

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO. 102 OF 2018**

The State of Maharashtra ... Applicant

Versus

Shahaji Raosaheb Hambarde and others ... Respondents

....

Mr. R. D. Sanap, APP for applicant – State

....

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

DATE : 03.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

. The present application under Section 378 (1)(b) of the Code of Criminal Procedure (Cr.P.C.) has been filed by the prosecution seeking leave to file appeal against judgment and order dated 08.02.2018 passed by the learned Additional Sessions Judge-1, Nanded in Sessions Case No.107/2012, thereby acquitting the respondents/accused for the offence punishable under Sections 143, 147, 364, 302, 201 read with Section 149 of the Indian penal Code and under Section 135 of the Bombay Police Act.

2. With the help of learned APP Mr. R. D. Sanap, we have considered the evidence which was before the learned trial Court on the point as to whether the leave can be granted to the prosecution to file appeal.

3. It is the case of prosecution that, Mr. U. D. Joshi, Security Guard of Swami Ramanand Teerth Marathwada University, Nanded, passed written information to the Rural police Station, Nanded on 29.04.2012 and informed about lying of dead body of a male person in the precinct of University. Accordingly, the P.S.O registered A.D. No.23/2012. The Police Officer Shri Mahadev Ananda Pawar, conducted investigation, visited at the spot of incident and drawn inquest panchanama of dead body, spot panchanama and referred the dead body for postmortem. During the inquiry, it was revealed that the dead body was of Ajitsingh Sidhu. After conducting the postmortem, the dead body of deceased Ajitsingh Sidhu was handed over to Shersingh Ranjitsingh Sidhu for last ritual. Thereafter, on 30.04.2012, Shersingh Ranjitsingh Sidhu lodged a report alleging that on 27.04.2012 at about 8.00 p.m., accused No.1 Shahaji, accused No.5 Shivaji and their associates visited at his house and told that, his son had bickered with them. Thereafter, accused No.5 Shivaji

slapped his son Ajitsingh and they took his son out of his house, but, subsequently, his son was not traceable and on 29.04.2012 the dead body of his son found within the precinct of University. On the basis of said report, Crime No.140/2012 registered against the accused persons for the offences punishable under Sections 143, 147, 364, 302, 201 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

4. The Investigating Officer Uttam Sitaram Mundhe (PW-9) conducted investigation and recorded statements of the witnesses and drawn spot panchanama and seized auto-rickshaw of Bajaj company from PW4 Sk. Maheboob Sk. Jalal under panchanama. Statement of auto-rickshaw driver was recorded. The Investigating Officer arrested the accused Shahaji and accused Ananda on 06.05.2012,. Thereafter, he arrested rest of the accused on 16.07.2012, 18.07.2012 and 28.07.2012, under arrest panchanama Exh.111 to 114 and seized clothes of arrested accused persons. The statements of witnesses under Section 164 of Cr.P.C. were got recorded and after collecting Chemical Analysis (CA) report about examination of articles as well as postmortem report, charge-sheet came to be filed against the accused persons before the Judicial Magistrate First Class (J.M.F.C.), Nanded.

5. On compliance of Sections 207 of Cr.P.C. the learned J.M.F.C., Nanded, passed an order under Section 209 of Cr.P.C. and committed trial to the Court of Session.

6. The learned trial Court framed the charge against the accused for the offences punishable under Sections 143, 147, 364, 302, 201 read with Section 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The accused pleaded not guilty and claimed for trial. Accordingly, their plea is recorded.

7. In order to bring home the guilt of accused, prosecution examined in all ten witnesses and proved documentary evidence. The statements of accused under Section 313 Cr.P.C. recorded at Exhs.131 to 137. The defence of the accused is of total denial and of their false implication in the crime.

8. On face of record, it appears that the case of the prosecution is based on the circumstantial evidence and though the prosecution examined ten witnesses, but there is no eye witness to the incident. The prosecution mainly relied on the following circumstances, viz;

“1. The accused had gone to the house of complainant and then they abducted Ajitsingh from the house of complainant.

2. There was motive for accused to commit murder of Ajitsingh as preceding one year of the incident, on the eve of Birth Anniversary of Dr. Babasaheb Ambedkar, a procession was arranged by Ajitsingh and in the subsequent year also Ajitsingh had taken active participation in the procession of Birth Anniversary of Dr. Babasaheb Ambedkar, resultantly invited wrath of accused.

3. The deceased was last seen with the accused persons in the vicinity of Kaleshwar on the night of 27.04.2012, but not seen alive thereafter anywhere.

4. Recovery of clothes of accused.

5. Failure of accused to offer any explanation in respect of incriminating circumstances as narrated above, which, according to prosecution can be accounted as providing links for completing the chain of circumstances.”

9. On careful perusal of evidence of prosecution witnesses, it appears that incident had taken place in the intervening night of 27.04.2012 and 28.04.2012. On the fateful night, the accused allegedly visited the house of informant because of the deceased Ajitsingh bickered with the accused persons. As per the testimony of PW-1, accused Shahaji Hambarde and Shivaji Hambarde had entered his house and they slapped his son Ajitsingh and abducted him from his house. On next day, the informant PW-1 visited the Police Station and attempted to lodge

report, but his report was not accepted by the Police. It is evident that in the night of 28.04.2012, the PW-1 lodged a report in respect of incident occurred on 27.04.2012 and dead body of deceased Ajitsingh was noticed on 29.04.2012 within the precinct of S.R.T.M. University by the Security Guard Shri U. D. Joshi.

