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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 438 OF 2012**

Shri. Gopinath @ Gopya Shantaram	]
Mhatre, Age 44 years,	]
Occ: Vegetable Seller	]
Residing at Pataneshwar, Tal. Pen	]
Dist. Raigad At present in Alibag Jail	]
Dist. Raigad	]..Appellant
	[Ori. Accused No.1]

Vs.

The State of Maharashtra	]
Through Nagothane Police Station	]
Dist. Raigad. CR No. 51 of 2010	]..Respondent
	[Ori.Complainant]

**WITH
CRIMINAL APPEAL NO. 671 OF 2013**

Nirmala Madhukar Patil	]
Age 38 years,	]
Residing at Umate, Post Ramraj,	]
Taluka Alibag Dist. Raigad	]
At present in Yerawada Central Prison]	]..Appellant/
	Ori. Accused No.2

Vs.

The State of Maharashtra	]
Through Nagothane Police Station	]
Dist. Raigad. CR No. 51 of 2010	]..Respondent
	[Ori.Complainant]

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Mrs. Nasreen S.K.Ayubi Advocate appointed for the Appellant
in both the Appeals
Mrs. A.S. Pai A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.B.P.COLABAWALLA, JJ.**

DATED : APRIL 09, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 Criminal Appeal No. 438 of 2012 has been preferred by appellant / original accused no.1 Gopinath. Criminal Appeal No. 671 of 2013 has been preferred by appellant / original accused no. 2 Nirmala. Both these appeals have been preferred against the judgment and order dated 20.2.2012 passed by the learned Additional Sessions Judge, Mangaon Raigad in Sessions Case No. 39 of 2010. By the said judgment and order, the learned Sessions Judge convicted both the appellants under Sections 302 and 201 read with Section 120-B of IPC. For the offence under Section 302 read with Section 120-B, both the appellants have been sentenced to life imprisonment and fine of Rs.1000/- each in default R.I. for six months. For the offence under Section 201 read with Section 120-B of IPC, both the appellants have been sentenced to R.I. for ten years and fine of Rs.500/- each in default R.I. for three months. Substantive sentences were directed to run concurrently. For the sake of convenience, both the appellants

shall be referred to as they were referred before the trial Court i.e. Gopinath will be referred to accused no.1 and Nirmala will be referred to as accused no.2.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Madhukar was the father of P.W. 7 Prashant and husband of accused no.1 Nirmala. Madhukar was an agriculturist. Madhukar along with his wife accused no.2 Nirmala and son P.W. 7 Prashant were residing within the jurisdiction of Revdanda Police Station. Accused no.2 Nirmala used to sell vegetables on Konkan Railway. Accused no.1 Gopinath was also selling vegetables on Konkan Railway, hence they became acquainted with each other. Accused no.2 Nirmala used to call accused no.1 Gopinath on his cell phone. This was not liked by deceased Madhukar. Quarrels used to take place on account of accused no.2 Nirmala making calls to accused no.1 Gopinath. Madhukar used to insist that his wife accused no.2 Nirmala should not keep contact with accused no.1 Gopinath on cell phone.

(ii) It is further the prosecution case that on 24.5.2010 Madhukar was lured by both the accused persons and taken

to a place which is situated in Patansai area in Roha. There Madhukar was strangled to death and his dead body was left in Kalamshet forest. On 29.5.2010 P.W. 1 Govind had gone to Kalamshet forest to graze his goats. He saw the dead body of Madhukar. He did not know the identity of the dead body. He informed this fact to P.W. 2 Ganpat who was Police Patil of the village. Ganpat inturn informed P.W. 3 PSI Wanjale who was attached to Nagothane Police Station. Police came to the spot. Inquest was carried out at the spot. Post-mortem was performed on the dead body. It was found that Madhukar had been strangled to death. P.W. 12 Dr. Garje conducted the post-mortem. According to him, cause of death was "asphyxia due to strangulation". Thereafter P.W. 3 PSI Wanjale lodged F.I.R. on behalf of the State. The investigation was thereafter taken over by P.W. 15 Vaghachavare. On 8.6.2010 Police Officer Vaghachavare came to know that a missing report was lodged at Revdanda Police Station in relation to Madhukar Patil being missing. He called P.W. 7 Prashant who is the son of deceased Madhukar to the police station and showed him the clothes of the deceased and watch which was found on the spot. Prashant identified the articles to be that of

his father. As the dead body was decomposed, blood sample of Prashant was taken which was sent to the C.A. along with D.N.A. sample of deceased Madhukar. D.N.A. reports show that from the bone of the deceased and from the blood sample of Prashant, it can be concluded that the deceased was the biological father of Prashant. After completion of investigation, the charge sheet came to be filed. In due course the case was committed to the Court of Sessions for trial.

