

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

CRIMINAL APPEAL NO. 301 OF 2016

Syed Eraj Arshad s/o. Syed Hashmi Ali .. Appellant
Age. 50 years, Occ. Business, [original
R/o. Gadipura, Nanded. accused]
*[At present
Nashik Road Central Prison,
Nashik, Taluka & Dist. Nashik]*

Versus

The State of Maharashtra .. Respondent
Through Police Station,
Bhagyanagar, Nanded.

Mr. R.S. Deshmukh h/f. Mr. S.S. Kazi, Advocate for the
appellant.
Mrs. P.V. Diggikar, A.P.P. for respondent/State.

**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA, JJ.
DATED : 18.07.2016**

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

1. This appeal challenges judgment and order dated
18.04.2016 passed by the learned Additional Sessions

Judge-4, Nanded, in Sessions Case No.203 of 2013 convicting sole accused/appellant for offence punishable under section 302 of the Indian Penal Code. The appellant was sentenced to suffer life imprisonment and to pay a fine of Rs.1000/- with a default clause.

2. The prosecution alleged that the accused had illicit relations with victim-Vidya and due to dispute that arose between them, he committed her murder on 10.06.2013 at Nanded.

3. The prosecution adduced evidence of twelve witnesses and the learned Sessions Judge of the Trial Court held that the prosecution could prove the case of murder through circumstantial evidence.

4. The learned Counsel for the appellant asserted that the circumstances required to prove the offence against the accused are not proved by the prosecution to prove its case beyond reasonable doubt and therefore the

appeal deserves to be allowed.

5. The question, therefore, is - what circumstances are proved against the appellant/accused and whether they are sufficient to convict him for any offence?

6. P.W.3-Mangalbai in our view is the main prosecution witness. She happens to be the victim's mother. She and victim-Vidya used to stay in one house located in Udaynagar area of Nanded city. Vidya was a spinster, aged about 40 years. She was working as a clerk in a school at Purna. She used to travel to Purna everyday to attend her job. Victim-Vidya's father Nagorao had two wives. He had control over management of two schools at Purna. He had two houses, one in Nanded in which the victim and her mother stayed and where incident took place and another at Purna, in which he stayed with his second wife and her son-Rahul (P.W.2). P.W.3-Mangalbai stated that on 10.06.2013 at about 8.30 a.m. she was about to leave her house for going to Parbhani as

she had some work in bank at Parbhani. At the gate she met the accused entering the house. The accused told her that he was to go to Nagpur and before he could go there, he wanted to meet Vidya and P.W.3-Mangalbai. Vidya was alone in the house. P.W.3-Mangalbai left for Parbhani. At about 3.30 p.m. she came back. She found that door of the house was locked from inside. Therefore, she went to enter the house from rear door. She found rear door open. She entered the house and saw Vidya's dead body on the floor. She raised alarm. She made phone calls to her step-son Rahul, Vidya's friend Vaishali and one Ashok Paikrao. She also made phone call to her husband i.e. Vidya's father. She then took Vidya to nearby hospital, where Doctor declared Vidya as dead. She noticed some injuries on throat, cheek and knee of the dead body. She also found *Odhani* lying near the dead body. She then realized that Vidya's mobile phones were missing. She made a call on her mobile phone. The accused picked up the phone call and told her that he was going to Nagpur and he had no concern with them. The accused then

switched off the mobile phone. Rahul (P.W.2), thereafter, lodged police complaint. She also alleged that she found cash amount of Rs. 4 to 5 lakhs missing from her house.

7. Rahul is P.W.2. He disclosed in his deposition that he knew that his step-sister Vidya was having love affair with the accused and that the accused was threatening Vidya etc. On 10.06.2013 he received phone call from Vaishali (P.W.4) – friend of Vidya- and learnt that Vidya was dead. He and his mother and other elders rushed to Nanded. He saw Vidya's dead body in their house. He also noticed some injuries on Vidya's body. He then made phone call to accused and asked him as to where he was. The accused informed him that he was carrying mobile phone belonging to Vidya. He then made complaint to police.

8. P.W.4-Vaishali's deposition is not quite relevant. She simply stated that she was friend of Vidya. She also disclosed that she met Vidya a day prior to her

death. She learnt from third person about Vidya's death. In other words, she did not state as to whether she received phone call from P.W.3-Vidya's mother and Rahul - P.W.2-Vidya's step-borther.

