

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.70 OF 1997

The State of Maharashtra.

....Appellant.
(Ori. Complainant)

Versus

1. Khandu Bali Mane, Age:28 yers.
2. Bali Yeshwanta Mane, Age:60 yers.
Both R/o Bijjanwadi, Tq. Tuljapur,
Dist.Osmanabad.

....Respondents.
(Ori. accused)

.....
Shri A.S. Shinde, APP for appellant.
None present for respondents.
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**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 08.10.2015

ORAL JUDGMENT (Per A.B. Chaudhari, J.) :

1] Being aggrieved by the judgment and order dated 27.11.1996 passed by the learned Additional Sessions Judge, Osmanabad, in Sessions Case No.86/1992, by which the learned trial Judge recorded the order of acquittal for the offence punishable u/s 498-A, 302 r/w 34 and 312

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of the Indian Penal Code, the present appeal was lodged in this Court by the State.

2] In support of the appeal, the learned APP vehemently argued that the learned trial Judge committed error in rejecting the evidence of the prosecution star witness PW2 Ashok, who had actually seen the accused persons carrying the deceased on their shoulder near the well in the field and there were blood stains nearby on the road as well as the near well on the stones. Not only that, according to him, there was discovery of axe from the accused persons and, therefore, the said evidence was a strong corroborative evidence, which was required to be accepted by the learned trial Judge. The learned trial Judge, however, committed perversity in not accepting the prosecution evidence and thus faltered in recording the order of acquittal.

3] None appears for the respondents though served.

4] With the assistance of the learned APP, we have perused the evidence of PW2 Ashok – the sole witness on the last seen theory. Looking to the evidence of PW2 Ashok so also his cross-examination, we find that he kept quiet though he had several opportunities to disclose

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that he had seen the accused persons and the deceased. We quote following portion from his cross-examination as to his conduct in keeping quiet despite several opportunities to disclose about what he had seen :-

"I had no occasion to visit the house of accused persons. I cannot tell the names of the family members of the accused persons. I was knowing them since about 5 to 7 years, prior to the incident. I did not go to village Arli when I learnt that Shobha is dead. Kashinath Darekar did not send for me at any time. I did not go to village Bijanwadi to see the dead body of Shobha. Now say, I visited the place of incident at about 8 a.m. When I reached there I saw both the accused, Kashinath Darekar and other villagers gathered there. I did not state anything in respect of the incident to any of the villagers. The Police reached there about 10 a.m. when I was present there. That time also I did not state anything to the Police. After 3 days of the death of Shobha, the Police at Tuljapur summoned me. Till that time, I did not disclose anything in respect of the incident in the night to anybody. I saw the accused coming from towards Chincholi and proceeding in the direction of Bijanwadi. I saw them at the distance of about $\frac{1}{2}$ furlong, from the well where in the dead body of Shobha was found. It was about 10 to 11 p.m.

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when I saw the accused persons. I did not make the statement to the Police that when I asked the accused as to who were they, none of them replied."

He is the only witness examined by the prosecution on last seen theory and we find from the above cross-examination that his evidence was rightly rejected by the learned trial Judge. The submission about discovery of weapon will have no significance in the light of infirm evidence in the form of PW2 Ashok, who was examined upon a *de-novo* order of trial made by the High Court. In that view of the matter, in the light of observations in paragraph no.24 of the judgment in the case of **State of Rajasthan vs. Darshan Singh alias Darshan Lal**, reported in **AIR 2012 SC 1973**, which we quote below, we think it will not be in the interest of justice to interfere with the order of acquittal:-

"24. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the

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presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

Hence, we pass the following order.

ORDER

Criminal Appeal No.70/1997 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)