

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.240 OF 2018

The State of Maharashtra,
through Police Inspector,
Pathardi Police Station,
Dist. Ahmednagar.

... Applicant

Versus

Suresh @ Suryabhan Dinkar Dahiphale,
Age : 48 years,
R/o. Daityanandur, Tq. Pathardi,
Dist. Ahmednagar.

... Respondent
(Orig. Accused)

...
Mr. A. V. Deshmukh, APP for Applicant - State
...

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

DATED : 19th JULY, 2023

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

1. Feeling aggrieved by the judgment and order dated 06.08.2018 passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.163 of 2017, thereby acquitting present respondent from the charge under section 302 of Indian Penal Code (IPC), State is hereby seeking leave to assail the same.

2. According to learned APP, respondent was charge-sheeted on the charge of murder of deceased Narayan Shankar

Palve, on 25.05.2017. Learned APP pointed out that, respondent is father-in-law of deceased. Relations between both of them were strained. Due to frequent quarrels between daughter of accused and deceased Narayan, even their relations were strained and so daughter was not staying with respondent. That, on 25.05.2017, around 4:45 p.m., Narayan was not in the house and PW1 Haribhau received a phone call from the mobile of respondent informing that Narayan was lying unconscious on the road. That, Narayan had suffered head injury. It is pointed out that, it was learnt that, immediately prior to the occurrence, there was quarrel between accused and deceased. Accused was seen leaving the spot with blood stained cloths. Police was informed and crime was registered. It is pointed out that, there is testimony of witness, who had seen accused leaving in such condition. Assault was made by stone. The same was found on the spot. Inquest and autopsy revealed that death to be homicidal one. Therefore, with such quality of evidence, it is submitted that, prosecution had established offence against respondent Suresh. There was motive behind the occurrence and therefore by examining seven witnesses, prosecution had established the charges, but learned trial Court has failed to consider and appreciate such quality of evidence and erred by acquitted accused. The judgment being not sustainable in the eyes of law, it is submitted that, State intends to

file appeal and as there is strong case on merits, leave to file is prayed for.

3. After hearing learned APP and on going through the papers before us, it is revealed that, FIR is lodged on 25.05.2017 by one Shankar Palve. The sum and substance of the FIR is that informant had two sons, namely Narayan and Haribhau. Narayan was married to daughter of respondent in 2014. According to informant, there were strained relations between Narayan and his wife Seema, i.e. daughter of respondent and as such she was staying with her parents. It is informed that, on 25.05.2017 around 4:00 p.m., from the mobile of respondent information was received phone call about Narayan lying on the road in unconscious condition. Therefore, all of them rushed there and they found Narayan lying on the road with head injury. According to informant, from villagers namely Babu Garje and others he learnt that there were quarrel going on the road between respondent and deceased. Hence he lodged the FIR. On the strength of which Pathardi Police Station registered the crime.

4. On carefully going through the papers, it is revealed that, prosecution in support of its charge examined as many as 7 witnesses.

PW1 Haribhau, son of informant stated that he had come to the village for appearing for exams. According to him, around 4:45 p.m., when he returned, his brother Narayan was not seen in the house. Phone call was received on his mobile from the mobile of respondent. According to him, on such phone daughter or respondent, namely Seema informed that Narayan is killed by them. Therefore, they all went and they found Narayan lying on the road with injuries on the head. A blood stained stone was lying there. Further, according to him while they were going to spot, they met respondent-accused. His clothes were blood stained and in torn condition. According to him, respondent told this witness that, there was scuffle between them and deceased was hit with stone by him.

In cross-examination, this witness has admitted that, he had not given any statement before police about phone call being received from Seema, daughter of accused informing about Narayan being killed by them. Omission regarding this witness meeting respondent accused barefooted is also not finding place. Similarly, there is omission about respondent informing this witness about scuffle between him and deceased. Therefore, there are material omissions.

PW2 Shankar, though narrated as like PW1 Haribhau his son, he also in his cross-examination admitted about not informing police about his son receiving phone call on the mobile from Seema, regarding they killing deceased, about talks between respondent and his son Haribhau, regarding confession given by respondent to his son.

Consequently, evidence of brother and father of deceased is full of material omissions and contradictions.

5. It is seen that, even important witness Seema, who allegedly informed about Narayan being killed by them is also not examined by prosecution. Therefore, material witness has been withheld.

6. Rest of the witnesses are panchas, doctor and Investigating Officer.

7. Therefore, here, except so called extra judicial confession, there is no other evidence or corroborating evidence. Hence with such quality of evidence, guilt cannot be fastened. In our opinion, learned trial court has not committed any perversity and any illegality in refusing to accept the case of prosecution and

acquitting the accused. Hence, there being no merits in the instant application so as to grant leave, we proceed to pass following order :-

ORDER

- (i) The application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)