

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.75 OF 2019

The State of Maharashtra
Through Officer-in-Charge of MIDC Police
Station, Ahmednagar, District
Ahmednagar

... Applicant / Appellant
[Orig. Prosecution]

Versus

1. Anil Laxman Gaikwad
Age: 28 years

2. Prachi Anil Gaikwad
Age: 25 years

Both R/o Datrange Mala,
Nalegaon,
Tal and Dist. Ahmednagar

... Respondents
[Original Accused]

...
Mr. A. V. Deshmukh, APP for the Appellant
...

**CORAM : SMT. VIBHA KANKANWADI, J.
AND**

S. G. CHAPALGAONKAR, J.

DATE : 26.06.2023

ORDER : [PER S. G. CHAPALGAONKAR, J.]

1. The Applicant / State of Maharashtra approaches this Court under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.P.C.' for short] impugning the judgment and order of acquittal of respondents, dated 05/02/2019 passed by

the learned Additional Sessions Judge, Shahada, District Ahmednagar, in Sessions Case No.263/2017.

2. The case of the prosecution narrates that Arjun Somai and his brother Ashok Somai jointly owns a Plot No.D-100, with constructed godown situated at MIDC Ahmednagar. It was initially used for Dena Plastic and Engineering Company, however since its closure in the year 1996, the premises had been leased to different person till 2016. But since then, it remained unoccupied. Arjun Somai and Ashok Somai were jointly looking after the affairs of the property and seldom visited the factory premises. Due to old age, they decided to appoint a Watchman to guard the factory premises. With consultation of some friends, respondent no.1 - accused, Anil Gaikwad was appointed as a Watchman.

3. On 02/07/2017, Ashok Somai had been to Ahmednagar. He informed brother – Arjun that he would visit Pune on 04/07/2017. However, he did not turn up. Therefore, on 05/07/2017 Arjun Somai attempted cellphone call to him however it was switched off. Arjun Somai enquired with relatives and friends to find out whereabouts of his brother. Lastly, he contacted the watchman of adjacent company premises to know whereabouts of Ashok Somai. In turn Watchman informed that the gate of the factory premises was open and asked

Arjun Somai to immediately come down to Ahmednagar. The Watchman further informed that the motorcycle of Ashok Somai was parked near the factory premises. The Watchman was absconding and hinted of some untoward incident. The informant Pravin, his father Arjun Somai and brother Anil Somai rushed to Ahmednagar and visited the premises at Plot No.D-100. They experienced bad odor emanating in the premises. They noticed that godown doors were locked and suspected of untoward incident. Thereupon, MIDC Police Station was informed. On arrival of the police officers, the godown shutter was opened. Upon entering the godown, dead body of Ashok Somai was found lying in decomposed condition and the watchman room was vacant.

4. On 07/07/2017, A.D. Report No.96/2017 was registered with the MIDC Police Station at Ahmednagar. The inquest panchnama of dead body was carried and post-mortem was conducted. The statements of two witnesses were recorded. A spot panchnama was drawn. The articles like blood stained clothes, pieces of plastic, glasses, bottle containing kerosene, wire of 4 - 5 feet, screw driver etc. were seized. The blood stains from motorcycle handle and wall were sampled. The liquid oozing from the dead body was collected.

5. On 10/07/2017, Pravin Somai, lodged report suspecting murder of Ashok somai, which led to registration of FIR in Crime

No.183/2017 against the Watchman – Anil Gaikwad and his wife suspecting them to be the culprit of murder of Ashok Somai. Both of them were arrested on 11/07/2017. The recovery of incriminating articles was made at their instance from the Sina river bed that includes pieces of beer bottle, iron chain and lock. The samples were sent to Chemical Analysis. The viscera preserved at the time of post-mortem of the dead body was sent to B. J. Medical College, Pune. The statements of witnesses were recorded. Ultimately, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Ahmednagar against the accused persons for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code [hereinafter referred to as 'IPC' for short]. On committal, the learned Sessions Judge framed the charges since accused pleaded not guilty. They were put to trial.

6. The prosecution examined in all twelve witnesses to bring home guilt of accused and various documents were tendered in the evidence. The learned Sessions Judge recorded the statements of accused under Section 313 of Cr.P.C. The accused denied incriminating material. The learned Sessions Judge, after hearing the parties, acquitted the respondents/accused under Sections 235(1) of Cr.P.C. for offences punishable under Section 302, 201 r/w 34 of IPC.

7. Mr. Deshmukh, the learned APP would submit that, case of the prosecution is based on circumstantial evidence. The evidence on record depicts that the accused were deployed by Ashok Somai at Plot No.D-100 as a Watchman and they were residing in the allocated room within the premises. Death of Ashok Somai appears to be unnatural in light of circumstances brought on record before the Sessions Court. The glass pieces, plastic bottle containing kerosene, wire, screw driver, pincer etc. were recovered from the crime scene. On searching of the Watchman room, blood stained iron rod was recovered. Even blood stains were noted on the handle of the motorcycle. The witnesses deposed about presence of the accused persons in the factory premises. The accused persons have failed to explain incriminating circumstances. He submits that chain of circumstances irrevocably points out the guilt of accused persons. He submits that the Trial Court recorded cryptic reasons depicting non application of mind, resulting into acquittal of the accused. He submits that, this is a fit case to grant leave to file appeal and re-appreciate entire evidence on record in the exercise of appellate jurisdiction.

8. With the assistance of learned APP, we have perused the material on record with a view to find out if the Sessions Court

missed to appreciate material evidence on record or adopted hyper technical approach in appreciation of evidence or to find out any perversity or legal lacuna that rendered illegal acquittal. Since the accused are charged with the offences punishable under Sections 302 and 201 r/w 34 of IPC, the prosecution has to establish homicidal death of the deceased authored by accused. In that endeavor, prosecution relied upon medical evidence i.e. postmortem report coupled with inquest panchanama placed at Exhibit-73. It shows that the corpse of Ashok Somai was decomposed and no traces of external injuries could be noticed. The column No.17 depicts that even internal injuries were absent. The prosecution relied upon the evidence of PW-8 - Dr. Shrikant Patil to prove contents of postmortem report. Although, witness, in his statement, deposed about preservation of viscera report, he admits that the cause of death could not be ascertained.

09. The learned Sessions Judge after appreciating the aforesaid evidence concluded that the prosecution has failed to establish homicidal death of Ashok Somai. We do not find any reason to deviate from the conclusion arrived at by the Sessions Court, which is based on appreciation of evidence on record. The learned APP could not point out any other circumstances that would lead us to take different view regarding cause of death of Ashok Somai.

10. The learned APP took us through the other material indicative of doubtful circumstances against accused. However, except yielding some doubt against accused, nothing could be established to bring home guilt against them. It is trite that howsoever strong is the reason to doubt guilt against accused, it cannot dispense the proof. Particularly, in absence of evidence regarding homicidal death, the chain of circumstance would not lead to any further conclusion, except upholding acquittal of the accused persons.

11. The second reason that prevents us from exercising our powers to grant leave to file appeal is that Since the case of the prosecution is based on circumstantial evidence, the prosecution is under obligation to establish the chain of circumstances that would lead to definite conclusion of guilt of the accused without any possible hypothesis of their innocence. In present case, the prosecution has failed to discharge burden to bring on record circumstance leading to conclusion of guilt of the accused. Pertinently, the entire evidence on record nowhere discloses the motive for commission of offence by the accused. No circumstances are brought on record to show that the accused had any reason to cause death of deceased. Therefore, genesis of prosecution case fails to bring on record the important link in the chain of circumstances. On analysis of the evidence of the prosecution witnesses and the other material, it is difficult to hold

that the accused persons are authors of death of Ashok Somai.

12. The Supreme Court of India in case of **Shivaji Sahabrao Bobade and Anr. Vs. State of Maharashtra** reported in (1973) 2 SCC 793 laid down certain principles to be adhered by the Appellate Court while dealing with the appeal against the acquittal. The relevant part of Paragraph No.5 of the judgment reads thus:

“In law there are no fetters on the plenary power of the appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration.”

13. Having applied the aforesaid principles of law in the facts of the present case, we do not find any reason to interfere in the finding of fact recorded by the Trial Court which is based on the material tendered into service on behalf of the prosecution.

14. In that view of the matter, we do not find any substance in the application seeking leave to file appeal. Hence, the application is rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE