

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.194 OF 2019

The State of Maharashtra,
through Officer in charge,
of Karjat Police Station,
Tq. Karjat, Dist. Ahmednagar.

..Applicant/appellant..
(Prosecution)

VERSUS

Ashok Laxman Gaikwad,
age 42 years, R/o Nandgaon,
Tq. Karjat, Dist. Ahmednagar.

...Respondent...
(orig. accused)

...
Mr. S.J. Salgare, APP for applicant
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**CORAM : SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 28 JUNE, 2023
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ORDER :- (Per : S.G. Chapalgaonkar, J.)

1. The prosecution has approached this Court under section 378(1)(b) of the Criminal Procedure Code, 1973 thereby seeking leave to file appeal against the judgment and order dated 4.6.2019 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.138 of 2015.

2. The case of the prosecution is that, Harishchandra Bagal lodged a report dated 14.2.2015 with police Station Karjat alleging that on 11.2.2015 he lives in a joint family. The family members had been to different places. He had been to attend harvesting work in field. His niece Surekha had gone to Karjat for attending the College, when she returned back to home, she noticed that the accused Ashok Gaikwad was

attempting rape on Sharada (wife of the informant). Surekha was scared and she ran out of home. The accused Ashok followed her and threatened that if she discloses the incident to anyone, she would face the consequences. Thereafter, accused Ashok Gaikwad left the place. Surekha joined her grandmother, who was sitting in the home. Thereafter, Sharada left home saying that she is going to answer the natural call and proceeded towards canal. After sometime, Surekha heard hue and cry from behind the house so peeped from the window. She found that the accused Ashok was quarreling with Sharda. Then, he dragged Sharda towards canal and pushed her into canal water. Surekha rushed to the canal, however, she could not find Sharda in the flow of the water.

3. The informant Harishchandra returned home in the evening at about 7 p.m. and found that Surekha, Shrikant and father were at home, but Sharda was missing. He noticed that Surekha was afraid. Therefore, he took her to the hospital at Karjat and returned back to home. On 13.02.2015, Surekha disclosed informant about the incident dated 11.2.2015. Thereafter, informant searched for the Sharda with the relatives. In the evening at about 7 p.m. informant located dead body of the Sharda at Deshmukh Vicinity in Kukdi canal. Corpus of Sharda was removed from the water and information was given to police. On the basis of the information, crime bearing no. 39 of 2015 was registered against the accused for the offences punishable under sections 302, 323, 506 of the Indian Penal Code (for short "IPC").

4. On 14.2.2015 the Investigating Officer visited the spot of incident and drawn the panchnama. The 7/12 extract of the land in question was collected. Statement of the informant was recorded as per his narration. Statement of the other witnesses were recorded. Postmortem report was collected. On 18.2.2015 the memorandum under

section 27 was prepared on the basis of disclosure statement of the accused. Map of the spot was drawn with the assistance of Circle Officer and finally charge-sheet was filed with the Judicial Magistrate First Class Court at Karjat against the accused for the offences punishable under sections 302, 323 and 506 of the IPC.

5. On committal of the case to the Sessions Court, charge was framed and the accused was put to trial. In all six witnesses have been examined during the trial. The documents were exhibited. The statement of the accused u/s 313 of the Criminal Procedure Code was recorded. After hearing both the sides, the learned Sessions Judge, vide his judgment and order dated 4.6.2019 acquitted the accused for the offences punishable under sections 302, 323, 506 of the IPC.

6. Mr. S.J.Salgare, the learned APP for the applicant-State took us through the evidence relied upon by the prosecution. He would submit that the prosecution case has been duly established by leading cogent evidence. Relying upon the evidence of PW 2 Surekha Ashok Bagal, he would submit that she is an eye witness of the incident and given detailed narration of the incident dated 11.2.2015 that lead to death of Sharda. He would submit that the medical evidence i.e. postmortem report would suggest that Sharda lost her life due to "Asphyx due to drowning". The accused had pushed her in the canal water as stated by the PW-2 Surekha. He would submit that Surekha was scared because of the conduct of the accused and his threats. She was taken to the hospital of Dr. Sunil Shelke, PW 5 and, after getting the medical treatment, she could disclose the incident to the informant leading to registration of the offence. He would further submit that the accused had disclosed spot of the incident. Memorandum under section 27 of the Indian Evidence Act was prepared as per his disclosure statement and the same is duly proved. Mr. Salgare learned APP would

urge that the evidence on record is sufficient to establish the guilt of the accused.

7. The case of the prosecution is based on alleged sole eye witness PW-2 Surekha Bagal. Pertinently, the incident took place on 11.2.2015 at about 4 p.m. However, FIR has been lodged on 14.2.2015. The reason for delay in lodging the FIR is sought to be explained by prosecution that Surekha was scared and she was in shock, hence could not disclose the incident to the informant at the earlier point of time. To support such contention, the evidence of PW-5 Dr. Sunil Shelke has been recorded at exhibit 34. Said witness admits that he is relative of the informant. Further, he states that Surekha was brought to him on 13.2.2015 with complaint of pain in abdomen and chest. However, nothing is coming on record to explain delay for the period from 11.2.2015 at about 4 pm till 13.2.2015. The story of the prosecution depicts that grandmother of Surekha was at home. However, no explanation regarding her silence is brought on record. Prosecution relied upon the evidence of Surekha, however, her conduct is not natural. Admittedly, the Canal is more than 150 feet away from the house of the informant. As per narration given by the Surekha, Sharda was dragged by the accused towards canal and she was raising hue and cry. The incident took place in broad day light. The evidence on record shows that there are many houses in the vicinity. There is a road passing from left side of the house of the informant. During the cross-examination, PW 1 - Harischandra admits that there is bridge on the canal and road to Durgaon passes from his house. Further, land of one Babu Mahadik is located in between his house and canal. He admits that beyond canal, there is land of one Baban Bagal. However, no other independent witness is available to support the case of the prosecution.

8. The evidence of PW 4 Dr. Subhash Shinde, witness on

autopsy, clearly depicts that he did not found antemortem injury on dead body of Sharda. Even, internal injury was also absent. If, narration given by Surekha that accused had initially attempted rape and thereafter dragged Sharda up to the canal and then pushed her into water flow is accepted, some external injuries ought to have been caused to her. As such, medical evidence does not support prosecution case. The circumstances discussed above leads us to hold that genesis of prosecution story does not inspire confidence.

9. The learned Sessions Judge, recorded adequate reasons for discarding the case of the prosecution. The learned APP could not bring any material evidence to our notice that has been missed from the consideration by the Sessions Judge. Although, we have scanned entire evidence on record, no perversity in the findings recorded by the learned Sessions Judge could be gathered. For the reasons recorded in impugned order of sessions court, case of the prosecution is rightly discarded. No other conclusion was possible in facts of case except acquittal of accused. We are convinced that to no grounds are available to grant leave to file the appeal. Hence, the application is rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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