

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.147 OF 2018

The State of Maharashtra,
Through Police Station Officer,
Police Station, Mukundwadi,
Aurangabad.

.. Applicant

Versus

1. Anita w/o Ramesh More,
Age: 36 years, Occu.: Labour,
R/o. Santoshi Mata Nagar,
Aurangabad.
2. Shaluman s/o Sampat Ghorpade,
Age: 36 years, Occu.: Driver,
R/o. Galli No.5, Prakashnagar,
Mukundwadi, Aurangabad.

.. Respondents

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Mr. S. J. Salgare, Advocate for applicant – State.

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

DATE : 9th June, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 22.02.2018 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.218 of 2015; thereby

acquitting the respondents from the offences punishable under Sections 302 read with Section 34 of Indian Penal Code.

2. Heard learned APP Mr. S. J. Salgare for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The prosecution story in short was that deceased Ramesh More was married to accused No.1 about 20 years ago. They had a son and daughter, however, accused No.1 had developed illicit relations with accused No.2 since last about 4-5 years prior to the incident. On account of said relations there used to be quarrels between deceased and accused No.1. Ramesh was residing separately from his wife since last about six months from the date of incident. The children were along with accused No.1 and they used to reside at Santoshi Mata Nagar, Mukundwadi, Aurangabad. Informant Suresh More is the real brother of deceased Ramesh. Mukundwadi Police informed him on 06.07.2015 that his brother Ramesh has been assaulted and as a result of which, he has sustained head injury. After getting such information, Suresh went along with his sister Mangalbai to the house of his brother. He gathered the information that around 2.00 p.m. both the accused had assaulted Ramesh by iron pipe and belted stone slab (दगडी पाटा) on his head. Ramesh was then shifted to Government Medical College

and Hospital, Aurangabad. The informant had checked the house of his brother from inside and noticed that there was blood on the floor and also stone slab. He then went to Ghati Hospital, Aurangabad, at that time, Ramesh was undergoing treatment, however, after few moments, he was declared dead. Prior to that the police constable on duty at medical hospital had given intimation to Police Station Officer, Mukundwadi regarding the fact about admission of Ramesh and then that he has expired around 18.30 hours on the same day.

4. After lodging of the FIR, offence was investigated and after the investigation was completed charge-sheet was filed. Both the accused were arrested and were tried by the learned Additional Sessions Judge. The prosecution examined in all eight witnesses to bring home the guilt of the accused, whereas the accused No.1 has examined one witness in defence. After considering the evidence on record and hearing both sides, the learned Additional Sessions Judge has acquitted the accused persons. Hence, present application.

5. The case of the prosecution rested on direct and circumstantial evidence and, therefore, it was the duty of the prosecution to prove the chain of circumstances and each segment of the chain should unerringly point out towards the accused persons as the assailants. Though P.W.1 Suresh – the informant has proved his FIR, it can be seen from the fact that

he had gone to the spot after receiving information from the police. He had no personal knowledge about what had happened on that day at the relevant time. However, testimony of P.W.5 Dr. Balaji Phalke, who conducted autopsy and testimony of P.W.4 Kanta Kale, who was panch to the inquest panchanama would prove that death of Ramesh is homicidal in nature. Even the learned Trial Judge has come to the said conclusion, which is in favour of the prosecution and, therefore, that part is not challenged by the prosecution side. What has been challenged by the accused Nos.1 and 2 is the allegations against them that they are the authors of the crime. Prosecution has examined P.W.2 Mangalbai, who is the sister of deceased. Though so many other facts have been stated by her which were in corroboration to the testimony of P.W.5, yet the fact remains is that she is also not the witness on the point of last seen theory. There might be disputes between deceased and his wife, but the fact remains is that when it comes to the allegations that the applicants have committed the said murder, we cannot hold them guilty, though neighbour to the house of deceased has been examined. When admittedly deceased was residing separately from accused No.1 since about six months prior to the incident, then we cannot invoke provisions of Section 106 of Indian Evidence Act. There was no duty on her part to explain under which circumstance deceased had sustained fatal injuries. In his cross-examination, P.W.1 Suresh has admitted that he had never went to the

