



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.22 OF 2020

The State of Maharashtra
Through Police Station Taluka Omerga,
District Osmanabad.

..Applicant

Versus

1. Maksud Mohamad Patel
Age: 29 years, Nil,
R/o. Dapka, Tal. Omerga,
Dist.Omerga.

2. Meheboob Ismile Fakir
Age: 30 years, Nil,
R/o. Dapka, Tal. Omerga,
Dist.Osmanabad.

..Respondents
(Ori. Accused)

...
APP for Applicant : Mrs.V.S.Choudhari

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

DATE : 5th OCTOBER, 2023

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

1. Acquittal of respondents from charge under Sections 302 r/w 34, 506 r/w 34 and 447 r/w 34 of the Indian Penal Code (IPC) prompts State to file instant application praying to grant leave to assail the said judgment passed in Sessions Case 16 of 2018 on 30-11-2019 by learned Additional Sessions Judge, Omerga.

2. Apprising about the charge and case of prosecution in trial Court, learned APP would submit that occurrence in question was of 22-04-2018. That FIR is at the instance of **PW2** Ram Pawar informing that he is a driver on a Truck owned by one Shaukat Patel and has two sons namely Ajit and Abhijit. It is informed that eight days prior to the incident, loaded Truck was taken from Pune towards Andhra Pradesh and said Truck was driven by accused Mehtab. That at Omerga, Mehtab told informant that he would like to go to his village and accordingly, he went to his village.

That prior to the incident, informant received a phone call from his wife regarding quarrel between his son Abhijit and accused Mehtab. It is further pointed out that on 21-04-2018 accused Mehtab had issued threat to informant. That on 22-04-2018 at around 04:00 p.m. while he was travelling to Pune, at around 01:30 a.m. (early morning of 23-04-2018), informant received a phone call from Tanhaji Gaikwad informing about quarrel taking place between Abhijit and accused Mehtab and that Abhijit suffered grievous injuries in the said quarrel and he should immediately come back to his village. That he parked Truck at Indapur Tolnaka and reached his village by a private vehicle. That there he got information that his son Abhijit died due to stab injury at the hands of accused Mehtab. Therefore, FIR was lodged.

3. It is next submitted that investigation revealed complicity of accused and therefore, after gathering sufficient evidence, accused persons were

chargesheeted and tried. It is pointed out that in support of its case prosecution had adduced evidence of in all seven witnesses. Weapon was recovered. Therefore, there was ample evidence regarding involvement of accused persons. However, learned trial Judge failed to appreciate evidence in its correct perspective and erred in acquitting the respondents. Therefore, as it is a fit case for re-appreciation and re-analysis, learned APP prays for leave to file appeal.

4. Having heard learned APP for the State, we have gone through the evidence adduced before the learned trial Court, which shows that prosecution has rested its case on oral evidence of in all seven witnesses and also relied on documentary evidence.

5. Evidence of **PW1** Dr.Basavaraj Sidharamappa Dhani, Autopsy Doctor shows that deceased Abhijit met homicidal death, i.e. due “cardio respiratory arrest due to hemorrhagic shock due to multiple injuries”.

6. **PW2** Ram Vishwanath Pwar, informant, father who is a truck driver, claims that accused Mehtab worked as helper. According to him, eight days prior to the incident, accused Mehtab expressed his desire to go back to village at Dapka and informant gave Rs. 1000/- to him. According to informant, while he was on the road carrying goods, he received phone call from his wife regarding quarrel between Mehtab and their son Abhijit. Further, according to

him, two days prior to the incident, he came back to Dapka and at that time, Mehtab challenged him to cross Indapur and that he would show. Informant claims that he ignored and on next day took the Truck towards Pune. At that time, around 01:30 a.m. he received phone call from Tanhaij Tulshiram Gaikwad about original accused nos.(1) Maksud Patel (2) Meheboob Fakir (3) Mehtab Fakir stabbing Abhijeet and therefore, informant came back and found his son to be dead. Informant's wife allegedly told him that deceased Abhijit had been to the field to sleep along with Irfan Fakir and in the night at 01:00 a.m. Irfan came and informed that accused Mehtab, Meheboob and Maksud all three stabbed Abhijeet and therefore, crime was registered.

7. **PW3** Madhav Shrirang Patil also claims that Irfan and Abhijit had been to the field to sleep and he had seen them while he was sitting on the bridge and later on Irfan and Rohit came and informed him that original accused no.3 Mehtab had stabbed Abhijit.

8. **PW5** Irfan Gaibhisha Fakir seems to be the important witness. According to him, after attending a function on the night of 22.4.2018, he and Abhijit went to sleep in the field. That time, original accused no.3 Mehtab came there and in the backdrop of previous dispute, stabbed Abhijit.

9. **PW4** Haridas Kashinath Pawar is Pancha to spot panchanama. His evidence is at Exh.51.

PW6 Dipak Kisansing Rajput is Pancha memorandum of disclosure and seizure panchanama of weapon. His evidence is at Exh.65.

PW7 Dinesh Uttamrao Jadhav (PSI) is Investigating Officer. His evidence is at Exh.72.

10. Here it is seen that, three persons were chargesheeted by Omerga Taluka police station by invoking section 34 of IPC. Important witness seems to be **PW5** Irfan. From his evidence, it is seen that no role is attributed to respondents i.e. original accused nos.(1) Maksud Patel and (2) Meheboob Fakir, who were arrested and chargesheeted. Presence and overact is attributed only to original accused no.3 Mehtab.

11. Therefore, learned trial Court has rightly held that there is no iota of evidence regarding involvement of respondents i.e. accused Maksud and accused Meheboob. Therefore, acquittal of respondents cannot be faulted at. No case being made out on merits, we refuse leave and proceed to pass following order :-

ORDER

Application for Leave to Appeal by State no.22 of 2020
stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)