

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 785/2018.

Central Bureau of Investigation.

-VERSUS-

Liaquat Ali Shaikh Miran and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Ms M. Chandurkar, Advocate for the Applicant.
Shri S. Deshmukh, Advocate for Non-applicant Nos.1 to 4.
Shri U.E. Quazi, Advocate for Non-applicant Nos.7 and 8.
Non-applicant Nos.5 and 6 served.

CORAM : VINAY JOSHI AND

VALMIKI SA MENEZES, JJ.

DATE : JUNE 05, 2023.

This is an application in terms of Section 372 of the Code of Criminal Procedure seeking leave to file appeal raising a challenge to the order of acquittal dated 23.04.2018 passed in Sessions Case No.127/2003 by which respondents have been acquitted of various offences, including Section 302 of the Indian Penal Code.

2. Heard learned Counsel present for the respective parties to the limited extent on the

aspect of grant of leave to file appeal.

3. Briefly stated one Gopi, a taxi driver, was found dead in the Well after few days from missing. Police initially carried out investigation, but, failed to find any evidence, resulting into filing of summary report.

4. Mother of deceased Gopi approached to the this Court about death of Gopi, and in turn this Court directed CBI to investigate into the matter. Accordingly the matter was investigated by the CBI and having found sufficient material filed charge sheet against in all 8 accused. Particularly, accused nos.1 to 6 were charged for the offence punishable under Section 302 of the Indian Penal Code read with Section 120-B of the Code. Accused nos. 7 and 8 – police officers were charged for not registering the offence. The prosecution has examined as many as 25 witnesses to substantiate the charge. Having regard to the nature of accusation and evidence led by the prosecution, the trial Court found that the evidence is not worthy of credit to hold that

the offence is proved against the accused beyond reasonable doubt. In consequence the order of acquittal has been passed.

5. CBI has challenged the order of acquittal by stating that this was a case of circumstantial evidence. There is evidence on the point of last seen as well as, other circumstances which connect the accused with the crime. The Special Prosecutor took us through the evidence of P.W.1 – Shriniwas and P.W.7 – Bharti to state that on 02.10.1991 in the late evening, the deceased was seen by these witness in the company of accused nos. 1 to 4. Not only that, within short time they have seen some heavy material was loaded by these persons in a car. According to the prosecution, the said material indicates culpability of accused nos. 1 to 4. Moreover, we have been taken through some other material to indicate that there was motive for accused to commit the crime. It is stated that though there was discrepancy about time of death, however, the medical evidence is in the form of opinion evidence and it

is to be appreciated, coupled with other evidence.

6. Learned Counsel for accused nos. 1 to 4 submitted that the evidence led by the prosecution is not sufficient to establish the guilt. He submits that there is time gap in between death and the factum of finding dead body. There was every possibility of intervention of third party and thus, last seen theory cannot be relied on. Moreover, he would submit that besides last last seen theory, there is nothing to strengthen the prosecution case. He has also relied on the decision of Supreme Court in case of **Anjan Kumar Sarma and others .vrs. State of Assam – AIR 2017 SC 2617**, to impress upon the value and credibility of last seen evidence.

7. We have considered the submissions advanced by the parties, as well as gone through the evidence of P.W.1 and P.W.7, who have stated about the last seen theory. We have also taken into account that the accused no.1 Liyakat had on the very next day immediately rushed to the police

station to lodge missing report about Gopi. The learned Trial Court also criticized his conduct raising suspicion. Having regard to the entire material, we are of the considered view that the matter requires re-look. In view of that, we grant leave to file appeal. Criminal Application is accordingly allowed.

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Criminal Appeal No. _____/2023.

Admit.

Learned Counsel present for the respective parties waives notice.

2. Action under Section 390 of the Code of Criminal Procedure to follow. The Trial Court shall release respondents/accused on bail on their furnishing P.R. Bond in the sum of Rs.15,000/- each with one or two sureties in the like amount.

JUDGE

JUDGE