

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 376/2018

Raghunath Kanaji Revatkar,
aged 50 years, Occ. Labourer,
r/o Kalamna, Tq. Samudrapur,
Dist. Wardha.

.....APPELLANT

...V E R S U S...

State of Maharashtra, through
Police Station Officer, Sindi (Rly),
Tahil Seloo, Dist. Wardha.

...RESPONDENT

Mr. Sumedh Kadam, Advocate appointed for appellant.
Mr. T. A. Mirza, A.P.P. for respondent-State.

CORAM:- V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.
DATE:- SEPTEMBER 23, 2021

JUDGMENT (Per: V. M. Deshpande, J.)

1. Being aggrieved by the judgment and order of conviction passed by learned Additional Sessions Judge, Wardha dated 12.06.2017 in Sessions Case No. 122/2014, convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and directing him to suffer rigorous imprisonment for life and to pay fine amount of Rs.10,000/- with default clause and also convicting him under Section 511 of the

IPC directing him to suffer one half of imprisonment for life and to pay a fine of Rs.5,000/- with default clause, the present appeal is filed. Though appellant was convicted for the aforesaid offences, he was acquitted of the offence punishable under Section 364 and 376 of the IPC. No appeal was preferred challenging the said acquittal by the State.

2. We have heard Mr. Kadam, learned counsel appointed through High Court Legal Services Sub Committee, Nagpur to represent the appellant and Mr. Mirza, learned A.P.P. for the State. With their able assistance, we have gone through the record and proceedings.

3. First Information Report was lodged by Rambhau Upase (PW2), father of deceased Shashikala alias Sarika. His oral report is at Exh.-26, whereas printed FIR is at Exh.-27. The investigation was conducted by Shaikh Rahim Shaikh Gaffar (PW10). After the crime was registered, he went near the spot of incident. Articles lying on the spot were also seized under seizure memo Exh.-21. Inquest was conducted. Inquest panchanama is at Exh.-22. He seized clothes, pubic hair, sample of hair, vaginal swab and blood sample of Sarika. Though pancha witness Nago

(PW3) has turned hostile, the investigating officer has proved the seizure memo. The appellant was arrested on 20.03.2014 under arrest memo Exh.-68. A liquor bottle was found on the spot. The investigating officer was having suspicion that there may be finger print on the bottle of liquor. Therefore, the finger print expert was called. Finger print expert's report is also available on record at Exh.-70. Muddemal articles were sent to Chemical Analyzer (CA) vide requisition Exh.-73. CA report is at Exh.-75.

4. There is no eye witness account in this prosecution case. According to the prosecution, the appellant was seen sitting nearby the place where dead body of Shashikala alias Sarika was found. The prosecution is also relying upon the finger print expert's report showing that finger prints of the appellant were matched with the finger prints available on liquor bottle. Also the prosecution is relying upon the C.A. report.

5. Since there is no direct evidence, this prosecution case will have to be decided by keeping in mind the principles laid down by Hon'ble Apex Court in *Sharad Birdhi Chand Sarda vs State Of Maharashtra* reported in *1984 (4) SCC 116*, in which following principles are enunciated by the Hon'ble Apex Court.

Those are reproduced below:

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- 2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- 3. The circumstances should be of a conclusive nature and tendency;*
- 4. They should exclude every possible hypothesis except the one to be proved; and*
- 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

6. Rambhau Upase (PW2) reported in Exh.-26 that on 19.03.2014 his elder daughter deceased Shashikala, aged 20 years and his younger daughter and Ranjana, went in the agriculture field with Sanjay (PW1), along with Vanita, Shobha, Lata, etc. in the morning at 09.30 a.m. At about 11.30 a.m. he left his house for grazing she goats and his wife Shakuntala went for grazing other live stock. First informant came to his house at 06.00 O'clock in the evening. That time, though he noticed that his

younger daughter Ranjana was present, he could not notice presence of his elder daughter Shashikala. Hence, he made inquiry with her. His wife Shakuntala also came with him and inquiry was made to many persons. He, therefore, started making inquiry with other women folks with whom Shashikala, went in the morning and they told him that after their work was finished, deceased Shashikala left their company on the pretext that she wants to bring some firewood. Therefore, he started making search of his daughter. On the way towards his agriculture field, he found stack of the firewood. In the meanwhile, Sanjay (PW1) informed him on telephone that the dead body of Shashikala was lying in the nala adjacent to the agriculture field of one Dashrath Satone. He, therefore, went there to notice that her clothes were pulled down. There was injure on her private part. He, therefore, lodged oral report against the unknown person.

