

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.63 OF 2019

The State of Maharashtra
Through the Police Inspector,
Police Station, Latur (Rural),
Tq. & Dist. Latur.

... Applicant

... **Versus** ...

- 1 Laxman @ Lakhan Subhash Jadhav,
Age 23 yrs., Occ. Labour,
- 2 Satyabhama @ Salubai w/o Saudagar Pawar,
Age 27 yrs., Occ. Household,

Both are r/o Khopegaon,
Tq. & Dist. Latur.

... Respondents

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Mr. S.J. Salgare, APP for applicant

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CORAM : SMT. VIBHA KANKANWADI
S.G. CHAPALGAONKAR, JJ.

DATE : 26th JUNE, 2023

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

- 1 Present application has been filed by the prosecution seeking

leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 21.12.2018 passed by learned Sessions Judge, Latur in Sessions Case No.84/2016, thereby acquitting respondents – original accused persons from the offence punishable under Section 302 and 109 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. S.J. Salgare for the prosecution and with his help we have gone through the record which was available before the learned Trial Judge.

3 First Information Report is lodged by PW 1 Vishwanath Goroba Pawar, who is the brother of deceased Saudagar. Accused No.2 is the widow of Saudagar and it is alleged that there are illicit relations between accused Nos.1 and 2. Deceased Saudagar used to sleep outside the temple on a platform because of the dispute between accused No.2 and deceased. Deceased used to sleep on the said platform since prior 4-5 years prior to lodging of First Information Report. 15 days prior to the First Information Report dated 26.06.2016 accused No.2 had left the house under the pretext that she would get the fall pico machine repaired, but she did not return. She was searched after about 5-6 days by the police at Bhiwandi and it was found that she was with accused No.1. After she was brought to the village,

she started residing with her mother and accused No.1 started residing in his house. As usual on 25.06.2016 Saudagar slept on the platform near the Hanuman Temple and the informant had got up at about 1.00 to 1.30 a.m. for urination. When he came out and gave fodder to the cattle and saw that the dogs were barking by coming down to the road and, therefore, he went to see that those dogs were barking. He saw accused No.1 going towards his house. In the morning around 6.00 his son told that Saudagar has slept near the temple and blood has oozed out of his head. When informant went and saw Saudagar, he found that Saudagar has expired and, therefore, the First Information Report came to be lodged that on the instigation by accused No.2, the accused No.1 has committed murder of deceased Saudagar.

4 After the investigation charge sheet was filed. In order to prove the guilt of the accused prosecution has examined 13 witnesses, whereas the accused No.2 has examined one defence witness. After considering the evidence and hearing both sides the learned Sessions Judge, Latur has acquitted the accused persons. Hence, the present application.

5 As aforesaid, we have gone through the entire evidence. Prosecution has tried to place reliance on PW 1 Vishwanath – informant and PW 2 Narayan Sadale, who is the priest in the temple. Both of them had

stated that they had seen the accused No.1 around the time of incident near the temple. The other evidence is circumstantial in nature and on the point that there were illicit relations between the accused No.2 and accused No.1. Here, what is to be required to be noted is that not only accused No.2 was the wife of deceased; yet, there was the earlier relationship between them. The mother of accused No.2 Subhadra is the sister of PW 1 Vishwanath and deceased Saudagar. Even the sister of accused No.2 has been given in marriage to the younger brother of Saudagar. Therefore, there was dwell relationship between them. Even if for the sake of argument it is accepted for a moment that there were illicit relations between accused No.1 and accused No.2, then, what the deceased had done as well as what his brothers had done to resolve the said point, is a question. Neither the First Information Report nor the testimony of PW 1 Vishwanath, PW 4 Rajendra Pawar (another brother of deceased) have stated about the same. However, it appears that there is some evidence to the point that the accused No.2 was missing and she could be traced to Bhiwandi and in order to prove the said fact the police person, who had gone to Bhiwandi and fetched accused No.2, has been examined. The prosecution has come with a case that the motive for commission of the crime was to eliminate Saudagar, as he was the hindrance between the relationship of accused Nos.2 and 1. However, the testimony of the brothers of deceased would show that since last about 4-5

years deceased Saudagar was sleeping on the platform near the temple and even after return of accused No.2 from Bhiwandi, she was residing with her mother. What had happened in those 5-6 days after accused No.2 was brought back has not been told by anybody from the family members. Whether deceased has taken objection or had behaved angrily with accused No.2 and/or accused No.1 is totally silent. If deceased had not taken any kind of objection for the said relationship, why the accused persons would think of eliminating him. There is absolutely no evidence, that is, adduced by the prosecution that there was prior meeting of minds between accused Nos.1 and 2 prior to commission of the crime.

6 Now, turning towards testimony of PW 1 Vishwanath, he says that when he woke up around 1.00 to 1.30 a.m., he saw that accused No.1 was going towards his house. He has not stated that he raised any suspicion and immediately checked the situation with deceased. Rather he went and slept. He came to know about the incident early morning from his son. Said son has not been examined. From the testimony of the Medical Officer and Postmortem Report it has not been brought on record by the prosecution as to approximately at what time the murder would have been committed. Therefore, we cannot imply or import the theory of 'last seen together'. The time gap between the lastly seen of the accused with the deceased by the

witness and the actual murder should be so narrow that the finger should point towards accused as the only author of the crime. Here, PW 1 Vishwanath had seen only accused No.1 and at that time accused No.1 was not in company with deceased Saudagar. Same is the case with PW 2 Narayan. He says that he was sleeping in the sabhamandap. He has not even stated the distance between the place where he was sleeping and the place where the deceased was sleeping. Still he says that when he heard some noise and by removing the bed cover when he saw, he found accused No.1 there. He says that thereafter he slept. Again, at the costs of repetition, it can be said that he is not giving the details of the time and the fact that he had seen the accused and the deceased together. Further, it can be certainly said that he had not found the presence of accused No.1 at odd hours and he had not questioned accused No.1 about his presence at that time. That could have been the only natural conduct on his part. Even after seeing accused No.1 if he goes to sleep, then such statement cannot be believed to support the theory of 'last seen together'. The distance between the place where he was sleeping and the deceased was sleeping would have clarified as to what reactions were given by the deceased. Here, we would like to put it on record that it is stated that the murder has been committed by throwing stone on the head of deceased. At least the noise of throwing the stone would have struck to PW 2 Sadale. The learned Trial Judge, therefore,

rightly held that the evidence is not sufficient to pinpoint the crime as has been committed by the present respondents. Only proof of autopsy report is not sufficient at all.

7 As there is no perversity or illegality in acquitting the respondents – original accused persons, no case is made out to grant application. Application stands rejected.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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