

payment of fine to suffer R.I. for one month. The trial Court acquitted other two accused.

3] It is the case of the prosecution that, the complainant Piraji Kamble (PW 2) was working with accused No.1 as agricultural labourer. The deceased Sharda was the wife of PW 2 Piraji Kamble. They were residing in the field of accused No.1.

4] On 12th May, 1995 at about 6.00 a.m. accused no.1 came to the house of PW 2 and asked him to plough the field. He then asked the deceased Sharda to accompany him to his another field, where weeding work was to be done. The deceased accordingly accompanied him. Till 10.00 a.m. the deceased did not return back. PW 2, therefore, got worried. He stopped ploughing and proceeded towards the field of the accused No.1, where the deceased was taken for weeding work. The accused No.1 met him on the way. PW 2 enquired with him about the deceased. Accused No.1 thereupon disclosed to him that the deceased had returned back immediately after weeding work. PW 2 suspected that accused No.1 is hiding something from him and giving false information to him. PW 2, however, then started searching the deceased Sharda, but she was not traced out. As the deceased was not traced out, on 13rd May, 1995 PW 2 had lodged the report with Salgar Vasti Police Station, Solapur, against the accused No.1.

5] On the basis of report lodged by PW 2, Salgar Vasti Police Station registered the crime against the appellant/accused No.1 vide CR No. 23 of 1995 for the offence punishable under Section 366 of the Indian Penal Code. On the same day, the accused No.1 was arrested.

6] On 14th May, 1995, the dead body of the deceased was traced out. It transpired during the investigation that the appellant/accused No.1 tried to rape the deceased and when she resisted, the accused No.1 committed her murder. It further transpired that the accused No.1 hired accused Nos.2 and 3 to dig the pit to bury the dead body of the deceased. Accused Nos.2 and 3 were then arrested. Sections 376, 302, 201, 511 read with 34 of the Indian Penal Code were invoked against the accused. On completion of investigation charge-sheet was filed against the accused.

7] The accused were charged and tried for the offences punishable under Section 366, 376, 302, 201, 511 read with 34 of the Indian Penal code. As stated earlier, the trial Court convicted the appellant/accused No.1 for the offence punishable under Section 302 of the Indian Penal Code, and acquitted accused Nos.2 and 3.

8] We have heard the learned counsel for the appellant/accused No.1 and learned APP for the respondent/State.

9] The learned counsel for the appellant/accused has submitted that the prosecution could not prove the alleged motive attributed to the present appellant/accused No.1 for committing the crime in question. It is submitted that only circumstance against appellant/accused No.1 is that of last seen. It is submitted that, considering the overall evidence on record, the possibility of involvement of third person cannot be ruled out.

10] As regards discovery of dead body of the deceased Sharda at the instance of appellant/ accused No.1 is concerned, the

learned counsel for the appellant/ accused No.1 has submitted that PW 1 Baburao Chandanshive- Panch witness has admitted that when they went to the place allegedly disclosed by the appellant/accused No.1, many people had already gathered there. It is further submitted that PW 3 Ratnabai Kamble – mother-in-law of the deceased Sharda has admitted in her evidence that the dead body of the deceased was found by the police during the search. It is submitted that the alleged discovery of the dead body at the instance of appellant/accused, is, therefore, nothing but a farce.

11] The learned counsel for the appellant/accused No.1 has submitted that evidence on record is not sufficient to connect the appellant/accused No.1 with the crime in question. It is submitted that the trial Court, therefore, ought to have granted benefit of doubt to the appellant/accused No.1.

12] Learned counsel for the appellant/accused No.1, in support of his submission has relied upon the following Judgments :

- i] **Criminal Appeal No.413 of 2007,
Nizam & Anr. vs. State of Rajasthan**
- ii] **Criminal Appeal Nos.1624-1625 of 2013,
Harbeer Singh vs. Sheeshpal & Ors.**

13] On the other hand, learned APP has submitted that the evidence on record will show that the deceased had accompanied the accused No.1 for weeding work in his field and thereafter did not return back. It is submitted that accused No.1 had not given any explanation about the death of the deceased. It is submitted that the dead body of the deceased Sharda came to be discovered at the instance of

appellant/accused No.1 It is submitted that the trial Court was, therefore, justified in convicting the appellant/accused No.1 for the offence punishable under Section 302 of the Indian Penal Code. It is submitted that the appeal may be dismissed.

14] The case is based on circumstantial evidence. The prosecution has relied upon following circumstances to prove it's case :

- i] Last seen theory;
- ii] Discovery of the dead body of the deceased at the instance of present appellant/accused No.1.

15] The fact that the husband of the deceased (PW 2) was working with present appellant/accused No.1 as agricultural labour is not in dispute. It is also not in dispute that PW 2 and the deceased were residing in the field of accused No.1. The fact that the deceased died due to strangulation has not been challenged.

16] PW 2 has stated in his substantive evidence that on 12th May, 1995 the accused No.1 came to his house at about 9.00 a.m. and took the deceased for weeding work and thereafter she did not return back. Whereas PW 2 has stated in his report at Exhibit 16 that on 12th May, 1995 accused No.1 came to his house at about 6.00 a.m. Thus, there is major variance as regards timing of arrival of accused No.1 at the house of PW 2, which is crucial in cases like this.

17] According to PW 2 the accused No.1 met him, while he was proceeding towards the field of accused No.1 in search of the deceased. The accused No.1 on being asked about the deceased,

disclosed to PW 2 that, the deceased had returned back after doing the weeding work.

18] It appears from the evidence on record and more particularly of PW 2 that field of accused No.1 where the deceased was allegedly taken by the accused No.1 was about one kilometer away from the field where PW 2 was residing. It further appears that railway track was required to be crossed to reach the said field. If this is so then possibility of some third person committing the crime in question cannot be ruled out.

19] As regards discovery of the dead body at the instance of accused No.1 is concerned, PW 1 Panch witness Baburao Chandanshive has admitted in the cross-examination conducted on behalf of the accused No.1, that some relatives of the deceased were already present near the dead body, when they reached there. He has further admitted that there were about 30-40 persons near the dead body and relatives of the deceased were weeping. He has further admitted that relatives of the deceased told them that they found the dead body after two days of the search.

20] Apart from it, the timing on memorandum of accused No.1 at Exhibit 11 is 14.05 hours to 14.20 hours. PW 2 has admitted that the dead body was found at 10.00 a.m. The discovery of the dead body at the instance of accused No.1, therefore, does not appear to be reliable.

21] The evidence on record is not sufficient to conclude that

the prosecution has proved it's case against appellant/accused No.1 beyond reasonable doubt. In the result, following order is passed :

ORDER

- i] Appeal is allowed.
- ii] Judgment and order dated 12th December, 1996 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.181 of 1995 is quashed and set aside.
- iii] The appellant/accused No.1 is acquitted of the offence punishable under Section 302 of the Indian Penal Code.
- iv] The appellant/accused is on bail. His bail bonds stand cancelled.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]