

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.132 OF 2018

The State of Maharashtra,
Through Police Station Officer,
Police Station Kasar Shirsi,
Tq. Nilanga District Latur

... **Appellant**

VERSUS

1. Dnyanoba s/o Pandurang Yernale
Age 35 years, Occu: Agri.

2. Sambhaji s/o Pandurang Suryawanshi,
Age 70 years, Occu: Agri.

... **Respondents**

3. Datta s/o Yadav Suryawanshi
Age 32 years, Occu: Mechanic

All r/o Shabitwadi Tq. Nilanga, Dist. Latur

Mr. R. D. Sanap, APP for the appellant-State

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

DATE: : 10.04.2023

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

1. The present application has been filed by the prosecution under section 378(1) (b) of the Criminal Procedure Code seeking leave to file appeal challenging the judgment and order dated 31.01.2018 passed by the learned Additional Sessions Judge, Nilanga, Dist. Latur in Sessions Case No.19 of 2013 thereby acquitting the non-applicants/accused from the offence punishable under sections 302, 201 read with section 34 of the Indian Penal Code arising out of

Crime No. 08/2013, registered with Police Station Kasar Shirsi, Tq. Nilanga District Latur.

2. Heard Mr. R. D. Sanap, learned APP for the State and with his able assistance, we have gone through the record which was before the learned trial judge for the purpose of considering whether leave can be granted to file appeal against the order of acquittal.

3. It is the case of prosecution that accused No.1 Dnyanoba Pandurang Yernale is cousin bother-in-law of deceased- Anusayabai Ramprasad Yernale. Her husband died long back. She has two daughters and one son who is taking education at Latur. On 06.02.2013, PW-2 Madhav Maruti Mare, got information that his sister Anusayabai is missing, since 4-5 days, therefore, he lodged missing report on 06.02.2013. However, the dead body of Anusayabai was found in sugarcane field of one Ganpat Suryawanshi on 07.02.2013. After receipt of information, PW-8 Vilas Sambhaji Yearnale lodged accidental death report on 07.02.2013 with Kasar Shirsi Police Station about occurrence of sudden death of Anusayabai, on the basis of which AD No. 2/2013 was registered. PW-10 Sudarshan Nivrutti Bhange-PI conducted inquest panchanama of dead body of Anusayabai and spot panchanama. The investigating officer seized clothes of deceased. Since dead body of Anusayabai was decomposed, request letter was issued to Medical Officer for conducting postmortem on dead body at the spot of incident. Accordingly, medical officer, with his team, conducted postmortem of dead body at the spot of incident. On the basis of report lodged by Madhav Maruti Mare, Crime No 8/2013 came to be registered with Kasar Shirsi Police Station for the offences under sections 302, 201 r/w section 34 of IPC. Investigating officer has

recorded statement of witnesses and arrested all the accused persons. He has collected postmortem report and on completion of investigation, charge-sheet came to be filed against the accused persons before the learned Judicial Magistrate First Class, Nilanga.

4. On required compliance of section 207 Cr.PC., the learned Judicial Magistrate has passed order under section 209 of Cr.PC. and committed the trial to the Court of Sessions. The learned trial court has framed charge at Exh. 34 against the non-applicants/accused for the offence punishable under section 302, 201 r/w section 34 of IPC. The accused have pleaded not guilty and claimed for trial.

5. In order to bring home guilty of the accused, the prosecution examined following witnesses:

PW-1 Vithal Babruwan Yernale at Exh. 59,
 PW-2 Madhav Maruti Mare at Exh. 62
 PW-3 Maruti Sayareddi Narhare at Exh.72
 PW-4 Shakuntala Govind Mare at Exh. 77
 PW-5 Venkat Ramprasad Yernale at Exh. 78
 PW-6 Venkat Sopan Sabade at Exh. 80
 PW-7 Balaji Pandharinath Mare at Exh.82
 PW-8 Vilas Sambhaji Yernale at Exh. 85
 PW-9 Dr. Santosh Hindole at Exh. 88
 PW-10, Sudarshan Bhange, Investigating officer at Exh. 93.

6. Besides oral evidence, the prosecution has proved documentary evidence viz. Spot Panchanama Exh. 60, Missing report Exh. 63, A.D. report Exh. 86, Spot Panchanama Exh. 68, inquest Panchanama Exh. 69, Clothe seizure panchanama Exh. 67, request

letter for conducting panchanama Exh. 94, postmortem report Exh. 90, sketch map of spot Exh. 70, final postmortem report Exh. 91.

7. After conclusion of the trial, statements of the accused were recorded under section 313 of Cr.P.C. and incriminatory evidence was put-forth to them. The defence of the accused is about their false implication. Learned trial judge passed the judgment & order on 31.01.2018 and acquitted the accused for the offence punishable under section 302, 201 r/w section 34 of IPC. Being dissatisfied with the findings, the prosecution has filed the present application seeking leave to file appeal against the acquittal of the accused persons.

8. The learned APP canvassed that the prosecution led substantial evidence that the deceased Anusayabai had received amount of Rs.1,60,000 as compensation due to death of her husband caused while digging well. Thereafter, non-applicant/accused no.1 had assured her to give double amount. Deceased Anusayabai demanded said amount at the time of marriage of her daughter, but the non-applicant no.1/accused, failed to give. The testimony of prosecution witness appears that during Diwali festival, preceding to death of deceased, wall of the house of accused had fallen near the door of deceased and when deceased asked accused No.1 for removal of debris, accused No.1 threatened that he would bury Anusayabai and her son- PW-5. As per testimony of PW-8, there was enmity between deceased Anusayabai and accused no.1 on count of unpaid amount. On all these grounds, Anusayabai has been murdered by accused. There was motive for them to kill her. The prosecution has brought substantial evidence on record to prove that accused Nos. 1 to 3 have committed murder of deceased Anusayabai with their common intention and destroyed the evidence.

9. Learned APP further canvassed that prosecution has brought all circumstantial evidence and proved last seen theory by proving that deceased Anusayabai had visited the field of Sambhaji Pandurang Suryawanshi (Accused No.2) on 31.01.2013. The testimony of other prosecution witnesses is in corroboration about attending agricultural work by deceased Anusayabai in the field of accused No.2 Sambhaji Suryawanshi on 31.01.2013. The dead body of Anusayabai was found in the field of Ganpat Suryawanshi which is adjacent to the field of Sadba Suryawanshi and Pandurang Suryawanshi. However, the learned trial court failed to consider last seen theory. The testimony of prosecution witnesses PW-2, PW-3, PW-4, PW-5 and PW-8 appears about giving of life threat to deceased Anusayabai by accused No.1. The circumstantial evidence proves that the accused have committed homicidal death of Anusayabai in order to execute the life threat. Learned trial court ought to have held the accused persons guilty of committing offences punishable under section 302, 201 r/w section 34 of IPC. Learned trial court recorded perverse findings and acquitted the accused. Therefore, the prosecution has made out substantial ground to file appeal.

10. Having regard to the submissions canvassed on behalf of the learned APP, we have gone through the record. In order to prove homicidal death of deceased Anusayabai, the prosecution examined medical officer PW-9 Dr. Santosh Hindole at Exh. 88. One Vilas Sambhaji Yernale (PW-8) has identified the dead body of deceased Anusayabai Ramchandra Yernale in green - blueish flower print sari. One scarf was found rotated around the neck. Upper half of the dead body was totally burnt up to umbilicus, chest, scalp, both upper

extremities, lower part of abdomen, right leg up to foot were in decomposed condition. PW-9 Dr. Hindole, with his team members conducted postmortem on the spot and found Maggots all over body including nostrils, mouth and inside chest. Perineal region was found totally decomposed. Both upper extremities and left leg were totally decomposed and only bones had remained. Two complete rounds of scarp were found around the neck. Ligature mark over neck were in depressed condition of size about 3 cm broad and 20 cm long was found. Tongue was clinched in between upper and lower teeth. Hyoid bone was fractured below horn. Thyroid cartilage was fractured at superior horns. Rigor mortis was absent. Right lower limb was totally decomposed up to foot was. Left leg was totally decomposed and only bones had remained. Burn injuries were found on the front portion of the body but no surface wound was found due to decomposition of the dead body.