10. Since the prosecution alleges abduction and committing murder of deceased by the respondents / accused persons, then the prosecution should bring all possible and cogent evidence on record to complete chain of circumstantial evidence to prove homicidal death of deceased Ajitsingh at the hands of the accused persons.

11. The prosecution has examined PW-8 Dr. Santosh Bhosale at Exh.100. He has deposed that he conducted autopsy of dead body of Ajitsingh on 29.04.2012 with Dr. Abdul Sami. They found contusion over right side of chest of size 10 x 10 cm and said injury was ante mortem. There was under scalp contusion over right frontal region of size 8 x 6 cm, and brain was soft and pulpy. On internal examination of thorax, he found fracture of second and third right side ribs, postero laterally. The fracture ends were irregular and blood was infiltrated. Pleura was torn corresponding to ribs fracture. They found 800 ml blood in pleural

cavities. Right lung laceration was present over upper lobe corresponding to ribs fracture with blood clots adherent at places and injuries were ante-mortem. As per his opinion, the death of deceased was due to blunt trauma to chest and abdomen. Therefore, the medical evidence corroborates the testimony of informant PW-1 on the point of death of his son Ajitsingh homicidal in nature, which is also in corroboration with the inquest panchanama.

12. The prosecution tried to bring another circumstance of motive and intention about committing murder of deceased that preceding one year of the incident on eve of birth anniversary of Dr. Babasaheb Ambedkar, a procession was arranged by Ajitsingh (deceased) and in following year also Ajitsingh had taken active participation and danced in the said procession, therefore, on that score the accused persons abducted deceased and committed his murder. The deceased was last seen with the accused persons in night of 27.04.2012 in the vicinity of Kaleshwar, but not seen alive thereafter. So also, there is recovery of clothes of accused, but the accused persons failed to explain incriminating circumstances available against them.

13. In order to bring chain of circumstances on record, the prosecution examined PW-4 Sk. Maheboob Sk. Jalal at Exh.82. He has deposed that, in the night of 27.04.2012 at about 10.00 p.m., he was plying auto-rickshaw from CIDCO to Vishnupuri and had reached Kaleshwar and at that time Sohail Rafiq Shaikh and one Pintu Keshav Hambarde came near him on Scooty and intended to hire his auto-rickshaw for taking injured to the hospital. Accordingly, he visited the house of Rangnath Patil and found a mob of 50 persons. Anil Sahebrao Hambarde, Anil Marotrao Hambarde, Raju Ramrao Hambarde, Raju Rangnath Hambarde, Shahaji Hambarde (accused No.1) and Raju Ramrao Hambarde (accused No.4) had out the injured in his auto-rickshaw, who was Sardarji. The injured was unconscious while proceeding towards the hospital. Those persons asked him to take auto-rickshaw towards University and after coming near the cattle shed belonging to Vithalrao, they took the injured out of his auto-rickshaw. He went away in his rickshaw. However, in cross examination, the material omissions which amounted to contradiction came on record about disclosing name of Anil Sahebrao Hambarde and Raju Rangnath Hambarde. PW-4 admitted in his cross examination that two boys of same age having name Shahaji Nivrathi Hambarde and Shahaji Raosaheb

Hambarde are residing in Vishnupuri village. There are omissions in respect of Raju Ramrao Hambarde and Raju Rangrao Hambarde.

14. It has not been brought in evidence of PW-4 about identification of the deceased and the accused persons to whom he carried in his auto-rickshaw on 27.04.2012 from the house of Rangnath Patil towards hospital or the University. PW-4 has not whispered about knowing deceased Ajitsingh prior to the incidence. The prosecution did not refer photographs of the deceased or dead body to the PW-4 for identification of the deceased. Therefore, all these circumstances do not connect the accused with the crime.

15. It is pertinent to note that during course of cross examination, the PW-1 informant admitted that he was used to advice his son Ajitsingh (deceased) for behaving properly with the people and prior to three months of the incident, he had conciliated his son on the point that he shall not harass or outrage the modesty of school girls and not to quarrel with people. The PW-1 further admitted that seven complaints have been lodged against his son Ajitsingh with Police Station. He was also involved in the incident in respect of outrage of modesty of school going

girls, assault with knife, snatching of chain about six months prior to the incident. Therefore, it appears that the deceased had many enemies. Though the prosecution tried to bring motive of accused persons to commit homicidal death of deceased on account of taking part in procession of birthday ceremony of Dr. Babasaheb Ambedkar, which does not appear proper and the prosecution failed to bring substantial evidence to that effect. Therefore, evidence of prosecution is short of completing the chain of circumstances to hold that the accused persons committed homicidal death of the deceased.

16. Learned trial Court passed the impugned judgment and order and acquitted the accused on 08.2.2018, from the offences punishable under Sections 143, 147, 364, 302, 201 read with Section 149 of the Indian penal Code and under Section 135 of the Bombay Police Act, which does not warrant interference and further scrutiny of this Court. Therefore, we do not find that the prosecution has made out substantial ground to grant leave to file appeal against the order of acquittal. Hence, the present appeal is dismissed.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]