. V. S. Choudhari, APP for Applicant - State

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 11th JULY, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Vide instant application, State is seeking permission of this Court to prefer an appeal against judgment and order passed by learned Additional Sessions Judge, Shrigonda, dated 23.10.2019 in Sessions Case No. 130 of 2019 by which present respondent is acquitted from charges under sections 302, 201 and 506 of Indian Penal Code (IPC).

2. Appraising us about the background of the case, learned APP would submit that, on 20.02.2017, deceased Navnath

and present accused had indulged in heating exchange of words at around 9:00 p.m.. After deceased Navnath and other family members including his wife Sarika informant went to sleep, at around 5:00 a.m. of 21.02.2017, informant Sarika heard sound of her husband and so she woke up and found appellant Bhanudas was giving blows with iron spade on the head of Navnath as a result of which he fell unconscious. Informant passed information to her near and dear ones and her husband Navnath was taken to hospital, i.e. initially at Civil Hospital, Ahmednagar and thereafter he was shifted to Sassoon Hospital, Pune where he died.

3. Learned APP submitted that, wife of Navnath (PW2) i.e. daughter-in-law of accused set law into motion. That, treating doctor as well as autopsy doctor have confirmed injury as well as cause of death. However, learned trial Judge has not considered and appreciated such medical evidence in proper perspective. It is pointed out that death was only because of head injury. That, PW2 in her testimony deposed that after hearing shouts of her husband she woke up and she saw occurrence. Therefore, her evidence was inspiring confidence. However, learned trial Judge has not appreciated her evidence properly. Prosecution had proved spot of incident. Father of informant i.e. PW5 Bhausahab also was examined. But, even such evidence has not been considered and

appreciated by learned trial Judge and according to learned APP the impugned judgment and order being perverse, it is sought to be challenged by State and hence prayers for leave.

4. In the light of above submissions, we have gone through the evidence on behalf of prosecution. It seems from the record that as many as 11 witnesses have been examined by prosecution in support of their case. PW1 Krishna, PW3 Prakash seem to be panch witnesses. PW2 Sarika, PW4 Devidas, PW5 Bhausaheb, PW8 Shahaji seem to be alleged eye witnesses, whereas PW10 Dr. Supriya and PW11 Dr. Rahul seem to be medical experts, whereas PW9 Sanjaykumar is the Investigating Officer.

5. At the outset, there being charge under section 302 of IPC, it is to be seen whether prosecution has established that death of Navnath was only and only homicidal and not otherwise. For taking call on this issue medical evidence assumes important and so he visited the said evidence. It is revealed that, immediately after alleged occurrence, PW6 Dr.Sudhir had occasion to examine deceased. In his evidence this witness has stated that, he is homeopathic practitioner. On 21.02.2017 at about 11:00 a.m. patient by name Navnath was brought by his relatives namely, maternal uncle Bapu Bhos, wife Sarika and sister Meena. Doctor claims that he noticed injury on the occipital region and being

serious in nature, he advised patient to be shifted elsewhere. Doctor stated that, history of the injury was stated by the relatives of patient as fall on the stone in night. In cross-examination, he has admitted suggestion that head injury is possible in a road accident.

6. Another witness who is crucial PW-10 Dr. Supriya. This doctor has issued injury certificate at Exh.82. She has stated that on examining Navnath on 21.02.2017, at Civil Hospital, Ahmednagar, she noticed head injury with left ear bleed, CLW over left parietal region. According to her, injuries are grievous in nature and patient was referred to Sassoon Hospital, Pune. In his substantive evidence this witness stated that, history of injury was reported by his wife as RTA.

7. Now let us examine the evidence of autopsy doctor PW11 Dr. Rahul. In the opinion of this doctor death was due to complications following head injuries.

8. What is emerging from the testimonies of above three medical experts is that history is reported as fall on stone and meeting RTA. Autopsy doctor has also admitted in cross-examination that injuries are possible in a road accident. Therefore, here, death of Navnath is not cogently proved to be homicidal one only.

9. As regards to the occurrence of assault is concerned, alleged incident seems to have taken place in early hours of 21.02.2017. The crucial evidence is of wife of deceased i.e. PW2 Sarika. After visiting her evidence, we find her deposing that, her husband returned home after consuming liquor. There was heated exchange of words between her husband and accused. After quarrel, everybody slept and on 21.02.2017 at about 5:00 a.m., on hearing noise and cries of husband, she woke up and claims that she saw accused assaulting her husband by spade. However, FIR seems to be lodged on 04.05.2017 i.e. after immense delay of 2 months and 13 days. From the evidence of medico legal expert, it has already come on record that history is reported as fall on stone and meeting RTA respectively. Therefore, such conduct of very wife reporting occurrence after so many days alleging assault by father-in-law creates serious doubt. Motive is also unfortunately not forthcoming because evidence of informant shows that there was mere heated exchange of words between them i.e. father and son. The quarrel also seems to be in the backdrop of accused father desisting his son from consuming liquor. Father of informant i.e. PW5 Bhausahab also has merely hearsay information.

10. Next witness PW7 Prakash, who is a neighbour claims that, he saw accused assaulting deceased. However, informant

does not mark his presence. Moreover, this witness was prosecuted on the complaint of accused. Further surprising thing is that this witness in spite of claiming to have seen the occurrence, his statement is recorded on 22.05.2017. This inordinate delay in recording his statement or he not approaching police promptly also creates doubt about his credit worthiness.

11. Likewise even PW8 Shahaji in spite of claiming to have seen the occurrence, has not immediately reported to anyone and he has given statement on 22.5.2017.

12. Therefore, taking overall survey of belated FIR and different history being reported to doctor, and when prosecution has not firmly established death of Navnath to be homicidal one, in our opinion, no error has been committed by learned trial Judge in disbelieving the case of prosecution and giving clean chit to the accused respondent. With such quality of evidence on record no fruitful purpose would be served by permitting State to prefer appeal.

13. Application for leave to appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)