

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

**CRIMINAL APPEAL NO. 341 OF 2014.**

**APPELLANT:** Maroti @ Ramesh Pralhad Panzade,  
aged about 32 years, Occu: Labour work,  
R/o Juna Nandura, Distt.Buldhana,  
presently detained in Central Prison,  
Amravati.

: **VERSUS** :

**RESPONDENT:** State of Maharashtra,  
through Police Station Officer,  
Police Station Old City Akola,  
Tq. and Distt.Akola.

-----  
Mr.V.R.Thote, Advocate (appointed) for the appellant.  
Mr.C.A.Lokhande, Additional Public Prosecutor for the State.  
-----

**CORAM:** B.R.GAVAI AND  
V.M.DESHPANDE, JJ.  
**DATE:** 11<sup>th</sup> JULY, 2016.

**ORAL JUDGMENT** (Per V.M.Deshpande, J.)

1. Being aggrieved by the judgment and order of conviction, dated 10<sup>th</sup> of December, 2012, in Sessions Trial

No.156 of 2011, by which the learned Additional Sessions Judge-2, Akola convicted the appellant for the offence punishable under Sections 302 and 394 of the Indian Penal Code and directed to him to suffer imprisonment for life and to pay a fine of Rs.100/- on account of his conviction for the offence punishable under Section 302 of the Indian Penal Code, whereas he is directed to suffer rigorous imprisonment for ten years in respect of his conviction for the offence punishable under Section 394 of the Indian Penal Code and also directed to pay a fine of Rs.100/- and in default of payment of fine to suffer simple imprisonment for one year.

2. We have heard Shri V.R.Thote, the learned counsel for the appellant and Shri C.A.Lokhande, the learned Additional Public Prosecutor for the State.

3. A Charge was framed against the appellant that on 3<sup>rd</sup> of July, 2011 he has committed murder of one Suman Bhagwanrao

Katore by strangulating her and also he has committed robbery of gold beads and Dorle from her person. The appellant denied the Charge and claimed for his trial. The prosecution has examined in all nine witnesses.

4. The First Information Report is lodged by Krishna Mehare (PW 1). The FIR is lodged against unknown person. Deceased Suman was working in his agricultural field. As per his evidence, on 3<sup>rd</sup> of July, 2011, he had been to his agricultural field at about 9.30 am. His evidence shows that he left his agricultural field, that time, Suman was present in the field. However, when he returned at 5.30 pm he could not locate her, however, her dead body was found in one small water tank. He immediately informed the matter to the Police. As per his evidence, a field adjacent to his agricultural field belongs to his brother Prushottam Mehare (PW 5) and the present appellant is his employee.

From the evidence of PW 1, it is clear that he is not an eye witness to the incident nor he has seen the appellant with the

deceased.

5. PW 2 is Sanjay Umak. This prosecution witness is neighbour of the appellant. According to this witness, the appellant told him that he wishes to mortgage some gold ornaments. Therefore, this prosecution took the appellant in 'Renuka Jewellers' which is owned by Ashok Anasane (PW 4). According to the evidence of Sanjay Umak (PW 2), in the jewellery shop he gave identification of the present appellant and thereafter the appellant kept gold ornaments with the jewellers and obtained Rs.2600/- from gold-smith.

According to the prosecution, the ornaments were robbed by the present appellant. There is a material discrepancy in the evidence of Sanjay Umak (PW 2) and evidence of Ashok Anasane (PW 4). The evidence of Ashok Anasane (PW 4) who runs 'Renuka Jewellers' shows that on 7<sup>th</sup> of June, 2011, PW 2 Sanjay Umak came to his shop and he told him that his wife is suffering from illness and therefore he is in need of money and

then he handed over six beads and 2 dorlas and therefore he gave Rs.2800/- to him. His evidence is completely silent about the presence of the present appellant at his shop. Not only that, he even does not refer his name. The ornaments are seized from this 'Renuka Jewellers' by the police under seizure memo (Exh.12). In view of the material discrepancy it is hard to believe that it is the appellant who reached to PW 4 Ashok Anasane and pledged ornaments.

6. PW 3 Bhawan Katore is the husband of the deceased. He was informed by PW 1 Krishna Mehare that his wife is not feeling well therefore he reached to the house of Krishna (PW 1) where he was informed that Krishna was already proceeded to Police Station. According to this witness, when the dead body was handed over to him that time gold Mangalsutra was not on her body.

7. PW 5 is Purushottam Mehare. He is the brother of the

first informant Krishna Mehare. From his evidence it is clear that the appellant was working in his agricultural field. His evidence shows that on 3<sup>rd</sup> of July, 2011 at about 12 noon he was in his land and that time the appellant was with him and Suman was providing water to Soyabean crop in the land of Krishna. According to him, on 8<sup>th</sup> of July, 2011, his statement was recorded by police. There, the appellant was called and there he admitted that he has killed Suman. The Arrest Panchanama of the appellant is at Exh.30. It shows that he was arrested on 9<sup>th</sup> of July, 2011. Thus, it is clear that after the confession made in front of the police by the appellant when he was called and arrested, such confession is clearly inadmissible in law.

8. PW 6 Rajesh Mehare is the son of PW 5 Purushottam. His evidence shows that at 5 pm. when he came to land he found that the appellant was coming from the land of his uncle. The prosecution is also relying upon the evidence of PW 8 Manohar Gawai, a panch witness, in whose presence the memorandum

statement of appellant (Exh.23) was recorded, by which he agreed to show the place where he had thrown the dead body. The place is same from where the dead body was found to be lying on the day when the First information Report was lodged. Therefore, the police were already know of the place. In that view of the matter, such evidence is hardly of any help to the prosecution.

9. It is settled principle of law that when the case of the prosecution is based on circumstantial evidence, the prosecution must establish all pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as it would permit no conclusion other than one of guilt of the accused. The circumstances cannot be of any other hypothesis. It is also well settled that suspicion, however grave it may be, it cannot be substituted for a proof.

In the present case, the evidence of the prosecution is so weak as could be seen from the preceding paragraphs that it will be hazardous to maintain conviction on the settled principle of law

as discussed herein above. That leads us to pass the following order.

**-ORDER-**

The Criminal Appeal is allowed.

The judgment and order of conviction convicting the appellant/accused for the offence punishable under Sections 302 and 394 of the Indian Penal Code are quashed and set aside. The appellant is acquitted of the said offence.

The appellant be set at liberty if not required in any other Crime.

Fees to be paid to the learned counsel appointed by the Legal Aid to represent the appellant is quantified at Rs.5000/-.

JUDGE

JUDGE

chute

**CERTIFICATE**

I certify that this Judgment/order  
uploaded is true and correct copy of original signed  
judgment/order.

Uploaded by : P.Z.Chute.

Uploaded on: 19/7/2016.