

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 212 OF 2019

The State of Maharashtra,
Through: Police Station, Ambad,
Tq. Ambad, Dist. Jalna.

... Applicant

Versus

1. Sakharam s/o Sheshrao Wanarshe,
Age: 28 years, Occ: Agriculture
2. Sandip s/o Deorao Ranjane,
Age: 21 years, Occ: Agriculture
3. Rahul s/o Dhondiba Nagre,
Age: 22 years, Occ: Agriculture,

All R/o: Chindhkhed, Tal. Ambad,
Dist: Jalna.

... Respondents
[Orig. Accused]

.....
Mr. A. V. Deshmukh, APP for the Appellant State
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 08.08.2023

ORDER [ABHAY S. WAGHWASE, J.] :

1. As State is keen in questioning the judgment and order of acquittal passed by learned Sessions Judge, Jalna dated 25.06.2019 in Sessions Case No. 42 of 2016, by which respondents came to be

acquitted from the charge under Section 302 r/w 34 of the Indian Penal Code [IPC].

2. FIR was lodged at the instance of PW1 Suvarna, wherein she had informed that her husband worked in a hair cutting saloon at Bhosari, Pune and he had come to village for Diwali festival on 10.11.2015. On 12.11.2015, her husband worked in the shop of her brother in law Bhagwan. It was informed that one Devidas (PW4) had come to their house and taken him, but he did not return. When he was searched, his dead body was found in the field of one Waman Gaikwad and on the basis of such information, crime was registered by Police.

3. Learned APP submitted that investigation revealed that Devidas (PW4) and one Anil Hiwrale (PW2) were in the company of her husband and they had consumed liquor in the house of Kanta Kamble (PW3). Anil and Devidas returned but her husband stayed in the house of Kanta Kamble. It is submitted that inquiry revealed that Rahul, Sakharam and Sandip (present respondents) had taken deceased for consuming liquor late night and a quarrel had taken place and deceased was done to death.

4. Learned APP further submitted that apart from informant, prosecution had examined Anil Hiwrale (PW2), Kanta Kamble (PW3) and Devidas (PW4) and they are all unequivocal about deceased to be in the company of present respondents. Learned APP specifically submitted that PW3 Kanta Kamble had last seen deceased in the company of present respondents. His testimony has remained unshaken. Statements are recorded under Section 164 of the Code of Criminal Procedure [Cr.P.C.]. He states that all panchanamas are proved. According to him, by examining doctor, homicidal death has been proved. However, according to him, such evidence has not been correctly appreciated by learned Sessions Judge and respondents are acquitted from serious charge. That, therefore, as there is no proper appreciation of evidence and law, State is proposing to file appeal and there being a strong case in appeal, State is seeking leave.

5. In the light of above submissions, we have gone through the record placed before us. It is emerging that as many as 11 witnesses are examined by prosecution in support of above charge. The status of the witnesses is as under:

PW1 Informant Suvarna Parve is the wife of deceased Datta.

- PW2** Anil Hiwrale and
- PW4** Devidas and acquaintances of deceased Datta.
- PW3** Kanta Kamble, seller of liquor at whose house deceased went to consume liquor with PW2 Anil and PW4 Devidas.
- PW5** Prabhu Kamble acted as pancha to spot panchanama Exhibit 27.
- PW6** Baliram Gaikwad acted as pancha to memorandum of disclosure at the instance of accused Sakharam and seizure of motorcycle, who has not supported prosecution.
- PW7** Dr. Bhimrao Dodke conducted autopsy and gave probable cause of death as “cardio-respiratory arrest due to multiple fracture of ribs”.
- PW8** Ram Parve is cousin of deceased Datta.
- PW9** Police Inspector Rameshwar Khanal is the Investigating Officer.
- PW10** Police Head Constable Balasaheb Khandagle who prepared inquest panchanama Exhibit 54.
- PW11** ASI Mohan Rathod prepared spot panchanama Exhibit 27.

6. Case seems to be based on circumstantial evidence as there is no eye witness. It seems that circumstance of last seen together and scientific evidence, i.e. blood stains on the shirt of accused Sandip are the circumstances which seem to be heavily relied by prosecution.

7. **PW3** Kanta Kamble was examined in support of last seen together. His evidence shows that on 12.11.2015, around 8.00 to 8.30 p.m., Devidas (PW4), Anil (PW2) and Datta (deceased) reached house of this witness. There, all three of them consumed liquor and according to this witness, Datta stayed back and Devidas and Anil left his house. He stated that around 9.00 to 9.30 p.m., present respondents came on motorcycle and again all these three persons had consumed liquor with deceased Datta and there was some quarrel and abuse between them. He claims to have heard words “don’t beat, don’t beat”. He claims that out of fright, he did not go there.

However, his cross renders his testimony doubtful for several reasons. Firstly, he has not given information to anyone including police immediately, but seems to have waited for four to five days to give statement. There seems to be omission about three persons coming to his house.

8. Similarly, another witness, namely, Anil [**PW2**] gave evidence that he, deceased Datta and Devidas [PW4] consumed liquor in the house of Kanta Kamble [PW3] and then he requested Datta to leave for home, upon which deceased Datta said that he will come later on. Therefore, this witness claims that, he asked Kanta Kamble [PW3] to keep watch on him and he himself returned home and on the next day, he learnt about death of Datta.

9. **PW4** Devidas also spoke about consumption of liquor at PW3 Kanta's house and Datta staying back and he and Anil leaving and then he learnt about death of Datta on the next day.

10. Informant **PW1** Suvarna, wife of deceased, spoke about only PW4 Devidas coming and taking her husband along with him. She along with her brothers-in-law Ganesh Parve and Ram Parve made inquiries with PW3 Kanta. She claims that when inquiry was made with PW3 Kanta, it was learnt that her husband was in the company of present respondents and therefore, she seems to have named them on 17.11.2015. However, even her evidence is full of material omissions.

11. **PW7** Dr. Dodke, autopsy doctor has attributed death due to “cardio-respiratory arrest due to multiple fracture of ribs”. The medico legal expert, in cross, has admitted that rib fractures are possible due to fall by accident. He merely answered that there is more possibility of homicidal death due to multiple injuries on the body. He also admitted that multiple injuries are possible due to accident. Therefore, even medico-legal expert’s evidence is not confirming death of Datta to be only and only homicidal.

12. As stated above, in spite of alleged occurrence taking place on the night of 12.11.2015 and report being lodged by wife of deceased on the strength of information from PW3 Kanta, he seems to have given statement to police on 17.11.2015.

13. Therefore, apart from delayed FIR, there is no evidence in support of so-called circumstance of last seen and recovery, which is also weak in nature. Possibility of deceased meeting accident has not been ruled out even by autopsy doctor. Therefore, there are no strong incriminating circumstances establishing involvement of respondents beyond reasonable doubt.

14. We have also considered the impugned judgment. All circumstances and points urged, seem to have been appreciated by learned trial Judge in elaborate manner. That is the only possible view that can emerge with such quality of evidence. Finding no merits in the case to grant leave, the application is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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