

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.46 OF 2019

(For Leave to file Appeal)

The State of Maharashtra

... Applicant
(Orig. Complainant)

Versus

1. Nasrin @ Anu Iqbal Shaikh,
2. Rohit Suresh Devalekar.

... Respondent
(Orig. Accd.Nos.1 & 2)

.....

Mrs. M. H. Mhatre, APP for State / Applicant.

Mr. Ketan Dabke i/b Mr. Rajendra Sorankar for Respondent No.2.

**CORAM :- A. S. OKA &
SARANG V. KOTWAL, JJ.**

DATE :- 15 FEBRUARY, 2019.

P.C. :

1. The State of Maharashtra has preferred this Application for leave to file Appeal against the Judgment and Order dated 08/06/2017 passed in Sessions Case No.215/12, whereby the Additional Sessions Judge-2, Thane, had acquitted the Respondents from the charges of commission of offences punishable u/s 302, 201, 394, 212 and 202 of the Indian Penal Code.

2. The prosecution case in brief is as follows;

Deceased Meerabai had received a cheque of Rs.1,00,000/- from a builder for vacating her hut. The cheque was encashed by Meerabai on 17/11/2011. According to the prosecution case, the Respondent No.1 had accompanied her to the bank. It is further the prosecution case that the Respondent No.1 committed murder of Meerabai and took away the cash amount of Rs.1,00,000/- and her ornaments. The dead body was found on 18/11/2011 on a road near a lake at Koparkhairne. The police were informed and the case was investigated. The Respondent No.1 was arrested on 26/11/2011.

3. During trial, the prosecution examined 22 witnesses.

The medical evidence shows that the deceased had died because of head injury and a stab injury on her neck. There were 14 wounds on the dead body including the incised wounds and abrasions.

4. The circumstances against the Respondent No.1 were;

- (i) Last seen together with the deceased;
- (ii) Recovery of stone and blade;
- (iii) Recovery of cash amount of Rs.35,000/-;
- (iv) Scratch marks on her face were seen by an acquaintance on 19/11/2011.

5. The allegation against the Respondent No.2 was that he assisted in commission of the offence and was with her when she went to various places after commission of the offence.

6. The learned Judge has rejected each of the circumstances by giving reasons and holding that the chain of circumstances was not established.

7. We have heard learned APP Mrs.M.H. Mhatre appearing for the State of Maharashtra. With her assistance we have perused the impugned judgment and the notes of evidence produced by her. We have also heard learned Counsel Mr. Ketan Dabke, appearing for Respondent No.2.

8. In respect of the circumstance of deceased having been

seen in the company of the Respondent No.1, the prosecution has examined P.W.16 Sudhir Madhukar Mahadik and P.W.22 Shrawan Lahanu Nipane.

P.W.16 was a Manager working at a Fast Food outlet at Vashi. He showed CCTV footage of 17/11/2011 from 06.30 p.m. to 07.30 p.m. in which the Respondent No.1 was seen with the deceased. This witness has not deposed that he had seen the deceased and Respondent No.1 together. But he has relied on the CCTV footage. There is no further cogent evidence about this CCTV footage and the same has not been produced in accordance with the provisions of the Evidence Act.

The other witness P.W.22 was a Senior Manager in Bank of India from where the deceased had encashed her cheque. He has deposed that the deceased had encashed the cheque on 17/11/2011 and at that time, the Respondent No.1 was with her. This witness has produced the CCTV footage. He himself was not knowing the Respondent No.1 and Test Identification Parade was not held to enable him to identify the

Respondent No.1 as one of the suspects. His evidence was recorded on 27/01/2017. Thus there was a considerable gap from the time when he had seen the deceased purportedly in the company of the Respondent No.1 and when his deposition was recorded. Therefore it is difficult to rely on such evidence. Moreover, the prosecution has not established the authenticity of the CCTV footage during trial as per the provisions of Evidence Act. Therefore the learned Judge has rightly disbelieved this important circumstance of the deceased and the Respondent No.1 having been seen together last at any point of time. There is no proximate connection of time and place in respect of Respondent No.1 being with the deceased and the time and place when the dead body was found.

9. The other circumstance of recovery of chain from a jeweller at the instance of Respondent No.1 is not incriminating against her, because the chain was not identified as belonging to the deceased.

10. The stone and blade were recovered from an open space accessible to all and the blade did not show any blood stains. Therefore even this circumstance was of no use to the prosecution. The money recovered at the instance of the Respondent No.1 was not conclusively connected to the cash amount which was in possession of the deceased.

11. There is no evidence to show that the nail clippings of the deceased showed presence of blood of the Respondent No.1. Therefore even the scratch marks on the face of Respondent No.1 did not connect her with the crime. The learned Judge has taken all these factors into consideration while acquitting the accused. The view taken by the learned Judge is a possible and reasonable view and we do not find this to be a fit case in which leave to file Appeal can be granted. Hence the Criminal Application No.46/19 for leave to file Appeal is rejected.

(SARANG V. KOTWAL, J.)

(A. S. OKA, J.)