

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

CRIMINAL APPLICATION NO. 4130 OF 2015

The State of Maharashtra	..	Applicant
Versus		
Ravindra @ Pintu Dnyanoba Shinde	..	Respondent

Ms. Rashmi P. Gaur, A.P.P. for the Applicant/State.
Shri Sachin S. Deshmukh, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 03RD DECEMBER, 2015.

PER COURT :

. The Record and Proceeding is received. With the assistance of learned Assistant Public Prosecutor and Mr. Deshmukh, the learned counsel for the respondent, we have gone through the record and proceedings.

2. Ms. Gaur, the learned A. P. P. strenuously contends that, the case is based on circumstantial evidence. The chain is complete. The deceased was last seen together with the accused. The evidence of Panchsheela, the sister of deceased with whom the deceased was staying is consistent in this regard. Panchsheela/P.W. No. 3 has specifically stated that, at 2.00 p.m. on 11.10.2009, the deceased had gone with the accused on the motorcycle of the accused and on 12.10.2009 at 9.00 a.m. body of

deceased was found, which was burnt. According to the learned A. P. P., the evidence of P.W. No. 3 is corroborated by the evidence of P.W. No. 4/Jitin, son of the deceased who has also stated that, he had seen the deceased going with the accused on the motorcycle of accused at 2.00 p.m. on 11.10.2009. The learned A. P. P. submits that, the deceased after the death of her husband was in love with the accused. The accused got the knowledge that the deceased is suffering from AIDS. According to the learned A.P.P. it was erroneous on the part of Sessions Judge to disbelieve the evidence of P.W. No. 3 and P.W. No. 4. The learned A. P. P. further submits that, the complaint was lodged late, as the sister could not report due to shock and her health was not good.

3. Mr. Deshmukh, the learned counsel submits that, the theory of last seen together does not survive, as Jitin Kamble i. e. P.W. No. 4 has specifically given statement before the police, which has been brought on record, wherein he specifically admits that, his mother had returned at 9.00 p.m. in the night on 11.10.2009. As such, the theory of last seen together does not survive. According to the learned counsel, even there is absence of motive. There is no explanation for long delay of 22 days in filing the complaint.

4. We have considered the depositions, the documents on record and the judgment. The complaint is lodged after a lapse

of 22 days. No plausible reason has been given in this regard for not lodging the complaint for 22 days. P.W. No. 3 admits that, she had met the police very next day, however, she did not disclose about the fact of deceased going with the accused at 2.00 p.m. on 11.10.2009. No reason is mentioned for the said omission. It is also matter of record that, P.W. No. 4/Jitin, the son of the deceased had stated in his statement before the police that, on the day, when the deceased had gone along with accused on his motorcycle at 2.00 p.m. she had returned back in between 9.00 to 10.00 p.m. In view of this, the theory of last seen together does not survive and after she returned back, she left the house with water bottle alone. This fact dislodges the prosecution case, coupled with this, there is no explanation for non filing of complaint for 22 days. It has been discussed by the learned Sessions Judge in para 52 of the judgment that, this Panchsheela/P.W. No. 3 sister of the deceased and the informant of the crime had gone to meet the police, however, had not disclosed the fact of deceased going with the accused. All these aspects are considered by the learned Judge. The learned Judge has arrived at a plausible conclusion.

5. Considering aforesaid aspects of the matter, the application is rejected. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]