

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

CRIMINAL APPEAL NO. 1119 OF 2019

Bebibai Vijay Padvi
Age : 48 Years, Occu. : Aanganwadi Helper,
R/o. Lahan Surawani, Taluka Dhadagaon,
Dist. Nandurbar.

... Appellant
(Victim and Original Informant)

Versus

1. The State of Maharashtra,
Through police Station In-charge,
Police Station Dhadgaon,
Taluka Dhadgaon, District Nandurbar
2. Ratan Khatrya Padavi,
Age : 57 Years, Occu. : Agriculturist,
R/o. Surwani, Taluka- Dhadgaon,
District Nandurbar.
3. Ramdas Bothya Padavi,
Age : 36 Years, Occu. : Agriculturist,
R/o. Bujagaon, Taluka – Dhadgaon,
District Nandurbar.
4. Pintu Jahangya Padavi,
Age : 33 Years, Occu. : Agriculturist,
R/o. Surwani, Taluka – Dhadgaon,
District Nandurbar.
5. Dipabai w/o. Pintu Padavi,
Age : 29 Years, Occu. Household,
R/o. Surwani, Taluka Dhadgaon,
District Nandurbar.
6. Dipak Khatrya Padavi (Abated/Since dead)

7. Arvind Khatrya Padavi,
Age :38 Years, Occu. : Agriculturist,
R/o. Surwani, Taluka Dhadgaon,
District Nandurbar.

... Respondents.

(Resp. No.1 is Prosecutor
and Nos.2 to 7 Original
Accused)

WITH

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 228 OF 2019

The State of Maharashtra
Through Police Station Dhadgaon,
District Nandurbar.

... Applicant

Versus

1. Ratan Khatrya Padvi,
Age : 66 Years, Occu. : Agriculture,
R/o. Surwani, Taluka- Dhadgaon,
District Nandurbar.
2. Ramdas Bhotya Padvi,
Age : 45 Years, Occu. : Agriculture,
R/o. Bhujgaon, Taluka – Dhadgaon,
District Nandurbar.
3. Pintu Jahangya Padvi,
Age : 42 Years, Occu. : Agriculture,
R/o. Surwani, Taluka – Dhadgaon,
District Nandurbar.
4. Dipabai w/o. Pintu Padvi,
Age : 38 Years, Occu. Household,
R/o. Surwani, Taluka Dhadgaon,
District Nandurbar.
5. Dipak Khatrya Padvi (Abated/Since dead)

6. Arvind Khatriya Padavi,
Age :47 Years, Occu. : Agriculture,
R/o. Surwani, Taluka Dhadgaon,
District Nandurbar.

... Respondent
(Orig. Accused)

.....

Mr. A. N. Irpatgire, Advocate for Appellant in APEAL/1119/2019

Mrs. V. S. Chaudhari, APP for Respondent No.1-State in APEAL/1119/2019
and Applicant in ALS/228/2019.

Mr. S. P. Pandit, Advocate for Respondent No.2 in APEAL/1119/2019 and
respondent No.1 in ALS/228/2019.

Mr. Gajendra D.Jain, Advocate for Respondent Nos.3 to5 in APEAL/1119/2019
and Respondent Nos.2 to 4 in ALS/228/2019.

Mr. Azizoddi R. Syed, Advocate for Respondent No.7 in APEAL/1119/2019
and Respondent No.7 in ALS/228/2019.

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

DATE :08th FEBRUARY 2023.

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

1. By invoking provisions under section 372 of the Code of Criminal Procedure, original informant is assailing judgment and order dated 08.08.2019 passed by learned Ad-hoc Additional Sessions Judge, Shahada, District Nandurbar in Sessions Case No.11 of 2010, by which present respondent Nos.2 to 7, original accused are acquitted from charge under sections 302, 201 read with 34 of Indian Penal Code (IPC).

