

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.25 OF 2020

The State of Maharashtra
Through, Police Station Jinsi,
Aurangabad.

.. Applicant

Versus

1. Saiyyad Kayyum Saiyyad Munir
2. Saiyyad Munir Saiyyad Sandu
3. Saiyyad Mansur Saiyyad Munir
4. Sau. Latifa Begum w/o Saiyyad Munir

.. Respondents

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Mr. A. M. Phule, APP for the applicant – State.

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

DATE : 13th July, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 17.12.2019 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.53 of 2015, thereby acquitting the respondents from the offence punishable under Sections 302, 323 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mr. A. M. Phule for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The prosecution story in short is that informant Santosh Basaiye is residing along with his joint family including deceased. There are three brothers in the family, namely, Dinesh, deceased Sachin and informant Santosh. The grocery shop of the family was run by deceased Sachin. Accused were residing in the building in front of their house. Informant was taking lunch at about 3.00 to 3.15 p.m. on 21.09.2014. When he heard shouts of his brother Sachin, he therefore went outside. He found that a person having beard had caught hold of Sachin and other two were beating Sachin on stomach and chest by fists. He found a lady at the spot, who was abusing and beating Sachin. He asked those persons to spare his brother, but still those persons continued the assault. Sachin thereafter fell down, still those persons continued to beat Sachin on stomach and chest by fists. Many people gathered there and then two persons brought rickshaw, from which Sachin was taken to Ghati Hospital. Around 4.15 p.m., Sachin was declared dead. It is then stated that those persons assaulted Sachin as they were demanding grocery articles on credit, but Sachin refused. Thereafter, informant Santosh lodged FIR with Jinsi Police Station, Aurangabad.

4. After the investigation of the crime, charge-sheet was filed and after its committal, trial was conducted. Prosecution examined in all eight witnesses to bring home the guilt of the accused. After going through the evidence and hearing both sides, the learned Trial Judge has acquitted all the accused persons. Hence, present application.

5. Learned APP would argue that the Trial Court has not appreciated the evidence properly. There were eye witnesses to the incident, yet they have been disbelieved. It is observed that the motive is also not strong to conclude that Sachin was murdered. PW.1 Santosh, PW.3 child witness - Shruti Dinesh Basaiye, PW.4 Reshma Dinesh Basaiye are the eye witnesses. The medical evidence has been doubted and on the basis of the medical evidence, the ocular evidence is doubted and, therefore, the re-appreciation of evidence is required.

6. At the outset, it is to be noted that as per the autopsy report there were three injuries (i) Linear abrasion of size 4.5 cm x 0.2 cm present over right part of neck, 6 cm from medial end of clavicle, 8 cm from right angle of mandible, reddish in colour, (ii) Abrasion of size 0.5 cm x 0.3 cm present 2 cm below right aspect of medial end of clavicle, reddish in colour and (iii) Abrasion of size 0.5 cm x 0.1 cm present 2 cm below injury No.2, reddish in colour. There was no internal injury to the head in thorax. Food particles were present on the inner aspect of mucosa of trachea and

terminal bronchial, mucosa – congested and reddish in colour. The lungs were emphysematous, heavy, congested, petechial hemorrhages present over external aspect of both lungs at places. On the cut section evidence of food particles present at secondary bronchi, whitish frothy fluid oozed out. PW.6 Dr. Kailash Zine, who conducted the autopsy has given the probable cause of death as “Asphyxia due to aspiration of food material up to lungs with evidence of abrasion over neck.” This medical evidence is then compared with the oral evidence by the learned Trial Judge. The oral evidence was specifically on the point that all the three accused persons were assaulting the deceased on his chest and stomach. It has been rightly observed by the learned Trial Judge that the medical officer had not seen any external injury on the stomach. In the cross-examination, PW.6 has admitted that if someone falls forcefully on hard and blunt surface, food particles can come in throat. There is no evidence by the prosecution as to when deceased had consumed the food. Definitely, this was the major aspect that was considered by the learned Trial Judge. In the normal course, when there is dispute between ocular evidence and medical evidence, then the ocular evidence would prevail, but there has to be certain specific reason for discarding the medical evidence in that case. Except the family members nobody else have been examined and the incident is stated to have taken place in the grocery shop, which was on the first floor and it appears that the family members stay on the upper floors.

Presence of PW.3 Shruti is doubtful. She says that around 3.00 p.m., she was riding bicycle outside the house along with her brother. Since the accused persons were residing in front of the house of the informant, it appears that they were knowing each others family. She says that accused Kayyum came to the shop and torn the packet of chips by his hand. Sachin, therefore, asked Kayyum to pay the price of the packet and then Kayyum started giving bad words. She has then stated that one old man and lady caught hold of her uncle and Kayyum started beating him. She has not identified the old man and woman. It is to be noted that PW.1 Santosh had stated that Sachin had given articles to accused on credit and he was asking money which accused were not giving and, therefore, they had beaten Sachin. That means the said story regarding motive is not consistent. PW.4 Reshma says that there were guest in the house. Her husband i.e. Dinesh - brother of deceased Sachin came home around 11.00 to 11.30 a.m. Then they had lunch. After lunch, her husband went to shop around 1.00 to 1.30 p.m.. Her daughter and son of brother-in-law were playing bicycle in front of the shop and then she says that her brother-in-law in tension went out of the house and, therefore, they also went out of the house behind him, at that time, one old person and old lady caught hold of Sachin and Kayyum was beating him. Thus, she is giving some different story. The ocular evidence was absolutely not consistent and as aforesaid, the medical evidence was not supporting to the fact that it was a homicidal death and,

therefore, the acquittal of the accused cannot be said to be perverse. The application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm