

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.103 OF 2019

The State of Maharashtra
Through Police Inspector,
Shevgaon Police Station,
Tq. Shevgaon, Dist. Ahmednagar.

... Applicant

... Versus ...

Sudhir Uttam Gangawane,
Age 48 yrs., Occ. Nil,
R/o Ghotan, Tq. Shevgaon,
Dist. Ahmednagar.

... Respondent

...

Mr. A.M. Phule, APP for applicant

...

CORAM : SMT. VIBHA KANKANWADI
S.G. CHAPALGAONKAR, JJ.

DATE : 30th JUNE, 2023

ORDER :

1 Present application has been filed by the prosecution seeking
leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to

file appeal challenging the Judgment of acquittal dated 13.02.2019 passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.99/2017, thereby acquitting respondent – original accused from the offence punishable under Section 302 and 323 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.M. Phule for the prosecution and with his help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, was that – deceased Uttam Daulat Gangawane was the father of accused – respondent. Deceased was residing with his wife and accused at village Ghotan, Tq. Shevgaon, Dist. Ahmednagar. Accused was not doing anything to earn, but he used to demand money from the parents for drinking liquor. Whenever they were not giving money to him, the accused used to assault them. When the parents as well as accused were in the house on 23.03.2017 at night time i.e. after dinner, it is alleged that deceased went to sleep and his wife Dayabai was washing utensils. She heard the loud noise of the husband and, therefore, went inside and then saw that husband was lying in the bed in injured condition and son i.e. accused was standing holding knife in his hand

and was shouting loudly. Deceased had sustained stab injury to his chest and abdomen. Dayabai called two neighbours i.e. Balu Salve and Balu Ghadge. After the Ambulance was called, deceased was shifted to Rural Hospital, Shevgaon and then he was shifted to Civil Hospital, Ahmednagar for further medical treatment. He was operated for the abdominal injuries, however, he succumbed to the injuries around 9.00 p.m. on 24.03.2017. Intimation about the death was given to Tophkhana Police Station. After drawing inquest panchnama, the dead body was referred for postmortem. The First Information Report was lodged by the brother-in-law (brother of wife Dayabai i.e. Vikas Gopinath Kamble) on the basis of information received by him on 25.03.2017.

4 After the investigation was carried out, trial was committed to the Court of Sessions by filing the charge sheet. The trial was conducted. Prosecution has examined in all 10 witnesses to bring home the guilt of the accused. After hearing both sides and perusing the evidence on record, the learned Trial Judge has acquitted the accused from all the charges. Hence, the present application.

5 Unfortunately injured Dayabai and another son Suhas i.e. PW 3 and PW 6 appears to have turned hostile, however, the learned APP points

out that PW 4 Balu Salve, PW 5 Balu Ghadge and PW 7 Mrs. Sangita Cardoza, who is the niece of deceased, all have supported the prosecution, so also, the testimony of PW 8 Dr. Dipak Pardeshi, who was the Medical Officer at Rural Hospital, Shevgaon and it has come in his evidence that when deceased was brought to the said hospital around 11.35 p.m., deceased was alive and was in a fit state to give statement. The history of assault was given by the deceased Uttam as - “चाकूने मारले माझ्या मुलाने”. This has not been appreciated by the learned Trial Judge.

6 We have gone through the testimony of all these witnesses. The testimony of PW 4 and 5 was challenged by the accused only on the ground that they had not contacted the police immediately, though they had allegedly seen the accused holding knife and standing by the side of deceased Uttam at the relevant time. The alleged contradictions between the testimony of PW 4 Balu Salve and PW 7 Sangita Cardoza have been highlighted by learned Trial Judge, which deserve to be revisited. Further, it appears that the defence that was taken by the accused was that – he was admitted in Shanti Nursing Home on 13.10.2004 and discharged on 28.10.2004. He was diagnosed of having ‘schizophrenia paranoid continuously’. The defence witness was examined by him in the form of DW Dr. Vishal Shriram Patil and then he has stated about the treatment given

including the 'electro convulsion therapy' to the accused. The witness had stated that if the medicines prescribed were given regularly, then the health of deceased would have been under control and could have been completely cured. Here, the important point to be noted is that the incident has taken place on 23.03.2017. So, for the treatment that was taken in the year 2004 whether it could have been taken as the deceased still subsisting in 2017, is a question. Further, the learned Trial Judge has also taken cognizance of the letter sent by District Superintendent of Sub Jail, Ahmednagar on 07.09.2017 stating that the accused has become violent. He again was given psychiatric treatment and it appears that the learned Trial Judge has given benefit of Section 84 of the Indian Penal Code, as regards the defence of unstable mental condition. Whether the trial that was conducted was as per the procedure, that is, prescribed under Chapter XXV of the Code of Criminal Procedure i.e. provisions as to accused persons of unsound mind is then required to be considered and whether inspite of defence since beginning about the unstable mental condition is not taken, then whether it could have been so appreciated, is also required to be considered. Further, if the alleged unsoundness of mind has cropped up in between i.e. during the trial, then whether the learned Trial Judge was justified in going ahead with the trial is also required to be considered. Therefore, case is made out to grant leave. Hence, the following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 Leave is granted to the prosecution to file Appeal.
- 3 Registry to register the Appeal.
- 4 Appeal stands **Admitted**.
- 5 In Appeal, issue notice to the respondent, to be made returnable on 11.08.2023.
- 6 Call Record and Proceedings.
- 7 Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial Court.

(S.G. Chapalgaonkar, J.)

(Smt. Vibha Kankanwadi, J.)