

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.648 OF 2008

Shri. Vishnu Shrihari Kshirsagar,	]	
Age : 25 Years, Occ.:	]	
R/at At Post Yerla, Tal.Osmanabad,	]	
Dist. Osmanabad.	]	 Appellant

Versus

The State of Maharashtra,	]	
Through Banda Police Station,	]	
Banda, Dist. Sindhudurga.	]	 Respondent

Mr. Umesh Mankapure for the Appellant.

Mrs. A.S. Pai, A.P.P., for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 8TH JUNE, 2015.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. This Appeal is directed against the Judgment in Sessions Case No.23 of 2006 delivered by the Additional Sessions Judge, Sindhudurg at Oros, thereby convicting Appellant for the offences punishable under Sections 302 and 201 of the IPC and sentencing him to suffer life imprisonment for the offence punishable under Section 302 of the IPC, with no separate sentence for the offence punishable under Section 201 of the IPC.

2. Facts, as are necessary, for deciding this Appeal may be stated thus:-

The marriage of Manisha, named Parvati after the marriage, was performed with the Appellant on 25th May, 2005. After the marriage, they co-habitated at Village Yerla and thereafter on 9th March, 2006, both of them went to Pune in search of the job. However, on 17th March, 2006, the Appellant's brother informed Manisha's parents that both the Appellant and Manisha were missing and not traceable. Hence, after taking their search, her father PW-7 Vishwanath lodged a missing complaint (Exhibit-29) on 18th March, 2006.

3. The enquiry of the said Missing Case No.3 of 2006 was handed over to PW-15 ASI Dayasingh Thakur. In the course of enquiry, the Appellant was found and thereafter, at his instance, the dead body of Manisha was recovered from the forest in Insuli Ghat Section. The said dead body was identified by her brother PW-5 Prakash and after the Inquest Panchanama (Exhibit-19), it was referred for postmortem examination to Primary Health Center at Banda. However, the body was decomposed to such an extent that the postmortem could not be performed and a certificate to that effect came to be issued by PW-10 Dr.

Jyoti Kamble, the Medical Officer attached to Primary Health Center at Banda, vide Exhibit-41, expressing her inability to state the probable cause of death.

4. During the course of further investigation, the statements of Manisha's brother PW-5 Prakash and her father PW-7 Vishwanath came to be recorded. It was also transpired that, both, the Appellant and the deceased were last seen together by PW-11 Bhau Salunke, PW-12 Mahendra Pande and PW-13 Mahesh Vazarkar, about 15 days prior to the incident. Hence, their statements also came to be recorded. It was further revealed in interrogation with the Appellant that he has sold the gold Mangalsutra and the ear-rings of the deceased to PW-16 Naimuddin Shaikh, the Manager of the shop by name "Raju Jewellers" at Osmanabad Main Road. Hence, at the instance of the Appellant, those gold ornaments also came to be seized under Panchanama and the statement of PW-16 Naimuddin Shaikh came to be recorded. The C.A. Reports of the clothes and other articles of the deceased were collected and after completion of due investigation, the Charge-Sheet came to be filed in the Court of Judicial Magistrate, First Class, Sawantwadi. In due course, the case was committed to the Trial Court.

5. The Trial Court framed charge against the Appellant vide Exhibit-6,

both, for the offences punishable under Sections 302 and 201 of the IPC. The Appellant pleaded not guilty and claimed trial, raising the defence of simple and total denial.

6. In support of its case, Prosecution examined in all 16 witnesses and relying on their evidence, the Trial Court held the guilt of the Appellant to be proved for both the offences and convicted and sentenced him, as aforesaid.

7. This Judgment of the Trial Court is being challenged in this Appeal by the learned Counsel for the Appellant Mr. Umesh Mankapure, by submitting that the entire Judgment of the Trial Court is based on conjectures and surmises, without there being any iota of concrete and positive evidence on record against the Appellant. According to him, the case is based on circumstantial evidence alone, however, not a single circumstance is proved by the Prosecution by adducing satisfactory evidence. Moreover, the circumstances which are proved, do not form a chain so complete as to leave no other hypothesis except that of the guilt of the Appellant. Hence, according to learned Counsel for the Appellant, Appellant deserves a clean acquittal.

