

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.221 OF 2019

SUBHASH RAGHUVIR JAISWAL)...APPELLANT

V/s.

1) THE STATE OF MAHARASHTRA)
)
2) SHERBAHADUR MANE SAUD)
)
3) SANTOSH RAMPYARE SHARMA)...RESPONDENTS

Mr.Aditya Mehta i/b. Mr.S.G.Pawar, Advocate for the Appellant.

Mr.V.B.KondeDeshmukh, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 3rd JULY 2019

JUDGMENT : (PER : A.M. BADAR, J.)

1 By this appeal, the appellant/victim of the crime in question is challenging the judgment and order dated 17th February 2017 in Sessions Case No.550 of 2014, so far as it relates

to acquittal of respondents / original accused nos.2 and 3 of offences punishable under Sections 302, 397 and 120B of the Indian Penal Code.

2 Facts, in brief, leading to prosecution of accused persons are thus :

- (a) Appellant/ First Informant Subhash Jaiswal is brother-in-law of Vimala Jaiswal (since deceased). Said Vimala Jaiswal along with her husband Ramakant Jaiswal used to reside at Flat No.201, Beach Classic Co-operative Housing Society Ltd., Andheri (West), Mumbai. After death of Ramakant Jaiswal in the year 2003, Vimala Jaiswal used to stay in the said flat all alone.
- (b) The incident of murder of Vimala Jaiswal took place on 24th April 2014. On that day, maid servant Meera Raundal approached Flat No.201 belonging to Vimala Jaiswal for work and despite ringing the door bell of the said flat, nobody responded. Thereafter, PW9 Daya Asrani – resident

of the said apartment scheme made a phone call to Vimala Jaiswal, but that phone call was also not responded by Vimala Jaiswal. Hence, in the evening hours, accused no.3 Santosh Sharma – watchman was called. He opened the door of the flat. It was seen that Vimala Jaiswal was lying in the said flat in a pool of blood. Other residents of the apartment scheme gathered there. Matter was reported to police. Vimala Jaiswal was taken to the Cooper Hospital where she was declared dead. Postmortem examination revealed that Vimala Jaiswal died due to strangulation. Then, appellant/ First Informant Subhash Jaiswal lodged report which resulted in registration of Crime No.136 of 2014 against unknown accused for offences punishable under Sections 302 and 397 of the Indian Penal Code with Versova Police Station.

- (c) During the course of investigation, in all three accused persons including respondent nos.2 and 3 (original accused nos.2 and 3) came to be apprehended and on completion of

investigation, they came to be charge-sheeted for offences punishable under Sections 302, 397 and 120B of the Indian Penal Code.

- (d) In order to prove the Charge leveled against accused persons, prosecution has examined in all fifteen witnesses and also relied on documentary evidence such as Autopsy Report, several panchnamas and Chemical Analysis Report. After due trial, by the impugned judgment and order dated 17th February 2017, learned Additional Sessions Judge, Mumbai, was pleased to acquit respondent nos.2 and 3 (original accused nos.2 and 3) of all charges leveled against them. However, accused no.1 Dharmesh @ Dharmendra Sant Bakshsingh came to be convicted for offences punishable under Sections 302 and 397 of the Indian Penal Code and he was sentenced accordingly. That is how, appellant/ First Informant, who is examined as Prosecution Witness No.2 (PW2) by the prosecution, is challenging the impugned judgment and order of the learned Additional

Sessions Judge, so far as it relates to acquittal of original accused nos.2 and 3.

3 Heard the learned counsel appearing for the appellant/First Informant at sufficient length of time. He drew our attention to the impugned judgment as well as deposition of prosecution witnesses and submitted that PW4 Satyaprakash Vaidya had deposed about the fact that acquitted accused were found in company of convict Dharmesh @ Dharmendra Sant Bakshsingh, and though respondent/accused no.3 Santosh Sharma, who was working as a watchman, was made known about the shouts emanating from the flat of the deceased, he failed to take any action. This implies that, both acquitted accused were a part of conspiracy to kill deceased Vimala Jaiswal, and therefore, they ought to have been convicted by the learned trial court.

4 We have also heard the learned APP appearing for the State and perused the record made available.

5 So far as respondent nos.2 and 3 are concerned, only evidence available against them is statement of PW4 Satyaprakash Vaidya, who happens to be sweeper working in the apartment scheme, where deceased Vimala Jaiswal used to stay. He has stated in his evidence that he saw convict Dharmesh @ Dharmendra Sant Bakshsingh along with Santosh and Shersingh twice in the building, but clarified that he had not heard their talks. This evidence, by no stretch of imagination, can be construed to mean that respondent nos.2 and 3 had conspired with convict Dharmesh @ Dharmendra Sant Bakshsingh to eliminate deceased Vimala Jaiswal.

6 PW4 Satyaprakash Vaidya, sweeper of the building, had also deposed that on 24th April 2014, he heard shouts of “madam” residing on 2nd floor in Flat No.201 and had informed this fact to watchman Santosh. However, watchman Santosh told him not to pay any attention towards those shouts. This evidence is also not sufficient to connect respondent/accused no.3 Santosh Sharma to the crime in question. What was the nature of shouts

or call of the woman residing in the flat is not explained by PW4 Satyaprakash Vaidya.

7 Apart from this, there is no evidence to connect respondent/acquitted accused nos.2 and 3 with the crime in question. The learned trial court has taken probable view in the matter by proper appreciation of evidence on record, and as such, same cannot be interfered with, in this appeal.

8 Resultantly, we proceed to pass the following order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)