

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

**903 CRIMINAL APPEAL NO.945 OF 2019
WITH
APPLN. FOR LEAVE TO APPEAL BY STATE NO.222 OF 2019**

VISHWAMBHAR BABASAHEB TARAKH .. Appellant
VERSUS
VILAS S/O. NANASAHEB HONDE AND ANR .. Respondents

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Advocate for the Appellant : Mr Sudarshan J. Salunke,
Mr Amar V. Lavte
Advocate for Respondent No.1 : Mr A.D. Hande
APP for Respondent No.2 / State : Mr R.V. Dasalkar
...

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

Date : 10-03-2021

PER COURT :-

1. The criminal appeal has been filed by the original informant, who is the father of the deceased woman. The State has preferred a criminal application for leave to appeal. By the impugned Judgment dated 25-06-2019 delivered by the Additional Sessions Judge-1, Jalna in Session Case No.56 of 2017, the accused has been acquitted of the charge of murdering the deceased, who was the wife of his cousin brother.

2. We have considered the strenuous submissions of the learned Counsel for the respective sides.

3. The learned Counsel for the original accused has vehemently opposed the appeal and submits that, there is no evidence against the accused. He has read out the deposition of Rangnath Khande (PW-5), who was the driver of a person by name Anil Gupta from Pune who was residing in rental premises of a teacher adjacent to the house which is the spot of the crime.

4. The evidence before the trial Court indicates that, deceased Sumitra was shot with a revolver in between 01:30 p.m. to 02:30 p.m. on 02-01-2017. The trial Court has given the benefit of doubt to the accused on the ground that neither Rangnath Khande (PW-5) nor Kalyan Aute (PW-7) or any other witness had actually seen the accused along with the deceased inside the house so as to support the 'last seen alive together' theory.

5. There is no dispute that, the services of a fingerprint expert were not utilized by the prosecution, when the murder weapon was seized. It is also undisputed that the victim died on account of a bullet injury that was fired through her head. Yet, the services of a ballistic expert was not utilized.

6. While dealing with an appeal against acquittal and an

application by the State seeking leave to assail the Judgment of acquittal, the Appellate Court has to assess as to whether there is any evidence which would necessitate consideration of the appeal. If there is no evidence at all, against the accused, the Appellate Court may dismiss the appeal *in limine*. At the same time, the Appellate Court has to bear in mind that the informant and the State would not get an opportunity of questioning the Judgment of acquittal handed down by the trial Court.

7. The record reveals that, the deceased was inside the residential house when she was shot through a revolver. It is on the basis of investigation that the role of the accused was revealed. Rangnath Khande (PW-5) was the driver of Anil Gupta, who was seated inside the Tata Sumo vehicle belonging to Mr Gupta. PW-5 was not using a wrist watch and, therefore, the time, that he has stated in his deposition when he saw the accused, is based on an approximate assessment of time. He had seen the accused leaving the house of the deceased around 02:15 p.m. He saw the accused mounting on his bullet motorcycle and leaving the house of the deceased. The accused was the member of the joint family, who was residing in the same house.

8. While PW-5 was seated in his vehicle, a cousin brother of the husband of the deceased, namely Kailas, arrived at about 03:30 p.m. PW-5 saw him entering the house and in a split moment, he came out of the house screaming. Therefore, people gathered from the neighbourhood. PW-5, one Mrs Atole known as 'Atole Kaku', Mr. Gupta and one Mr Robert, entered the house and found that the deceased was lying in an unconscious condition on a sofa. Since Mr Gupta directed PW-5 to call for Dr. Bharat Honde, a renowned doctor as well as the brother of the husband of the deceased, PW-5 moved his vehicle. On the way, he saw Dr Honde travelling towards the house where the crime had occurred. He, therefore, turned around and came back to the house. Police were summoned and Dr Honde placed the unconscious victim in the Honda City Car belonging to her husband to be taken to the Hospital.

9. Kalyan Aute (PW-7) is an independent person, who was working as a Head Master in a school in the Ambad Town. On 02-01-2017, he left for the school at about 10:30 a.m. His wife had travelled to Aurangabad and, hence, she kept the keys of the house in the house of the deceased. This was informed by her to PW-7. At around 01:35 p.m., PW-7 came to his house and knowing that the keys are in the house of the deceased, entered the house through the

main gate. He noticed from outside that the television was switched on. The accused was inside the house and it was the accused, who handed over the keys to PW-7. At about 01:50 p.m., PW-7 came out of his house, locked it and went back to the house of the deceased to handover the keys. He noticed that the main gate of the house was closed. The northern side channel gate was also locked. Finding PW-7 near the channel gate, the accused received the keys of the house of PW-7 by remaining inside the channel gate. PW-7 saw that the accused had covered his body with a blanket. It was at around 03:45 p.m. that PW-7 received a call from his wife and he was informed that the deceased was murdered inside the house.

10. Considering the evidence available before us and especially the testimony of Kalyan Aute (PW-7) who is an independent witness, we are of the view that, this appeal needs consideration. If we take a pedantic view of the matter, the murder of the deceased would not be unravelled and the mystery of her murder would remain a mystery forever. So also, being an Appellate Court, it is an obligation for this Court to consider the entire evidence in the face of an appeal against acquittal so as to assess as to whether the trial Court has committed any error in discarding the evidence before it.

11. *Prima facie*, we are of the view that the testimony of PW-7 coupled with the corroborative statement found in the testimony of PW-5, points towards the accused.

12. In view of the above, this appeal is **admitted**. The application for leave to appeal filed by the State is allowed. The learned Counsels for the respective sides waives service on admission. Keeping in view the law laid down by this Court in the matter of **Satesh H. Chandiramani V/s. Sadashiv Namdeo Kharabi & Anr., Criminal Application Nos.1201 of 2007 & 1200 of 2007 decided on 10-02-2009**, the said application is treated as an appeal. We direct the compliance of Section 390 of the Code of Criminal Procedure, 1973 with regard to the accused herein.

13. We direct the trial Court to prepare the appeal paper-book in Session Case No.56 of 2017 decided on 25-06-2019, on or before 31-07-2021 and transmit the same along with the original Record & Proceedings and the muddemal property, to reach this Court on or before **15-09-2021**.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE