

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 52 OF 2020

The State of Maharashtra,
Through Police Station Gondi,
Taluka Ambad, District Jalna.

... Applicant.

Versus

1. Babulal S/o Ambadas Rasal,
Age : 44 years, Occupation : Agriculture,
2. Salikram S/o. Santram Fatangade,
Age : 60 years, Occupation : Agriculture,
3. Mohan S/o. Sahebrao Shelar,
Age : 44 years, Occupation : Labour,
4. Pandurang S/o Janardhan Admane,
Age : 32 years, Occupation : Agriculture,
5. Sandeep S/o. Ramkisan Fatangade,
Age : 27 years, Occupation : Agriculture,
All R/o. Churmapuri, Tq. Ambad,
District Jalna.

... Respondents.
(Orig. Accused)

...
Mr. R. D. Sanap, APP for Applicant.

...

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

DATED : 06th JUNE, 2023

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

1. State has preferred instant application seeking leave to question the judgment and order of acquittal passed by learned

Sessions Judge, Jalna in Sessions Case No.43 of 2015 for commission of offence under sections 302, 120-B, 201 read with section 34 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. There was land dispute on account of common bandh of the agriculture fields of accused and informant. Cases were filed in the civil court. Thus, initially there was enmity between both the family. Subsequently, compromise was reached at. Since two months, accused and deceased were in talking terms. On 15.10.2014, after local body elections were over, deceased Anil Appasaheb Choudhari returned home from polling booth and informed his wife that he is going to hotel Tuljai at Shahagd for dinner and accordingly left the house in Indica vehicle of accused no.1 bearing no. MH-12-DG-9128. But, he did not return. Therefore, missing was lodged. Subsequently, after two days his dead body was found in the well. According to informant - father, accused persons hatched conspiracy and took his son and he was done to death and thereafter dead body was thrown in a well. FIR to that extent was lodged by father holding accused persons responsible. Hence the crime was registered for above offence.

3. Investigating machinery swung into action, undertook investigation, arrested accused and after completing the

investigation accused Nos.1 to 4 came to be charge-sheeted.

4. After framing charge, trial was undertaken, during which prosecution examined in all 11 witnesses and relied on documentary evidence. Defence denied to lead any evidence.

5. On appreciating the oral and documentary evidence, learned trial court reached to a conclusion that prosecution has failed to establish the charges and thereby vide judgment and order dated 09.12.2019 acquitted all accused from all the charges.

Getting dissatisfied by the above order of acquittal, State intends to question the same and hence instant proceeding by way of leave.

6. Learned APP would submit that, since prior to the incident there was long standing enmity between accused party and informant party on account of common boundary of agricultural land. In such backdrop, conspiracy was hatched by accused persons and on the pretext of dinner, took deceased Anil to a dhaba in the evening of 15.10.2014. Wife and family members of Anil, who were present in the house, had seen accused no.1 taking deceased Anil. However, he did not return. After two days, his dead body was found in the well.

7. Learned APP submitted that, investigation revealed that deceased Anil was assaulted by means of iron pipe and rods. There is eye witness account regarding assault i.e. in the form of PW-3 Raju. Therefore, along with direct evidence there was strong circumstantial evidence. That, prosecution had examined as many as 11 witnesses and had thereby strongly established their case. However, the learned trial court failed to correctly appreciate the oral and documentary evidence and erred in disbelieving the prosecution case.

8. It is further submitted that, there is recovery of weapons at the instance of accused no.1. Such aspect is overlooked by the learned trial court. It is further submitted that, learned trial Judge also did not evaluate the evidence of PW-5 Manisha - wife, PW-8 Sunil - brother, who had seen accused person taking deceased, after which deceased never returned alive.

9. We have given anxious thought to the submissions advanced before us. We have also examined the oral and documentary evidence. PW-1 Sk.Akhtar seems to be a panch to the spot (Exh.58) and inquest panch (Exh.59). PW-2 Ashok is also a panch to the seizure of clothes and Indica Car (Exhs.61 and 62).

PW-3 Raju is alleged eye witness. PW-4 Narayan, panch to the memorandum and recovery of iron pipe at the instance of accused Pandurang. PW-5 Manisha wife of deceased. PW-6 Pandhari a witness who give lift to accused Salikram. PW-7 Ramesh, owner of the land and well, in which dead body was found on 17.10.2014. PW-8 Sunil, brother of deceased. PW-9 Vishnu, PW-10 Pandit and PW-11 Somnath are police personnels, who participated in the investigation.

