

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 99 OF 2013
CRIMINAL APPEAL NO. 109 OF 2013
CRIMINAL APPEAL NO. 120 OF 2013**

CRIMINAL APPEAL NO. 99 OF 2013

Savita Kamlakar Kokate	..	Appellant
Age. 34 years, Occ. Household,		[original
R/o. Dastapur, Tal. Lohara,		accused
Dist. Osmanabad.		No.3]

Versus

The State of Maharashtra	..	Respondent
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Mr.Sudarshan J. Salunke, Advocate for the appellant.
Mr.K.S. Patil, A.P.P. for respondent/State.

**WITH
CRIMINAL APPEAL NO. 109 OF 2013**

Devidas Walchand Rathod	..	Appellant
Age. 47 years, Occ. Agri,		[original
R/o. Tugaon Chaugule Wasti, Tal. Omerga,		accused
Dist. Osmanabad.		No.2]

Versus

The State of Maharashtra	..	Respondent
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Mr.B.R. Survase, Advocate for the appellant.
Mr.K.S. Patil, A.P.P. for respondent/State.

**WITH
CRIMINAL APPEAL NO. 120 OF 2013**

Kamlakar s/o. Ram Rathod Age. 44 years, Occ. Agril, R/o. Tugaon, Tal. Omerga, Dist. Osmanabad.	.. Appellant [original accused No.1]
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Versus

The State of Maharashtra	.. Respondent
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Mr.R.A. Jaiswal h/f. Mr. N.S. Ghanekar, Advocate for the
appellant.

Mr.K.S. Patil, A.P.P. for respondent/State.

**CORAM : A.V.NIRGUDE &
INDIRA K. JAIN, JJ.
DATED : 18.03.2016**

ORAL JUDGMENT : [PER : A.V. NIRGUDE,J.] :-

1. All these three appeals can be disposed of by this common judgment. All these appeals challenge judgment and order dated 25.02.2013 passed by learned Sessions Judge, Omerga in Sessions Case No.123 of 2011. The appellants herein were accused before the Trial Court. Learned Sessions Judge convicted all the accused for offences punishable under section 302 read with section 120-B of the Indian Penal Code and sentenced them to suffer life imprisonment and fine of Rs.50,000/- each with default clause.

2. The prosecution case in brief is as under. The parties to the appeal would be referred as per their status in the lower Court :-

. Deceased Vithal was father-in-law of accused No.3, who is a widow. Accused No.1-Kamlakar was cultivating land belonging to deceased Vithal on contract basis. He had illicit relations with accused No.3-Savita. Accused No.2-Devidas was a relative of accused No.1. Vithal had decided to take away his land from cultivation of accused No.1-Kamlakar. To this proposal, accused No.3-Savita had strong objection. The accused, thus, had reason to get aggrieved and it is stated that they had motive to eliminate Vithal. On 23rd May, 2011 early in the morning Vithal's dead body was found near village Borman Tanda. It was found that Vithal was Murdered. He had sustained many injuries. Police was informed. They registered offence and started investigation. On 25th May, 2011 the accused were arrested. After completion of investigation, charge-sheet was sent and as said above after trial as many as 15 witnesses were examined and the accused were convicted.

3. Learned Counsel for appellant in Criminal Appeal No.99 of 2013 Mr. Salunke asserted that this was a case

of no evidence and yet learned Sessions Judge convicted his client and others. He took us through entire record and now we are inclined to accept Mr.Salunke's contention that this is a case that there was no evidence at all. Yet, in order to complete formality of judgment, we would make a gist of relevant circumstances that are brought on record.

4. P.W.15-Vithal Kale (ASI) stated that the police of Naldurg Police Station received information on 23rd May, 2011 in the morning that a dead body was lying near village Boraman Tanda. Police then went there and after inquest, sent dead body for post-mortem. Doctor opined that the deceased died due to strangulation. The post-mortem report on record has gone on record uncontroverted. It shows that Vithal was first assaulted and thereafter strangled with rope like object. With this evidence on record, the prosecution could establish that Vithal died homicidal death.

5. P.W.5-Bhaskar and P.W.13-Bandu, who are near relatives of deceased Vithal, asserted that there was illicit relation between accused No.1-Kamlakar and accused No.3-Savita. They had seen accused No.1-Kamlakar visiting accused No.3-Savita's house.

6. We have no difficulty in accepting this part of prosecution case. Such relationship is not secret in villages and therefore we would not disbelieve the witnesses when they stated that accused No.1-Kamlakar and accused No.3-Savita had illicit relation. These two witnesses also stated that Vithal had told that he was intending to take away land which was given to accused No.1-Kamlakar for cultivation and the proposal of staunchly opposed by accused No.3. On account of this, there was quarrel between deceased Vithal and accused No.1-Kamlakar and accused No.3-Savita together. We are inclined to believe this part of the prosecution case also. We are, therefore, inclined to even believe that the accused had developed a grudge against deceased Vithal.

7. In has come in the deposition of P.W.5-Bhaskar that on 21.05.2011 at about 5.30 p.m. he entered the house of accused No.3 and saw accused No.1-Kamlakar and accused No.2-Devidas sitting with her and discussing something. He said that as soon as he entered the house they stopped talking. This circumstance according to the prosecution would amount to conspiracy being hatched amongst the accused for committing Vithal's murder. We are not inclined to accept this conclusion of the prosecution though we are inclined to believe prosecution

witness No.5 that on 21st May, 2011 he had an occasion to go inside the house of accused No.3-Savita and had occasion to see accused No.1 - Kamlakar and accused No.2-Devidas sitting with her discussing something. This witness did not hear the discussion. It is, therefore, hazardous to make guess that the accused were conspiring and plotting Vithal's murder. On the basis of this piece of evidence no one can draw such conclusion.

8. The next piece of evidence on which prosecution placed reliance is the fact that after arrest the Investigating Officer took in charge the clothes of accused No.1 - Kamlakar and accused No.2 - Devidas. These clothes were then sent for medical analysis and then it was found that they were stained with human blood of group "A". The victim's blood group was also "A". Unfortunately for the prosecution, the blood group of accused No.1 - Kamlakar and accused No.2-Devidas thus cannot conclusively connect them to the murder.

9. The last circumstance of the prosecution case is the fact that near the dead body of Vithal, they found piece of key-chain. It was a peculiar key-chain having word "Raje" inscribed on it. P.W.5-Bhaskar stated that he had seen similar key-chain on accused No.1-Kamlakar's

motor-cycle. The prosecution, however, did not bring on record that the part of the key-chain that was found on the spot was belonging to accused No.1 only. No witness came forward to depose that the key-chain found at the scene of occurrence was belonging to accused No.1-Kamlakar. The prosecution, thus, placed reliance on their guesswork. The prosecution tends to believe that the key-chain that was found on the spot could be belonging to accused No.1-Kamlakar. The Investigating Officer, could not collect sufficient circumstances to form a chain to connect the accused with homicidal death of Vithal. We are, therefore, allowing the appeals. Hence, following order is passed :-

- i. All the Criminal Appeals are allowed.
- ii. The judgment and order passed by learned Sessions Judge, Osmanabad in Sessions Case No.123 of 2011 on 25.02.2013 is quashed and set aside.
- iii. The appellants/original accused are acquitted for the offences with which they were charged.
- iv. Accused Nos. 1 & 2 are in custody. They be released from custody, if not required in any other case.

v. Accused No.3 is on bail. Her bail bond stands cancelled.

vi. Fine amount, if deposited, shall be refunded to the appellants/original accused.

[INDIRA K. JAIN,J.]

[A.V.NIRGUDE,J.]