

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.259 OF 2018

The State of Maharashtra
Through Police Station Officer,
Police Station, Sillod (City),
Tq. Sillod, Dist. Aurangabad.

... Applicant

... Versus ...

Devchand Savliram Shinde,
Age 28 yrs., Occ. Labour,
R/o Eknath Nagar, Tq. Sillod,
Dist. Aurangabad.

... Respondent

...

Mr. A.V. Deshmukh, APP for applicant

...

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

DATE : 23rd JUNE, 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 14.09.2018 passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No.194/2015, thereby acquitting respondent – original accused from the offence punishable under Section 394 and 302 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. A.V. Deshmukh for the applicant and with his help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – one Yogesh Pandurangsing Pardeshi, who was serving in Irrigation Department at Sillod, informed the police on 10.06.2015 that when he along with his staff had gone to Ajintha around 2.00 p.m. for inspection purpose and had returned to their office around 5.45 p.m., they found dead body of unknown person was lying behind the office. A.D. vide No.7/2015 came to be registered and inquiry was started. API Mr. Wankhede, to whom the inquiry was entrusted, went to the spot, drew spot panchnama Exh.30 and seized certain articles including blood stained tile from the spot. The dead body was sent for postmortem. As the Aadhar card was also seized from the spot, the identity could be established and, therefore, police gave information to Akash

Namdeo Bhagwat that dead body of his father Namdeo Bhimrao Bhagwat has been so found. The postmortem was completed and taking into consideration the same the First Information Report came to be lodged. It was also revealed that Akash had made inquiry with the adjoining persons and one rickshaw driver by name Mohammad Taki Mohammad Umar told that when he had come to answer nature's call around 5.00 p.m. on 11.06.2015 in the open space of Irrigation Office, Sillod, he had seen accused Devchand Savlaram Shinde assaulting one person. Accused was asking money to the said person for consumption of liquor, but on that count the dispute was going on. After sometime Mohammad Taki found accused Devchand coming out of the Irrigation Office and, therefore, he went near the space, saw the said person in a pool of blood. Thereupon in the First Information Report the name of the accused was mentioned.

4 Further investigation was conducted and charge sheet was filed.

5 After the committal of the case, trial was conducted. Prosecution has examined in all eight witnesses to bring home the guilt of the accused. After considering the evidence on record the learned Trial Judge has acquitted the accused. Hence, the present application.

6 Perusal of the evidence which was before the learned Trial Judge

would show that the case of the prosecution was surrounding on the statement of PW 3 Mohammad Taki Mohammad Umar Shaikh as he was posed as eye witness. However, in his substantial evidence it is found that he has turned hostile. PW 1 Akash is the son of deceased, who had lodged First Information Report Exh.27. He is admittedly not an eye witness. As per his contention, PW 3 Mohammad Taki Mohammad Umar Shaikh had made some disclosure before him, but that would be hearsay and, therefore, it cannot be considered at all. PW 2 Shriram Bhikaji Katkar is the person who had given the information about the dead body and had registered A.D. Exh.30. PW 4 Sanjay Bhimrao Bhagwat is the brother of deceased, who was also not present at the time of incident and relied upon the information that was received by him. PW 5 Rohidas Sonaji Landge is then introduced as an eye witness. He has stated that he is resident of village Undangaon, but he had some work with Sillod Court and, therefore, came to Sillod on 10.06.2015. He was passing by the wall of Irrigation Office and stood there for answering nature's call, when he heard the noise of quarrel. Therefore, he climbed over the wall and looked towards noise. He found that accused was assaulting somebody. He says that he was acquainted to the accused prior to the incident. He said that he went away thereafter from the spot. Thereafter he learnt from the villagers that co-villager Namdeo Bhagwat was found lying with head injury. The learned Trial Judge has questioned the veracity of this

witness and we found that the said questioning was correct. This witness has not given how he was knowing accused and then he says that accused was assaulting somebody, when in fact, deceased appears to be his co-villager. He had not stated in his statement under Section 161 of the Code of Criminal Procedure that he was knowing accused since earlier. Then, he was also asked about the height of the wall. It is stated that it is 10 feet and he says that his height is 5'6". The question is therefore raised, as to how he could have climbed the wall ? We do not find, therefore, any perversity. The next is the testimony of PW 6 Ganesh Jadhav, who says that accused had given memorandum and discovered articles. The discovery panchnama is also questioned on the ground that who had opened the house from where the articles were discovered, where the key was ? No doubt, testimony of PW 7 Dr. Dilip Thombre would show that it was homicidal death but the Trial Court has rightly held that there is no cogent and conclusive evidence to connect the accused with the crime. The acquittal is not perverse and, therefore, does not require further re-appreciation. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)