



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.272 OF 2019

The State of Maharashtra,
Through Dhule City Police Station,
Dhule.

... Applicant.

Versus

1. Bablu alias Nilesh Suresh Gaikwad,
Age : 29 years, Occu. Labourer,
2. Sachin Kailas Ahire,
Age : 32 years, Occu. : Labourer,
3. Kiran Suresh Gaikwad (Absconding),
4. Priti alias Rani Suresh Gaikwad,
Age : 30 years, Occu. Labourer,

All R/o. Chittod Road, Dhule
Tq. And Dist. Dhule.

... Respondents.
(Orig. Accused)

...
Mr. S. D. Ghayal, APP for Applicant/Appellant.

...

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

DATED : 6th OCTOBER, 2023

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

1. As State is dissatisfied by the judgment and order passed by learned Sessions Judge, Dhule in Sessions Case No.27 of 2018 dated 07.09.2019, thereby acquitting respondent nos.1 to 4, application has been preferred to seek leave to file appeal.

2. Taking us through the charge and evidence, learned APP would submit that, death of Sagar Pagare is established to be due to hemorrhagic shock due to injuries sustained and as such it is homicidal death. That, respondents mounted attacked on deceased on 28.09.2017 at around 8:00 p.m. with articles like iron pipe. The incident was fall out from previous incident and as such the attack was by way of revenge. Learned APP submitted that apart from ocular account, there are strong incriminating circumstances. Before incident of assault, threat was issued and it was duly executed. Recovery is sufficiently proved by adducing evidence of pancha witnesses. There is scientific evidence. Resultantly, it is submitted that, with such quality of recovery, learned trial Judge ought to have accepted the case of prosecution and held respondents guilty, but learned trial court failed to appreciate the evidence in correct perspective and has erred in acquitting the accused and therefore, it is his submission that, there is need for re-appreciation and re-analysis of evidence in appeal and hence the prayers.

3. We have gone through the papers before us including the evidence adduced by prosecution before the trial court. Here, respondents are charge-sheeted for commission of offences under sections 302, 325, 504 and 506 read with 34 of Indian Penal Code.

It appears that, case of prosecution is rested on testimonies of in all seven witnesses. Learned trial court seems to have recorded finding that death of deceased Sagar demonstrated to be homicidal one.

4. We have gone through the evidence on record.

PW1 Buddhapriya is the informant, who, lodged the report at Exh.20.

PW2 Gajanan seems to be pancha to the spot (Exh.26) as well as pancha to memorandum of disclosure at the instance of accused Nilesh Gaikwad regarding handing over iron rod. The same is shown to be discovered from the bushes in the vicinity of Ashoknagar water tank vide panchanama (Exh.28) and he has identified the Article.

PW3 Sharif seems to be pancha to seizure of clothes of accused Nilesh Gaikwad and Sachin Ahire vide panchanama Exhs.38 and 39.

PW4 Kaushalyabai seems to be mother of deceased Sagar. She deposed that, at 8:00 p.m. she and her daughters were going to *fasi-pul* for purchasing vegetables. She claims that, that time, she saw assault on her son by accused by means of iron pipe on the head. She has named as accused Sachin for catching hold of

deceased Sagar, accused Rani throwing chili powder in the eyes of deceased Sagar, Nilesh and Kiran mounting assault on the head of deceased. Her statement seems to be recorded on the same day.

PW5 Rajendra Barge, watchman examined as eye witness, but has not supported prosecution.

PW6 Rajendra Magre, pancha to seizure of clothes of deceased;

PW7 PSI Mandekar is the Investigating Officer.

5. *Prima facie*, there is evidence of mother. Her son has met homicidal death. There is recovery at the instance of accused persons. We have gone through the impugned judgment which is sought to be challenged, in our opinion, the findings and reasons are not *prima facie* in consonance with the evidence. Minor variances seem to have been given undue importance and therefore, in our opinion, it is a fit case for re-appreciation and reanalysis in appeal. Hence, we proceed to pass following order:-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands admitted.

(v) Call record and proceedings.

(vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondents to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)