

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 93 OF 2018

THE STATE OF MAHARASHTRA
VERSUS
BHARTI SHERSINGH TAMCHIKAR

...
Advocate for Appellant/State : Mr. A.V. Deshmukh
...

**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.**
DATE : 30th March, 2023

ORDER :- (Per: Y.G. Khobragade, J.)

1. By the present application under Section 378(i)(b) of the Cr.P.C. the prosecution is seeking leave to file appeal against the judgment and order of acquittal of the respondent-accused passed by the learned Additional Sessions Judge, Sangamner, Dist. Ahmendnagar, in Sessions Case No.19 / 2017 on 24.01.2018; thereby acquitting the accused for the offence punishable under Section 302 read with Section 34 of the I.P.C.

2. With the able assistance of learned APP, we have gone through the record. We have considered the evidence which was before the learned trial Court from the point of view as to whether leave can be granted to the prosecution to file the appeal.

3. In short it is the case of the prosecution that, the informant Shahabai Pawar lodged a report with Sangamner Police Station on 03.01.2017, alleging that, her married daughter-Sushama visited her house for dinner at about 8.30 p.m., on 02.01.2017. Sushama was stammering, hence, informant asked daughter whether she has consumed something and in reply her daughter told that some time before coming to informant's house, the accused-Bharti had given her juice. Thereafter informant had asked her husband to drop Sushama to her house, however, at about 11.30 p.m., Yash & Prathamesh, sons of her daughter came to her house and informed about death of their mother. Therefore, she visited the matrimonial house of her daughter and found that Sushama was lying in a pool of blood in the kitchen room and noticed injuries. Informant then lodged First Information Report. On the basis of said report a Crime No. I-1/2017 was registered against the accused for the offence punishable under Section 302 of the I.P.C.

4. The Investigating Officer PW8-Vinayak Saravade visited the spot of the incident, carried out inquest panchanama of deceased and referred the dead body for autopsy at Govt. Hospital. He has then prepared spot panchanama, collected the blood from the floor as well as the blood stains appearing on walls, doors, bed room and kitchen. The Investigating Officer summoned dog squad and recorded statements of the witnesses. The Investigating Officer sent all collected samples and seized articles for chemical

examination. On completion of investigation charge-sheet came to be filed. On compliance of Section 207 of the Cr.P.C., the learned JMFC passed an order under Section 209 of Cr.P.C. and committed the trial to the Sessions Court as the offences are triable by the Court of Sessions. Accordingly, the learned trial Court framed charge at Exh.9 to which the accused pleaded not guilty and claimed for trial.

5. In order to bring home guilt of the accused the prosecution examined eight witnesses. Besides oral evidence the prosecution proved FIR (Exh.17), bank account extract of deceased (Exh.30), post mortem report (Exh.38), FSL report (Exh.42), letter (Exh.43) under which the articles were sent for forensic examination. The statement of accused under Section 313 of the Cr.P.C. was recorded. The defence of the accused is that she has been falsely implicated in the crime and the deceased was her good friend but she was indulged into illegal business of money lending and prostitution therefore the murder of deceased might have been committed by other persons to whom money was lend or any other person.

6. The trial Court passed the impugned judgment and order on 24.01.2018, and acquitted the respondent-accused for the offence punishable under Section 302 read with Section 34. Being dissatisfied by the same, the prosecution seeks leave to file appeal.

7. In order to bring homicidal death of deceased-Sushama the prosecution examined Medical Officer-PW7 Dr. Sanjay Buktar at Exh.37 who deposed about conducting post mortem on dead body of deceased-Sushama and he found 10 injuries as under:

1. Stab wound, elliptical shaped present over Rt side of abdomen, 9 cm Rt to midline and 19.2 cms below Rt nipple, 4x1 cms x cavity deep, transverse, directed downwards. On reflecting the skin and soft tissue, red coloured hematoma seen underneath wound. The wound pierced through the abdominal wall to peritoneum and perforated the transverse colon, through size of 3.6 x 0.7 c.m.
2. Stab wound, elliptical shaped present over Rt side of abdomen, 5.8 cm Rt to midline, 3.8 x 1 cms x cavity deep, transverse, directed downwards. On reflecting the skin and soft tissue, red coloured hematoma seen underneath wound. The wound pierced through the abdominal wall to peritoneum, through size of 3.2 x 0.7 cm.
3. Stab wound, elliptical shaped present over At side of abdomen, 6.5 cm Rt to midline, 5.8 x 1.3 cms x cavity deep, transverse, directed downwards. On reflecting the skin and soft tissue, red coloured hematoma seen underneath wound. The wound pierced through the abdominal wall to peritoneum, through size of 5.5 x 1 cm.
4. Stab wound, elliptical shaped present over Lt side of abdomen, 9 cm Lt to midline and 22.5 cms below LI nipple, 3.4 x 1 cms x cavity deep, transverse, directed downwards. On reflecting the skin and soft tissue, red coloured hematoma seen underneath wound. The wound pierced through the abdominal wall to peritoneum...
contd. and perforated the descending colon through size of 3.1 x 0.7 cms.
5. Incised wound present over Rt side of fact, extending from Rt angle of mouth to lateral aspect, of size 5 x 0.8 cm x tissue deep, with clean cut and contused margins and transverse.

