

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.128 OF 2019

The State of Maharashtra
Through: Yawal Police Station,
Taluka Yawal Dist. Jalgaon.

... **Applicant**
[Ori.Complainant]

Versus

Ananda Madhav Wankhede
Age: 21 years, R/o. Borale,
Taluka Yawal, Dist. Jalgaon

... **Respondent**
[Ori. Accused]

....
Mr. A. M. Phule, APP for applicant - State
....

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

DATE : 19.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

. The prosecution has filed the present application under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file appeal, challenging the judgment and order dated 07.03.2019 passed by the learned Additional Sessions Judge, Bhusawal, District Jalgaon in Sessions Case No.34 of 2017, thereby acquitting the non-applicant for the charges under Sections 302, 394 read with Section 397 of the Indian Penal Code.

2. With the able assistance of learned APP Mr. A. M. Phule, we have perused the record. We have considered the prosecution story as narrated in First Information Report as well as evidence which was available before the learned trial Court with a view to consider, whether leave to file appeal can be granted.

3. The prosecution story is that, Shri Ganesh Patil the Police Patil of village Chunchale, taluka Yawal, District Jalgaon. He lodged a report with Yawal Police Station on 16.12.2016 alleging that at about 7.30 p.m., his brother Yogesh Patil had received a phone call of one Balu Neve. Said Balu informed that one female has been found murdered in peripheri of village Chunchale. Therefore, Police Patil visited at the spot of incident and found dead body of one aged female lying in prone condition with flower print cloth around her neck. The harvested cotton was lying around dead body. On the basis of said report, Crime No.25/2016 was registered against unknown person. The PW-12 rushed to the spot of incident and drawn spot panchanama, inquest panchanama and referred the dead body for autopsy. During the course of investigation, the Investigating Officer seized the clothes of deceased under seizure panchanama as well as pair

of footwear, broken bangle pieces, scarf, cotton collection cloth and blood mixed oil under seizure-cum-spot panchanama. During the course of investigation, it was revealed that the respondent accused Ananda Madhav Wankhede has committed murder of deceased Tarabai Ananda Mali. Therefore, the Investigating Officer arrested the accused under arrest panchanama. The Investigating Officer recorded statements of witnesses and interrogated the accused. On his disclosure, gold, silver ornaments and murder weapon were seized. Investigating Officer seized clothes of the accused which were on his person at the time of incident. All seized articles were referred for Chemical Analysis (C.A.) The gold and silver ornaments were weighed through the goldsmith. Blood sample of accused was collected through the Medical Officer and he was medically examined. Accordingly, the Medical Officer issued certificate with opinion. The motorcycle used by the accused while committing crime, was also seized under seizure panchanama. Photographs of spot of incident and dead body were snapped. On completion of investigation, charge-sheet came to be filed against the accused.

4. On compliance of procedural law, the learned trial Court framed the charge against the accused for the offence punishable under Sections 302, 394 read with Section 397 of the

Indian Penal Code. The plea of accused was recorded, and he had pleaded not guilty. Trial has been conducted.

5. In order to bring home the guilt of accused for said offences, the prosecution has examined in all twelve (12) witnesses. On conclusion of prosecution evidence, the statement of accused was recorded under Section 313 of the Code of Criminal Procedure. The defence of the accused is of total denial. Learned trial Court passed the impugned judgment and order on 07.03.2019 and acquitted the non-applicant / accused for the offence punishable under Sections 302, 394 read with Section 397 of the Indian Penal Code. Hence, this application by prosecution.

6. The learned APP vehemently submitted that though the prosecution had brought substantial evidence to prove motive of the respondent / accused by examining PW-2, PW-8 and there is recovery of ornaments of deceased under Section 27 of the Evidence Act at the behest of accused as well as recovery of weapon used by the accused while committing crime, blood stained clothes of accused, however, the learned trial Court failed to appreciate the evidence of prosecution witnesses in positive manner. It is further canvassed that the prosecution led circumstantial evidence and had completed the chain of

circumstances beyond reasonable doubt. Therefore, the learned trial Court ought to have held accused guilty, however, the learned trial Court illegally passed the judgment and order acquitting the accused. Therefore, it is necessary to re-appreciate the evidence.

