

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

14 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.49 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
AJAY RAMA RAHASE AND ANOTHER

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Mr. S.J. Salgare, APP for applicant

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

DATE : 27th MARCH, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 378(1)(B) of the Code of Criminal Procedure, 1973 seeking leave to file criminal appeal challenging the Judgment and order dated 15.12.2017 passed by learned Additional Sessions Judge, Shahada, Dist. Nandurbar in Sessions Case No.27/2016, thereby acquitting the respondents/original accused persons from the offences punishable under Section 302, 504 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. S.J. Salgare for applicant. With his able

assistance we have gone through the material that was before the learned Trial Judge.

3 The prosecution story, in short, is that deceased Santosh Sambersing Rahase was residing with his wife and children at Lakhapur. They had come to Lakhapur about two months prior to the incident. Informant Manglabai – widow of deceased Santosh was present in the house around 8.30 p.m. on 08.03.2016. Both the accused had gone to the house and asked her about Santosh. She told them that Santosh is not at home. They then started asking her, as to why Santosh is cultivating the forest land. They abused and threatened that they will not spare Santosh and then left the place. After some time Manglabai came to know that the accused persons had assaulted Santosh by fist blows and wooden mace (गदा). The place where Santosh was found lying in injured condition was near one grocery shop. Thereafter Santosh was brought near the house. Manglabai had then informed the said fact to her father-in-law Sambersing Rahase. Thereafter, the injured was taken to Government Hospital, Borad, then to Government Hospital, Nandurbar, then to Government Hospital, Dhule, but he was declared dead around 4.05 hours of 09.03.2016. Manglabai then lodged report with Dhule City Police Station on the same day. The said First Information Report was then transferred to Taloda Police Station, Tq.

Shahada, Dist. Nandurbar, whereupon offence vide Crime No.18/2016 was registered for the offence punishable under Section 302, 504 read with Section 34 of the Indian Penal Code.

4 After the completion of investigation charge sheet was filed. Charge came to be framed by the learned Additional Sessions Judge after the committal of the case. Prosecution has examined in all 12 witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides the learned Trial Judge has acquitted both the accused of all the charges. Hence, present application.

5 Learned APP submitted that the Trial Judge has not appreciated the evidence properly. The medical evidence would show that Santosh had sustained 12 external injuries and there were corresponding internal injuries. The Medical Officer PW 8 Dr. K.M. Choudhari, who conducted the autopsy, has opined that the cause of death was head injury. That means, the death of Santosh was homicidal in nature and the said witness has also stated that those injuries, which he had noted on the person of deceased, were possible by hard and blunt object like wooden mace before the Court. Further, the learned Trial Court failed to appreciate that both the accused had gone to the house of Manglabai just prior to the incident and had made inquiry about

Santosh. Prosecution has also examined PW 4 Gorjya, PW 10 Sumanbai and PW 11 Vishal as the persons who had seen the incident. PW 11 Vishal is the son of deceased. Though he is minor; yet, he has given all the details. When the evidence of the eye witnesses has not been properly appreciated, it requires re-appreciation and, therefore, leave deserves to be granted.

6 At the outset, we would like to say that perusal of the evidence as well as the impugned Judgment would show that a detailed Judgment giving reasons has been passed. It is not disputed or doubted by the learned Trial Judge that Santosh had received injuries and he succumbed to those injuries, however, it has been held that the evidence of the eye witnesses is not trustworthy, it is full of discrepancies, contradictions, omissions etc. We have also considered testimony of PW 8 Dr. K.M. Choudhari, who had conducted autopsy. Important point to be noted here is that though he had noted about 12 external injuries on the person of deceased, injury Nos.11 and 12 were the sutured wounds. There were two contusions, 8 abrasions and one lacerated wound. Interestingly, in the cross-examination of accused No.1 it was asked, as to whether all the injuries mentioned in column No.17 are possible by means of wooden mace, he has answered in the affirmative and then further he has stated that injury Nos.1 and 2 are possible with sufficient force of the wooden mace. Then again he says that injury Nos.1

and 2 are possible due to stone also. The stone as well as wooden mace seized in the matter were never referred to him prior to the date of deposition by the police for his opinion. Again he has stated that any hard and blunt object would cause similar injuries as mentioned in column No.17. Therefore, from his testimony it cannot be said in clear words that the death is homicidal in nature. Even if it is taken that it was homicidal in nature, further connection about the weapon with which those injuries were caused has not been conclusively established.

