

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2017 OF 2020
IN
CRIMINAL APPEAL NO.480 OF 2020

DATTA SUBHASH LOHAR
-VERSUS-
THE STATE OF MAHARASHTRA

WITH
CRIMINAL APPLICATION NO.2015 OF 2020
IN
CRIMINAL APPEAL NO.482 OF 2020

PRATIBHA PRAKASH CHAPEKAR
-VERSUS-
THE STATE OF MAHARASHTRA

...
Advocate for the Applicants : Shri S.J.Salunke
APP for the Respondent/ State : Shri S.G. Sangle
...

**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 13th January, 2021

Per Court :-

1. We have heard strenuous submissions of the learned advocate on behalf of both the applicants, who are accused Nos.2 and 3 in Sessions Case No.89/2016 decided vide the judgment dated 14.08.2020 delivered by the learned Additional Sessions Judge, Osmanabad. We have also heard the submissions of the learned prosecutor at length. With their assistance,

we have gone through the voluminous documents placed before us in Criminal Appeal Nos.480/2020 and 482/2020.

2. Accused No.1 (Prakash) has not preferred an application for suspension of sentence and for bail during the pendency of the appeal. These two applications have been filed by accused No.3 (Pratibha), who is the wife of accused No.1 (Prakash) and by Datta (accused No.2), who is the brother of accused No.3 (Pratibha), for suspension of sentence and for bail during the pendency of their appeals.

3. The crime registered against the three accused was that Kanchan Popatlal Pardeshi, an unmarried highly educated girl, was murdered by the three accused by conspiring to get rid of her. Kanchan was said to be in live-in relationship with Prakash for the period in between 2010 to 2016. Both had met while serving in Bluedart Courier Services at Pune. Prakash was already married to Pratibha. Gradually, a matrimonial discord erupted on the side of Prakash. There were constant squabbles in between Prakash and his legally wedded wife Pratibha. Consequentially, the father of Pratibha lodged a non-cognizable complaint against Prakash in the Faraskhana Police Station on 15.07.2015 bearing Crime No.175/2015. As a consequence, Prakash got fed up with Kanchan.

4. PW-1 (Arun Keshav Pimpale) aged about 65 years and an agriculturist from village Wagholi, Taluka and District Osmanabad, noticed at about 07:00 am on 21.12.2015, while inspecting the water level in his

well, that a gunny bag was floating in the water. He went to the village and disclosed about the gunny bag to Ramesh Bhimrao Magar and Nabi Tamboli. These persons along with other villagers went to the well and found that the legs of the body were protruding out from the gunny bag from one side and long hair of the body were hanging out from the other side. They noticed that it was the dead body of an unknown lady. PW-1 informed the police. On his report exhibit-55, the Station House Officer, Osmanabad Rural Police Station registered Crime No.174/2015 under Sections 302 and 201 of the Indian Penal Code.

5. It is undisputed that the investigation was initiated by the first investigator Shri B.S.Gavade, Police Inspector. Since the case appeared to be complex, the investigation in the crime was handed over to the Assistant Deputy Superintendent of Police, Tuljapur Shri Raj Tilak Roshan on 21.05.2016 as he was holding additional charge of Osmanabad city. The entire course of investigation has been narrated by the Trial Court in the impugned judgment.

6. The salient features of the investigation can be summarized as under :-

(a) While conducting the postmortem examination, the clothes that were worn by the deceased Kanchan, were identified as *jaipuri kurti*, *salwar* and other apparels.

(b) The *kurti* was having a tag with the address

“jaipurikurti.com”.

(c) The search for such type of dresses was launched and similar type of *kurti* was available on Flipkart, Amazon and e-commerce websites.

(d) As per Section 91 of the Code of Criminal Procedure, Shri Roshan, Investigating Officer, issued online notices through email and requested those websites to furnish details of the customers, who had purchased such type of *kurti* in between 01.01.2015 to 20.12.2015.

(e) On a response from these websites, the Investigating Officer noticed that there were about 1800 customers, who had purchased the said type of *kurti* from Flipkart and there were 07 customers, who had purchased it from Amazon.

(f) The Investigating Officer compared the tower data with Flipkart and one common mobile number, which ordered the said *kurti* and the tower location was that of the Wagholi Tower, found to be that of accused No.1 Prakash.

(g) SDR was from another phone, which was held by Amol Sonawane, who was working in Great Wall Company at Nagpur, was considered.

(h) Upon checking the number from Facebook, it was confirmed that the number was used by accused No.1 Prakash.

(i) The Investigating Officer zeroed down upon the purchase of the *kurti* from Flipkart by accused No.1 Prakash and the same was linked

to the deceased Kanchan as Prakash had purchased the *kurti* in his own name and has gifted it to Kanchan.

(j) Further investigation was conducted at Nagpur and after a painstaking investigation, the Investigating Officer collected sufficient data including CDR, SDR and tower dump data, which linked Prakash to the death of Kanchan.

(k) After Prakash was taken into custody from Pune and interrogated, he revealed the name of Kanchan as being the name of the deceased person, since until then, the Police were unable to identify the identity of the dead body.

(l) Based on the above information, further investigation revealed that Prakash and Kanchan were in live-in relationship for almost five years.

(m) Due to the family discord between Prakash and his wife Pratibha on account of his relationship with Kanchan and as the pressure was building up in the life of Kanchan as well as Pratibha, Kanchan had allegedly consumed poison and was admitted in the hospital. She survived the said episode and it was Prakash, who was said to be at her bed side for almost five days.

(n) Further investigation in the murder of Kanchan, revealed the role of accused No.2 (Datta), who is the real younger brother of accused No.3 (Pratibha).

(o) It was revealed that Prakash had initially conspired with Datta and Datta had provided the knife, rope and gunny bag after he was informed by Prakash that he would be traveling with Kanchan to reach Wagholi, Taluka and District Osmanabad.

(p) Datta is the resident of village Wagholi and Pratibha hails from Wagholi prior to her marriage to Prakash.

(q) Further investigation revealed the continuous telephone calls between Prakash, Datta and Pratibha on 18.12.2015, 19.12.2015 and 20.12.2015.

(r) The death of Kanchan is said to have occurred on 20.12.2015 and the body in the gunny bag was found floating at about 07:00 am on 21.12.2015.

(s) DNA sampling of the deceased at exhibit 97 matched with the DNA sampling of her parents.

(t) The car used by Prakash, which he had subsequently sold in an attempt to destroy evidence, was also located and blood stains were found in the car.

(u) Prakash was arrested on 15.06.2016 after a prolonged investigation on the basis of which, the Investigating Officer was fully convinced that the crime has been committed by Prakash.

(v) Datta was arrested on 16.06.2016.

(w) After interrogation, Datta gave the memorandum of the

discovery under Section 27 of the Evidence Act. The discoveries are at exhibits 102 and 103.

(x) The panchanama was carried out at exhibit-124 and the clothes of Datta were recovered, which had blood stains.

(y) No explanation has been given by Datta under Section 313 of the Code of Criminal Procedure as to how those blood stains were found on his clothes.

(z) A strong motive was established before the Trial Court of Prakash desiring to get rid of Kanchan.

(za) Datta, being brother of Pratibha, having noticed turmoil in the marital life of Pratibha, also participated in the crime to eliminate Kanchan.

(zb) The prosecution contended that Pratibha was equally desirous of getting rid of Kanchan as she was the third angle of the love triangle and was a thorn in her marital life.

(zc) 33 witnesses were examined by the prosecution. Not a single witness amongst these 33, has turned hostile.

(zd) A chain of circumstantial evidence, prima facie, is complete.

7. Considering the above, we do not find that the voluminous evidence and the painstaking investigation conducted by the Investigating Officer for a period of almost six months and the material that he has

collected as a part of oral and documentary evidence, could be easily disbelieved. In these circumstances, though accused No.2 (Datta) was on bail during the trial and has children, we are not moved by the said submission to be a ground for considering suspension of sentence and for enlarging Datta on bail. Criminal Application No.2017/2020 filed by Datta is, therefore, rejected.

8. Insofar as Criminal Application No.2015/2020 filed by Pratibha (accused No.3) is concerned, despite the strenuous submissions of the learned prosecutor and his reliance on ***Mohammad Amin vs. CBI, (2008) 15 SCC 49*** and ***Mir Nagvi Askani vs. (2009) 15 SCC 643***, we find that the case of the prosecution could be considered for suspension of sentence.

9. In ***Mohammad Amin (supra)***, the Honourable Supreme Court has held as under :-

“....The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.”

10. In ***Mir Nagvi (supra)***, the Honourable Supreme Court has concluded that while drawing an inference of criminal conspiracy from the

material brought on record, the Court has to arrive at a find as to whether, the charge of criminal conspiracy has been proved or not. However, it must be borne in mind that conspiracies are hatched in secrecy and it is normally difficult to obtain direct evidence to establish the conspiracy.

11. After considering the material before the Trial Court in the light of Sections 201, 120-A and 120-B of the Indian Penal Code, the Trial Court has observed against Pratibha in paragraph 63 of it's judgment, which reads as under :-

“63. The evidence shows that the accused having a strong motive. The N.C. (Exh.277) discloses that there was illicit relation in between Prakash (Accused No.1) and deceased Kanchan, therefore, the family members of Prakash was fed up and due to that reason, his father Suryakant lodged N.C. in 2012. In 2015, Prakash shifted to Nagpur from Pune. Kanchan persuaded Prakash and this fact was noticed by accused No.3. So, to absolve from the clutches of Kanchan, all the accused prepared plan and activated it. The various links in the chain of evidence has clearly established. If all the circumstances on record and proven facts taken together, then it exclude every possibility of innocence of accused.

Absence of explanation of accused or notional defence would itself be an additional link which completes the chain. The chain of evidence demonstrated supra, is completed as to show that within all human probability, the murder must have been committed by the accused.”

12. In paragraph 64, the Trial Court has observed that from the call details, which proved continuous interaction and conversation between accused Nos.1, 2 and 3 on 18.12.2015, 19.12.2015 and

20.12.2015, it can be inferred that accused No.2 (Datta) and accused No.3 (Pratibha) are co-conspirators in the main object of conspiracy, which was to eliminate the victim Kanchan. It was, therefore, concluded that there was unity of object between the three accused.

13. However, the learned counsel are unable to point out from the voluminous record, running into 779 pages, placed before us, as to what was the actual transcript of the conversation between Prakash and Pratibha and between Pratibha and Datta. The learned advocate for the applicant/ Pratibha, therefore, contends that it would not be unusual or abnormal for the wife Pratibha to be in contact with her husband Prakash and younger brother Datta. Such calls and conversations between the three accused would not mean that Pratibha desired that Kanchan be murdered or that she had participated in the criminal conspiracy so as to achieve the common object. She was on bail during the trial and has four children to take care . They are presently being taken care of by the aged parents-in-law of Pratibha, who are grand parents of the children from their paternal side.

14. In these circumstances, Criminal Application No.2015/2020 filed by Pratibha is allowed and the substantive sentence of rigorous imprisonment awarded to her shall stand suspended till the decision in this appeal on the following conditions :-

- (a) The applicant (Pratibha) shall be released on bail on

furnishing a PR bond of Rs.50,000/- (Rupees Fifty Thousand) and two sureties of the like amount.

- (b) She shall mark her attendance with the Police Station, Vishrantwadi, Pune-15 on every second and fourth Sunday of each month in between 10:00 am to 01:00 pm.
- (c) Her attendance shall be noted in the station diary and her signature shall be obtained by the Station House Officer to evidence her presence.
- (d) She would not leave the municipal limits of Pune city without intimating the Station House Officer of the Police Station, Vishrantwadi, Pune-15 in writing and upon obtaining an acknowledgment.
- (e) She shall tender her passport to the said Police Station along with the self attested copies of her Adhar Card, Voters Identity Card issued by the Election Commission of India and latest permanent address proof. So also, she shall furnish her cellular number and landline number, if any, to the said Police Station.
- (f) Violation of any of the above conditions, shall be a good ground for cancellation of bail.