7. It is the matter of record that the prosecution has produced documentary evidence Exh.55, oral report Exh.57, printed F.I.R. Exh.58. Correspondence issued to the Tahsildar, Yawal, Correspondence made to the Block Development Officer, Panchayat Samiti, Yawal Exh.59, correspondence with Medical Officer Exh.18, inquest panchanama of deceased Exh.10, information about deceased Exh.60, death certificate of deceased Exh.19, memorandum of statement Exh.12 seizure panchanama of articles Exh.13, cloth seizure panchanama of deceased Exh.16, muddemal receipts cloth seizure panchanama of accused Exh.15, property search and seizure panchanama in respect of motorcycle Exh.8, muddemal receipt Exh.76, Gao Namuna No.8 in respect of house of accused Exh.80, the communication issued to the C.F.S.L. Exh.41, communications to the Medical Officer Exh.68, postmortem report Exh.20, goldsmith certificate Exh.53, panchanama in respect of ornaments Exh.7, etc.

8. In order to prove homicidal death of deceased, it is necessary to scrutinize the evidence of Medical Officer PW-3 Dr. Kaustubh Talele. As per the testimony of PW-3, he conducted postmortem on dead body of Tarabai on 17.12.2016 and found injuries on her throat. He found blood stains, mud on face of deceased and injuries on her ears. He collected stomach spleen, liver, kidney and viscera for examination. He took blood sample of deceased and issued advance death certificate Exh.19. PW-3 has deposed about finding transection of neck muscle and trachea over cut throat injury, which is probable cause of death of the victim. After some days, he issued postmortem report Exh.20. PW-3 further deposed that in response to query letter Exh.21 and 22, the probable cause of death of deceased, time and nature of weapon. Initially he issued reports on 16.01.2017 under Exh.23 and 24. As per his opinion, the death of deceased might have been caused 18 to 20 hours prior to the postmortem. Injuries might have been caused by razor blade or other like articles.

9. In cross examination, the PW-3 has admitted about finding C.L.W. injuries, which can be caused by hard and blunt object. The razor blade is sharp cutting object. He has not mentioned about margin of concerned injuries in postmortem report Exh.20. Further, he has not mentioned about colour of

injuries and blood oozing position in postmortem report, which can decide the age of injuries. He had not mentioned the age of injuries in postmortem report. PW-3 admitted about ascertaining time of death of deceased on the basis of body temperature, food particles available in stomach and rigor mortis. However, he found semi digest food particles in the stomach of deceased. In postmortem report Exh.20, he mentioned cause of death due to asphyxia, which can be caused by strangulation, throttling, hanging, drowning and suffocation. PW-3 further stated that on reading the nature of injuries, one cannot say definitely as to whether injuries suffered by deceased were ante-mortem or postmortem. However, on perusal of inquest panchanama and postmortem report, it appears that death of deceased is neither suicidal or accidental.

10. The prosecution has proved spot panchanama, from it appears that the dead body of deceased Tarabai was found in cotton field of one Ismile Khan in prone condition and one flower print cloth was found around the neck of deceased containing blood stains. Further, there was a sharp cut injury near throat and blood was oozing from the same. Both the ears of deceased were cut. Though the respondent / accused has conducted cross examination of prosecution witnesses, but nothing has been

solicited to disprove seizure cum spot panchanama. The prosecution tried to prove recovery of weapon article under Section 27 of the Evidence Act under seizure panchanama Exh.13 and also clothes of respondent / accused under seizure panchanama Exh.15 through the evidence of PW-2 Latesh Nemade. However, testimony of PW -2 Latesh Nemade and the Investigating Officer does not inspire confidence about seizure of weapon at the instance of accused, because the blade was found in open space near the spot of incident. The razor blade is common article, which is easily available in open market. They have not stated that there was blood to the said razor, at the time of its seizure. As per the testimony of PW-4 Himmatsingh Rajput, the accused had purchased saving blade (Article-J) from his shop on 14.12.2016. However, PW-4 has admitted that several persons in the village purchase of saving blades from his shop. The testimony of PW-4 does not inspire confidence about identification of blade Article-5 in absence of identity mark.

11. The PW-5 Indubai was knowing the accused and her daughter-in-law namely Pushpabai (PW-6). PW-5 Indubai has stated that, the deceased Tarabai was plucking cotton in the field of Ismile Khan on 16.12.2016. After 3.00 p.m., on that day the deceased was alone plucking raw cotton at one side of the field

and other labours were at some distance from the deceased. Deceased was not present while weighing of raw cotton in evening time i.e. after 5.00 p.m. The raw cotton bundle of deceased was collected by the accused Ananda and raw cotton bundle of other labours was collected by Irfan and Ananda. She and other labours took search of the deceased, but deceased was not found. Therefore, all the labours thought that the deceased might have gone to her home directly.

12. As per the testimony of PW-6, the daughter-in-law of deceased, her mother-in-law (deceased), she herself and other labours started plucking of raw cotton at about 9.00 a.m. on 16.12.2016. In afternoon, they had lunch. Thereafter, till 5.00 p.m., she and her mother-in-law deceased Tarabai were plucking raw cotton in the same field but in another portion of land where some raw cotton was available. PW-6 testified that accused Ananda had collected raw cotton of her mother-in-law Tarabai weighing 16 Kg, but at the time of weighing of raw cotton, her mother-in-law Tarabai was not present. Hence, she asked the accused where about of Tarabai, but the accused replied her that Tarabai (deceased) is not present in the field. Therefore, she and PW-5 thought that deceased Tarabai might have gone home alone. But it was informed to the father of Irfan that house of Tarabai

was locked. As per the testimony of PW-6, her mother-in-law Tarabai was wearing two silver bangles, six gold rings in her ears and two gold *Chaphe*, but those gold ornaments were not present on dead body of her mother-in-law.

13. If we consider that the homicidal death of deceased Tarabai was caused in the field of Ismile Khan and as per medical expert opinion, death of deceased had occurred 18 to 20 hours prior to the postmortem, then the death of deceased appears to be on around 7.30 p.m. to 8.30 p.m. on 16.12.2016. As per the testimony of prosecution witnesses, the deceased Tarabai was with her daughter-in-law PW-6, agricultural labour PW-5 and agriculturist PW-7 Irfan Khan, from 9.00 a.m. to 5.00 p.m. on 16.12.2016 in the field for plucking cotton. It is not the case of prosecution that the deceased Tarabai had returned to her house and in evening time at about 7.30 p.m. to 8.30 p.m. the accused has committed murder of deceased. If the accused had committed murder of deceased in the field of Irfan Khan PW-7, in that circumstances the PW-6 daughter-in-law of deceased as well as other agricultural labours could have heard noise. Further, as per the testimony of PW-5, PW-6 and PW-7, when the deceased Tarabai had disappeared while plucking cotton from the field; the agricultural labours had taken search of the deceased in cotton

field, but the deceased was not found. Therefore, the prosecution story is unbelievable.

14. As per the testimony of Investigating Officer PW-12, initially oral information was telephonically received on 16.12.2016 and after making entry in Station Diary, the P.S.O. Mr. Ahire had reached the spot of incident. He found some other persons at the spot. When the P.S.O. reached at the spot of incident, at that time there was dark and name of the accused revealed on the next day in afternoon. However, till that time, statements of witnesses were not recorded. It appears that the Investigating Officer recorded statements of witnesses on 19.12.2016. Though the prosecution alleged that the Investigating Officer PW-12 had seized of clothes of accused, weapon and ornaments under Section 27 of the Evidence Act, however, testimony of prosecution witnesses about seizure of said articles does not inspire confidence, because, recovery of clothes, weapon and alleged ornaments did not disclose the words uttered by the accused to the police while giving memorandum statement.

15. The requirement of section 27 of the Evidence Act needs to be fulfilled before accepting the evidence of discovery is by proving the contents of panchanama. The Investigating Officer

in his deposition is obliged in law to prove the contents of panchanama and it is only if the Investigating Officer has successfully proved the contents of discovery panchanama in accordance with law; then in that case, the prosecution may be justified in relying upon such evidence and the trial Court may also accept the said evidence. In the case in hand, the Investigating Officer PW-12 Baliram Hire deposed that during custodial period, the accused gave memorandum statement and he recorded as per his version in presence of witness. The PW-12 has not stated that the accused had voluntarily disclosed about concealment of gold and silver ornaments and keeping the weapon blade at a particular place. He has stated that thereafter they went to the spot of incident in that field which was already known to the Investigating Officer. When the Investigating Officer had already visited at the spot of incident, then it was incumbent on his part to take search of the spot or nearby the area. No search appears to have been conducted by Investigating Officer and therefore said discovery does not inspire confidence about seizure of articles as alleged by the prosecution.

16. On perusal of record, it appears that there are material omissions and contradictions, which do not corroborate story of the prosecution. Therefore, it can be certainly concluded

that prosecution had failed to prove accusation against the accused beyond reasonable doubt.

17. Learned trial Judge has passed the impugned judgment and order on 07.03.2019 and acquitted the accused for the offence under Sections 302, 394 read with Section 397 of the Indian Penal Code, which is itself justifiable and it does not appear perverse or bad in law. No substantial grounds are set out to grant leave to file appeal against acquittal. Accordingly, the application is dismissed.

[Y. G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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