

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.947 OF 2013

Mrs.Pratima Jaykishan Chaurasiya	)	.Appellant
Age : 30 yrs	)	(Original
R/o.Sai Chhaya Society,	)	Accused
Room No.B-14, Near B.M.C.Garage,	)	No.2)
Gorai - I, Borivali (W),	)	
Mumbai - 400 092.	)	
	)	
(At present in Yerwada Central	)	
Prison - at Yerwada, Pune)	)	

V/s.

The State of Maharashtra) .Respondent

Mr.K.M.Tripathi, Advocate, for the Appellant

Smt.A.S.Pai, APP, for the Respondent - State

WITH

CRIMINAL APPEAL NO.1149 OF 2013

Mr.Subhan Kamruddin Khan	)	.Appellant
		(Original
		Accused
		No.1)

V/s.

The State of Maharashtra) .Respondent

Smt.Rohini Dandekar, appointed Advocate, for the Appellant

Smt.A.S.Pai, APP, for the Respondent - State

**CORAM : SMT.V.K.TAHILRAMANI &
SMT.I.K.JAIN, JJ.**

DATE : 7TH JANUARY, 2015

JUDGMENT (PER SMT.I.K.JAIN, J.)

. Criminal Appeal No.947 of 2013 has been preferred by the original accused No.2 - Mrs.Pratima Chaurasiya. Criminal Appeal No.1149 of 2013 has been preferred by the original accused No.1 - Mr.Subhan Khan through jail. In both the Appeals, the Appellants have challenged their conviction and sentence passed by the learned Additional Sessions Judge, Vasai in Sessions Case No.30 of 2011 vide Judgment and Order dated 10.04.2013. By the said Judgment and Order, the learned Additional Sessions Judge convicted and sentenced the appellants for the offences as under :-

- (i) Section 302 of the Indian Penal Code to suffer life imprisonment with fine of Rs.2,000/- each in default R.I. for six months.
- (ii) Section 364 of the Indian Penal Code to suffer R.I. for five years with fine of Rs.1,000/- each in default R.I. for three months.
- (iii) Section 201 of the Indian Penal Code to suffer R.I. for two years with fine of Rs.1,000/- each in default R.I. for three months.
- (iv) Section 120-B of the Indian Penal Code to suffer life imprisonment with fine of Rs.1,000/- each in default R.I. for

three months. All the substantive sentences were to run concurrently. Since both the Appeals arise from the same Judgment of the trial Court, they are being decided by this common Judgment.

2. For the sake of convenience, we shall refer to the appellants as they were referred before the trial Court i.e. Mr.Subhan Kamruddin Khan as the original accused No.1 and Mrs.Pratima Jaykishan Chaurasiya as the original accused No.2.

3. Facts, as are necessary for the decision of these Appeals may briefly be stated as under :-

Accused No.2 Pratima is the sister of Complainant Ashok Kumar Chaurasiya PW-9 and wife of deceased Jaykishan. Pratima and Jaykishan were residing at Nalasopara with their two sons, one daughter and accused No.1 Subhan. Ashok Kumar and Jaykishan were working as loaders with Manish Transport at Malad. Accused No.1 Subhan alias Bablu was employed in a Steel Company at Waliv.

4. On 17.10.2010 Ashok Kumar and Jaykishan

settled their accounts with the Company and came to Nalasopara. On the next day informant went for work. He found Jaykishan absent. On 20.10.2010, Complainant Ashok Kumar came to Nalasopara at 07:30 a.m. and inquired from his sister about Jaykishan. Pratima told him that on 20.10.2010 at 03:30 a.m. Bablu had taken Jaykishan with him. Bablu alone returned home. Pratima inquired from Bablu about Jaykishan. He told her that Jaykishan was at Naka and he asked Bablu to collect tiffin for him. Then Bablu collected tiffin and left the house.

5. The informant, thereafter, contacted accused No.1 and asked him about Jaykishan. Accused No.1 told him that he is not aware about Jaykishan and not to contact him again. Then search of Jaykishan was made but he was not found. PW-9 Ashok Kumar lodged report with the police. On the basis of report offence punishable under Section 366 of the Indian Penal Code was registered. During investigation, it transpired that accused Nos.1 and 2 had illicit relations and they hatched conspiracy to kill Jaykishan. The plan was accordingly executed. Dead body was recovered at the instance of accused No.1. Blood stained clothes of accused No.1 were found in the house of accused No.2. A blade of

knife was recovered in pursuant to the Memorandum Statement of accused No.1. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

6. Charge came to be framed against the accused under Sections 302 r/w.34, 201 r/w.34, 363 r/w.34, 364 and 120-B of the Indian Penal Code. The appellants pleaded not guilty to the said charge and claimed to be tried. The factum of relationship inter se amongst the parties is not in serious dispute. However, in respect to commission of crime defence of accused was of total denial and false implication. After going through the evidence adduced in the case, learned Additional Sessions Judge convicted and sentenced the appellants as stated in para 1 above. Hence, these Appeals questioning the correctness of Judgment of conviction and Order of sentence.

7. We have heard learned Advocates for the Appellants and learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the Judgment delivered by the trial Court

and the evidence on record, for the reasons stated below we are of the opinion that the prosecution has proved the case beyond reasonable doubt and the Appeals have not merits.

8. The prosecution case exclusively rests on circumstantial evidence. Needless to state that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. A legal trend would further show that for a conviction in murder case on circumstantial evidence following conditions must be fulfilled :

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, they should not be explainable on any other hypothesis except that the accused is guilty.
3. The circumstances should be of a conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be proved and
5. There must be a chain of evidence so complete as not to leave any reasonable ground

for the conclusion consistent with the innocence of the accused and it must show that in all human probability the act must have been done by the accused and accused alone.

Thus the circumstantial evidence is just like a rope of many strands to stay together. The rope has strength more than sufficient to bear the stress laid upon it though one of the filaments of which it is composed would be sufficient for that purpose.

9. In the present case, the prosecution has examined 11 witnesses and mainly relied upon the following circumstances.

- (i) Jaykishan was seen lastly in the company of accused No.1 Subhan.
- (ii) The dead body was recovered at the instance of accused No.1.
- (iii) The blood stained clothes of accused No.1 were found in the house of accused No.2.
- (iv) The blade of knife was recovered in pursuance to the Memorandum Statement of accused No.1.
- (v) Misleading statement made by accused No.2 Pratima to her own brother Complainant Ashok Kumar.
- (vi) Extra marital relations of accused Nos.1 and 2, motive

behind commission of crime.

(i) **Jaykishan was seen lastly in the company of accused No.1 Subhan.**

10. PW-6 Neha Dudnath Chaurasiya is the sister of deceased Jaykishan. At the relevant time, she was staying in the same chawl but in a different room. It is stated by Neha that on 20.10.2010, at 03:00 a.m.. While she was going to the toilet she saw Jaykishan and accused No.1 going out together. In the morning, Neha went to accused No.2 and inquired about Jaykishan. She was informed by Pratima that Jaykishan had gone for purchase of water tank.

11. The testimony of Neha is supported by the evidence of PW-9 Ashok Kumar. He stated that accused No.2 disclosed to him that Jaykishan had gone with Bablu. It is pertinent to note that PW-6 and PW-9 are the relatives of Jaykishan and accused No.2. It has come on record that accused No.1 was staying with accused No.2 and her family including Jaykishan and three children. These facts together have established that the deceased was last seen in the

company of accused. In such a case, accused have to explain how Jaykishan sustained injuries as deposed by PW-4 Dr. Shyam Jungare. According to the Medical officer, dead body was moderately decomposed. On examination of the dead body, it was found that there was 1 x ½ cm horizontal hole in the chest wall between 4th and 5th ribs. Under Section 106 of the Indian Evidence Act, facts specially within the knowledge of any person are to be proved by that person having the knowledge. In the case on hand, it is proved that the deceased and accused No.1 were last seen together. The prosecution has proved the injuries stated above. According to the Medical officer, those injuries were sufficient to cause death of any human being in the ordinary course of nature. The accused have failed to offer reasonable explanation and thus, it is a clinching circumstance proved against the accused.

(ii) **The dead body was recovered at the instance of accused No.1.**

12. True, the prosecution has not examined panch witnesses in respect to recovery of dead body at the instance of accused No.1. The testimony of investigating

officer PW-11 PSI Shankar Vithu Salunkhe shows that accused disclosed to show the place where the dead body was concealed and took the police to the spot. He discovered dead body hidden in the grass and it was identified of Jaykishan. Nothing substantial is elicited in the cross-examination of the investigating officer to disbelieve his testimony in respect to the recovery of the dead body at the instance of accused No.1. The Memorandum Statement is at Exh.72 and Discovery Panchanama of the dead body is proved at Exh.73.

(iii) **The blood stained clothes of accused No.1 were found in the house of accused No.2.**

13. PW-10 Kasim Shabir Ahmed Shaikh was examined as panch witness on recovery of blood stained clothes of accused No.1 from the house of accused No.2. According to this witness, said clothes were kept in the kitchen of the house of accused No.2. The evidence of PW-10 is further corroborated by PW-9 Ashok Kumar Chaurasiya, who stated that he named accused No.2 before the police as blood stained clothes of accused No.1 were found in her house. It can be seen from the evidence of

PW-10 that he is an independent panch. There was no reason for him to side the prosecution. Therefore, based on his evidence supported by PW-9 Ashok Kumar and the investigating officer, prosecution could establish an additional link in the chain of circumstances proved against the accused.

(iv) **The blade of knife was recovered in pursuance to the Memorandum Statement of accused No.1.**

14. PW-2 Ramchandra Shrikant Yadav was examined on discovery of blade of knife at the instance of accused No.1. He stated that on 25.10.2010, he was called at Nalasopara Police Station. In his presence, accused Subhan made a statement to discover a knife. In pursuance to Memorandum, accused No.1 took them to one dry Nala near Pratibha Industrial Estate and shown the knife. It was seized under panchanama Exh.23. The evidence of this witness is consistent and properly appreciated by the trial Court.

(v) **Misleading statement made by accused**

No.2 Pratima to her own brother Complainant Ashok Kumar.

15. It appears from the evidence of PW-9 Ashok Kumar that initially when he had been to the house of his sister accused No.2 Pratima and inquired about Jaykishan, he was informed by Pratima that Jaykishan had gone for work. Thereafter, Ashok Kumar went to his work place at Malad. He noticed that Jaykishan had not come to the work place. So he again came to Nalasopara and asked accused No.2 Pratima about Jaykishan. That time Pratima told him that Bablu had taken Jaykishan with him for purchase of water tank. The conduct of accused No.2 is relevant. She made a misleading statement in the beginning to her own brother and then changed the same. This misleading statement by Pratima speaks volumes about inter se relations of both the accused as contended by prosecution.

(vi) **Extra marital relations of accused Nos.1 and 2, motive behind commission of crime.**

16. In a case based on the circumstantial evidence motive assumes pertinent significance as existence of

motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the Court on guard to scrutinize the circumstance more carefully to ensure that suspicion and conjectures do not take place of legal proof.

17. In the present case, it is the submission of the prosecution that accused Nos.1 and 2 had illicit relations. To prove this, prosecution examined PW-9 Complainant Ashok Kumar Chaurasiya and also placed reliance on the conduct of accused. In addition, evidence of PW-6 Neha Chaurasiya is relied upon. It is not disputed that both the accused were working together and staying in the same house. The prosecution has brought sufficient evidence on record to show that for six months Jaykishan was at his native place and during this period informant Ashok Kumar was with him. The subsequent conduct of accused No.2 i.e. hiding the truth from her own brother that accused No.1 Bablu had taken Jaykishan with him and recovery of blood stained clothes of accused No.1 from the house of accused No.2 indicate that prosecution case in respect to motive behind commission of crime is not without substance.

18. In view of the above clinching circumstances duly established by the prosecution, we do not find any merit in both the Appeals. Accordingly, Appeals stand dismissed.

19. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Smt.Rohini Dandekar at Rs.5,000/-.

(SMT.I.K.JAIN, J.)

(SMT.V.K.TAHILRAMANI, J.)