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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.117 OF 2015**

Ganesh S/o Madhav Rajpanke
Age 28 yrs., Occ. Labour
R/o. Raiwadi, Tq. Chakur,
Dist. Latur.

... Appellant

V/s.

The State of Maharashtra,
Through P.S.O. Police Station,
Chakur Tq. Chakur Dist. Latur.

... Respondent

Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. Govind A. Kulkarni and
K.A. Kale, Advocates for the Appellant.

Mr. S.P. Deshmukh, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
S.G. DIGE, JJ.**

JUDGMENT RESERVED ON : 16th MARCH 2022.

JUDGMENT PRONOUNCED ON : 25th APRIL 2022.

(THROUGH V.C.)

JUDGMENT : (Per Sadhana S. Jadhav, J.)

1. The appellant herein is convicted for the offence punishable under section 302 of IPC and sentenced to suffer R.I. for life and to pay fine of Rs.2,000/- in default, to undergo further R.I. for two months by the Additional Sessions Judge, Latur in Sessions Case No.35 of 2014 vide judgment and order dated 17th January 2015. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows:-

(i) On 11th December 2013 at about 8.30 am, one Manohar Waman Mohale called upon his nephew Sanjay Rajpankhe. The phone was answered by an unknown person who inquired with the caller about the identity of the person to whom the phone belonged. The person answering the call informed Mr. Mohale that probably Sanjay has met with an accident and he has died in the said accident. Mr. Mohale rushed to the spot on the basis of the disclosure made by the answering person and found his nephew to be dead. There were injuries on his right occipital region. There were injuries on his left cheek. He informed the police on the basis of which A.D. No.93 of 2003 was registered. The Station Diary entry was taken at about 3.45 pm. Sudhakar Bawkar (P.W. 8) had registered A.D. case No.93 of 2013 and the said accidental death was investigated by Head Constable Parkote.

(ii) The Spot Panchanama, Inquest Panchanama and Seizure Panchanama of the clothes of the deceased was conducted in A.D. Inquiry under section 174 of Cr.PC. The body was sent for autopsy. The Post-mortem notes are at **Exh.48**.

(iii) The scene of offence panchanama was conducted on 11th December 2013 in the A.D. inquiry. The scene of offence was National

Highway No.3 Latur Road near the flyover. It was noticed that there was a corner-stone. The dead body was lying in a supine position. There was a cement pillar fitted with iron pipes. The dead body was lying at a distance of 2 feet from the said corner-stone. At a distance of about 8 feet from the dead body there were broken glass pieces of the head light of Hero Honda Motorcycle and also the side glasses of Hero Honda motorcycle. On the Northern side, there were marks of dragging and a rift had occurred on the ground. There were no signs of anything dashing against the iron pipes or the wall. The headlight cover, broken pieces of glass of the side mirror, and a Bristol cigarette were seized from the spot.

(iv) On 12th December 2013, Narayan Rajpalkhe (P.W.2), the brother of deceased Sanjay Rajpalkhe made a written communication to the Police alleging therein that there was a dispute between the family of Ganesh Rajpalkhe and the deceased over the property belonging to Sheshabai. That on 10th December 2013, at about 12.00 noon, Ganesh Rajpalkhe had taken the deceased on his motorcycle and thereafter, Sanjay had not returned home. On 11th December 2013, Ganesh had visited the house of the deceased and inquired with his sister Savita the whereabouts of Sanjay. She confronted with him the fact that in fact, Sanjay had accompanied him on the previous day and therefore, there was no reason to inquire with her. There was no reaction by Ganesh and he quietly returned.

(v) PW.2 was informed by his maternal uncle that Sanjay was found lying dead near the flyover, hence, PW.2 returned from Bombay. Upon seeing the injuries on the dead body, they realized that it is a case of homicidal death and after the funeral, he informed the police about the same and expressed his suspicion against Ganesh Rajpankhe. On the basis of the said report, the accused was arrested on 12th December 2013 in Crime No.230 of 2013 registered at Chakur Police Station for the offence punishable under section 302 of Code of Criminal Procedure. The investigation was set in motion and charge-sheet was filed on 11th March 2014.

(vi) At the trial, the prosecution has examined as many as 10 witnesses to bring home the guilt of the accused.

3. PW.2 Narayan Rajpankhe happens to be the brother of Sanjay. He has deposed before the Court that the accused happens to be the son of maternal uncle of his father. That, initially the family of the deceased was residing at Katkarwadi, Taluka Ambejogai. Their grandmother was residing at Raiwadi and therefore, three months prior to the incident, the family came to reside at Raiwadi. That, since four months prior to the incident he was residing in Mumbai. On 11th December 2013, the wife of his maternal uncle namely Radhabai informed him telephonically that Sanjay had met

with a homicidal death and that his dead body was lying on the railway flyover at Latur. Accordingly, he reached on 12th December 2013. He saw the injuries on the dead body of his brother. Thereafter, his sister Savita informed him that on 10th December 2013, Ganesh had been to their house and had asked Sanjay to accompany him. Thereafter, their brother Sanjay had not returned home but on 11th December 2013, Ganesh had visited their house inquiring about the whereabouts of Sanjay. He was confronted with by Savita.