9. P.W.7 is one Sanjeev Kumar, who stated that he was related to Vidya and 15 days prior to the incident, he had occasion to meet Vidya. At that time Vidya told him that she had love affair with the accused and that she and the accused would marry soon. She also told him that she had sex with the accused and the accused had taken her nude photos using his mobile phone camera. She further told him that the accused was threatening her that he would show said photographs to people and defame her. In addition to this some Text Messages on mobile phone of the accused and the victim have been proved.

10. In the light of above material, we can find following circumstances.

11. First circumstance is that the accused had motive to commit this offence. There is no denial even on his part that he had relationship with Vidya. The text messages that were exchanged between the accused and the victim-Vidya are admitted evidence. The accused admitted contents of such messages. On perusal of these messages, we found that all was not well between the couple. Vidya was asking the accused that he should divorce his wife and should marry her. In other words, she was not ready to become his second wife. On account of this, there was tension between the couple. The text messages do not disclose any demand from the accused side for transferring any property in his favour etc. Therefore, the prosecution could not prove that the accused demanded the property from Vidya and since she was not willing to part with her property, he killed her.

12. Second circumstance according to the prosecution is that the accused was seen lastly together with the victim on 10.06.2013 at about 8.30 a.m. P.W.3-Mangalbai

stated that she met the accused at the gate of her house. Accused then entered the house where Vidya was alone. The question is whether this disclosure inspires confidence. The complaint of this incident was given to police at about 11.30 p.m. on that day. But in this complaint, there is no mention of this incident. P.W.2-Rahul is the complainant and admittedly P.W.2-Rahul met P.W.3-Mangalbai prior to lodging of the complaint. As soon as P.W.2-Rahul learnt about the incident, he rushed to Nanded. He, his father-Nagorao, his mother and his step-mother P.W.3-Mangalbai were all together till lodging of the complaint. During this time, P.W.3-Mangalbai would have certainly disclosed that she had occasion to meet the accused in the morning at her house. It was natural for P.W.3-Mangalbai to disclose this incident to all her family members, so that would have been used as one of the circumstances against the accused. If this important incident is not found in the F.I.R., it can be concluded easily that P.W. 3 Mangalbai did not disclose this piece of information to anyone till 11.30 p.m. on that day.

Surprisingly, during investigation P.W.3-Mangalbai's statement was not recorded soon after the F.I.R. was lodged. Her statement was recorded seven days after the incident. In this statement, it seems, she for the first time disclosed that she had occasion to meet the accused on that day in the morning at her house. This circumstance, thus appears to be a planted piece of evidence. This piece of evidence is not reliable and we discard it. There are no other circumstances proved against the accused, which leads to establish guilt of the accused beyond reasonable doubt. The most important circumstance of last seen together has not been proved.

13. On due consideration of evidence on record, we are of the view that reasons and findings recorded by the learned Additional Sessions Judge are not sustainable in law. In a case based upon circumstantial evidence, the evidence must satisfy the following tests :-

“(1) the circumstances from which an inference of guilt is sought to be drawn must be

cogently and firmly established;

(2) those circumstances, should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulative, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

14. It is settled position in law that in a case based on circumstantial evidence, prosecution has to prove that the circumstances on the basis of which conclusion of guilt is to be drawn, must be fully established and same must be of conclusive in nature and must include all possible hypothesis except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused and chain of circumstances must be complete, so as not to leave any

reasonable ground for a conclusion consistent with the innocence of the accused.

15. On analyzing reasons and findings recorded by the trial Court in the light of evidence as discussed in foregoing paras, we are of considered opinion that there is no circumstantial evidence which establishes chain of circumstances to conclusively establish the guilt of accused and rules out his innocence.

16. In this view of the matter, the reasons and findings recorded by the Trial Court are not sustainable in law. In the result, the appeal deserves to be allowed by extending the benefit of doubt to accused. We, therefore, pass the following order :-

O R D E R

- i. The Criminal Appeal is allowed.

ii. The judgment and order dated 18.04.2016 passed by learned Additional Sessions Judge-4, Nanded in Sessions Case No.203 of 2013 is hereby quashed and set aside.

iii. The appellant is acquitted of the offences with which he was charged. Fine amount, if paid by the appellant be refunded to him.

iv. The appellant be set at liberty, if not required in any other offence.

[V.L.ACHLIYA, J.]

[A.V.NIRGUDE, J.]