

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.110 OF 2020

The State of Maharashtra,
Through Police Inspector,
Police Station, Bhokardan,
Taluka Bhokardan,
District Jalna.

... Applicant.
(Orig. Informant)

Versus

1. Siddharth S/o. Sampat Kale,
Age : 60 years, Occu. : Agriculture,
2. Rahul Siddharth Kale,
Age : 25 years, Occu. : Agriculture,
3. Vishal S/o. Siddhaaarth Kale,
Age : 25 years, Occu. : Agriculture,
4. Chandrakalabai w/o Siddharth Kale,
Age : 45 years, Occu. Household,
5. Meena d/o Siddharth Kale,
Age : 22 years, Occu. : Household,
All r/o. Babulgaon,
Taluka Bhokardan, Dist. Jalna.

... Respondents.
(Orig. Accused Nos. 1 to 4 & 6)

...
Mrs. V. S. Choudhari, APP for Applicant – State.
...

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

DATED : 19th JUNE, 2023

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

1. The State proposes to take exception to the judgment

and order of acquittal dated 17.06.2020 passed by the learned Sessions Judge, Jalna acquitting accused nos.1 to 4 and 6 from charges under sections 302, 307, 324, 147, 148, 323, 506 read with section 149 of Indian Penal Code and section 135 of Bombay Police Act in Sessions Case No.76 of 2016.

2. Heard learned APP for the Applicant - State. She took us through the testimonies of prosecution witnesses and evidence and would submit that there is crucial evidence of PW-4 Geeta and PW-6 Anjana. They are important witnesses. Their evidence inspires confidence. However, learned trial Court has disbelieved their testimonies. It is pointed out that deceased Punjabai an old lady was assaulted by accused. While undergoing treatment, she succumbed to the injuries. Accused are solely responsible for the same. Ocular account was supported by medical account. Statements of witnesses are got recorded under section 164 of the Code of Criminal Procedure (Cr.P.C.), which are consistent as regards to occurrence of assault is concerned. It is submitted that, in spite of sufficient incriminating evidence, learned trial Judge has failed to consider and appreciate the quality of above evidence and therefore, as State intends to prefer appeal against the same, it is prayed that, the leave application deserves to be granted.

3. In the light of above submissions, we have undertaken

the scrutiny of entire evidence placed before learned trial court. It seems that, in this case prosecution has rested their case on testimonies of in all 8 witnesses and has relied on other documentary evidence like, FIR, inquest, P.M. and various panchanamas.

4. As submitted by the learned APP, we propose to first visit the evidence of so called star witnesses, i.e. PW-4 Geeta. Her evidence at Exh.77 shows that, *de facto* informant, i.e. her father is dead. According to her, he had lodged report and she has identified the signature over Exh.78. She testified that her brother Akshay is differently abled and there is certificate to that extent. She claims that while she was cooking that day, her grandmother was fetching water. At such time, she heard chaos from the place of tap and so she came out. According to her, she saw Chandrakalabai was hitting her grandmother with pot, whereas Rahul Kale and Vishal Kale came to the spot getting armed with axe and wooden stick respectively. Rahul assaulted her grandmother from the blunt side of the axe on the head. Vishal, Reena and Meena also assaulted her grandmother with sticks and her grandmother fell unconscious. That, a lady who had come to the tap for fetching the water, also intervened in the assault and thereafter accused fled away. Her grandmother was admitted in Ghati hospital, Aurangabad, during

treatment she expired on 05.02.2016. According to her, police recorded her statement on 06.02.2016 and her statement under section 164 of Cr.P.C. was also recorded in Bhokardan court.

In cross she answered that, there is only one tap in their village. She answered that quarrel took place between women on the point of water. She is questioned about the circumstances and situation at the tap. She had flatly denied about her grandmother standing at the platform for filling water, about she learning that her grandmother falling from the platform and landing on a tap.

5. Reliance is also placed by the learned APP on the testimony of PW-6 Anjana. She seems to be a resident of same village and claims to be knowing all accused as well as deceased. According to her, incident took place on 02.02.2016 at around 7.00 to 7.30 p.m. She stated that she was standing near the tap for fetching water. She stated that Chandrakalabai assaulted deceased with steel pot and immediately thereafter Rahul came with axe and gave a blow on the backside of the head of deceased Punjabai. Vishal and Siddharth came with sticks. Similarly, Reena and Meena also came with the sticks and they all also assaulted deceased Punjabai. As a result of which she fell unconscious. It is further stated that, Ashok is the son-in-law and Akshay is the

grandson of deceased, who went to intervene, but they are also assaulted. This witness denied that deceased was her mother-in-law. She answered that she herself and deceased were standing nearby at the tap. For not rescuing deceased, she gave explanation that she was frightened. She too flatly denied that deceased was standing on the platform for collecting water. Rest all suggestions which she has denied to be false, including suggestion of deceased accidentally falling and getting injured on coming in contact with a tap.

6. PW-8 Dr. Ramesh Wasnik is the medico legal expert. His evidence shows that he has conducted post mortem on the dead body of Punjabai on 06.02.2016. He narrated the external as well as internal injuries noticed by him and he has issued opinion as cause of death due to forceful impact of object. He has also stated that it is possible due to article axe shown to him. He candidly answered that due to surgical intervention, he cannot comment whether there was injury caused by the sharp edge of axe. He flatly denied that fracture of left parietal bone is possible due to fall on pipe of tap from heightened platform. Rest of the witnesses are panchas and police officers.

7. The upshot of the analysis of the above evidence, in our opinion is that, here, PW-4 Geeta has categorically stated about

hearing chaos and commotion, coming out of the house. She has named presence of Chandrakalabai and hitting deceased with the pot and has also stated about other accused coming getting armed with axe. Witness has also narrated about accused Rahul reaching at the spot and they too be armed with axe, sticks etc. Medical evidence suggests that there are external as well as internal injuries. PW-6 Anjana deposed on similar line on aspect of occurrence.

8. Independent witnesses PW-6 Anjana as well as PW-4 Geeta have flatly denied about deceased accidentally falling from the platform at the tap and suffering injuries. Taking into account such evidence and the medical evidence, in our opinion, there is *prima facie* evidence suggesting incident of assault. There is said to be use of articles, like axe and sticks. Death is due to head injury. Therefore, under such circumstances, learned trial court ought to have appreciated the evidence carefully. It does not seem to have happened so. Rather certain infirmities in the evidence of PW-6 Anjana are given undue importance. In fact, both witnesses PW-4 Geeta and PW-6 Anjana have stuck up to their version about deceased Punjabai being hit by accused persons.

9. Admittedly, incident seems to have taken place in the heat of passion. Admission of deceased in the hospital with head

injury has not been rendered doubtful. Death has taken place after four days also. Therefore, it ought to have been assessed whether death was homicidal or culpable homicide not amounting to murder. That, such angle has not been apparently adopted by the learned trial Judge. Consequently, we are of the view that the evidence on record needs to be re-appreciated and reanalyzed at length in the appeal. Hence, finding it a fit case for grant of leave. We proceed to pass following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.) (SMT. VIBHA KANKANWADI, J.)