

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 209 OF 2015

NAVNATH S/O SOPAN GADEKAR
VERSUS
THE STATE OF MAHARASHTRA & ORS

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Advocate for Appellant : Mr. N.G. Talekar
APP for Respondent/State : Mr. V.D. Godbharale

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CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.

Dated: July 20, 2015

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PER COURT :-

Heard.

2. This is a statutory appeal under Section 376 of the Criminal Procedure Code by the original complainant.

3. In order to ascertain whether the findings recorded by the trial Court are in consonance with the evidence on record or otherwise, we did summon the original Record and Proceedings for our perusal. The learned counsel appearing for the appellant, relying upon the notes of evidence, would contend that, there are three witnesses, who have stated that, the deceased

was last seen in the company of the accused. The motive for commission of offence was that, the deceased had illicit relations with the aunt of the accused. It is submitted that, apart from proving the motive and last seen together theory, the prosecution witnesses have proved the recovery, and in particular, recovery of motorcycle and knife at the instance of the accused. According to the learned counsel appearing for the appellant, therefore, the appeal deserves to be allowed.

4. On the other hand, the learned Additional Public Prosecutor appearing for the State, in addition to submissions made by the learned counsel appearing for the appellant submits that, the findings recorded by the trial Court are not in consonance with the evidence brought on record. The vital circumstance in the chain of circumstances is at the instance of the accused the motorcycle is seized, and the said circumstance has not been properly considered by the trial Court.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State. With their able assistance, we have perused the notes of evidence and, in particular, evidence of PW-3, PW-4 and PW-5. None of the witness has specifically stated that, the

deceased was last seen in the company of the accused persons either on 6th December, 2008 or prior to it. Merely because there was quarrel between accused persons and deceased on trifle issue on 5th December, 2008, would not lead to the conclusion that, the accused persons have committed the offence, as alleged against them. Upon careful scrutiny of the evidence, we find that, the said circumstance has not been proved by the prosecution. In our opinion, the last seen together is a vital circumstance in the chain of circumstances, while considering the case based upon circumstantial evidence. Further the alleged recovery is not supported by the panch witnesses. The view taken by the trial Court appears to be plausible. Therefore, appeal sans merit, hence dismissed.

(A. I. S. CHEEMA, J.)

(S.S. SHINDE, J.)

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