BRIEF BACKGROUND OF THE CASE IN TRIAL COURT

2. Present respondents were made to face trial on above charge on the basis of report lodged by present appellant (PW-4 in trial Court), who is wife of deceased Vijay. Accusations were raised that, on 15.04.2009 accused Ramdas called up PW-4 Bebibai and asked her to talk with her husband Vijay. Her husband told her that, he is coming home with vegetables in Nawapur Mulgi bus. The bus reached at 7.00 pm to their village Surwani, but deceased Vijay did not return home. Around 7.30 p.m., one Dinesh came to PW-4 Babibai and informed her that her husband Vijay has stayed in the house of accused Ramdas at Bujgaon and he went away. PW-4 Bebibai kept waiting for the return of her husband for the whole night, but he did not return.

3. Prosecution came with a case that, Ramdas took deceased along with other accused Pintya and they made Vijay consume liquor and thereafter accused Nos.2, 3 and 4 insisted Vijay to have meals and stayed there. However, around 8.30 to 9.00 p.m. accused No.2 assaulted deceased and with the help of accused No.3 deceased was taken inside the house and there again accused No.3 hit Vijay with iron rod and caused his death and with the help of remaining accused, to cause disappearance of the evidence. Dead body was carried in a jeep and it was thrown on Dhadgaon-Mulgi road to foist that deceased Vijay had met with an accident. According to prosecution,

investigation revealed that accused No.1 had illicit relations with PW-4 Bebibai and apprehending that Vijay would come to know about it, conspiracy was hatched by accused No.1 and it was duly executed by all accused.

PW-4 Bebibai approached Dhadgaon police station and lodged FIR at Exhibit-185. On the strength of which investigation was carried out and accused were arrested and after gathering sufficient materiel, accused came to be charge-sheeted.

4. That, prosecution conducted trial before Additional Sessions Judge by examining 35 witnesses and also relied on documentary evidence. On appreciation of the same, learned trial Judge acquitted all accused persons from the charge under sections 302, 201 read with 34 of IPC and hence precisely said order of acquittal is now taken up in appeal by PW-4 Bebibai - original informant and also State.

5. Heard learned counsel Mr. Irpatgire for appellant, learned APP Mrs. Chaudhari for Respondent No.1 – State, learned counsel Mr. S. P. Pandit for respondent No.2, learned counsel Mr. Jain for Respondent Nos.3 to 5 and learned counsel Mr. Syed for Respondent No.7.

6. Learned counsel for appellant raised following grounds before us:

Firstly, there is non appreciation of evidence on record and

judgment is cryptic. **Secondly**, apart from eye witness there was sufficient, trustworthy corroborative evidence, but learned trial court failed to appreciate the same. **Thirdly**, homicidal death was proved and as such in the light of testimonies of PW-20 Jobi and PW-22 Rushikesh, involvement of accused persons was established beyond reasonable doubt. **Fourthly**, from the evidence of **PW-11** motive was established by prosecution which revealed that there was enmity between accused and deceased, but the learned trial court failed to consider and appreciate the same. **Fifthly**, there was no evidence suggesting mode of death to be accidental and therefore finding of learned trial court to that extent is erroneous. **Sixthly**, undue importance and weightage is given to minor discrepancies. **Lastly**, judgment is based on conjectures and surmises and therefore, not sustainable in the eyes of law and liable to be set aside.

The sum and substance on the argument on behalf of learned counsel for appellant is that prosecution evidence clearly established that deceased husband was in the company of accused. There are witnesses who spoke about deceased made to stay and consume liquor and to have dinner and thereafter deceased was found dead with grievous injury, but learned trial court has failed to appreciate such evidence. Learned counsel took us through the testimonies of **PW-11** Narsing, **PW-20** Jobi and **PW-27** Joba and emphasized that their evidence sufficiently established involvement of accused Nos.2, 3 and 4. From the evidence of **PW-11** Narsing motive was established.

In spite of availability of overwhelming evidence, it is submitted that learned trial court has acquitted present respondent Nos. 2 to 7 and therefore, it is his submission that there being no proper appreciation of evidence and non application of mind, the impugned judgment is required to be set aside by allowing instant appeal and to take further action under section 390 of Cr.P.C. against accused.

7. Here, State also seems to be aggrieved by order of acquittal and is intending to seek leave to file appeal. In such background, learned APP submitted that in trial court prosecution had examined witnesses, who had seen accused and deceased together, death was proved to be homicidal one. There is overwhelming, incriminating evidence on record. But learned trial court has failed to appreciate the same. Therefore, it is submitted that prosecution intends to question the said judgment by preferring appeal and prosecution is already equipped with several important points and legal aspects which are either not considered or lost sight of by learned trial Judge and therefore, in the interest of justice, it is prayed that, State be permitted to file appeal by granting leave.

8. There being charge for offence under section 302 of IPC, it was a bounden duty of prosecution to prove death to be homicidal one, but here autopsy doctor himself does not seem to be sure as he has admitted that

possibility of accidental death or injuries due to fall from height cannot be ruled out. Therefore crucial aspect of mode of death has remained open and not established.

9. We have sifted the entire oral testimonies of prosecution witnesses, however it is emerging that out of said 35 prosecution witnesses, almost of half of them have turned their back from prosecution story and have not supported prosecution and these witnesses includes panchas to the spot, seizure, memorandum of disclosure and discovery. Out of remaining witnesses, there seem to be 2-3 interpreters and their testimonies are of little or no use on the merits of the case.

10. It seems that, important witnesses are PW-4 Informant, PW-20 Jobi and PW-27 Joba and therefore we propose to visit their evidence and re-examine their testimonies.

We have visited the testimony of **PW4**-informant. According to informant, her husband who was supposed to come home with vegetables, but he had sent the same through one Shanu and Dinesh with a message that deceased who was with Rama and that he would come later on. Therefore, the whereabouts of deceased were got known by informant from Shanu and Dinesh, however, unfortunately, these two witnesses are not examined by prosecution.

11. Another witness, according to prosecution was crucial is **PW-20** Jobi and she claims that, in the evening, when she was in the outside in the courtyard near her house, she saw deceased, accused Rama and Seema going towards house of Damanya and further proceedings towards the hill and engaging in chats. She also speaks of seeing accused Rama catching hold of deceased by his neck and making him fall on the ground. However, in her cross material omissions are brought about her statement to be silent about seeing accused Rama catching deceased by neck and making him fall on the ground. Surprisingly, this witness PW-20 has not informed anyone including informant about whatever she claims to have seen. Her such unnatural conduct is required to be looked upon being suspicion.

12. Next witness on whom prosecution seeks reliance seems to be **PW-27** Joba and he in his evidence stated that when he was at his home in Bujgaon, he saw deceased in the company of accused Pintya and Ramdas . He stated that they went in the house and when deceased came out, wife of accused Pintya asked him to go after meals and therefore again deceased went back in the house. However, this witness further spoke about he going to sleep and merely hearing big sound. Therefore, his evidence is also of no avail to the prosecution as he has neither personally heard the quarrel nor has seen any overt act at the hands of accused persons.

13. When the prosecution had come with a case of accused conspiring and calling deceased to them and making him consume liquor and thereafter assaulting him, it was expected from prosecution to lead cogent, reliable and trustworthy evidence regarding hatching of conspiracy, but it had failed to do so. As stated above, even there is doubt about mode of death as prosecution has not cogently proved beyond reasonable doubt that death is only and only homicidal and not otherwise. Consequently, here neither there is direct evidence nor any strong circumstance suggesting role of each of the accused. Further, there is no evidence in support of prosecution case about accused persons causing disappearance of the evidence. Hence, here prosecution having miserably failed to establish the charges by adducing cogent evidence, we are of the view that it is not a fit case for grant of relief as prayed. No error, perversity or illegality in the appreciation of available evidence by learned trial court is brought to our notice by learned counsel for appellant. In absence of cogent or reliable evidence, case of prosecution cannot be accepted. Learned counsel for appellant also could not convince us about availability of trustworthy evidence nor any circumstance is shown to be cogently proved but the same has not been considered by the trial court.

14. Even after hearing learned APP for State, no case or ground is made out so as to grant leave to the State to prefer an appeal against judgment and order of acquittal. Hence, we proceed to pass following order:-

ORDER

Criminal Appeal No.1119 of 2019 and Application for Leave to Appeal by State No.228 of 2019 stand rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)