

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 10 OF 2020

The State of Maharashtra,
Through Officer In-charge of
Bhada Police Station, Ausa,
Tq. Ausa, Dist. Latur.

... Applicant
(Orig. Informant)

Versus

1. Laxman Baburao Gavli,
Age : 55 years, Occu. : Agri.,
R/o. Bhada, Tq. Ausa, Dist. Latur.
2. Rajendra Laxman Gavli,
Age : 20 years, Occu. : Agri.,
R/o. Bhada, Tq. Ausa, Dist. Latur.

... Respondents
(Orig. Accused)

...
Mr. A. V. Deshmukh, APP for Applicant - State
...

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

DATED : 11th JULY, 2023

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

1. Feeling aggrieved by the judgment and order of acquittal dated 17.10.2019 passed by learned Additional Sessions Judge, Latur in Sessions Case No. 120 of 2013, thereby acquitting respondents from charges under sections 304 Part II in the alternative for the offence punishable under section 304-A and 201 of Indian Penal Code (IPC), State is hereby seeking leave to file appeal against the said judgment and order.

2. Taking us through the FIR, learned APP would submit that respondents owns a field. That, he had erected fencing by making use of binding wire to prevent trespass. However, he supplied electric current to prevent intrusion in his property. Deceased Gorakhnath and his dog happened to come in contact with live current passing through the binding wire and both suffered massive electric shock and died. To escape himself from legal action respondents disposed of the dead body. That, required ingredients for attracting section 304-A of IPC were readily available in the evidence gathered by investigating machinery and therefore respondents were duly charge-sheeted. As many as 15 witnesses were examined by prosecution. According to learned APP, prosecution has made out a full proof case in trial court regarding commission of offence by respondents. Respondent is solely responsible for the death of Gorakhnath and therefore learned trial Court ought to have appreciated the evidence in the light of the legal requirement and as death was shown to be due to negligence and rashness, guilt ought to have been recorded. Consequently, it is submitted that as respondents being acquitted, State intends to prefer appeal and hence leave is sought as prayed for.

3. In the light of above submissions, we have gone

through the entire papers before us. It transpires that, in support of the charge, prosecution has examined following witnesses.

PW1 Ganesh, brother of deceased, who has lodged report. It is his version that after his brother did not return home and as was missing, he was searched for. On the strength of marks of wheels of bullock-cart whereabouts were traced, which led to field of respondents. That, it was found that on three sides of the field, electricity current was supplied through bindings wire fencing and only because of it, deceased got electric shock and died. Dog of deceased also died because of electric shock, and therefore, he lodged report (Exh.56).

PW2 Kishor stated that, to the north of his field, there is field of respondents and that electricity current used to flow through the binding wires erected by respondents during night. On 13.07.2013, dead body of deceased Gorakhnath and dog were found, and therefore, he informed police.

PW3 Siddhanath, panch to panchanama (Exh.60).

PW4 Sidhling also a panch to panchanama (Exh.64), i.e. off road going through the field of respondents.

PW5 Rajkumar, veterinary doctor who examined and conducted postmortem on dog, opined that, 'dog died due to electric shock'.

PW6 Rekha, wife of deceased stated that, her husband left house in the morning of 12.07.2013, but did not return. When searched, his body was found in the well owned by Vithal More. According to her, it was learnt that her husband suffered electric shock on coming in contact with binding wire, which was used for fencing the field of respondents.

PW7 Nasiroddin, carrier; PW8 Shriniwas, panch to panchanama (Exh.81), during which panchanama of spot of binding wires were drawn and binding wires from the spot were seized.

PW9 Dr. Ravindra, autopsy doctor, who conducted postmortem on deceased Gorakhnath and it is his opinion that 'death was due to cardio respiratory failure due to high voltage electric shock'.

PW10 Munjaji, PSO; PW11 Somnath, vendor of binding wires; PW12 Vyankat, adjoining field owner.

PW13 Ratnadeep, Official from MSEDCL who answered queries raised by Investigating Officer.

PW14 Anil, a Photographer;

PW15 Usman, the Investigating Officer.

4. On appreciating the available evidence, it is emerging that respondent Laxman is the owner of land gut no.132(B). Precise accusation is that, he deliberately supplied electric current through the binding wires and due to his rash and negligent act, deceased and his dog both came in contact with it and suffered electric shock and died.

5. To bring home the charge of section 304-A of IPC, prosecution was expected to bring on record following essential ingredients :-

“(i) Death of a person

(ii) Death was caused by accused during any rash or negligence act.

(iii) Act does not amount to culpable homicide.

And to prove negligence under Criminal Law, the prosecution must prove :

(i) The existence of duty.

(ii) A breach of the duty causing death.

(iii) The breach of the duty must be characterized as gross negligence.”

6. In the light of above requirements, the evidence on record examined. It is revealed that to the field of respondents binding wires only three sides of the field. Admittedly, there is no direct eye witness about seeing deceased Gorakhnath and his dog attempting to enter the field owned by respondents. It seems that, bullock cart wheel marks at the scene of occurrence are the only clue to reach to the conclusion drawn about deceased entering the field owned by respondents. That apart, there is a well in which

also has electricity pump. According to prosecution, dead body of Gorakhnath was found in said well water.

In the light of accusations, there ought to have been evidence clearly suggesting respondents deliberately, negligently and in rash manner supplying electricity current with intention to cause death. However, there is no evidence in that regard. Unless it is demonstrated that, death was only and only due to coming in contact with binding wire which carried electricity, charge cannot be returned. There is also electricity pump to draw well water and dead body is found in said well. Therefore, possibility of deceased coming in contact with well water also cannot be ruled out. Though neighbors are examined, unfortunately they have not supported prosecution evidence. Therefore, more than one possibilities of suffering electric shock are cropping up and therefore in absence of trustworthy and reliable evidence about causing death due to rash and negligent act cannot be attributed to the respondents. Due to paucity and weak evidence, guilt cannot be fasten. Apparently, report seems to have admitted that he entertained mere suspicion. This being the position, apparently case of prosecution is without any foundation.

7. We have gone through the impugned judgment, learned

trial court seems to have appreciated entire evidence of prosecution in the light of legal requirement. Not finding convincing evidence, no error in our opinion has been committed by the learned trial Judge in acquitting respondents from the charges. Hence, we proceed to pass following order :-

ORDER

- (i) Application for leave to appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)