

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 36 OF 2004**

The State of Maharashtra	... Appellant
V/s.	
Bapu Kondiba Patil	... Respondent

Ms P.P. Shinde, APP for the Appellant-State.
None present for the Respondents.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

**RESERVED ON : 12.02.2021.
PRONOUNCED ON : 08.06.2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal at the instance of State takes an exception to the judgment and order dated 18.08.2003 passed by the learned 4th Ad-hoc Additional Sessions Judge, Kolhapur in Sessions Case No. 217 of 2002. By the impugned judgment and order, the respondent, who was accused before the trial court, has been acquitted of the offences punishable under sections 364, 366, 376 and 302 of the Indian Penal Code (for short 'IPC').

2] It is the case of the prosecution that the deceased Sangita, who at the relevant time was aged about 13 years, was residing with her parents at village Latavade, Taluka Hatkanangale, Dist. Kolhapur. The accused along with his wife was residing 4 to 5 houses away from the house of deceased.

3] According to the prosecution, the incident took place in the intervening night of 26.7.2002 and 27.2.2002. It is alleged that the deceased Sangita was pregnant from the accused. It is alleged that the deceased disclosed the said fact of pregnancy to the accused on the day of incident. It is alleged that the accused who was already married, therefore, committed the murder of deceased by strangulating her.

4] On the basis of report lodged by father of deceased, i.e., PW-1 Keshav Patil on 28.7.2002 with Vadgaon Police Station, crime No.101 of 2002 was registered against the accused for the offence punishable under sections 363, 364, 366, 376 and 302 of the IPC. On completion of investigation, chargesheet was filed against the accused for the said offences.

5] Accused was charged and tried for the above said offences. As stated earlier, the trial court by the impugned judgement and order acquitted the accused of all charges.

6] We have heard learned APP for the appellant/ State . None appeared for the respondent/accused.

7] Admittedly, the case is based on circumstantial evidence. According to prosecution, the deceased was last seen with the accused in the intervening night of 26.7.2002 and 27.7.2002 and then her dead body was found on 28.7.2002. Whereas the defence of the accused is that on the day of alleged incident, he was at the house of his in-laws at village Vadgaon.

8] PW-1 Keshav Patil has stated in his evidence that on the day of incident, at about 8.00 to 8.15 p.m., while he, his wife, daughter Sulabai and son Vasant were having dinner, he saw that his daughter Sangita and the accused were sitting beside the front door of their house and were talking with each other. PW-1 has stated that after having dinner, he came out of the house and found that the accused and his daughter were not there. He felt that his daughter Sangita as usual might have gone to watch T.V. in their neighbour's house. On the next day, at about 5.00 a.m., his wife told him that deceased Sangita has not come back. At that time, he told his wife to go to the house of neighbours where Sangita used to go for watching T.V. and make enquiry with them. PW-1 has stated that accordingly, his wife went to the house of Nana Hari Patil, who told her to go to the house of accused to make enquiry with him, as on previous night, at about 8.00 p.m., he had seen Sangita and accused talking with each other in front of his house.

9] PW-1 has further stated that he told his wife to go to the house of accused and make enquiry with him. Accordingly, his wife went to the house of accused. On enquiry, the mother of accused disclosed to her that the accused had gone the house of his in-laws. PW-1 has further stated that he then went to the village Vadgaon where he learnt from the wife of accused that the accused had gone out for work and would come back in the evening. PW-1 has stated that the accused was then brought to the village Latavade and enquiry was

made with him. However, the accused did not disclose anything. PW-1 has stated that on that day, he could not go to the police station as it was night time and thus, he lodged the report on the next day, i.e., 28.7.2002.

10] The wife of PW-1 namely Tanabai Patil has been examined as PW-3. There is no reference at all of Nana Hari Patil in the evidence of PW-3. Instead PW-3 has stated in her evidence that in order to search Sangita, she had gone to the house of Laxmibai and made enquiry with her about Sangita. Laxmibai thereupon disclosed to her that on previous night she had seen Sangita and accused talking with each other in front of her house and she heard Sangita saying to the accused that she is pregnant from him. PW-3 has further stated that she went to the house of accused where she learnt from the mother of accused that the accused had gone to the house of in-laws. PW-3 has stated that then she came back and narrated everything to her husband.

11] It is apparent from the evidence of PW-1 and PW-3 that they made no attempt to search the deceased till 5.00 a.m. of 27.7.2002. Both PW-1 and PW-3 have stated that they thought that their daughter might have gone to watch T.V. in the neighbourhood and therefore, they went to sleep. However, this conduct of PW-1 and PW-3 of going to sleep when their 13 year old daughter had not come back home does not appear to be natural and casts doubt on the veracity of their version.

12] There is one more circumstance which compels us to doubt the version of PW-1 and PW-3 is that, according to PW-10 Dr. Kumar Dattatraya Nanavare, the autopsy surgeon, the deceased was five months pregnant. It is hard to believe that five months pregnancy would not come to the notice of parents. Apart from it, PW-1 has lodged the report against the accused only after the dead body of the deceased was found. These circumstances, in our view, cast doubt on the entire prosecution case.

13] PW-4 Laxmibai N. Patil, who appears to be relative of PW-1, has stated in her evidence that on the day of incident at about 8.00 p.m., when she came out of the house to throw used water, at that time, the accused and Sangita were standing on the road and they were talking with each other. She heard Sangita saying to the accused that she is pregnant from him. Thereafter, the accused and Sangita went away and she came back to her house. On the next day, the mother of deceased Sangita came to her house and upon enquiry by her she disclosed to her what she saw on the previous night. In the cross-examination conducted on behalf of the accused, PW-4 has admitted that after hearing talk between the accused and Sangita, she did not feel that she should go to the house of Sangita and disclose whatever she had heard to the mother of Sangita. This admission on the part of PW-4 makes her entire version doubtful. In such circumstances, PW-4 being relative, the least that was expected from her to convey what she has heard, i.e., pregnancy of Sangita to her

parents. PW-4 has, however, done nothing of that sort. It would not be therefore, safe to rely upon the evidence of PW-4.

14] PW-5 Nana Hari Patil and PW-7 Vasant N. Patil are also relatives of PW-1. PW-7 has admitted in his evidence that the mother of accused had lodged a complaint against his father for outraging her modesty. The possibility of false implication of the accused, therefore, cannot be ruled out.

15] Apart from the above facts and circumstances, according to the prosecution, the deceased was pregnant from the accused. In such circumstances, the DNA test of fetus would have been the best evidence. However, for the reasons best known to the prosecution, the same is not done. The accused has examined the defence witnesses, who have stated in their evidence that on the day of incident, the accused was at village Vadgaon. Considering overall facts and circumstances, it is difficult to hold that the prosecution has proved its case against the accused beyond reasonable doubt. The trial court was therefore, justified in acquitting the accused. No interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

Criminal Appeal stands dismissed.

(N.R. BORKAR, J.)

(SMT. SADHANA S. JADHAV, J.)