7. Dead body of Shashikala alias Sarika was sent to Sewagram Hospital, where post mortem was conducted by Dr.Vishal Surwade (PW6). He found following injuries:

- “i) Contusion over left side of the face about 2 cm lateral to left nostril of size 5 cm x 2.5 cm, reddish in colour.
- ii) Abrasion over right side of the face about 3

cm lateral to the right nostril of size 3 cm x 2 cm, reddish brown in colour.

iii) Abrasion over right side of the mandible of size 2 cm x 1 cm, reddish in colour.

iv) Abrasion of size ranging from 2 cm x 0.5 cm to 2 cm x 0.2 cm are present over right side of face, with reddish brown in colour.

v) Crescentic abrasion of size ranging from 2cm x 0.5 cm to 2 cm x 0.2 cm over anterior aspect of the neck, with reddish brown in colour.

vi) Abrasion over posterior aspect of right shoulder of size 4 cm x 0.5 cm with oblique in presentation and reddish brown in colour.

vii) Multiple abrasion over left side of the back of size ranging from 2 cm x 0.5 cm to 4 cm x 0.5 cm. obliquely placed and reddish brown in colour.

viii) Multiple abrasion over right breast of size ranging from 2 cm x 0.5 cm to 4 cm x 0.5 cm obliquely placed and reddish brown in colour.

ix) Multiple contusions over right breast of size ranging from 2 cm x 2 cm to 2 cm x 0.5 cm. obliquely placed and reddish brown in colour.

x) Abrasion over area between right labia majora and labia minora of size 2 cm x 0.1 cm present vertically and reddish in colour.

xi) Abrasion over left labia majora of size 2 cm x 0.1 cm, vertically and reddish in colour.

xii) Abrasion over anterior aspect of upper

portion of the right thigh of size 2.5 cm x 0.5 cm, reddish in colour. Horizontal in presentation.

xiii) Abrasion mark is appreciated over right side of lower back, of size 2 x 0.5 cm which is brown in colour.

xiv) Abrasion of size 3 X 05. cm. Which is brown in colour.”

8. Sanjay Muke (PW1) is the person in whose agriculture field Shashikala went in the morning along with other women folks. On the day of incident i.e. 19.03.2014, this prosecution witness was at village Goul for canvassing of election. He received telephone call from Vaibhav Zade about missing of Shashikala. He, came to the village and started searching along with other villagers. In nala situated near the village, they found appellant sitting and was smoking cigarette. An inquiry was made from where he is coming in such night hours. Upon that the appellant replied that he is coming from Vikhni and proceeding to Kalamna. Upon that, Sudhakar (PW7) asked him as to why he is proceeding to Kalamna by such a circuitous way and they proceeded further just to notice the dead body of Shashikala.

Evidence of Sanjay (PW1) is corroborated to this extent by Sudhakar Borkar (PW7).

9. It is an admitted position that appellant is also resident of village Kalamna from where all the prosecution witnesses and deceased were hailing. It has come in evidence that various persons including Sanjay (PW1) and Sudhakar (PW7) were making search of the deceased. It is the defence of the appellant that he was also member of the searching party. What is important to note is that neither Sanjay (PW1) nor Sudhakar (PW7) did state that the appellant was not member of searching party. Further, no other member of searching party was examined by the prosecution to rule out the possibility to disbelieve evidence of the appellant.

10. After the appellant was arrested, he was referred to Dr.Rajendra Kotwear (PW8). On his examination, Dr. Kotewar noticed following external injuries.

“i) Scratch abrasion of size 1 cm. In front of left side ear, brownish black in colour.

ii) Scratch abrasion of size 1.5 cm. over middle of neck brownish black in colour.

iii) Scratch abrasion of size 2 cm. brownish in colour over abdomen below sternum (over the upper part of the abdomen and below chest in middle)

iv) Scratch abrasion of size 2 cm. brownish black in colour over lumber region left side,

v) Scratch abrasion of size 2 cm. brownish black in colour over right side of thigh (mid thigh);

vi) Abrasion of size 0.5 cm. over thinner region of palm surface brownish black in colour;

vii) Abrasion of size 0.5 cm. over mid arm right side interiorly brownish black in colour;

viii) Liner Scratch abrasion two in numbers each of approx 3 mm over left forearm brownish black in colour;

ix) Abrasion of size 0.5 cm. over left shoulder joint brownish black in colour;

x) Abrasion of size 0.5 cm. over left scapular region (over the back) brownish black in colour;

xi) Abrasion of size 0.5 cm. over left wrist joint dorsally brownish black in colour;

xii) Abrasion (graze) of size 1.00 cm. over right shoulder brownish black in colour;

xiii) Graze abrasion of size 1.00 cm. over right scapular region brownish black in colour;

xiv) Multiple abrasion of size 0.5 cm. each over right elbow joint posteriorly region brownish black in colour;

xv) Abrasion of size 0.5 cm. over knuckle (base of middle finger of right dorsall) of middle finger right brownish black in colour;

xvi) Abrasion of size 5.00 cm. over right scapular

region brownish black in colour;
xvii) Abrasion of size 0.5 cm. over right thigh
posteriorly brownish black in colour;
xviii) Abrasion of size 3.00 mm. over lower lip right
side brownish black in colour.”

