



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.40 OF 2021

The State of Maharashtra,
Through Police Station Officer,
Kallam Police Station,
Tq. Kallam, Dist. Osmanabad.

... Applicant

Versus

1. Haridas Sopan Hullule,
Age : 60 years, R/o. Andhora,
Tq. Kallam, Dist. Osmanabad.
2. Savita Haridas Hullule,
Age : 32 years, R/o. Andhora,
Tq. Kallam, Dist. Osmanabad.

... Respondents
(Orig. Accused)

...
Mrs. V. S. Choudhari, APP for Applicant/Appellant
...

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

DATED : 6th OCTOBER, 2023

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

1. This leave application arises out of judgment and order of acquittal of respondent nos.1 and 2 from charges under sections 302 and 504 read with section 34 of Indian Penal Code (IPC) passed by learned Additional Sessions Judge, Osmanabad dated 10.02.2021.

2. According to learned APP, there was charge of murder. There was prompt lodgement of report. Prosecution in support of

its case has adduced as many as 16 witnesses. There was assault by rod and there was recovery at the instance assailant accused. Panchas to the memorandum of discovery have been examined. It is pointed out that even learned trial court has affirmed death of Babruwan as homicidal one, and therefore, there being sufficient and cogent evidence except minor variances, charge was brought home. Therefore, learned trial Judge ought to have accepted the case of prosecution, but it failed to do so and due to improper appreciation of evidence, acquittal is granted. Therefore, as the evidence is not appreciated in proper perspective, it is submitted that, the same is required to be re-appreciated and re-analyzed in appeal and hence instant application.

3. We have gone through the papers and the evidence adduced by the prosecution in trial court. Present respondents were indicted on the charge of section 302 and 504 read with section 34 of Indian Penal Code (IPC) and made to face trial before Additional Sessions Judge, Osmanabad. Here, it is seen that prosecution has examined 16 witnesses to establish the charges. Judgment shows that the learned trial Judge has admitted and answered that death of Babruwan is homicidal one. It seems on going through the evidence that, PW1 Dilip is the son of deceased and he has set law into motion. According to him, He has received information from Ganesh Kawade about his father being assaulted

by present respondents by means of iron rod and wooden log, and therefore, he went to the spot/house. He claims that he saw iron rod in the hand of accused no.1 Haridas and wooden log in the hand of accused no.2 Savita. He further stated that Sandipan Sable had intervened, and thereafter, he took his father to hospital, but on the way his father expired and thereafter, he approached police station. However, in cross he answered that it took half an hour for him to reach home on bicycle and when he reached, he found his father lying on the ota. He answered that he gave report at 8:55 a.m. He admitted that he did not go to police station, but he lodged online FIR. Then again in para 9, he stated that, he went to police station.

4. The person from whom informant got news does not seem to have supported prosecution. However, PW9 Sandipan stated that, in the morning, when he woke up, he heard about quarrel between deceased and accused Savita. He stated that when he went there he also saw accused no.1 Haridas equipped with iron rod. He stated that, there was some incident, but he is unable to state what exactly happened to deceased. Therefore, he has also not supported the prosecution. However, both PW1 Dilip and PW9 Sandipan are marking presence of accused persons and Babruwan to be injured and having succumbed to the injuries suffered by him that day. As stated above, death according to medico legal expert

is homicidal one. Recovery is also caused at the hands of accused. Learned trial Judge seems to have opined that, same panchas are used for various panchanamas. It does happen that investigating machinery at times extract services of official who are readily available and therefore merely using such witnesses itself is not sufficient to opine that they are stock panchas.

5. Therefore, in our considered opinion, it is not a case that there is no evidence at all. Therefore, *prima facie*, we are of the opinion that, there is need for re-appreciation and re-analysis of evidence. Hence, we proceed to pass following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands admitted.
- (v) Call record and proceedings.
- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)