

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.81 OF 2021

The State of Maharashtra
Through Police Station, Murum,
Tq. Omerga, Dist. Osmanabad.

... Applicant

... **Versus** ...

Gajendra Gorakh Patil,
Age 42 yrs., Occ. Agri.,
R/o Chincholi (Bhuyar),
Tq. Omerga, Dist. Osmanabad.

... Respondent

...

Mr. S.J. Salgare, APP for applicant

...

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

DATE : 23rd OCTOBER, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 22.09.2021 passed by

learned Additional Sessions Judge, Omerga, Dist. Osmanabad in Sessions Case No.23/2018, thereby acquitting respondent – original accused from the offence punishable under Sections 302, 201, 203 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. S.J. Salgare for the applicant and perused the evidence which was before the learned trial Judge.

3 The respondent – original accused stood prosecuted for allegedly committing murder of his daughter Asmita, who was then 11 years old and it was said that the murder had taken place on 22.06.2018 in between 12.10 to 12.45 p.m. in the land of one Sanjay Madhukar Patil.

4 PW 1 Dr. Suhas Salunkhe is the Medical officer, who conducted the autopsy on 28.06.2018 after the dead body was referred to him by letter dated 27.06.2018. It appears from his testimony that there was incised/chop wound obliquely placed deep resent over neck. He has given the cause of death as the said injury to the neck and he has also stated that it is possible by a katti which is a sharp instrument for sugarcane cutting. From the said evidence it is certain that death of Asmita was homicidal in nature. However, the learned trial Judge has held that prosecution has failed to prove that the accused – father is the perpetrator of the crime.

5 It is to be noted that the present respondent – original accused had lodged a complaint on 23.06.2018 stating that his daughter Asmita has been kidnapped by somebody between 12.30 to 1.00 p.m. on 22.06.2018. Thereafter, the investigation started and according to the prosecution, the informant – father himself was the murderer. The case of the prosecution was resting on the circumstantial evidence in the form of last seen together. Important point to be noted from the said First Information Report which was lodged by the father that Asmita went missing between 12.30 to 1.00 p.m. on 22.06.2018, however, as per the testimony of PW 3 Suresh Kashiram Survase, the panch to the spot panchnama and from the place where the dead body is recovered i.e. well situated in the field of one Sanjay Madhukar Patil, it was recovered around 8.00 a.m. on 28.06.2018. The testimony of PW 1 Dr. Suhas does not clarify that what was the approximate time of death of Asmita and it has come on record that her dead body was highly decomposed. For the circumstantial evidence the prosecution is relying on the testimony of PW 4 Karuna Mahadeo Gaikwad and PW 5 Sarika Dhanraj Gaikwad. Both have stated that on the day of incident they had seen the accused as well as Asmita going together on motorcycle driven by the accused. PW 4 Karuna says that around 11.00 a.m. she had seen accused and Asmita going opposite to the village, but within half an hour they returned and went towards the village.

Thereafter, about 12.00 noon again she saw them going ahead of her field till the sugarcane crop in the field of Sanjay Patil. PW 5 Sarika says that her house is situated opposite to Zilla Parishad school. Accused has picked Asmita on his motorcycle around 12.00 noon and thereafter she has not seen them. Even if for the sake of argument it is accepted that they had seen the accused and the deceased going together on motorcycle from the road, we cannot infer that the accused could have committed murder of Asmita. The approximate time of death of Asmita has not come on record and, therefore, these two witnesses cannot be said to be the proper witnesses on the point of last seen together. The time gap between the time of death and deceased seen alive in the company of accused should be as narrow as possible, but here, the dead body itself is found after about six days.

6 None of the family members, especially the mother of deceased, grandmother of deceased, who were in the house at the relevant time, have been examined by the prosecution to say that accused and deceased left the house together on 22.06.2018.

7 PW 6 Chandrakant Murlidhar Birajdar says that accused had taken the katti which is used for cutting sugarcane from him 17 – 18 days prior to the alleged incident. But the said statement appears to have been an

improvement as compared to his statement under Section 161 of the Code of Criminal Procedure.

8 In any case based on circumstantial evidence it is incumbent upon the prosecution to prove the motive. Here, there is nothing on record to prove the motive. Under the said circumstance, we do not find any illegality or error committed by the learned trial Judge in appreciating the evidence and acquitting the accused. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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