6. Incised wound present over Lt side of face, extending from base of nose from left side to lateral aspect of size 7 x 0.8 cm x tissue deep, with clean cut and confused margins and transverse
7. Incised wound present over Rt side of chest, 11.3 cm below chin, of size 5.9 x 1.6 cm x muscle deep, with clean cut and confused margins and vertical.
8. Incised wound present at the level of suprasternal notch, 11 cm below chin 2 x 0.7 cm x muscle deep, with clean cut and confused margins and vertical.
9. Incised wound extending from below left side of chin upto thyroid cartilage, of size 9 x 2.8 cms, underneath muscles, tissue and vessels exposed. Margins of the wound are clean cut and confused and transverse.
10. Incised wound extending from left lateral aspect of the neck till the nape of the neck, of size, 11 x 2 cms underneath cut of sternomastoid muscle, tissue and external jugular vein, left common carotid artery and left internal jugular vein seen. Margins of the wound are clean cut and confused, placed vertically obliquely.

8. The Medical Officer-PW7 issued report Exh.38. As per the opinion of the PW7 the cause of death of deceased due to hemorrhagic shock due to injuries to neck and abdomen and all the injuries described in post mortem report are sufficient to cause death of deceased in ordinary course of nature and age of injuries may be 12 to 24 hours prior to autopsy. Thus, from the medical evidence we conclude that the death of Sushama is homicidal in nature; however, it is required to be seen as to whether accused is the author of the crime.

9. The informant-PW1-Shahabai has deposed at Exh.31 that her daughter deceased-Sushama is blessed with two sons. There were three houses between her house and Sushama's house. The accused was good friend of Sushama and Sushama had told her about lending of Rupees Two Lakhs to the accused. There was quarrel between Sushma and accused on that count and when she had intervened, at that time, the accused had threatened Sushama of dire consequences. There was quarrel between her daughter-Sushama and accused and at about 8.30 p.m. on 02.01.2017. Informant had asked Sushama whether she would take food, when she visited at informant's house, but Sushama disclosed her about offering juice by the accused. Sushama was feeling giddiness, hence, informant asked her to visit doctor but Sushama refused to take meal and went to her house. After sometime her grandsons came to her house and informed about death of their mother. Therefore, the PW1 went to the matrimonial house of Sushama and found dead body of her daughter lying on the floor in kitchen in prone position and brought her daughter in supine position and found wounds on her mouth, chest and on throat, so also, blood was lying on the floor. Thereafter, neighbours gathered and she lodged a report against the accused (Exh.P17). The PW1 has identified clothes of her deceased daughter. The testimony of this witness is not trustworthy. Even if she has stated that Sushama had lent amount to accused, PW 1 has not given further details, as to when the amount

was given and when it was supposed to be returned by accused. How Sushama was having so much of amount is a different question. Unless the details of loan transaction are given, we cannot say that there was any nexus between the two events.

10. The prosecution examined PW2-Prathamesh the minor son of deceased at Exh.23. The PW2 deposed that the accused was friend of his mother who was frequently visiting at his house along with one Takdir Mama and there was quarrel between her mother and the accused. On the day of incident her brother-Yash was sleeping on the bed and her mother was sleeping on sofa and when he got up after hearing sound coming from the throat of his mother, the accused showed him knife and told him to sleep. Thereafter, the accused was taking search of cup-board and said Takdir Mama was with the accused. After the accused and Takdir Mama left, he woke his brother-Yash and with the help of mobile torch of his mother he went to kitchen and switched on lights and found that his mother was lying in prone position in the pool of blood. Therefore, he and his brother went to her grandmother's house (PW1) and narrated the incident. The PW2 admitted in his cross-examination that when he woke up there was darkness in the room.

11. During the investigation, the Investigating Officer-PW8 recorded statement of the PW2-minor in question and answer form, however, the PW2 has not stated about that the accused was having knife and one Takdir Mama

(Takdir Tamchikar) was accompanying with Bharti aunt i.e. the accused. From the said testimony of alleged eye-witness, it can be gathered that there was dark in the house, then how he had identified accused and said Takdir. It is not his case that both of them were present in their house prior to the time, when they went to sleep. He says that he was required to put on the torch of the mobile of his mother, but does not explain as to why he had not put on the lights from the house. At one breath he says that accused had shown knife to him, but then at another breath he says he saw the body of his mother in the light of torch of the mobile. The testimony of this witness is doubtful. Possibility of tutoring him cannot be ruled out.

12. Evidence of informant-PW1 shows that her daughter had disclosed about juice being provided by the accused and thereafter deceased felt giddiness, however, the prosecution failed to prove FSL report to show that some poisonous substance was found in viscera. The prosecution failed to bring substantial direct as well as circumstantial evidence on record to connect chain of circumstances that the accused is the author of injuries sustained to the deceased.

13. On perusal of impugned judgment and order, it appears that the learned trial Court considered the cases of **Munish Mubar V/s. State of Haryana; (2012) 10 SCC 464, Sharad Birdichand Sarda V/s. State of Maharashtra; (1984) 4 SCC**

116 and Dhan Raj @ Dhand V/s. State of Haryana; (2014) 6 SCC 745, wherein it has been reiterated that when the prosecution case is based on circumstantial evidence, then the said circumstantial evidence must complete the chain of circumstances and then can draw inference indicating the guilt of the accused and in absence of complete chain of circumstances, the accused is entitled for benefit of doubt. The judgment and order of acquittal does not appear to be perverse, illegal or bad in law. Therefore, to our conscious view, there is no substantial ground to grant leave to file appeal against the acquittal.

14. In view of the above, the present application stands dismissed.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]