



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.90 OF 2020

The State of Maharashtra,
Through In-charge of Police Station Jintoor,
Tq. Jintoor, Dist. Parbhani

... Applicant.

Versus

1. Shrihari S/o. Bhagaji Tanpure,
Age : 26 years, Occu. : Labour,
R/o. Titvi, Tq. Lonar, Dist. Beed.
2. Gayabai W/o. Sanjay Tanpure,
Age : 30 years, Occu. : Labour,
R/o. Kapadshingi, Tq. Sengaon,
Dist. Hingoli.

... Respondents.
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant/Appellant

...

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

DATED : 5th OCTOBER, 2023

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

1. As State is intending to prefer appeal against judgment and order passed by learned Additional Sessions Judge-3, Parbhani in Sessions Case No.144 of 2016, acquitting respondents-original accused from charge under Sections 302 and 201 read with Section 34 of Indian Penal Code (IPC), vide instant application leave is prayed for.

2. According to learned APP, there was serious charge of commission of murder. Deceased was husband of accused no.2. Accused no.2 had illicit relation with original accused no.1. To do away from husband, both respondents/original accused committed murder of Sanjay by putting his body in a sack and disposed of it by throwing in the water. On receipt of report, investigation was carried out and detailed investigation revealed involvement of both respondents i.e. accused nos.1 and 2. Medical expert has attributed death of Sanjay to be homicidal one. That, by examining six witnesses, prosecution had established the charges. Evidence of prosecution witnesses has remained intact, however, it is submitted that, the learned trial court unfortunately did not accept the case of prosecution and acquitted respondents, and therefore, as there is no proper appreciation to prefer appeal against the judgment, learned APP prays for leave to file appeal.

3. In the light of above submissions, we have gone through the papers. It seems to be the case of prosecution that, there were relations between both respondents i.e. accused nos.1 and 2, and deceased is husband of accused no.2. According to prosecution, to eliminate husband, he was done to death. There is no direct evidence and case is admittedly based on circumstantial evidence. It transpires that, in support of its case prosecution has

relied on the circumstances of motive, last seen together, recovery and discovery.

4. We have visited the prosecution evidence. The following are the witnesses on behalf of prosecution :-

PW1 API Kailas, Police Officer, who, received information from Police Patil about gunny bag floating in the water. He drew inquest and spot panchanama and got PM done vide Exhs.39, 40 and 41. He seems to have set law into motion on behalf of State by lodging FIR against unknown persons for committing murder of unknown person for unknown reason.

PW2 Mohd. Taher seems to have acted as a pancha and memorandum of disclosure at the instance of accused no.1 in pursuance to which there is recovery of stick and string. Record shows that accused was arrested on 23.07.2016.

PW3 Bhagwan seems to be the land owner, who had employed deceased as labour yearly basis. According to him, on 18.07.2016, when he went to his field, at that time, deceased servant had been to Parbhani to remove his son's plaster on the motorcycle of accused no.1, who is cousin brother of deceased and used to regularly visit him. On 19.07.2016, he again visited the field and not finding deceased, he questioned wife Gayabai, who

allegedly told him that deceased quarreled with her and went away.

PW4 Ramesh in his testimony states that on 18.07.2016, he went to the field at around 11:00 a.m. and there he met accused nos.1 and 2. Four five days later, he learnt about death of Sanjay.

PW5 Dr. Shahanaz, autopsy doctor, who deposed about conducting post mortem and reserving opinion for CA report. He admitted that body of Sanjay was in decomposed condition.

PW6 P.I. Sopan is the Investigating Officer.

5. On examining the above evidence, here, there is no evidence about alleged illicit relationship between both accused persons and to save their such relations deceased was done to death. Evidence of PW3 Bhagwan and PW4 Ramesh shows that they had seen deceased only on 18.07.2016. According to PW1 Kailas, dead body was located and traced on 21.07.2016, i.e. after almost three days. According to autopsy doctor, death might have taken place somewhat between 24 to 72 hours.

PW3 Bhagwan has admitted that, his statement to police is silent about deceased been taken by accused no.1 to

Parbhani to remove plaster of his son. Likewise, evidence of PW4 Ramesh, another witness on last seen does not speak about seeing deceased in the company of accused during visit to the field on 18.07.2016. Therefore, evidence of PW3 Bhagwan and PW4 Ramesh is of no avail to the prosecution. Son of deceased is also not examined by the prosecution. Therefore, mere recovery of string and stick at the instance of accused is itself not sufficient or an incriminating material to connect respondents.

6. For all above reasons, when none of the circumstances are cogently and firmly proved by prosecution, the net result is bound to be acquittal.

7. We have gone through the judgment under challenge. In our opinion, evidence and law applicable has rightly been appreciated and considered. No fault or perversity is brought to our notice so as to grant leave for re-appreciation and reanalysis of evidence. Resultantly, we proceed to pass following order :

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)