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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.268 OF 2014

Asgar Ali Mohd. Mumtaz Mansuri	]	
age: adult, residing at: Near Hindustan Mill	]	.. <u>Appellant</u>
Opp. Bhara Petrol Pump	]	(Original
Maulana Azad Road	]	Accused)
Agripada, Mumbai	]	

V/s.

The State of Maharashtra	]	
At the instance of Agripada Police Station	]	..Respondent
Mumbai	]	

Mrs. Farhana Shah, appointed advocate for the Appellant.
Mr. H. J. Dedia, APP for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH FEBRUARY 2016.

ORAL JUDGMENT: [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. Appellant, who stands convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous

imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for three months, by the judgment and order dated 3RD May, 2008, by the Additional Sessions Judge, Greater Bombay in Sessions Case No.155 of 2007, by this appeal challenges his conviction and sentence.

2. Brief facts of the appeal can be stated as follows :-

Deceased Asgar Mansur was the brother of P.W.1 Murtuza. P.W.5 Shabnam was initially in love with the appellant. As the appellant refused to marry with her, she started having love affair with deceased. On that count, the appellant was annoyed with the deceased and has once scolded and threatened to kill him. On 12.11.2006, at 11.15 p.m., deceased was standing near Taxi bearing No.MH-01-G-2033 parked at Maulana Azad road, chitchatting alongwith his friend P.W.8 Mohmed Gulab Idris. At that time the quarrel ensued between the deceased and the appellant in respect of relations of deceased with P.W.5 Shabnam. The appellant again threatened deceased. P.W.2 Shahanaj, the mother of deceased came there at about 12.00'O clock in the night and requested the deceased to come to sleep in the house. At that time she found appellant was present with the deceased. Deceased, however, preferred to sleep in the taxi. Hence, his

mother returned to her home. On that night at about 4.45 a.m., P. W.3 Saifunissa Mohd came to the house of P.W.2 Shahanaz and informed her that her son Asgar was lying in injured condition on the footpath near the taxi. Hence both P.W.1 Murtuza and his mother P.W.2 Shahanaj went there and found that Asgar has already succumbed to the injuries. One blood stained stone was lying near head of the deceased and there were injuries to his nose and mouth.

3. P.W.9 Constable Koyande attached to Agripada Police Station, on receipt of information that one injured person was lying in the pool of blood, in front of Rangwala compound, reached there. P.W.12 PSI Pathan also reached there with his mobile van. Inquest panchnama (Exh.23) of the dead body was performed by P.W.12 PSI Pathan and he sent the dead body for postmortem examination. Thereafter in between 7 to 8 a.m., PSI Jadhav also carried out the spot panchnama and from the spot, he seized the blood stained stone lying there, under panchnama (Exh.14)

4. P.W.1 then lodged complaint (Exh.8) against the appellant. On his complaint C.R.No.259 of 2006 was registered against the appellant. On the same day, appellant was arrested and the blood stained clothes on his

person came to be seized under panchnama (Exh.22). The blood stained clothes of the deceased produced by one constable were also seized under panchnama Exh.16. All the seized muddemal articles were referred to Chemical Analyzer. The Chemical Analyzer's reports are produced in the case at Exh.42 to 49. Further to completion of investigation, P.W.14 PI Lohar filed chargesheet in the Court against appellant.

5. On committal of the case to the Sessions Court, trial Court framed charge against appellant vide Exh.20. Appellant pleaded not guilty and claimed trial. In support of its case, the prosecution examined in all 14 witnesses and on appreciation of their evidence, trial Court was pleased to hold the guilt of the appellant to be proved beyond reasonable doubt and convicted and sentenced him as aforesaid.

6. In this appeal, we have heard learned counsel for the appellant, who has challenged the impugned judgment and order of the trial Court, on the ground that incriminating circumstances alleged by prosecution against appellant, in the instant case are not established by cogent and reliable evidence and they are not forming a complete chain leading to inference of the guilt of appellant alone. Per contra, learned APP has supported the

judgment of the trial Court, pointing out various incriminating circumstances proved on record by prosecution with the help of convincing, cogent and reliable evidence.

7. In our considered opinion, before adverting to the rival submissions advanced by learned counsel for appellant and learned APP, it would be useful to refer to the evidence on record.

Indisputably, this case is based on circumstantial evidence alone. The circumstances relied upon by prosecution are as follows :-

- i. Homicidal death.
- ii. Motive.
- iii. Last seen.
- iv. Recovery of appellant's clothes with stains of deceased's blood group.

8. To prove the first circumstance of, “*homicidal death*”, the prosecution has relied upon the inquest panchnama (Exh.23) proved through the evidence of P.W.12 PSI Pathan. The inquest panchnama proves presence of injuries on the dead body of the deceased. Further there is evidence of P.W.10 Dr. Sukhdeve, who has conducted postmortem examination (Exh.20). On external examination, he found following

injuries :-

- ➔ Injury No.1: Reddish abrasion present over right shoulder region more nearly the neck region of size 4 x 2.
- ➔ Injury No.2 Reddish abrasion present 3 cm away and lateral to injury No.1 of the size 1 cm x 1 cm.

9. On internal examination, he found head was slightly compressed on both sides. There were depressed communicated fractures on both the temporal bones which has extended down to the base of skull and separately horizontally whole middle. Craniumfossa of total length 22 cm. Brain was showing subdural haemotoma on left temporo parietal region of size 6 cm x 4 cm with weight 40 gms reddish with 3 laceration and the base of both temporal region size 1 cm x 2cm, 2 x1 cm, 1x1 cm, and contusion of the size 2 cm x 1 cm over the brain stem. Base of the brain was filled with blood clots.

10. According to him, the cause of death was head injury; hence unnatural and homicidal. The said injuries are noted in the postmortem report at Exh.20. In his opinion the injuries are possible by Muddemal Article No.1 the stone. There is absolutely no cross examination of this witness except for putting suggestion that the injuries can be possible by

accidental fall, which suggestion is denied by him.

11. The second circumstance relied upon by prosecution is, “*motive*”. To prove motive on the part of appellant to commit murder of the deceased, prosecution has relied on the evidence of P.W.5 Shabnam. She has deposed that she was having friendship and was in love with the appellant. However, as the appellant refused to marry with her, she started having friendship and love with the deceased. She was visiting the house of deceased and meeting the deceased. This fact is deposed to by P.W.1 Murtuza, the brother of the deceased and P.W.2 Shahanaz, the mother of the deceased also. According to evidence of P.W.5 Shabnam, as she developed relations with the deceased, appellant became jealous, even scolded her and also quarrelled with her. Further he has also threatened her that he will kill the deceased. It is further deposed by her that on the date of incident, appellant met her in the evening at 4.00 p.m. and threatened to kill the deceased and hence she went to the house of deceased and narrated him about the threat given by the appellant. However, deceased ignored the said threat. In her cross examination, it is again brought on record that as the appellant refused to marry with her though she was in love with him, she

developed love relations with the deceased. Her evidence, thus proves that on account of her relations with the deceased, the appellant was having grudge against the deceased and he has also threatened to kill the deceased.

12. As regards the third circumstance of, “*last seen*”, the evidence of P.W.1 Murtuza and P.W.2 Shahanaz goes to prove that on the date of incident, after taking dinner, deceased went to his taxi which was parked at Maulana Azad Road. His mother P.W.2 Shahanaz went to call him to the house at about 11.15 p.m. She asked him to return to the house. However, deceased stated that he will sleep in the taxi or on the footpath. She then took his bedding to him at about 12.00 'O clock in the night. At that time, she found that the appellant was very much present with her son. There is again nothing in her cross examination or in the cross examination of P.W.1 Murtuza to disbelieve them or to discard their evidence. Their evidence is also supported and corroborated from the evidence of P.W.8 Mohd. Gulab Idris Shaikh, the friend of deceased and the appellant. According to his evidence, on that night, he was sitting alongwith the deceased and the appellant on the dickey of the taxi near footpath. It was about 11.15 p.m. There was quarrel between deceased and the appellant on account of the

relations of the deceased with P.W.5 Shabnam. In the quarrel, appellant had threatened to kill the deceased. Though the mother of the deceased P.W.2 Shahanaz came to call him to the house, deceased preferred to sleep in the taxi and hence her mother brought his bedding. The evidence of these three witnesses, thus, go to prove that the deceased was, last seen with the appellant and some quarrel had ensued between them in respect of relations of deceased with the P.W.5 Shabnam. On the same night at 4.45. a.m. P.W. 2 Shahanaj came to know from P.W.3 Saifunnisa that the deceased was lying in injured condition on the footpath

13. As regards the last circumstance of, *“recovery of blood stained clothes of appellant”* there is evidence of P.W.11 Mohd Yasin the panch to the arrest panchnama and of P.W.13 PI Pradhan that the appellant was arrested on the same day at about 1.50 p.m. while he was trying to escape. The clothes on his person were seized under panchnama Exh.22. The jean pant which he was wearing was having blood stains at the bottom. As deposed by P.W.14 PI Lohar, the clothes of the deceased, clothes of appellant and blood stained stone which were seized under panchnama were sent to Chemical Analyzer. As per Chemical Analyzer's report(Exh.40) , the

blood stains of blood group “A” were found on the stone, on the clothes of the deceased and also on the jean pant of the appellant. No explanation at all is offered by the appellant about presence of the stains of blood group of deceased on his clothes. In our considered opinion, this is one more conclusive incriminating circumstance against appellant.

14. To sum up, therefore, it has to be held that the prosecution has succeeded in establishing the chain of incriminating circumstances against the appellant by bringing cogent, reliable and convincing evidence on record, thereby proving the guilt of appellant beyond reasonable doubt. The appeal, therefore, holds no merit, hence stands dismissed.

15. The fees payable to the learned counsel from Legal Aid Committee, appointed to represent the appellant, in this appeal, are quantified at Rs.5,000/-

[ACTING CHIEF JUSTICE]

[DR. SHALINI PHANSALKAR-JOSHI, J.]