8. Per contra, learned A.P.P. Mrs. A.S. Pai has supported the

Judgment of the Trial Court by submitting that there are two strong circumstances against the Appellant, namely, (i) recovery of the dead body of his wife at the instance of Appellant; and (ii) recovery of the gold ornaments of his wife, that too at the instance of the Appellant. According to learned A.P.P., these two strong circumstances are more than sufficient to prove the guilt of the Appellant.

9. Admittedly, this case is based on circumstantial evidence alone. To connect the Appellant with the offence, the Prosecution has relied on the following circumstances :-

- (a) *The Motive;*
- (b) *Deceased last seen in the company of the Appellant;*
- (c) *Recovery of the dead body of Manisha at the instance of the Appellant;*
- (d) *Recovery of the gold ornaments of the deceased, again at the instance of the Appellant.*

10. At this stage, it may be stated that the most important and crucial ingredient, which Prosecution has to prove in order to attract the charge under Sections 302 and 201 of the IPC, is the homicidal death of the deceased. In this case, however, Prosecution has miserably failed to prove this very crucial circumstance, and it is proving to be a fatal lacunae

in the entire Prosecution case. In our considered opinion, on this very ground itself the Prosecution case has to result into acquittal of the Appellant. As stated above, the dead body of deceased Manisha was decomposed to such an extent that PW-10 Jyoti Kamble, the Medical Officer attached to Primary Health Center at Banda, has clearly opined and given in writing that the dead body, due to its decomposition, was not fit for conducting postmortem examination. Hence, she has expressed her inability to give probable cause of the death. She had advised the body to be taken to Government Medical College, Miraj for the purpose of finding the probable cause of the death. Her certificate to that effect is produced at Exhibit-41. However, there is no evidence produced on record to show that the dead body was sent to Government Medical College, Miraj or Police had made any attempt to find out the probable cause of death. Needless to say, that in the absence of any evidence proving the probable cause of the death, the inference that Manisha has succumbed to homicidal death, cannot be drawn.

11. Once this crucial fact is not proved by the Prosecution, as a matter of fact, it is not necessary even to enter into the discussion on other evidence brought by the Prosecution. For the completeness of Judgment, however, this Court is entering into the evidence relating to other

circumstances, which Prosecution has made an attempt to prove.

12. The first circumstance, as relied upon by the Prosecution, is the motive on the part of the Appellant to do away with the deceased. To prove this circumstance, Prosecution has placed reliance on the evidence of her brother PW-5 Prakash and her father PW-7 Vishwanath. According to them, the marriage of Manisha with the Appellant was performed on 25th May, 2005. After the marriage, they were residing together at Yerla and thereafter they went in search of job to Pune. From there, initially, both of them were missing, but, subsequently, the Appellant was found and at his instance, the dead body of Manisha was found. In evidence before the Court, both of them have deposed that Appellant was ill-treating and assaulting Manisha on the ground that she cannot cook food well. However, from their cross-examination, it is brought on record that this evidence is in the nature of improvement, as they had deposed about it for the first time before the Court and not stated about the same to Police, when their complaint and statement came to be recorded. Hence, much reliance cannot be placed thereon. Moreover, as per evidence of PW-5 Prakash, just few days before the incident, when he made enquiry with his sister Manisha, he found that both of them were happy and there was no complaint of ill-treatment at all. In view thereof, there hardly

remains any evidence as regards the motive. It is apart that motive by itself is not a sufficient incriminating circumstance to prove the guilt. Motive has to be accompanied with other circumstances.

13. Hence, the second circumstance relied upon by the Prosecution is that of deceased being last seen in the company of the Appellant. On this aspect, the Prosecution has examined three witnesses, the first witness being PW-11 Bhau Salunke, who is working as Conductor with Kolhapur S.T. Depot. According to Prosecution case, on 7th March, 2006, the Appellant and deceased Manisha travelled in his bus to Banda. However, this witness has, in examination-in-chief itself, stated that he is not in a position to identify the Appellant as the same person, who had travelled in his bus along with deceased. In such situation, Trial Court has also not believed his evidence on last seen.

