

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

Criminal Application No. 200 of 2015

The State of Maharashtra,
Through Police Station Officer,
Police Station (Rural), Beed,
District : Beed.

.. Applicant
(Original complainant)

versus

Durga s/o. Timma Kurhade,
Age : 25 years,
Occupation : Labour,
R/o. Wadarwada Barshi Naka, Beed,
Taluka & District : Beed.

.. Respondent
(Original accused)

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*Mrs. S.G. Chincholkar, Additional Public Prosecutor,
for the applicant - State.*

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 12TH FEBRUARY 2015

COURT'S ORDER (Per A.M. Badar, J.) :

1. By this application, applicant - State is seeking leave to challenge judgment and order dated 31-10-2014, passed by the learned Sessions Judge, Beed, in Sessions Case No. 169/2012, thereby acquitting respondent - accused of the offence punishable under Section 302 and 201 of Indian Penal Code.

2. Heard the learned Additional Public Prosecutor appearing for the applicant - State. She vehemently argued that in a case based on circumstantial evidence, the prosecution has proved that deceased Krishna @ Sonya s/o. Hanumant Dhotre was lastly seen in the company of accused - Durga s/o. Timma Kurhade on 24-6-2012 and thereafter he was never seen alive. The learned Additional Public Prosecutor further argued on the basis of voluntary disclosure statement of respondent - accused Durga, that a stone came to be recovered which was used in the commission of offence of murder of Krishna @ Sonya. According to the learned Additional Public Prosecutor, blood stained clothes of accused Durga were also seized by the prosecution. With this, the learned Additional Public Prosecutor contended that the learned Sessions Judge erred in acquitting respondent / accused of the offences alleged against him.

3. The facts projected from Police report leading to the prosecution of respondent - accused are thus :-

Deceased Krishna @ Sonya is a school going boy aged about 12 years. At the relevant time, he was studying in 4th Standard. Accused Durga is husband of PW 8 Chiu Tai, who is sister of deceased Krishna @ Sonya. He was missing from 3.00 p.m. of 24-6-2012 and ultimately his dead body was found in a *Nala* behind Reliance Petrol Pump at Aanandwadi in Beed. According to the prosecution case, it was accused Durga who committed murder of his brother-in-law Krishna @ Sonya for the reason that Krishna @ Sonya was preventing the accused from beating his sister PW 8 Chiu Tai.

4. The prosecution case rests on circumstantial evidence and the law on this aspect is well settled. In a case where evidence is of circumstantial nature, circumstances from which guilt of the accused is to be drawn should be established by firm and cogent. Those proved circumstances should be consistent with the sole hypothesis of guilt of the accused and inconsistent with his innocence. In the case at hand, last seen theory is pressed in service by contending that Krishna @ Sonya was taken by accused Durga at about 3.00 p.m. of 24-6-2012. This theory comes into play when time gap between the point of time when the accused and the deceased were lastly seen alive and when the deceased was found dead, is so small that in all probability any other person than the accused being the author of crime becomes impossible. At the outset, we may note that even according to the prosecution, the deceased was lastly seen with the accused on 24-6-2012 and subsequently his dead body was found on 1-7-2012. During this time gap, he was missing.

5. The prosecution is propounding last seen theory relying on the evidence of PW 8 Chiu Tai, sister of the deceased and wife of the accused. Similarly, evidence of PW 9 - Ganesh s/o. Sudarshan Pandkar, *Wada Pav* vendor was also sought to be relied, but during trial he turned hostile. Let us consider the only remaining evidence of PW 8 Chiu Tai on this aspect. It would not be out of place to consider her evidence along with evidence of her father / informant PW 3 - Hanumant s/o. Rama Dhotre and evidence of her mother PW 10 - Ramabai w/o. Hanumanta Dhotre. Their evidence shows that accused Durga was addicted to liquor and he was in the habit of beating his wife PW 8 Chiu Tai. Evidence of

these three witnesses further shows that deceased Krishna @ Sonya used to visit house of his sister Chiu Tai frequently and whenever he used to see accused beating Chiu Tai, he used to intervene and prevent the accused from beating his sister. On this backdrop, it is in evidence of PW 8 Chiu Tai, that on 24-6-2012, as usual, her brother Krishna @ Sonya came to her house. At that time, accused was quarrelling and assaulting her. Then PW 8 Chiu Tai questioned the accused about reason for assault. Thereafter, as per version of PW 8 Chiu Tai, at about 3.00 p.m. of that day, the accused and her brother Krishna @ Sonya left the house together. Accused Durga then returned after two hours and again assaulted her. PW 8 Chiu Tai further deposed that upon questioning in respect of whereabouts of Krishna @ Sonya, the accused did not answer. Then, as per her version, her father PW 3 Hanumant lodged missing report at Exhibit 21.

6. We have our own doubts to rely on testimony of PW 8 Chiu Tai because in her cross examination, she has stated that on that day i.e. on 24-6-2012, her brother Krishna @ Sonya (since deceased) did not come to her house. Her evidence goes to show that her husband PW 3 Hanumant lodged missing report after meeting her. Perusal of this missing report at Exhibit 21 goes to show that PW 3 Hanumant reported Police, that his son Krishna @ Sonya left his own house by stating that he is going for playing. The fact that Krishna @ Sonya left the house in the company of the accused is conspicuously missing from this missing report. Ultimately, upon finding dead body of Krishna @ Sonya in partially decomposed condition in *Nala* on 1-7-2012, PW 3 Hanumant lodged FIR Exhibit 20 pointing out a finger of suspicion on the accused. In our opinion, evidence of PW 8 Chiu Tai, for the aforesaid reason, is unsafe to rely.

7. The next piece of evidence relied by the prosecution, in order to bring home the guilt to the accused, is recovery of weapon of offence i.e. stone, at the instance of respondent - accused Durga on 6-7-2012. PW 2 - Bhima s/o. Hanumant Nimbalkar is stated to be a Panch witness to this voluntary disclosure statement by the accused. However, PW 2 Bhima has not deposed about any such disclosure statement. As per his version, accompanied by Police and the accused, they went to the spot of the incident i.e. *Nala* and the accused showed a small stone in the bed of *Nala*. Seizure Panchanama at Exhibit 18 shows that the stone was seized from the centre of *Nala*, but there was no blood on it. There is no forensic evidence on record to show that blood was found on the stone allegedly recovered at the instance of the accused. As such, this recovery cannot be a relevant fact.

8. PW 11 - Dr. Upendra Devidasrao Kulkarni had conducted autopsy on the dead body of Krishna @ Sonya. *Post mortem* report is at Exhibit 37. Evidence of PW 11 Dr. Upendra Kulkarni, read with *post mortem* report, shows that at the time of autopsy, no opinion regarding cause of death was formed by the autopsy surgeon. While in the witness box, upon perusal of Chemical Analyzer's report, this Autopsy Surgeon has given probable cause of death as '*asphyxia due to drowning*'. On this count also, the evidence of recovery of stone is of no consequence.

9. According to the prosecution case, blood stained clothes were recovered from respondent - accused Durga. PW 7 - Shankar s/o. timma Gaikwad is the witness for this seizure. Exhibit 29 - Seizure Panchanama

shows that one shirt and blood stained pant of the accused was seized by Police. Leave apart the evidence regarding absence of sealing of these clothes, forensic evidence shows that no blood was detected on the clothes of the accused.

10. There is no other evidence worth saying in this case. The evidence discussed in foregoing paras is scanty to infer guilt of the accused by concluding that the prosecution has established the entire chain of circumstances pointing guilt to the respondent - accused and to none else.

11. In the result, we are of the opinion that the learned Sessions Judge has duly considered the evidence before it and the judgment and order sought to be impugned by the instant application cannot be said to be perverse, unreasonable, or impossible.

12. In the light of foregoing discussion, the Application fails and the same is rejected. Consequently, leave to file appeal is refused.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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