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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.221 OF 2014**

Harischandrra Ramchandra Borade	]
age 22 years,	]
at present lodged in	]... <u>Appellant.</u>
Kalamba Central Prison,	] Ori. accused
Kolhapur	]
Prisoner No.C.5969	]

V/s.

The State of Maharashtra	]
at the instance of	].... Respondent
Neral Police Station,	]
District: Raigad.	]

Ms. Rohini M. Dandekar, appointed advocate for the appellant.
Mr. H. J. Dedhia, APP for the Respondent-State.

**CORAM : SMT. V.K. THILRAMANI- ACTING CJ &
DR. SHALINI PHANSALKAR-JOSHI, J.**

DATE : 17th NOVEMBER, 2015.

Oral Judgment : [Per:SMT. V.K. TAHILRAMANI, ACTING CJ]

1. The appellant has preferred this appeal against the judgment and order dated 16th July, 2013, passed by the learned Sessions Judge, Raigad, Alibag, in Sessions Case No.87 of 2012.

By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and fine of Rs.1,000/- in default rigorous imprisonment for six months.

2. The prosecution case briefly stated is as under :-

Deceased Sangeeta was the daughter of P.W.1 Lahu Thombare. She was about 19 years old at the time of incident. As Sangeeta was sick, she was sent by her father to the Government Hospital at Kashele at about 8.00 a.m. She did not return home upto 4.30 p.m. Therefore, P.W.1 Lahu went in search of her, but Sangeeta was not found. Hence Lahu returned back to his village i.e. Bhombalwadi in Raigad District. When P.W.1 Lahu came to the village, P.W.3 Kailash met him and told that he had seen Sangeeta returning home and at that time, the appellant was ahead of Sangeeta. P.W.1 Lahu searched for her in the morning, but Sangeeta was not found. On the next day in the morning Lahu and his family members went in search of Sangeeta. They found the dead body of Sangeeta lying in the bushes. P.W.2 Dharma, who was son of P.W.1 Lahu lodged F.I.R.

Thereafter investigation commenced. The dead body of Sangeeta was referred for postmortem. Six bruises were found on her body which were mostly on the face and neck. In addition six abrasions were found on the body of Sangeeta. The Medical Officer Dr. Kadam stated that the cause of death was suffocation due to smothering. After completion of investigation, chargesheet came to be filed.

3. Charge came to be framed against the appellant under Section 376 read with Section 511 and also under Section 302 of the Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted the appellant of offence punishable under Section 376 read with 511 of IPC. However, he convicted and sentenced the appellant under Section 302 of the IPC. Hence this appeal.

4. We have heard learned counsel for the appellant and learned APP for the State. We have carefully considered their submissions, judgment and order passed by the learned Sessions

Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt.

5. There are no eye witnesses in the present case and the case is totally based on circumstantial evidence. The conviction of the appellant is based on following three circumstances.

- i) The deceased was last seen with the appellant in the after noon of 7.4.2012.
- ii) Seizure of clothes of the appellant on which there were some stains.
- iii) Recovery of plastic bag in which there were documents of the deceased at the instance of the appellant.

6. As far as first circumstance, "deceased last seen with the appellant" is concerned, the prosecution has placed reliance on the evidence of P.W.1 Lahu, P.W.3 Kailash and P.W. 4 Mangala. P.W. 1 Lahu is the father of Sangeeta. He has stated that Sangeeta was his daughter. Sangeeta was sick, therefore, he sent her to the Government Hospital at Kashele at about 8.00

p.m. She did not return home upto 4.30 p.m, therefore, he went in search of her, but Sangeeta was not found. Hence he came back to the village. In the village he met P.W.3 Kailas, who told him that he has seen Sangeeta returning home. P.W.3 Kailas also told P.W.1 Lahu that appellant was ahead of Sangeeta. On the next day morning, the dead body of Sangeeta was found in the bushes. Lahu's son P.W.2 Dharma then lodged F.I.R.

7. P.W.3 Kailas has stated that on 7.4.2012, in the afternoon, he was proceeding from Bhombalwadi towards Nandgaon. Sangeeta met him on the way. She was returning to her village i.e. Bhombalwadi. P.W.3 Kailash stated that at that time the appellant was walking behind Sangeeta. However, evidence of P.W.1 Lahu shows that Kailas told him that the appellant was walking ahead of Sangeeta. This discrepancy in the evidence of P.W.1 Lahu and P.W.3 Kailas raises some doubt as to whether the appellant was actually following Sangeeta.

8. On the aspect of "last seen" the prosecution has also placed reliance on the evidence of P.W.4 Mangala. Mangala has stated that on 7.4.2012 at about 3.00 p.m. she had seen Sangeeta going towards her house. At that time, appellant was

behind her. However, cross examination of Mangala shows that this avernment that the appellant was behind Sangeeta when she was returning home is an improvement. Thus this avernment cannot be taken into consideration.

9. The second circumstance relied upon by the prosecution is, "seizure of the shirt of the appellant which had stains". However, Chemical Analyzer's report in relation to the stains is inconclusive. Hence this circumstance is of no use to the prosecution.

10. The last circumstance relied upon by the prosecution is, "recovery of plastic bag at the instance of the appellant". According to prosecution in the plastic bag, ration card, diary and case papers of the deceased were found. As far as this circumstance is concerned, P.W. 11 API Arjun Botre has stated that during his earlier investigation it did not transpire that the deceased was carrying ration card, note book and case paper at the time of incident.

11. P.W.8 panch witness Chahu Sarai was examined on the aspect of recovery of the above mentioned articles. We are not inclined to place any reliance on the evidence of this witness.

Firstly he has stated that he signed on the panchanama in the police station. This witness has admitted that deceased Sangeeta is from his community. He has also admitted that his village is at a distance of 15 Kms from Neral police station, yet he used to often visit Neral police station. He has also admitted that he was called many times by the police, in connection with this case. What is most important to note is that none of the articles which according to prosecution, were recovered in the presence of this witness, were shown to this witness and identified by him in the Court. In such case we are not inclined to take this circumstance of recovery of articles at the instance of appellant into consideration.

12. Thus, on going through the record, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt. Hence following order is passed.

Order

1. The impugned judgment and order dated 16th July, 2013, passed by learned Sessions Judge, Raigad, Alibag in Sessions Case No.87 of 2012 convicting and sentencing the appellant under Section 302 of the

Indian Penal Code is set aside and the appellant is acquitted of the said offence.

2. The appellant who is in jail be released forthwith, if not required in any other offence.
3. The order be communicated to the applicant who is presently lodged in Kalamba Central Prison, Kolhapur.
4. The fees payable to appointed advocate Ms.Rohini M. Dandekar, by Legal Services Authority, are quantified at Rs.5,000/-.
5. The appeal is allowed in above terms.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original signed
judgment.