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APPLN-463-2018 (sr.23)
10.6.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 463 OF 2018

IN

CRI. APPEAL NO. 1386 OF 2018

Ravindra Namdeo Wadekar
and anr.

.....Applicants

V/s.

The State of Maharashtra

....Respondent

* * * *

Mr. Chaitanya Pendse I/by. Mr. Heramb S. Kadam, Advocate
for the applicants.

Mr. H.J. Dedhia, APP Advocate for the respondent-State.

CORAM : B.P. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Monday, 10th June, 2019.

P.C. :

1. Heard Advocate, Mr. Pendse and learned APP in
the backdrop of order dated 4th April, 2019. On that date,
time was given to State to explain the controversy

regarding establishing identity of deceased.

2. The prosecution claims that, deceased, Sagar who had some previous enmity with the accused persons, was kidnapped by them on 9th July, 2012 and carried in Bolero vehicle. On 10th July, 2012 his body without any clothes was found. The body could not be identified and hence its photographs were taken. After cremation, when search was going on, Investigating Officer learnt that a person, by name Sagar from adjacent village in jurisdiction of other police Station had gone missing. Accordingly, photographs were shown to the relative of that person and identity was established. After enquiry, on 6th August, 2012, five accused persons were arrested. In investigation, concealed Bolero Jeep was recovered under Section 27 of the Evidence Act. Similarly, a stick was also recovered at the instance of accused no.1. Full-pant on person of deceased was recovered at the instance of accused no.4. One lady by name, Pansare examined as P.W.6 claimed that, she had seen the deceased being forcibly carried in jeep by accused persons.

3. The trial court, has on the basis of circumstantial material like last seen, motive and recovery under Section 27 of the Evidence Act, convicted present appellants and accused no.5.

4. Accused nos.2 and 3 have been acquitted.

5. Accused no.5 has expired during the pendency of the present Appeal.

6. In this backdrop, apart from other contentions, learned Counsel states that P.W.6, Pansare has suddenly surfaced as a witness to the incident of alleged kidnapping. How, she could be reached by the Investigating Officer has not been explained. He points out that, photographer who is alleged to have taken the photographs of body, has not been examined to prove the identity of photographs and hence it is not clear whether manual camera or digital camera was used for the said purpose. If it was a manual camera, originals i.e. negatives are not on record. If it is digital camera, Certificate under Section 65B of the Evidence Act is missing. He also states that, photographs are not shown to the mother or other relative in Court when they entered

into the witness box. It is brought on record from the Investigating Officer only.

7. The pant allegedly on the body of deceased is also not shown to any relative and therefore its connection with the deceased has not been established. Contention is, thus, the conviction is based on surmises only.

8. The learned APP disputes this. He invites our attention to evidence on record and its appreciation in judgment. According to him, the investigation has proceeded step by step and as deceased was from an adjacent village, identity could not be established immediately. He submits that, previous altercation and N.C. complaints about it, kidnapping and use of vehicle therefor, have been brought on record. P.W.6 is important witness who has supported the prosecution. Photographs were identified in police Station by mother and other relatives and hence challenge to identity is also without any merit.

9. We find that, while taking photographs of body of deceased, no panchanama was drawn and there is no material except word of mouth of the Investigating Officer to

connect those photographs with the body of the deceased.

Photographer who may have carried out that exercise, has not been examined though bill furnished by him is on record. If the photographs were shown to the relatives on computer in Police Station and they identified the person therein as Sagar, again no contemporaneous document, has been prepared at that time.

10. The facts also show that, though P.W.6 claims that, she informed about forcibly taking of deceased, Sagar by accused person to mother of deceased, the mother of deceased has not supported this narration. Fact, whether P.W.6 was knowing accused persons before hand, is also not brought on record by prosecution.

11. The present applicants, namely accused nos.1 and 3 were on bail during trial.

12. In this situation, we are inclined to release them on bail on same terms and conditions, as in Court below, subject to their furnishing fresh bonds and Undertaking with following added conditions :

(i) they shall furnish the address at which they

shall always be available during the pendency of Appeal alongwith their contact numbers.

(ii) similar details in relation to their sureties shall also be furnished.

(iii) they shall attend the office of the trial Court and report to Superintendent there on every first working Monday, once in period of every two months, during the pendency of this Appeal.

(iv) the Vakalatnama of Advocate filed in the present Appeal shall be kept alive during the pendency thereof and they shall not claim any fresh notice at the time of final hearing.

(v) An Undertaking on these lines be furnished to this Court and also to trial Court within two weeks from today.

(vi) Failure to submit such Undertaking or to comply with the terms and conditions shall entitle the Court to take them in custody immediately.

(vii) The application is accordingly allowed and disposed of.

(B.P. DHARMADHIKARI, J)

(SANDEEP K. SHINDE, J)