11. On internal examination, PW-9 Dr. Santosh Hindole had not found any injury to the scalp. The brain was liquefied. Upper half portion of body was totally burn up to umbilicus. PW-9 Medical Officer opined that death of deceased might have been caused 5-6 days prior to the postmortem. Death was caused “due to asphyxia due compression of neck structures due to strangulation”. PW-9 accordingly issued the postmortem report Exh. 90. Though the non-applicants have cross examined the medical officer PW-9, nothing has been solicited to prove that death of deceased Anusayabai was suicidal or accidental. Considering the nature of burn injuries as well as strangulation due to compression of neck, it can be safely concluded that the death of deceased was homicidal in nature.

12. The prosecution has examined PW-2 Madhav brother of deceased Anusayabai who lodged missing report Exh. 63, PW-3 Maruti Sayareddi Narhare, son-in-law of deceased, PW-4 Shakuntala Govind Mare, daughter of deceased, PW5 Venkat Ramprasad Yernale, son of deceased, and PW-8 Vilas Sambhaji Yarnale who lodged AD report Exh. 86 but testimony of these witnesses, do not reveal that prior to lodging of missing report Exh. 63, deceased Anusayabai was lastly seen with accused No.2 Sambhaji Pandurang Suryawanshi.

13. It has come on record that marriage between Anusayabai (deceased) and Ramprasad Yernale was solemnized 30 years prior to FIR. He expired after 10 years of his marriage while working in the well of one Gopal Yernale. Due to said incident, deceased Anusayabai had received compensation to the tune of Rs.1,60,000/- i.e Rs.60,000/- from owner of field Gopal Yernale and Rs. One lakh from the villager society. The prosecution tried to bring on record that deceased Anusayabai gave Rs. One lakh to accused No.1 Dnyanoba Yernale, who had assured her that he would invest in fix deposit and would return the amount at the time of marriage of her daughter. The accused No.1 paid only Rs. 50,000/- at the time of marriage of her elder daughter, indicating that he has discharged all liabilities. A meeting at village Chilwantwadi was called, in which accused No.1 Dnyanoba gave guarantee of one Balaji Mare but no amount was paid to the deceased. Thereafter, accused No.1 Dnyanoba allegedly abused and threatened the deceased to kill her because of insult but said incident does not connect the accused Dnyanoba to prove that prior to 5/6 days of lodging of missing report Exh. 63, deceased Anusayabai had accompanied him.

14. It would be appropriate to mention that on 06.02.2013, PW-2 Madhav Mare came to know about missing of his sister Anusayabai. He and his relatives took search of deceased Anusayabai but she was not traceable and lodged missing report Exh. 63. Thereafter, on 07.02.2013, PW-2 came to know from one Tukaram Yernale about lying dead body of deceased Anusayabai in sugarcane crop of one Ganpat Suryawanshi in decomposed state. PW-2 Madhav has deposed that non-applicant Nos.1 to 3/accused threw the dead body of deceased Anusayabai in sugarcane field of Ganpat Suryawanshi. The deceased Anusayabai was having illicit relations with Sambhaji Suryawanshi/non-applicant no.2 who had secured hand loan of Rs.25,000/-from the deceased. On the score of returning said amount, the relations between deceased and accused No.2 Sambhaji had become strained. However, there is no corroboration to his testimony. It is also alleged that as deceased Anusayabai was having illicit relations with father of accused No.3, he had motive to kill her but, the prosecution evidence is lacking to prove this angle also.

15. The circumstantial evidence brought by the prosecution on record does not complete the chain of circumstances. There are material omissions, contradictions as well as improvements in the prosecution story. The testimony of some of the prosecution witnesses is based on hearsay evidence. The prosecution failed to bring cogent and reliable evidence about alleged illicit relations between accused No.2 and the deceased. So also, there is no consistency in the story of prosecution witnesses about giving of threat on account of money transaction.

16. Learned trial court passed the impugned judgment & order on 31.01.2018 and acquitted the accused from the charges under sections

302, 201 read with section 34 of the Indian Penal Code; which is itself justifiable and no substantial grounds are made out for grant of leave to file appeal challenging the order of acquittal. Accordingly, the application stands rejected.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan