

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.135 OF 2019

The State of Maharashtra
Through Police Inspector,
Neknoor Police Station,
Tq. and Dist. Beed.

.. Applicant

Versus

Ramdas @ Ramkisan s/o Laxman Mali
Age: 69 Years, Occu.: Labour,
R/o. Dhotra, Tq. and Dist. Beed.

.. Respondent

...

Mrs. V. S. Choudhary, APP for the respondent – State.

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

DATE : 19th April, 2023.

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

. Present application has been filed by the State under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file criminal appeal challenging the judgment and order dated 07.03.2019 passed by the learned Additional Sessions Judge, Beed in Sessions Case No.111 of 2016, thereby acquitting the respondent/original accused from the offence punishable under Section 302 of Indian Penal Code.

2. Heard learned APP Mrs. V. S. Choudhary for applicant - State. With the able assistance of learned APP, we have gone through the evidence, which was before the learned Trial Court.

3. It is the prosecution story that one Trimbak Uttam Pawar resident of Waghebabulgaon, Tq. Kaij, Dist. Beed lodged FIR with Neknoor Police Station on 01.07.2016. He contended that he is residing with his parents, sister, three sons and five daughters. His sister Mangalbai got married to accused about 20 to 25 years ago and they have two sons and four daughters. Accused used to ill-treat and harass Mangalbai under the influence of liquor and, therefore, since three years prior to the FIR, Mangalabai was residing with the son-in-law of the informant at Pune. Name of his son-in-law is Sambhaji Vinayak Mali. There was marriage of daughter of brother of accused at village Dhotra on 30.06.2016. Therefore, informant had come to attend the said marriage along with said Sambhaji, Mangalbai and other persons. Initially, accused had not talked to them, but thereafter, he told that they should bring clothes as gift and, therefore, informant, his wife and son-in-law Sambhaji and some other persons went to Chousala in a tempo to purchase clothes. They returned around 11.00 a.m. and when they were near the vasti at Chousala. he noticed that his father Uttam Bhaurao Pawar, who was then aged 80, was along with accused and they were going by walk

towards village. By stopping the tempo, informant asked his father as to where he is going. His father replied that the accused is taking him for a cup of tea. Thereafter, informant and others went to the marriage place. They saw accused alone around 1.00 p.m. and, therefore, asked as to where Uttam is. The accused did not reply and tried to flee away, however, he was caught hold and the marriage ceremonies were allowed to be completed. Thereafter, after taking the custody of accused, the informant, Sambhaji, Sarjerao and other relatives took search of Uttam, but they could not be traced out. At that time, accused was repeatedly asked about the whereabouts of father, but he replied evasively. Therefore, all of them halted at village Dhotra. On the next day morning, Mangalbai took accused in confidence and made inquiry about father, then accused replied that he has killed Uttam and thrown the dead body in a streamlet in the field of one Dasu Kalase. Informant, other relatives, accused and wife of accused went to the spot. Accused had led them to the spot and thereupon they found dead body of Uttam. It was noticed by them that there were injuries to the head, ear, back and throat of deceased Uttam. They made inquiry with the accused as to why he has done so, then he replied that as Uttam was not permitting and sending Mangalbai for cohabitation with him, he has killed him. Thereafter, the informant made the said report.

4. After the registration of crime on the basis of the said FIR investigating officer carried out the spot panchanama as well as inquest panchanama and then sent the dead body for postmortem. Statements of witnesses came to be recorded. Accused came to be arrested. Accused gave memorandum and discovered his shirt having blood stains on the same from an iron box in his house in presence of panchas. The stick which was alleged to be used as murder weapon was seized from the spot. All the seized articles were sent to chemical analysis and after collecting the reports, charge-sheet came to be filed.

5. After the committal of the case, charge was framed. Prosecution has examined in all six witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned Trial Judge has acquitted the accused. Hence, this application.

6. P.W.5 Dr. Kailas Khakare is the medical officer, who has conducted the autopsy. Autopsy was carried out between 10.40 a.m. to 11.40 a.m. on 01.07.2016. He had found seven external injuries which are as follows :-

- (i) Contused lacerated wound (CLW) on left parietal region, size 6 x 4 cm x deep bone.

- (ii) CLW on back side head i.e. on occipital region 8 x 4 cm x deep bone.
- (iii) Abrasion on right wrist joint, 2 x 2 cm.
- (iv) Abrasion on left eye lid, size 2 x 1 cm.
- (v) Cutting of ear lobule right side.
- (vi) Abrasion on nose, size 1 x 1 cm.
- (vii) Abrasion on left hand forearm, size 3 x 2 cm.

7. Thereafter, he had also found fracture injuries i.e. fracture of left parietal bone and fracture on occipital bone. All the injuries were ante mortem. On internal examination, he had found injury to the scalp on occipital region as well as on left parietal region. He also found fracture to the skull at occipital region as well as to the left parietal bone. The probable cause of death as per his opinion is “due to head injury”. He has also stated that those injuries are possible by article-1 stick. Accordingly, he has given the postmortem report Exhibit-46. In his cross-examination, he has stated that injury Nos.1 and 2 are not possible if a person fell in drainage from height of 5 to 6 feet, but then he has admitted that injury Nos.3 to 7 are not possible by stick. According to him, the death of deceased might have occurred 12 to 24 hours prior to the postmortem. A fact can be noted from his testimony is that he has not stated that any of those seven

injuries were bleeding injuries. There was CLW on left parietal region as well as occipital region. Bruises, contusions are the examples of contused lacerated wounds, which can occur as a result of blow or fall or the area in question becoming pinched or trapped, but in the normal course, such wounds cannot be bleeding injuries. Here, injury No.5 is cutting of ear lobule of right side which could have caused bleeding, but it cannot be to a large extent. We are taking note of these things only, because under Section 27 of the Indian Evidence Act when the alleged memorandum is stated to have been given and a shirt has been recovered and for that purpose P.W.3 Ajay Gujar has been examined, he has specifically stated that there were blood stains on the shirt. Therefore, the question arises when there was no severe blood injury, how there could have been blood stains on the shirt of the accused. No doubt, the fact remains is that the cross-examination has not done the job of destroying the opinion of the expert regarding cause of death. When the said cause of death was head injury, then two possibilities would arise, one is accidental death and second is homicidal death. Now, in order to prove the homicidal death of Uttam, it was necessary for the prosecution to rule out the possibility of accidental death.

8. P.W.1 Trimbak is the informant. P.W.4 Kashibai is the wife of P.W.1 Trimbak and both of them have supported the contents of the

FIR. However, in the cross-examination, much facts have been brought on record that accused Ramdas was member of the panch committee of his caste and the said committee had imposed penalty on Sambhaji – son-in-law of informant. Sambhaji has performed marriage with two daughters of P.W.1 and P.W.4. Definitely, it appears that there was no reason for Trimbak to implicate the accused. Though he has denied the fact that accused was one of the panch to the said committee, but he has admitted that panch committee had imposed penalty to Sambhaji. Now, whether the said panch committee can be said to be legal and the penalty that was imposed by such committee was legal or not, is not required to be gone into in this case. It appears that even said Sambhaji as well as Trimbak had never raised any objection for the said panch committee. Further it has come on record that Sambhaji resides at Pune since about 15 years. Since when Uttam was residing at Pune and whether he was residing with Sambhaji has not been told by P.W.1 and P.W.4 in their examination-in-chief. It was tried to be contended that Uttam was residing at Pune and he had taken Mangalbai - wife of accused with him and that is tried to be stated to be the motive for committing the crime, however, surprisingly Mangalbai has been examined as defence witness and she has denied all those contentions. She has denied that she was residing with her

father. The prosecution has not examined her as witness, though as per the contents of the FIR, it is Mangalbai to whom the accused alleged to have disclosed for the first time on 01.07.2016 that he has committed murder of Uttam. In other words, Mangalbai has been posed by the prosecution, till the charge-sheet, as the person to whom the extra judicial confession was given by the accused at the first place and thereafter, the others gathered and alleged to have gone to the spot as per the direction of the accused. When the best witness was not examined by the prosecution, but she comes and deposes in favour of the accused, then definitely the prosecution story cannot be accepted.

9. Another fact to be noted is that the prosecution has not brought on record as to what was the distance between the spot where informant had seen the accused and deceased together walking to go to tea stall and the place where the dead body was found. Another fact that has come on record in the cross-examination is that the spot where they had found the father was at a distance of about 100 to 150 feet from the police station. The spot was visible from the main road and there were houses at about 100 to 150 feet from the spot. Under such circumstance, when the alleged incident is stated to have taken place between 11.30 a.m. to 1.00 p.m., how nobody had seen the incident. The distance between the spot and the marriage venue

has also not come on record. It is hard to believe that there would not have been arrangement for tea at the marriage hall and the accused and Uttam were required to go at some distance to take tea. Another fact is that the marriage was of the niece of accused (daughter of his brother). Instead of attending the marriage ceremony and doing work there the accused would have taken his father-in-law to a distance just for consumption of tea, is an unbelievable story. We need not go to the testimony of the wife of accused as she might be under pressure to save the accused and she would give different story, but the fact remains is that in the cross-examination of P.W.1 Trimbak as well as P.W.4 Kashibai, it has come on record that there was no strained relationship between the accused and his wife. They both used to go for the work of cutting sugarcane in the season. That means they both were doing labour work together. In the cross-examination, P.W.1 Trimbak has admitted that there is no big shop of cloth in village Dhotra but still says that he along with other persons had gone to purchase clothes. He has also admitted that accused had given him invitation in a traditional way for attending the marriage ceremony. Under such circumstance, if the informant had intention to attend the marriage ceremony, he would have brought the gifts along with him and it could not have been a last moment purchase that too on the insistence of accused.

The prosecution has not ruled out the possibility of accidental death though the expert is not supporting the said fact. Another fact to be noted is that prosecution has not examined Sambhaji Sheshrao and other relatives before whom also it is alleged that the accused had given extra judicial confession. Extra judicial confession is a weak kind of evidence and unless there is strong circumstances and evidence, such weak evidence cannot be relied. As aforesaid, the prosecution had also failed to prove the discovery under Section 27 of the Indian Evidence Act, as it is unbelievable. Just to show some connection, it appears that such evidence has been created.

10. The findings and reasons given by the learned Trial Judge do not appear to be perverse or illegal and, therefore, the acquittal of the accused from all the charges does not require any interference. Hence, the application stands rejected.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm