



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.41 OF 2021

The State of Maharashtra
Through : Police Inspector,
Deopur Police Station, Dhule.

..Applicant

Versus

1. Ajay Babulal Barelikar
Age: 47 years, Occu.: Painter
2. Paras Babulal Barelikar
Age: 50 years, Occu.: Service,
Both R/o. Vishnunagar, Mochiwada,
Deopur, Dhule

..Respondents
(Ori. Accused)

...

APP for Applicant State : Mr.S.J.Salgare

...

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

DATE : 4 OCTOBER, 2023

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

1. Leave on behalf of State is sought for questioning judgment and order passed by the learned Additional Sessions Judge, Dhule in Sessions Case No.138 of 2019 tried for offence under Sections 302 read with 34 of the Indian Penal Code (IPC).

2. Apprising about case of prosecution, learned APP would submit that there was charge of 302 read with 34 of the IPC on allegation of committing

murder of Satish Kishn Dhurmekar. That in support of its case, prosecution had examined as many as 16 witnesses and apart from oral evidence, prosecution had relied on various documentary evidence. Learned APP submitted that initially incident was reported as assault by unknown person for unknown reason, however, investigation revealed complicity of accused. He pointed out that from the statement of PW15 Gangurde (PI) it has emerged that on 12-07-2018 deceased had allegedly outraged modesty of wife of accused no.1 and that time accused no.1 had also issued threat to kill him. That accordingly on 05-03-2019, accused no.1 mounted assault on head of deceased by means of wooden log and said injury on head of deceased was fatal. It is submitted that there is recovery of said wooden log at the instance of accused no.1. Even T-shirt of accused having blood stains was seized vide seizure memo Exh.33/1. According to learned APP, prosecution had come with clinching evidence. Prosecution witnesses have deposed to that extent and therefore, their evidence has remained unshaken on crucial count. He would point out that death was homicidal. Complicity of both accused was firmly established and therefore, they were made to face trial. According to learned APP, numerous witnesses deposed against accused but learned trial Court has not appreciated evidence in correct perspective and had arrived at erroneous conclusion and acquitted both accused. Learned APP would submit that it is a fit case to re-appreciate and re-examine evidence as learned trial Court has failed to appreciate the evidence in correct spirit and therefore, as

there is every hope of succeeding in appeal on merit, he prays for leave as prayed for.¹²

3. In the light of above submissions, we have visited evidence adduced on behalf of prosecution. The role and status of the witnesses examined by prosecution are as under :

PW1 Mahendra Balu Patil is Pancha to seizure panchanama of weapon and T-shirt of accused no.1. His evidence is at Exh.33. Seizure panchanama is at Exh.33.

PW2 Radha Satish Dhurmekar is wife of deceased and informant. Her evidence is at Exh.37.

PW3 Dipak Chandrabhan Choudhari is Pancha to spot panchanama. His evidence is at Exh.39. Spot panchanama is at Exh.40.

PW4 Bhushan Bhaiyyasaheb Choudhari is nephew of deceased. His evidence is at Exh.41.

PW5 Laxman Mohan Choudhari is Pancha to seizure of mobile handsets. His evidence is at Exh.45. Seizure panchanama is at Exh.46.

PW6 Santosh Kisan Gavali is Pancha to seizure of pair of chappal. His evidence is at Exh.48. Seizure panchanama is at Exh.49.

PW7 Dr.Anand Vilas Pawar is Autopsy Doctor. His evidence is at Exh.51.

PW8 Govind Maikulal Chitte is resident of same locality and independent witness. His evidence is at Exh.54.

PW9 Dr.Jitendra Yuvraj Thakur is the Doctor, who initially examined deceased. His evidence is at Exh.57.

PW10 Pankaj Himmatrao Patil is Police Officer and carrier. His evidence is at Exh.59.

PW11 Shirish Baliram Bhamare is Police Officer and carrier. His evidence is at Exh.61.

PW12 Minabai Gorakh Ahire is Peon working in D.V.Patil Madhyamik Vidyalaya. Her evidence is at Exh.69.

PW13 Durga Uttam Gaikwad is Police Officer and carrier. Her evidence is at Exh.71.

PW14 Nayeed Ajij Shaikh(PSI) is Police Officer, who prepared inquest panchanama. His evidence is at Exh.79.

PW15 Dilip Vithoba Gangurde (PI) is Investigating Officer. His evidence is at Exh.82.

PW16 Sanjay Dattatray Sanap (PI) is another Investigating Officer. His evidence is at Exh.86.

4. In our opinion, here evidence of **PW2** Radha, wife of deceased is significant. On going through her evidence at Exh.37, it transpires that on 04-03-2019 at 10:00 p.m., her husband had been to attend a Bhajan program but he did not return till next day morning. According to her, on next day, one Kanhaiyya approached her and informed her that her husband was lying

in front of Jaiswal Country Liquor shop in injured condition and therefore, she went there alongwith her sister and found her husband in injured condition. According to her, hands of her husband were in tied condition. She had taken steps to shift him in the hospital. After examination, he was finally referred to Mumbai and in the way at Nashik, as her husband's condition got critical, he was taken in hospital at Nashik, but he seems to have expired at 11:00 p.m. According to her, she has lodged report on 07-03-2019 and even gave supplementary statement.

In **cross-examination**, she admitted that she did not approach Police and lodge any report on 05-03-2019. She admitted that till funeral was over, she had not approached Police Station. She admitted that on 04-03-2019, one Rajesh Nhavi had come to their house and taken her husband for Bhajan purpose but there was no contact between herself and said Rajesh between 05-03-2019 to 07-03-2019. She candidly admitted that there was no previous quarrel between Rajesh and her accused.

5. **PW4** Bhushan, nephew of deceased, seems to have received information and he joined PW2 Radha. Therefore, whatever information he has is hearsay.

6. **PW8** Govind according to prosecution is a crucial witness as he had seen quarrel between accused and deceased. His evidence is at Exh.54. According to him, on 05-03-2019 at around 03:00 a.m., he woke up to answer

call of nature. According to him, in front of house of accused, quarrel was going on between both accused and deceased and seeing the quarrel, he claims to have returned to his house. He deposed that in the morning, relative of deceased took deceased to Civil Hospital. Thereafter, he came to know that while being taken to Nashik for treatment, deceased passed away. He admitted that he gave statement after 13 days of the occurrence.

In **cross-examination**, above witness has admitted that in between his house and house of accused there is only one lane. He answered and admitted that he had answered call of nature over drainage lane adjacent to his own house. He admitted that adjacent to house of accused Paras and in front of his house, there are other residential houses. He answered that except both accused and deceased, there was no other person present there. He admitted that in his statement to Police, he had not informed whether he was from 05-03-2019 to 13-03-2019. That portion marked "A" was confronted to him.

Other witnesses are Pancha witnesses, Police witnesses, Carriers and medical experts.

7. Though **PW7** Dr.Pawar, Autopsy Doctor had denied injury to be possible on account of accident, **PW9** Dr.Thakur, other medico legal expert has stated that person involved in accident may suffer injuries noted at Exh.58. Thus, even medical evidence is contrary.

8. Therefore, *prima facie* it appears that except evidence of PW2 Radha,

wife of deceased and informant, there is no other evidence. All other witnesses are Panchas, Police Officers etc. PW8 Govind, whose evidence is heavily relied by prosecution is of no avail for the simple reason that though he claims to have been seen quarrel between accused and deceased in the intervening night of 04-03-2019 and 05-03-2019 at 03:00 p.m. and inspite of being immediate neighbour, he has not reported about alleged quarrel either to informant wife or Police. It is most unnatural conduct on his part. He himself has admitted that after almost two weeks, he has given statement.

9. Though PW2 Radha, wife of deceased has narrated about coming across rope tied to the hands, the same does not seem to have been seized by the Investigating Officer. Even the Liquor Shop Owner in front of whose shop deceased was allegedly found lying in injured condition is not examined. Immediate neighbours of the spot are not examined. Therefore, with such quality of evidence, in our considered opinion, learned trial Court committed no error in refusing to accept the case of prosecution.

10. In our opinion no purpose would be served by granting leave to file appeal. No case being made out for grant of relief, Application for Leave to Appeal by State is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)