

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION (ALS) NO. 2 OF 2020**

The State of Maharashtra.

..Applicant.

Versus

Sakshi @ Yogita Santosh Khade.

..Respondent.

Mr. Arfan Sait, APP for the Applicant – State.

CORAM : PRASANNA B. VARALE &  
SURENDRA P. TAVADE, JJ.

Date : **June 21, 2021.**

P. C. :

1. Heard learned APP. This is an application preferred by the Applicant – State of Maharashtra challenging the judgment and order passed by the learned Additional Sessions Judge, Mumbai in sessions Case No. 702 of 2013. Accused Nos. 1, 2 and 3, namely, Ravindra Bagaram Mane, Santosh Sakharam Khade and Sakshi @ Yogita Santosh Khade were charge-sheeted for commission of the offences punishable under sections 302, 201 and 404 read with 34 of the Indian Penal Code, 1860. Learned Sessions Judge, on appreciation of evidence, was pleased to pass the judgment and order dated 20<sup>th</sup> May 2019 whereby accused no.1 Ravindra Mane was convicted for commission of the offence punishable under section 302 of IPC and was awarded sentence

to suffer life imprisonment along with fine, in default to suffer further rigorous imprisonment for one year. Accused nos.1, 2 and 3 were convicted for the offence punishable under section 201 read with 34 of IPC and sentence was awarded to them. Accused No.3 Sakshi @ Yogita Santosh Khade was also convicted for commission of the offence punishable under section 404 of IPC and awarded sentence. But the learned trial judge was pleased to acquit accused no.2 as well as accused no.3 from the charge of commission of offence punishable under section 302 of IPC read with section 34 of IPC.

2. Being aggrieved by the judgment and order passed by the learned Sessions Judge, the present application is preferred only in respect of original accused no.3-Sakshi @ Yogita Santosh Khade. Learned APP Mr. Sait vehemently submitted that the learned trial Judge failed to appreciate the evidence in its proper perspective and arrived at an erroneous conclusion. It is also submission of the learned APP that the serious offence in the nature of offence punishable under section 302 of IPC was committed by accused persons. It is also submission of learned APP that the recovery of certain articles is a material in support

of the case of prosecution against the respondent Sakshi @ Yogita Santosh Khade. Thus, in short, the submission of learned APP is of an erroneous appreciation of evidence by the learned trial Judge.

3. Though at the first blush, the submissions of learned APP looks attractive, on going through the judgment and order passed by the learned Additional Sessions Judge, Mumbai, more particularly the reason assigned for acquittal of respondent (original accused no.3) we are of the opinion that no error was committed by the learned trial judge in rejecting the case of the prosecution against the respondent and arriving at the conclusion of acquittal of respondent (original accused No.3).

4. It is not in dispute that case of the prosecution against the respondent rests on only circumstantial evidence, and mere presence of respondent in the house at the relevant time would not be a strong material against the respondent so as to arrive at a conclusion that the respondent played an active role in the commission of offence punishable under section 302 of IPC.

5. The backdrop of the prosecution case is reflected in paragraph nos.2, 3 and 4 of the judgment and order of learned trial Judge. Then there is reference to the material collected by the investigating agency in the process of investigation, including the tower location etc.. It may not be necessary for us to give all those details and suffice it to say that the case of prosecution against the respondent (accused No.3) rests on two pillars; firstly, the ocular testimony of two witnesses; and secondly, the recovery of certain articles, namely, gold tops (ear-rings) and gold chain. The learned trial judge made a detailed reference to the ocular evidence of production witnesses in paragraph no. 21. The sum and substance of these observations is that PW-2 Nitesh Pachadkar and PW-3 Abhishek Tiwarekar were claimed as star witnesses by the prosecution. What emerges from the ocular testimony of PW-2 Nitesh Pachadkar is only of hearing of shouts at about 3.35 p.m. from the house of respondent-accused No.3 Sakshi @ Yogita Santosh Khade. He has deposed before the Court that on the day of incident, he had been to the house of PW-3 Abhishek, who happens to be his maternal brother, for study and at about 3.35 p.m. he heard the noise of giving smash

and hitting from the house of accused Sakshi Khade. He also heard noise of falling utensils and the loud shouts of one lady. Both these witnesses, Nitesh and Abhishek, rushed to the house of Sakshi. However, Sakshi prevented them from entering into the house. Sakshi then gave direction to her daughter to go down-stairs and latch the door from outside. On an enquiry made by these witnesses, Sakshi informed that her maternal aunt gets the shocks of epilepsy on seeing kids. Then they heard the words “अग आई ग”. Then they heard words in the voice of Sakshi “बाबा तुमचे काम झाले का”. With these material, the prosecution wanted to establish its case against respondent-accused no.3 Sakhi. Even accepting that the words uttered by Sakshi namely, “अग आई ग” and “बाबा तुमचे काम झाले का” were heard by these witnesses, ie., PW-2 Nitesh and PW-3 Abhishek, that by itself would not be a substantive material to arrive at a conclusion that accused no.3 played a vital role in the commission of offence punishable under section 302 of IPC. The prosecution ought to have established its case against respondent-accused no.3 with some more reliable material than except the words.

6. Then, the other material is again a very weak piece

of evidence against the respondent. The material on which the prosecution relies against accused no.3 is the recovery of articles, namely gold chain and gold tops (ear-rings). Perusal of the judgment clearly shows that the witnesses have stated that the accused persons mortgaged the gold ornaments as they were in need of money. Even for the sake of assumption this is a material against respondent - accused no.3, this material at the most would indicate an act of disposal of property in the offence by the respondent and this material would not be sufficient enough to establish that the respondent - accused no.3 played any active role in the serious offence of committing murder of deceased, i.e., the offence punishable under section 302 of IPC.

7. Insofar as the role played by accused no.3 is concerned, learned trial judge appreciated the evidence in its proper perspective and convicted accused no.3 respondent Sakshi @ Yogita Santosh Khade for the offence punishable under section 201 read with 34 of IPC, and for the for the offence punishable under section 404 of IPC and awarded sentence.

8. Considering all these aspects, we are of the opinion

that the learned trial judge committed no error in appreciating the evidence and arrived at the ultimate conclusion. The application, thus, being devoid of any merit deserves to be rejected and the same is rejected. Needless to state that leave to appeal is refused.

**[Surendra P. Tavade, J.]**

**[Prasanna B. Varale, J.]**