14. Similarly, PW-12 Mahendra Pande, who is having a Dhaba at Insuli, where the Ghat Section ends, has also admitted in his cross-examination that several persons visit his Dhaba and in the absence of any reason, he cannot recollect the face or clothes of every customer attending Dhaba. His evidence, therefore, also cannot be relied upon to hold that the Appellant had visited his Dhaba before the incident, along with deceased Manisha.

15. PW-13 Mahesh Vazarkar, who is running the tea stall near the Bus Stand of Banda, has also admitted in his cross-examination that many persons visit his tea stall daily and hence it is not possible to recollect the persons attending his tea stall. He has further admitted that as Police told him that Appellant had been to his tea stall, he has stated to that effect.

16. In view of the evidence of these three witnesses, there is no alternative but to hold that the Prosecution has failed to prove this second circumstance also.

17. The third circumstance relied upon by the Prosecution is that of recovery of the dead body of Manisha at the instance of the Appellant. The Prosecution has miserably failed to prove this circumstance also. As admitted by PW-14 PI Dipak Pawar, the recovery of the dead body was not at all in pursuance of the memorandum given by the Appellant, under Section 27 of the Evidence Act. According to his evidence, the panch witnesses were called after the discovery of the dead body. Further, PW-3 Nandkishor Pednekar, who is a Reporter, has deposed that information was already received in his office that dead body of a woman is found in Ghat Section of Insuli. Hence, he rushed there and found the dead body, which was identified by PW-5 Prakash. As per his evidence, the Appellant

was thereafter brought to the spot by Osmanabad Police. Therefore, his evidence demolishes the Prosecution case that the recovery of the dead body was at the instance of the Appellant.

18. PW-5 Prakash has further admitted in his cross-examination that on the night before the recovery of the dead body, the Appellant was assaulted by Police Officer at Dhoki and Banda for the purpose of enquiry to trace the dead body. Further he has stated that Police had already taken the Appellant into the forest of Insuli and after recovery of the dead body, he was taken to the spot to identify the dead body. Therefore, there is no evidence to prove that the recovery of the dead body was at the instance of the Appellant, in pursuance of the disclosure statement given by him. Further, the recovery of the dead body is also from the open space, like, a forest in Ghat Section and not from some hidden and concealed place, the exclusive knowledge of which can be attributed to the Appellant alone.

19. The last circumstance relied upon by the Prosecution is of recovery of the gold ornaments of the deceased at the instance of the Appellant. To prove this circumstance, the Prosecution has relied on the evidence of PW-1 Panch Rehan Karol and PW-16 Naimuddin Shaikh, the Manager of Raju Jewellers. As per PW-16 Naimuddin Shaikh, the Appellant has sold

to him one gold Mangalsutra and ear-rings about two and a half months before he was brought to the shop by the Police on 10th May, 2006. He has purchased these two gold ornaments from the Appellant for Rs.5,000/- and he has issued the receipt accordingly vide Exhibit-59. However, in his cross-examination, he has admitted that no such receipt was issued by him in favour of the Appellant, when he sold the gold ornaments to him. Further he has admitted that he has not maintained daily note-book indicating the receipt and disposal of the gold. Thus, he is not having any documentary evidence to show that the Appellant has sold those gold ornaments to him. Those gold ornaments are also not shown to PW-5 Prakash, brother of the deceased, or PW-7 Vishwanath, father of the deceased, to prove that they were belonging to deceased Manisha and she was wearing the same. In the absence of such connecting evidence on record, this circumstance alone, even if held as proved, would not help the Prosecution to prove the guilt of the Appellant.

20. The net result, therefore, is that the Prosecution has not succeeded in proving a single incriminating circumstance against the Appellant by bringing cogent, reliable and satisfactory evidence on record and none of the circumstance, either taken individually or cumulatively, is sufficient to prove the guilt of the Appellant for either of the offence charged against

him. Hence, the conviction and sentence of the Appellant, as recorded by the Trial Court, is required to be quashed and set aside.

21. Consequently, this Criminal Appeal is allowed and the conviction and sentence of the Appellant - Vishnu Shrihari Kshirsagar, is hereby quashed and set aside and the Appellant is acquitted of the offences punishable under Sections 302 and 201 of the IPC, with which he was charged and convicted. Fine, if paid by the Appellant, be refunded to him. Since the Appellant is in Jail, he be released forthwith, if not required in any other case.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K. TAHILRAMANI, J.]