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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 18 OF 2014

Jagdish Satpal Siddhu,)
R/o. Government Colony)
Dnyaneshwar Nagar,)
Bandra East – Bombay)
Presently lodged at)
Kolhapur Central Prison)
Kalamba ... Appellant

Vs.

State of Maharashtra)
(Through Kherwadi Police)
Station, vide C. R. No.143/2011... Respondent

Adv. Ms. Rohini M. Dandekar, (appointed for the Appellant.

Adv. Mr. Arfan , APP for the Respondent – State.

CORAM : Smt. V. K. TAHILRAMANI,
 ACTING CHIEF JUSTICE, &
 P. N. DESHMUKH, J.

DATE : MAY 8, 2018

(SPECIAL VACATION BENCH)

JUDGMENT [Per : P. N. DESHMUKH, J.]

1. This appeal takes exception to the judgment dated 16th May, 2013 passed by Additional Sessions Judge, Sewree, Mumbai, convicting accused / Appellant for the offence punishable under Section 302 of Indian Penal Code, sentencing for life imprisonment, and under Section 397 of I.P.C., imposing rigorous imprisonment for ten years. Both sentences are directed to run concurrently.

2. Case of prosecution can be briefly stated as under:

(i) PW 1 Yuvraj Patil was serving as a police constable and was residing in Building No. 8, Government Colony, Bandra (East), Mumbai. On 7.9.2011 at about 5.00 p.m. some children on coming from the terrace informed him that one person was lying on the terrace motionless below the water tank. While he was to proceed towards terrace, Yuvraj noticed 2-3 ladies from the building proceeding to Kherwadi Police Station, to whom he joined and informed said fact in the police station. Police officials accompanied them on the terrace of Building No. 8 and

on reaching the spot, pulled out one person lying in an injured condition below the water tank, having several injuries on his person and was found to be dead. On the basis of report lodged by PW 1 Yuvraj Patil, offence came to be registered vide Crime No. 143/2011 against unknown person and was investigated by PW 12, API Atmaram Mohite, during the course of which while he was drawing spot panchanama, PW4 Krushna Begari arrived on the terrace and identified dead body to be of his brother Venkatesh Begari and further informed that deceased used to wear gold chain with pendant therein having inscribed upon it as "Om", and was using mobile phone of Nokia company, which were missing. The dead body was referred for the post mortem.

(ii) Accused was arrested on 10.9.2011 and on 12.9.2011 upon interrogation, made disclosure statement to discover gold chain from jeweler PW 5 Anjaram Parmar, owner of jewelery shop, styled as "Mahadev Bhandar" at Khar, Mumbai which came to be recovered vide Exhibit 22 and the gold chain recovered is seized under panchanama Exhibit 22A. On

13.9.2011 accused further made disclosure statement to discover knife, rope of deceased and mobile handset, of which memorandum statement came to be recorded at Exhibit 27 and above articles came to be seized at the instance of Appellant under recovery panchanama Exhibit 27A. Muddemal articles were forwarded to Chemical Analyser. On recording statement of witnesses and on completion of investigation, charge-sheet is filed before the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai.

3. As the offences are exclusively triable by the Court of Sessions, case came to be committed to the Court of Sessions for trial. Charges were framed against accused vide Exhibit 3 for offences punishable under Section 302 and 397 of I.P.C., to which he pleaded not guilty and claimed to be tried. The defence of accused is of total denial. Accused did not examine any witness in support of his defence.

4. To establish the charges levelled against accused, prosecution, in all, examined 14 witnesses and mainly relied on

evidence of PW 1 Yuvraj Patil, coupled with evidence of PW 2 Sakharam Waghmare and PW 3 Ravindra Mohite who had seen Appellant at the spot of incident, immediately prior to the incident, and on further considering evidence of PW 4 Krushna Begari, brother of deceased that deceased was using gold chain with pendent having “Om” inscribed thereon which came to be recovered at the instance of Appellant from the jewelery shop of PW 5 Anjaram Parmar in pursuance to the memorandum statement of appellant, PW 6 Nitin Wagale, panch witness in whose presence it is recorded and gold chain came to be seized and further from evidence of PW 7 Shaikh Feroz other articles like cell phone of deceased, knife, rope involved in this crime also came to be recovered at the instance of accused, he came to be convicted, as aforesaid. Hence this appeal.

5. Heard Ms. Rohini Dandekar, advocate for Applicant and Mr. Arfan Sait, learned Additional Public Prosecutor for Respondent-State. It is submitted on behalf of Appellant that though prosecution's case is based on circumstantial evidence no

convincing evidence is brought on record which is sufficient to establish the guilt of accused, and referring to the evidence of PW 2 Sakharam Waghmare it is contended that his evidence requires to be kept out of consideration, being an interested witness. Similar submissions were advanced with regard to evidence of PW 3 Ravindra Mohite, according to whom, Appellant was found at the water tank in the late hours of the night. Doubting evidence of these 2 witnesses, it is submitted that if evidence of these witnesses is kept out of consideration there is no other evidence to connect Appellant with the present crime and thus prayed that appeal be allowed.

6. Learned APP, on the other hand, by referring to the material evidence on record, contended that when the entire evidence is considered collectively in its true spirit, the only conclusion which can be drawn is of guilt of Appellant, as from the evidence on record, prosecution had established all the circumstances which are conclusive in nature to connect the accused with present crime and thus, contended that appeal be

dismissed.

7. In the background of facts as aforesaid, admittedly, case of prosecution is based on circumstantial evidence. By now, law on circumstantial evidence is well established that to establish the case based on circumstantial evidence, it is necessary for the prosecution to establish each and every incriminating circumstance beyond reasonable doubt, and prosecution has to further establish that the circumstances so proved are inter-woven to each other so that it can lead to no other conclusion than guilt of accused. Keeping above settled principles in mind, we have scrutinized evidence of material witnesses if it is sufficient to establish guilt of accused beyond reasonable doubt.

8. PW 1 Yuvraj Patil, complainant has stated that on 7.9.2011 at around 5.00 p.m., some boys on coming down from the terrace of Building No. 8 where he was residing, informed that some unknown person lying below the water tank and was not responding to the call, upon which though he intended to go

on the terrace as he noticed 2-3 lady members of their Building proceeding to Kherwadi Police Station, joined them and on reaching police station gave information to police. Accordingly, police arrived on the spot and pulled out body of one male person, having injuries on his face, neck and chest.

9. Evidence of PW 4 Krushna Begari, brother of deceased establish that on 7.9.2011, he went to terrace of his Building No. 8, as police had arrived for investigation, when he identified dead body to be of his brother and had noted that one gold chain with pendent having 'Om' inscribed thereon and Nokia make mobile handset of his deceased brother was missing, informed said fact to police. It has come in his cross-examination that said fact is informed by him to police on 7.9.2011 itself that gold chain and mobile of deceased were missing.

10. Evidence of PW 2 Sakharam Waghmare and PW 3 Ravindra Mohite appear to be material with reference to the case of prosecution, as PW 2 Sakharam Waghmare stated that on 6.9.2011 at around 8.00 p.m. when he was in front of his house,

he saw Appellant and on inquiring with him, he disclosed that he had come to meet deceased Venkatesh and in his presence gave call to deceased, upon which he came out of his house and both of them went away. PW 2 Sakharam was knowing deceased as he was residing in front of his house.

11. In the cross-examination, PW 2 admits that he is operated on one of his eyes and his eye sight is weak and he is unable to see from long distance, and has stated, there were street lights and in fact, it has further come in the evidence that there was conversation between deceased and PW 2 Sakharam when deceased inquired him as to “Waghmare Mama, how are you?” In view of conversation between Appellant and PW 2 as above there is nothing to doubt that this witness had not met Appellant in front of house of deceased at around 8.00 p.m. as from his face or from their conversation he must have identified the appellant.

12. Evidence of PW 3 Ravindra Mohite further substantiates case of prosecution of Appellant's involvement in

the crime, when he has stated that on 6.9.2011, he had seen Appellant near the Building at 11.00 p.m. and had also heard noise from the water tank on the Building and on his talking with Appellant near the Gate, Appellant told him not to interfere in the matter. Evidence of this witness does establish presence of Appellant at the spot at 11.00 p.m. on 6.9.2011 where from the dead body of deceased was recovered from below the water tank on the following date. In fact in his cross-examination it has come on record that Building No. 8 is adjacent to his Building and he had heard noise as “वाचवा, वाचवा”.

13. In view of above stated evidence, it is necessary to state that by now law insofar as theory of “last seen” is well established. It is settled principle of law that the Court has to apply the theory of “last seen” cautiously and unless there is corroborating and circumstantial evidence that does not by itself necessarily lead to the inference that it was the accused who committed the crime.

14. In view of requirement of law to attract theory of last

seen as above and evidence of evidence of PW 2 Sakharam Waghmare, PW 3 Ravindra Mohite evidence of PW 6 Nitin Wagale if perused, same is material, who had stated that on 12.9.2011, accused made a disclosure statement to police to discover gold chain as per Exhibit 22 and in pursuance to same, led police party alongwith panchas to the shop of PW 5 Anjaram Parmar, styled as “Mahadev Bhandar”, situated at Khar, Mumbai, who produced the gold chain with pendant having 'Om” inscribed over it, stating same to be pledged by Appellant for Rs. 20,000/- with him, and is seized under seizure panchanama Exhibit 22A.

15. Evidence of PW 5 Anjaram Parmar, owner of jewelery shop, corroborates said aspect when he had stated that on 12.9.2011 Appellant was brought by police in his shop and on inquiry, he informed police of Appellant's pledging one gold chain against amount of Rs. 20,000/- and produced the same.

.. Similarly, evidence of PW 7 Shaikh Feroz A. Kadar, pancha on memorandum statement and recovery panchanama

has stated that on 13.9.2011 Appellant while in custody made disclosure statement to recover mobile, knife and rope which came to recorded as per Exhibit 27 and in pursuance to same, Appellant led police and panchas to Building No. 8 and produced yellow coloured rope, and then took them to one room and removed one knife concealed in gunny bag, having blood stains. Accused thereafter led police and panchas to his house at Dnyaneshwar Nagar and produced one mobile handset concealed in the Almari. All these articles came to be seized under panchanama Exhibit 27A.

16. In the background of above stated evidence, further evidence of PW 4 Krushna, brother of deceased establish that all the articles which are recovered as aforesaid, consisting gold chain with pendant of “Om”, mobile phone were identified by him in the police station on 12.9.2011 and 13.9.2011 respectively, which are produced before the trial Court as Articles “A” and “B”.

17. When ample other evidence as above stated is

considered alongwith evidence of deceased having been lastly seen with appellant on the night of incident, all above circumstances lead to the only conclusion that it is the Appellant alone, who is involved in the present crime, as at his instance various muddemal articles, as aforesaid, belonging to deceased, are recovered.

18. In the background of above discussed evidence and 20 other circumstances as mentioned in the impugned judgment referred in paragraph 35 thereof, which are proved and established by prosecution on record directly establish guilt of accused.

19. In view of above evidence, we find no substance in the appeal as prosecution has established guilt of accused beyond reasonable doubt. In the circumstances, Appeal is, dismissed.

Sd/-

[P. N. DESHMUKH, J.]

Vinayak Halemath

Sd/-

[ACTING CHIEF JUSTICE]