10. There is said to be an eye witness account as well as prosecution seems to be relying on circumstance of last seen together. In the light of such case of prosecution, we examined the evidence on record.

We first intend to deal with alleged direct evidence. PW-3 Raju in his evidence at Exh.63 claims that, he knew Appasaheb and Salikram and about dispute amongst them regarding land. He claims to know all accused persons. According to him, on 07.10.2014, there were elections in the village. He went to cast vote and left Gevrai at around 7.00 to 8.00 p.m. to return back to his village Churmapuri and on the way he claims to have taken a brief halt for dinner at Tuljai Hotel. Around 9.00 p.m. Shalikram, Mohan, Sandip, Babulal, Pandurang were also found to

be present at the said hotel. Pandurang is the owner of the Hotel. He stated that deceased Anil was also present there. Witness states that, accused persons were beating Anil. He specifically states that Accused Pandurang beat Anil by iron pipe and other accused also beat him. He stated that, he being alone and out of fear he left the hotel. He testified that, on 17.10.2014, dead body of Anil was found lying in the well. He further stated that on the 14th day of ritual, he went to the house of Anil and on such day he informed father of Anil whatever he had seen at Tuljai hotel. He identified iron pipe shown to him in the court. Above witness is subjected to extensive cross by learned counsel for each of the accused separately.

11. On minutely examining the answers given by him in the cross, it is emerging that, he had occasion to see the occurrence barely for 2 to 4 seconds. Further, he did not also disclose about it either to the police or family members of Anil immediately or even thereafter till the 14th day of rituals. It seems that he was not even knowing the name of accused Pandurang. There are variance and contradictions in the date given by him. Therefore, apparently firstly his conduct is unnatural. It is doubtful whether he at all had any occasion to see the occurrence, in the light of answer given by him about seeing the occurrence for two to four seconds. As stated

above, he has withheld the information for pretty long time only on the count that he was under fear. It is difficult to accept such explanation. Therefore, we do not find his testimony to be worthy of credence. There is ambiguity in his version because he speaks about Pandurang assaulting with iron pipe, but he fails to state with what other accused were assaulting deceased. For above reasons, his testimony, for want of corroboration deserves to be discarded.

12. Wife (PW-5) and brother (PW-8) are witnesses on the point of last seen together. PW-5 and PW-8 both claim that deceased Anil was taken by accused no.1 in the car. Missing was reported on 16.10.2014. Both unanimously claim that deceased Anil left in the evening with accused no.1 on 15.10.2014. Admittedly, dead body was found on 17.10.2014. Therefore, apparently, here there is a gap of over 24 hours between deceased to be alive in the company of accused and he found dead. The gap is enormous. Time since death is also not established even by approximation. Therefore, it is unsafe to apply or rely on the circumstance of the last seen together.

13. Circumstance of recovery is also pressed into service by prosecution. However, in an occurrence allegedly taking place

on 15.10.2014, accused are arrested on 27.10.2014. Recovery of iron pipe is also from open space and therefore, in the light of such evidence on record, even the said circumstance does not inspire confidence so as to take recourse to.

14. It is also pertinent to note that, here prosecution has not established death of Anil to be only and only homicidal and not otherwise, i.e. by examining autopsy surgeon. Charge being under section 302 of IPC, it was imperative for prosecution to establish at the threshold that death was homicidal one. Unfortunately, this primary burden has not been discharged by the prosecution.

15. Though, there is charge for hatching conspiracy for invoking section 120-B of IPC, there is no iota of evidence for namesake suggesting meeting of minds between all accused persons for conspiring to commit murder of Anil. In the light of evidence on record about agricultural dispute being settled by way of compromise, even aspect of motive pales into insignificance.

16. Therefore, here in the totality of circumstances and quality of evidence on record, in our opinion, there is very weak or no evidence in support of accusation of the prosecution that accused planned to commit murder of Anil, took him out of the

house on the pretext of dinner and thereafter assaulted him and after finishing him off, throwing his dead body in the well.

17. Resultantly, in our considered opinion, there being no merits at all, it is not a fit case to grant leave. Hence, Application for Leave to Appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)