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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.175 OF 2014**

The State of Maharashtra

... Applicant

V/s.

Dashrath Rampat Yadav
Age about 27 years,
residing at Ramnagar, Ramwadi
Wagle Estate, Thane
Respondent

....

Mrs. A. S. Pai, APP for Applicant State.

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

DATE : 24th JUNE, 2015.

P.C. : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. This application is preferred by the State, seeking leave to appeal against the judgment of acquittal dated 7th June, 2014 in sessions Case No.420 of 2011, passed by Additional Sessions Judge, Thane. By the said judgment respondent accused is acquitted for the offences punishable under Sections 376 (2) (f), 302, 342, 363, 364, 366 and 201 of the Indian Penal Code.

2. The facts of the case, necessary for deciding this application, may be stated as follows :-

P.W.14 Nadku Yadav is the father of the victim girl, aged about 8 to 9 years. He was residing at Wagale Estate, Thane, alongwith his wife and the daughter. The accused herein was on visiting terms with him.

3. On 22.6.2011, at about 10.30 p.m., P.W.14 Nadku received call from his landlord Pratap Yadav that his daughter was missing. Hence he left the company where he was working. The accused was standing outside the gate of the company with his motorcycle. Both of them then returned to the house and made enquiry with his wife and came to know that his daughter was playing outside the house at about 2.00 p.m and thereafter she did not return. Hence P.W. 14 Nadku and the accused went to the police station and lodged missing complaint No.75 of 2011. Thereafter also they continued to take search of the victim.

4. On 25.6.2011, the dead body of the victim girl was found by the Forest Guard P.W.1 Ananta Gharat in

decomposed condition in Yeur forest. The dead body was kept in one speaker box. P.W.20 Sr. P.I., Vartak Nagar Police Station, went to the spot, took out body from speaker box, carried out inquest panchanama Exh. 25 and sent the said dead body for postmortem examination after it was identified by P.W.14 Nadku Yadav that of his missing daughter. The complaint of P.W.14 Nadku was then recorded accordingly and on his complaint C.R.No.288 of 2011, came to be registered.

5. During the course of investigation, the accused came to be arrested and at his instance, from his house on 28.6.2011, one similar speaker box, jute rope and his clothes came to be seized under panchanama Exh.27. The seized Muddemal articles were sent to the Chemical Analyzer vide requisition Exh.58. The Chemical Analyzer's reports are produced in the case at Exh.62 to 65A. On 3.7.2011, at the instance of accused, one screw driver also came to be seized under panchanama Exh.31. The motorcycle of the accused was seized under panchanama Exh.67. Further to completion of investigation of the case, chargesheet came to be filed in the Court.

6. On the case being committed to the Sessions Court, the trial Court framed charge against accused, for various offences punishable under Sections 376 (2) (f), 302, 342, 363, 364, 366 and 201 of the IPC vide Exh.4. The accused pleaded not guilty and claimed trial. In support of its case, prosecution examined 20 witnesses and on appreciation of their evidence, the trial Court acquitted respondent accused on arriving at a conclusion that the prosecution has failed to prove guilt of the accused beyond reasonable doubt, on the basis of incriminating circumstances, relied against him.

7. Being aggrieved, the prosecution has filed this application seeking leave to file appeal.

8. We have heard learned APP Mrs. A.S. Pai for the State and after going through the record of the case, we are of the opinion that no case is made out by the prosecution for grant of leave to appeal. Our opinion is based on the reasons as under:-

The prosecution case rests on the circumstantial evidence alone. The circumstances relied upon by the

prosecution are :-

- i) The victim was last seen in the company of the accused.
- ii) The accused was seen carrying speaker box and the dead body of the victim was subsequently discovered in speaker box.
- iii) Recovery of similar speaker box and jute rope at the instance of accused
- iv) Previous and subsequent conduct of the accused.

9. At the outset itself, it has to be stated that though the prosecution has charged the accused for the offences punishable under Sections 376(2)(f), 302 342, 363 and 364, 366 of the IPC, there is absolutely no iota of evidence on record against the accused to prove these offences. Admittedly there is no eye witness, who has seen the accused either wrongfully confining and kidnapping the victim girl and committing rape on the victim. The evidence of P.W.10 Dr. Bobade, who has conducted postmortem on the dead body of the victim reveals that as the dead body was in decomposed condition, he cannot give opinion whether victim was

subjected to sexual assault and whether there were injuries on the private part of the victim or not. The Chemical Analyzer's reports produced on record by the prosecution also do not reveal that any semen stains were found on the vaginal swab, vaginal smear or on the clothes of the victim. Even the CA report of the clothes of the accused is also silent about the presence of any semen stains. Therefore, in the absence of any evidence on record, the trial Court has rightly acquitted the accused for the offences punishable under Sections 376(2)(f), 342, 363, 364, 366 of the IPC.

10. As regards the offences under Section 302 and 201 of IPC, though evidence of P.W.10 Dr. Bobade, reveals that the cause of victim's death was asphyxia due to strangulation, so far as involvement of the accused in the homicidal death of victim is concerned, there is absolutely no connecting evidence on record.

11. In respect of the *last seen* circumstance, the prosecution has relied on the evidence of P.W.11 the neighbour Smt. Sinder. According to her evidence, on the date of incident at about 2 to 2.30 p.m., she saw the accused

bringing one girl aged about 8 to 9 years. However, police have not verified from her after showing the photograph of the victim that she has seen the accused with victim. Hence, merely because, she has seen some girl of 8 to 9 years in the company of the accused, it cannot lead to unerring inference that the deceased was *last seen* with the accused. Moreover, this witness has not disclosed about the said fact to anyone, even after she came to know that the victim girl was missing and reported to be murdered.

12. The second circumstance relied upon by the prosecution is that of *accused carrying speaker box*. About this circumstance, the prosecution has examined P.W.12 Maina and has also relied upon the evidence of P.W.11 Sinder. Both of them have stated that they have seen the accused carrying the speaker box. However, as the carrying of speaker box is by itself not an incriminating circumstance. It is also pertinent to note that P.W.1 Sinder is having inimical terms with the accused as she had quarrel with him on account of accused listening music in loud volume.

13. The third circumstance relied upon by the

prosecution is that of recovery of *similar speaker box, jute rope and the clothes of accused* from his house. In our considered opinion, this circumstance alone cannot in any way help the prosecution to prove guilt, unless there is corroborating evidence on record. It is apart that the prosecution has failed to prove this circumstance also beyond reasonable doubt.

14. The prosecution has then relied upon on the evidence of P.W.13 Balikadevi Yadav to prove the character of the accused that he was using filthy language to her and teasing and touching inappropriately to her and her daughter. In our considered opinion, this evidence relating to character or conduct of the accused cannot be admissible also. As regards the subsequent conduct of accused of attempting to leave for his native place, the evidence on record contrary proves that he was with P.W.14 Nadku while taking search of the victim. In such situation, this conduct also cannot be called as incriminating piece of evidence .

15 To sum up, therefore, in our opinion, the prosecution has failed to prove any of the incriminating

circumstances alleged against accused by bringing cogent and convincing evidence on record, far remained to establish the chain of circumstances so complete that from proved circumstances no other inference except that of guilt of the accused can be drawn. In such situation, the view taken by the trial court of acquitting accused of all the offences charged against him being the probable and the only view, no case is made out by the prosecution for grant of leave to appeal. Hence leave is refused. Application is dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

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