7 PW 1 Manglabai is the informant, but she is not the eye witness. Whether her statement about the prior visit of the accused to her house and giving threat can be connected to the incident would depend on the testimony of the eye witnesses. PW 2 Sambersing is the father of the deceased. He has not witnessed the incident. PW 3 Prakash has deposed that around 8.00 p.m. one Durjya Aapsing Valvi gave call to his father Atmaram that both the accused persons had beaten Santosh and they were in need of vehicle to take Santosh to hospital. Thereafter he made arrangement for a vehicle and went to Manglabai's house then whatever he is saying was on the basis of communication by Manglabai to him, which is not admissible. Therefore, the testimony of this witness is not of much helpful to the prosecution.

8 PW 4 Gorjya was the Sarpanch of village Lakhapur. He has posed himself as the eye witness and he has stated that when he heard shouting, he took torch and went towards the voice. He found both the accused beating Santosh. He has assigned the role by saying that accused No.2 was assaulting Santosh by wooden mace, whereas accused No.1 was beating Santosh by means of stone. He says that he had then given call to Atmaram and told them that accused persons had killed Santosh. At the next moment he says that at that time Santosh was alive, and he was lying on the ground, blood was oozing out of his mouth, then he states about how he was taken to various hospitals. Important point to be noted in the cross of this witness is that he says that he was playing with a grandson and then by taking torch he went to the spot. He has stated that the assailants had left the spot when he reached there. That means, he had not seen both the accused persons at the spot when he reached. Testimony of this witness is not inspiring confidence.

9 Next in line is the testimony of PW 10 Sumanbai who is stated to be another eye witness. In her cross-examination she has stated that PW 4 Gorjya is the Ex-Sarpanch. PW 4 Gorjya has rather posed himself as Sarpanch, that means, his tenure is still going on. In her cross-examination it has come that the accused persons were cultivating the encroached land and

since after their arrest they are in jail. PW 4 was cultivating that land which accused used to cultivate. That means, PW 4 Gorjya on the day of his deposition had the reason to speak against the accused as he became interested in keeping the accused persons behind the bars, so that he can cultivate the encroached land. As regards the testimony of PW 10 Sumanbai is concerned, she heard shouting at 8.30 p.m. She says that people were running and then she went near the grocery shop of one Ranjit. She says that she saw accused Ajay beating with stone and accused Homa beating Santosh with mace, and thereafter both the accused fled away. Here, both these witnesses have not stated, as to how many persons were present at the spot and how none of them had made an attempt to nab both the accused. None of them say that they had tried to intervene. The examination-in-chief of this witness itself is not believable. PW 11 Vishal is the son of deceased and he has stated that the incident had taken place at 8.30 p.m. behind the grocery shop of Ranjit. For what purpose he had gone to the said place has not been clarified by him. PW 4 Gorjya and PW 10 Sumanbai have not stated that the incident had taken place behind the grocery shop, but according to them, it is near the grocery shop. The spot panchnama shows the spot of incident towards the left hand side of the grocery shop. It is on kachcha road. The grocery shop owner has not been examined in this case. Another fact that is coming on record is, at that time there was no electricity in the village and,

therefore, even PW 4 Gorjya says that he had gone to the spot taking torch. But then in his cross-examination he has stated that when he went to the spot the assailants had left the spot.

10 The evidence adduced would show that many other witnesses have turned hostile. If as per the testimony of Manglabai, Gorjya, Sumanbai and Vishal many persons had gathered there, then who was there since beginning is not coming forward. The so called eye witnesses have not stated about presence of each other at the spot. Therefore, taking into consideration all these aspects and the further details, which were gone into by the Trial Judge, we conclude that prosecution had failed to prove the guilt of the accused beyond reasonable doubt. No case is made out for grant of leave. Application stands rejected.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)