3 Charge came to be framed against both the accused under sections 302 and 201 read with 34 and Section 120-B of IPC. The accused pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the accused as stated in para 1 above, hence, these appeals.

4 We have heard the learned counsel for the accused and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case,

arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that prosecution has not proved its case against both the accused.

5 There is no eye witness in the present case and the case is totally based on circumstantial evidence. The circumstances against the appellants are as under:

- (i) motive;
- (ii) seizure of cell phone from accused no.1 at the time of his arrest;
- (iii) recovery of tape at the instance of accused no.1;

6 As far as motive is concerned, the prosecution has relied on the evidence of P.W. 4 Yamuna and P.W. 7 Prashant. Yamuna was the sister of deceased Madhukar and Prashant was the son of Madhukar. Yamuna has stated that deceased Madhukar was her brother. Accused no.2 Nirmala was the wife of her brother. Yamuna used to sell vegetables in the railway station. Yamuna has stated that quarrels used to take place

between Nirmala and her husband Madhukar on account of visit of accused no.1 Gopya. The evidence of P.W. 7 Prashant shows that quarrels used to take place between his mother and father on account of Nirmala calling the accused no.1 Gopya on his cell phone. His father used to insist that his wife Nirmala should not keep contact with accused no.1 Gopya on the cell phone. Besides the above evidence, there is no other evidence in relation to motive. The evidence of P.W. 4 Yamuna and P.W. 7 Prashant shows that both the accused used to contact each other on phone and dispute arose on account of accused no.1 visiting accused no.2. However, the evidence of P.W. 4 Yamuna further shows that the matrimonial life of deceased Madhukar was going on smoothly. Her evidence further shows that when Madhukar had gone out of the house, there was no reason for him to leave the house. This shows that Madhukar alone left the house and he was not accompanied by any of the accused persons. Thus, the prosecution case that both the accused persons or any of them lured the deceased to Kalambshet forest area cannot be believed.

7 In addition to the above circumstance, there is

circumstance of seizure of cell phone having SIM No. 9273864435 from accused no.1 at the time of his arrest. The officer of Tata Teleservice i.e. P.W. 13 Ravat was examined. He has stated that the said cell number stood in the name of Changuna K. Bhoir resident of House No. 267 Nigade Tal. Pen, Dist. Raigad and landline No. 02141-688622 stood in the name of Madhukar M. Patil (deceased). He has proved the call data record and call data record shows that number of calls have been made from the said phone numbers to each other. There is no transcript of conversation which took place between accused nos. 1 and 2 and the call data record only shows that calls were made by the accused persons to each other. This fact by itself cannot connect any of the accused persons to the crime.

8 Lastly, reliance was placed on the circumstance of recovery of plastic tape at the instance of accused no.1. It may be stated that the panch witness P.W. 6 Sanjay has turned hostile. The second panch witness has not been examined. It is the prosecution case that Madhukar was strangulated with the plastic tape. However, it is pertinent to note that there is

no C.A. report to show that the tape with which according to the prosecution, the deceased was strangled, was part of the tape which was recovered at the instance of accused no.1. There is no material to show that both these tapes tally. There is no distinguishing factor which would show that the tape which was recovered at the instance of the accused was part of the same tape with which the deceased was strangled.

9 Thus, the only reliable evidence against both the accused can be said to be the circumstance of motive. The Supreme Court in the case of **Narsinbhai Haribhai Prajapati etc. Vs. Chhatrasinh and others** reported in **1977 Cri.L.J. 1144** has observed that "presence of motive by itself is fully insufficient for sustaining charge of murder." There is no other reliable material against any of the accused to connect them with the crime. In this view of the matter, we pass the following order:

ORDER

(1) The judgment and order dated 22.2.2012 passed by the learned Additional Sessions Judge, Mangaon-Raigad in Sessions Case No. 39 of 2010 convicting and sentencing the

accused nos.1 and 2 under Sections 302 and 201 read with Section 120-B of IPC is set aside. Both the accused are acquitted thereunder. They be set at liberty forthwith, if not required in any other case.

(2) Both the Criminal Appeals i.e. Criminal Appeal No. 438 of 2012 and Criminal Appeal No. 671 of 2013 are allowed.

(3) Writ of order is expedited.

(4) Office to communicate this order to the appellants and the Jail Superintendent in which Jail, the appellants are lodged.

(5) We quantify total legal fees at Rs.6000/- to be paid to Advocate Mrs. Nasreen S.K. Ayubi by the High Court Legal Services Committee in both the appeals.

[SHRI.B.P.COLABAWALLA,J.] [SMT. V.K.TAHILRAMANI, J.]