He proved injury certificate. Dr. Kotewar has admitted that he did not obtain history of injuries from the appellant. As per his evidence, upper layer skin is delicate and if there is scratching by nails, then there are chances of having skin materials and blood in the nails. It would be useful to reproduce evidence of Dr.Kotewar:

“...Some injuries out of injury nos. 6 to 18 may be possible if agriculturist works in the agriculture field or over hard surface. If somebody is searching to some person from night hours in the bushes then some injuries out of injury nos. 6 to 18 may be possible. When Raghunath was brought, he was having clothes on his person. At that time, I had not examined those cloths. I had asked to Raghunath to change the clothes and also not collected his cloths. I had not made any inquiry as to since when Raghunath wearing those clothes. The dimension of all injuries have been mentioned approximately. All the injuries are superficial in nature.”

In the context of the injuries, may be precisely, much importance cannot be attached to the C.A. report Exh.-75 showing

some element of blood on his clothes.

11. Insofar as finger print on the liquor bottle is concerned, from evidence of Kailash Wachkal (PW11), it is clear that he is not an independent expert. He is attached to the police department. Under Exh.-21, the liquor bottle was seized. Contemporaneous document is completely silent about sealing on the spot. Sanjay (PW1) who acted as pancha did throw any light on sealing aspect. The law is well crystallized on the issue of sealing and it assumes importance when the prosecution case is solely based on the circumstantial evidence. From the evidence of Kailash (PW11), it is clear that police shown the said bottle to him in the police station. His evidence would show that he has not taken photographs personally on the spot. Further the person who obtained finger prints of the appellant is not examined by the prosecution. As per the finger print expert's report Exh.-70, out of two chance finger prints, one chance finger print developed on wine bottle concerned in police station Sindhi (Rly), Crime No.20/2014, is identical with right index finger of the finger impression slip of the accused. Thus, even from the expert's

report, only one index finger is shown to be matched. It is really hard to believe that a person can lift a wine bottle only with the help of one finger.

12. In the C.A. report, apart from the blood, it is stated that one hair was found on the clothes of the appellant. However, no attempt was made to conduct DNA test. There is nothing on record to show that there was any occasion for appellant to change clothes. If that be so, it is hard to believe that for 22 hours, at the time of seizure of his clothes, one long hair will still be there.

13. Nobody has seen the appellant in company of the deceased at any time, leave apart the last seen. What is the prosecution case is that he was seen sitting smoking cigarette at nearby place from where dead body was found, In his statement under Section 313 of the Code of Criminal Procedure, he did state that various groups were formed for searching Shashikala alias Sarika and he was member of one of the groups. When he was searching the deceased, while entering into the bushes, resulting into having various injuries on his person. He also states that he remained with the group during entire night. In view of the

Doctor's evidence who examined the appellant, the defence of the appellant is probalilized.

14. There is no other evidence to connect the appellant in whatsoever nature regarding the incident of murder of Shashikala. The suspicion howsoever strong cannot take place of proof, is the cardinal principle of criminal jurisprudence. In view of that, there is no hesitation in our mind that this is a fit case wherein the Court should extend benefit of doubt in favour of the appellant. Hence, we pass the following order.

ORDER

1. *The Criminal Appeal is allowed.*
2. *The impugned judgment and order of conviction dated 12.06.2017 passed by the learned Additional Sessions Judge, Wardha in Sessions Case No. 122/2014 is quashed and set aside.*
3. *Appellant – Raghunath Kanaji Revatkar is hereby acquitted of the offence punishable under Sections 302 and 511 of the Indian Penal Code.*
4. *Appellant – Raghunath Kanaji Revatkar who is in jail, shall be released forthwith, if he is not required in any other offence.*
5. *Mr. Sumedh Kadam, learned counsel appointed by the High Court Legal Services Sub Committee, Nagpur is entitled to receive his professional fees and we quantify it at Rs.5,000/-.*

6. *Mr. Kadam, learned appointed counsel has graciously submitted that in stead of giving the amount to him, the said amount be given to the High Court Bar Library, Nagpur way of donation.*

Hence, the High Court Legal Services Sub Committee, Nagpur shall remit Rs.5,000/- to the High Court Bar Library, Nagpur as donation from Mr. Sumedh Kadam, Advocate.

We appreciate the pains taken by the learned counsel for arguing this matter.

7. The criminal appeal is allowed and disposed of in above terms.

JUDGE

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