house of brother Ramesh and, therefore, he had no knowledge about the people residing nearby to his house. He has also stated that on the day of incident, he went to Ghati Hospital and then directly to police station and relied upon whatever information was given to him by the police. Therefore, his alleged visit to the house of deceased comes under shadow of doubt. It appears from the cross-examination that accused No.1 had lodged report against P.W.1 Suresh in respect of incident dated 07.02.2015. The house in which incident took place belongs to Ramesh. Under such circumstance, it appears that P.W.1 Suresh has intentionally not given the place where accused No.1 was residing. It has come in the evidence of P.W.1 Suresh that since prior to the occurrence of incident, his brother was not residing in the said house, which was in the name of deceased, but he used to reside in a rented room at Mukundwadi. Under the said circumstance, it was required for the prosecution to bring such evidence to show that deceased had visited the house of accused No.1 at the relevant time and accused No.1 was inside the house at that time also. As regards accused No.2 is concerned, everything appears to be hearsay. There is no concrete evidence to show that there was illicit relations between accused No.1 and accused No.2. At the cost of repetition, it can be said that non examination of neighbour was fatal to the prosecution and same is the case with the testimony of P.W.2 Mangalbai.

6. PW.3 Raju Bawaria in his examination-in-chief has stated that accused No.1 was having illicit relations with accused No.2. That was the reason there was dispute between accused No.1 and deceased. He has tried to show himself as an eye witness and, therefore, states that around 2.00 p.m. on 06.07.2015, when he was in front of his house, accused Ramesh had come and asked his son where is his mother. The son replied that mother is inside the house. Then the deceased asked accused No.1 to open the door. When after much time accused No.1 opened the door, she started abusing so also Ramesh started abusing. He states that in the meantime accused No.1 had concealed himself in the bathroom of the house and then he came from behind. He was caught hold by Ramesh and there was scuffle between Ramesh and accused No.2. Accused No.1 has assaulted Ramesh by means of iron pipe. Then he says that deceased came out of the house in injured condition and fell down on the ground. According to him thereafter accused Nos.1 and 2 took Ramesh inside the Wada and closed the door. After a while accused No.2 ran away from the place. This witness had gone inside and found that one stone slab was near Ramesh and Ramesh was lying in pool of blood. Much admissions have been given in the cross-examination. He has stated that one cannot see the things happened in the Wada of accused from his house. His conduct is also doubtful. He says that he did not feel that he should rescue Ramesh when he was assaulted by iron pipe. His testimony gives a picture that the

incident had seen by 20-25 persons. Further, in the cross-examination, he has categorically stated that PW.1 and PW.2 were present when his deposition was recorded. He was told how to give evidence in respect of death of Ramesh. If he had seen the incident, then why he had not gone to the police to lodge a report, is a question. The conduct of this witness is unnatural and, therefore, carefully discarded by the learned Trial Judge. Contrary to this, D.W.1 Radhabai is the mother of accused No.1 and she has stated that she was in the house of accused No.1 on the date of incident. Ramesh had come in front of house under the influence of liquor and started abusing accused No.1. When people in the lane started advising Ramesh not to abuse and Ramesh continued his behaviour, those people who had gathered, had assaulted Ramesh. If we consider the cross-examination taken on behalf of the prosecution, we could get that except the fact that she has the desire that her daughter accused No.1 should be acquitted and, therefore, she is deposing falsely, is the suggestion given to her and she has denied the same. The specific defence was raised by accused No.1 and it has not been discarded by the eye witnesses. Even PW.7 Premlata has also claimed to be the eye witness. The learned Trial Judge after considering the evidence of both these witnesses held that their account is not free from doubt and, therefore, they are not reliable. Though the prosecution was able to succeed in proving that it was homicidal death of Ramesh, yet it has not been proved beyond reasonable

doubt. No case is made out to arrive at a conclusion that the decision given by the Trial Court is perverse. The application therefore stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm