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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.551 of 2015**

Mahesh Jagan Surti	]	
age about 32 years	]	<u>Appellant</u>
residing at Saravali Jakat Naka	]	Original
Surti Pada, Dahanu,	]	accused.
District Thane, Maharashtra	]	

V/s.

The Union Territory Administration	]	<u>Respondent</u>
of Daman and Diu	]	Original
Through I/c Daman Police Station, Daman	]	complainant

Mrs. Nasreen S.K. Ayubi, appointed advocate
for the Appellant.

Mrs. Poornima H. Kantharia, A.P.P., for the
Respondent- U.T..

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

DATE : 22nd AUGUST, 2017.

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

1. In this appeal, an exception is taken to the judgment

and order dated 19th September, 2011 of Session Judge, Daman, in Session Case No.13 of 2006; whereby the appellant is convicted for the offence punishable under Sections 302 and 201 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.2,000/-, in default to suffer R.I. for three months, on the first count, and R.I. for three years and fine of Rs.1,000/-, in default to suffer R.I. for one month, on the second count.

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

P.W.1 Pravina is the wife of the appellant. They had three daughters by name, Divya - aged 8 years, Nisha- aged 5 years and Khushi aged 1 ½ years. On 23.4.2006, they had gone to a fair, near Mahalaxmi Temple, in the morning at about 9.00 a.m., on the scooter. After taking Darshana of "Mahalaxmi Goddess", appellant took his daughters by name Divya and Nisha towards giant wheel. P.W.1 Pravina had with her, the youngest daughter Khushi. She waited for the appellant to return with their two daughters. However, the appellant did not return. She took search and returned to the house alongwith Khushi. She then

informed about the same to P.W.5 Ravi Surti, the brother of the appellant. The appellant, however, returned to the house, on the next day, in the evening. On enquiry with the appellant about the daughters, he gave evasive replies by stating that he met with an accident in which both the daughters succumbed to the injuries. However, on further confrontation, appellant admitted that he has drowned his both the daughters in Arabian Sea and buried them.

3. In view of this information given by the appellant, he was taken to Daman Police Station. There, complaint of P.W.1 Pravina came to be recorded vide Exh.52. On her complaint C.R.No.93 of 2006 was registered. During the course of investigation, at the instance of appellant, dead bodes of both the daughters came to be recovered from the Forest land, near sea-shore. As a part of further investigation, the spot panchnama was made. Statement of witnesses were recorded and after completion of due investigation, chargesheet came to be filed in the court of Chief Judicial Magistrate, Daman.

4. On committal of the case to the Court of Sessions, the trial Court framed charge against the appellant vide exh.5. The

charge was read over and explained to the appellant to which the appellant pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined in all 12 witnesses. The appellant also led the evidence of his brother-in-law Navin Surti to prove his defence that at sea-shore, his daughters went missing, he tried to trace them, but could not find them and on the next day police showed him the dead bodies.

6. On appreciation of this evidence, the trial Court was pleased to hold the guilt of the appellant to be proved beyond reasonable doubt for both the offences punishable under Sections 302 and 201 of the IPC and convicted and sentenced him as aforesaid.

7. In this appeal, we have heard learned counsel for the appellant and learned APP for the Union Territory.

8. Learned counsel for the appellant has challenged the finding of the trial Court, on the ground that there is absolutely no evidence to connect the appellant with the death of his two

daughters. It is submitted that neither the motive is proved nor prosecution witnesses including P.W.1 Pravina, the wife of appellant and P.W.5 Ravi-the brother of appellant, have supported the prosecution case. It is urged that even the other witnesses namely P.W.7 Dashrath Burkey, P.W.6 Vikram Dhodi have not supported the prosecution case. It is submitted that the evidence of defence witness, Navin Surti, who is the brother of P.W.1 Pravina, also goes to prove that after the daughters of appellant went missing, appellant had come to him and both of them had taken search of the daughters. Thus, it is submitted that the prosecution has utterly failed to prove its case against the appellant and hence the impugned judgment and order of the trial Court needs to be quashed and set aside.

9. Per contra, learned APP has strongly supported the impugned judgment and order of the trial Court by pointing out that not only the circumstance of deceased lastly seen in the company of the appellant is proved by the prosecution, but there is also evidence of panch witness P.W. 2 Rajubhai Purohit and P.W.12 Investigating Officer- PI Rohit proving recovery of the dead bodies at the instance of appellant which were buried in the

sand near the sea-shore. According to learned APP these two incriminating circumstances are clinching the guilt of the appellant; the trial Court had properly appreciated the entire evidence on record and thereafter convicted the appellant. Therefore, the appeal needs to be dismissed.

10. In the light of these rival submissions advanced by learned counsel for appellant and learned APP, if the evidence on record is to re-appreciated, then in this case the evidence of P.W.4 Dr. Suhas Solanki leaves no iota of doubt to prove that the death of both, Divya and Nisha was on account of cardio respiratory arrest due to asphyxia due to drowning. The appellant himself has also not disputed the said fact. According to the case of appellant, however, the drowning can be either accidental or suicidal or homicidal. It is his case as made out in his statement under Section 313 of Code of Criminal Procedure that while his daughters were playing on giant wheel, he went to the Hotel for drinking water, he returned within half an hour and found that his daughters were missing, he tried to take search of them, but could not succeed. On the next day, police took him to sea-shore and showed the dead bodies of his daughters.

11. Thus, the appellant is not disputing the fact that he has taken his two daughters alongwith him for playing on the giant wheel and thereafter they were not seen alive. It, thus proves the case of prosecution that the two girls were last seen in the company of the appellant. This fact is deposed to by P.W.1 Pravina also. Her evidence further proves that she waited at the fair for sufficiently long time for appellant and her daughters to return. However, as they did not return, she came back to house and informed about it to P. W .5 Ravi, the brother of appellant. The evidence of P.W.5 Ravi also proves that after P.W.1 Pravina informed this fact to him, he and his brother Ashok took search of appellant and the two girls and got the message about their missing announced at the fair. Then they returned to the house and again made inquiry with P.W.1 Pravina, but she told them that appellant has yet not returned with the daughters. On the next day in the evening as per evidence of P.W.1 Pravina, her husband alone returned to house. When she made enquiry with appellant as to what has happened to the daughters, he did not give reply. Therefore, alongwith P.W.5 Ravi and the appellant, she went to the police station where her complaint came to be recorded. It may be true that she has not remained faithful to the

complaint (Exh.52), lodged by her. She has denied the incriminating portion marked "A" and "B" in the said complaint, according to which the appellant has confessed of drowning his two daughters in the Arabian Sea and thereafter burying them. The contents of the complaint are proved on record through evidence of P.W.8 PSI Mulla, who has recorded it. It may also be true that P.W.5 Ravi - the brother of the appellant, has also not supported the case of prosecution, but their evidence definitely proves that both the girls were also last seen in the company of the appellant and they took search of appellant and the girls on that night as they did not return to the house on that night.

12. There is also another incriminating circumstance proved on record, namely the recovery of the dead bodies at the instance of the appellant. This recovery is proved through the evidence of P.W.2 Panch Rajubhai Purohit and Investigating Officer P.W.12 PI Rohit. As per their evidence, the appellant gave disclosure statement expressing his willingness to show the place where he has buried the dead bodies of his two daughters, namely Divya and Nisha. He disclosed the place as little ahead of Devka village in the seashore. The memorandum panchnama of

his statement was made vide exh. 26. Thereafter the appellant took the police and panchas to the said place, accompanied with the Executive Magistrate. There, the appellant took them to the spot and removed the sand and from the pit, he removed the two dead bodies of his daughters which were wrapped in white cloth. These bodies were seized under panchnama Exh.26. Some dried flowers kept on the dead bodies were also seized under panchnama.

13. In our considered opinion, these two incriminating circumstances of deceased last seen in the company of the appellant and the recovery of their dead bodies at the instance of the appellant are of a conclusive nature to clinch the guilt of the appellant coupled with appellant's own conduct and the false explanation offered by the appellant that while his daughters were playing on the giant wheel, he went to a Hotel for drinking water and when returned, he found both the daughters were missing. There are inherent inconsistencies in the explanation and hence it cannot be accepted. If it is the case of the appellant that his daughters were missing in his absence, then he should have immediately rushed to his wife P.W.1 Pravina and made enquiry

about his daughters. He could have also rushed to the police station or nearby police chowky or the police persons present in the fair to set the law in motion and to ensure that his daughters are traced. However, the appellant has not taken any such steps. He has even not returned to his house on that day or night to verify whether his daughters were found. He returned only on the next day in the evening. The first explanation put up by him was that he met with an accident and his daughters succumbed to the injuries sustained in the accident. Giving of such false explanation is also one of the link in the circumstantial evidence against the accused.

14. There is also no reason as to why if someone else committed the murder or found dead bodies of these two girls drowned accidentally, instead of informing the police, will wrap those bodies in white cloth and also put flowers and bury them near seashore. The inference is therefore, inevitable that it was the appellant alone, who must have put his daughters to death and disposed of their bodies in careful manner so that no one will come to know about it. The only irresistible inference that can be drawn from the circumstances proved on record is that appellant

alone and no-one else can be the author of this crime.

15. In our considered opinion, therefore, the conviction of the appellant, as recorded by the trial Court for the offences punishable under Sections 302 and 201 of the Indian Penal Code, being based on the proper appreciation of evidence on record, no interference is warranted therein. The appeal, therefore, holds no merit and hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]