4. PW.7 – Savita happens to be the sister of the deceased and the first informant. She has deposed before the Court that since four years she alongwith Sanjay and Narayan had started residing at Raiwadi with Sheshabai who happens to be her paternal grand-mother. She has further deposed that on 10/12/2013 Ganesh had been to their house at about 11.30 am to 12 noon and that he requested Sanjay to accompany him on his motorcycle. That, Sanjay did not return till 7.30 pm and therefore, she made a phone call to him. That, Sanjay had told her that he was in the company of Ganesh and they had taken motorcycle to garage for repairing and therefore, there is delay. Sanjay had also told her that he may return home at late hour and in the eventuality there would be further delay, they would visit the house of their maternal uncle namely Ganesh. That, Sanjay did not return home. However, at about 8 am, in the morning, the accused

had been to the house of Sanjay and asked P.W. 7 about the whereabouts of Sanjay, to which she had reacted that he would be the best person to know where is Sanjay as he was in the company of Sanjay on the previous night. Ganesh quietly returned home without responding to the remark of P.W. 7. After Ganesh had left, her maternal aunt Radhabai enquired with her telephonically as to who was in the company of Sanjay on the previous day and P.W. 7 had disclosed that he was in the company of Ganesh. At that juncture, P.W. 7 was informed by Radhabai that Sanjay had been murdered.

5. The statement of P.W. 7 was recorded on 13/12/2013. There are omissions in the evidence of P.W. 7 which would show that she had not disclosed relevant facts to the police in her previous statement. The portion marked "A" in the evidence of P.W. 7 shows that Radhabai had told P.W. 7 that Sanjay had met with an accident and he had died in the said accident. However, P.W.7 has categorically stated that she is not aware as to why such a statement finds place in the record. She has denied the suggestion that they had demanded compensation to Ganesh and was unaware that on 11/12/2013 her maternal uncle had lodged a report that Sanjay had met with an accident. This in fact is only a suggestion.

6. The investigation in Crime No.230 of 2013 was carried out by P.W. 8 - API- Sudhakar Bawkar who had recorded the statements of the witnesses. It is admitted by P.W. 8 that even prior to registration of the FIR in

Crime No.230 of 2013, Manohar Mohale had lodged a report in respect of the accidental death of the deceased Sanjay and the FIR was lodged by Narayan. It is also admitted by P.W.8 that the Test Identification of the accused was not conducted, rather P.W.6 - Ramdas Gaikwad had not been called for identifying the accused.

7. The learned counsel for the appellant has vehemently submitted that Narayan had lodged a report in respect of accidental death and filing of the FIR is an afterthought and that therefore, there is inordinate delay in lodging the FIR for which the informant – Manohar has not offered any plausible explanation. Hence, the accused deserves to be acquitted of the charges under section 302 of IPC. That, there was no motive on the part of the accused to commit murder of the deceased. The prosecution has failed to prove the motive.

8. Per contra, the learned APP submits that the prosecution has proved its case beyond reasonable doubt. That, there is cogent evidence in respect of last seen together and that the accused has taken the defence of total denial in his statement under section 313 of Cr. P.C.

9. That, P.W. 7 had even confronted the accused to which he had not reacted and that speaks volumes for itself. Hence, the judgment of the trial Court calls for no interference.

10. With the help of the learned counsel for the appellant and the learned APP, we have meticulously gone through the records. The admitted facts are as follows:-

(i) That, the prosecution has been able to establish through P.W. 7 that on 10/12/2013 the accused had been to the house of the deceased at about 11.30 to 12.00 noon and thereafter, the deceased was not seen by anyone or heard of. They had left on the motorcycle of the accused.

(ii) That, the motorcycle on which the accused and the deceased had left was the motorcycle i.e. Hero Honda Splendor bearing registration No.MH-24-G-5295 was seized at the instance of the accused from front of his house. The seizure panchanama is at **Exh.45** which is proved through P.W. 3 - Akash Gaikwad.

(iii) The seizure panchanama shows that the dome of the headlight was totally damaged. The indicators on the front and the rear side were damaged. The said motorcycle is registered in the name of the accused.

(iv) P.W. 7 has also established that on 10/12/2013 deceased Sanjay had not returned home. On 11/12/2013 the accused had visited the house of P.W. 7 at about 8.00 am and inquired about the deceased. Upon being confronted by P.W.7 that he is answerable to the whereabouts of Sanjay, he had not reacted and simply left the house of P.W.7.

(v) Column no.17 of post-mortem shows the following injuries:-

- (1) Lacerated wound over the occipital region of size 3½ inch bone deep underlying tissues and vessels injured.
- (2) Contusion with laceration over the left side of face and anterior to ear 2x1x1 inch.
- (3) Laceration behind and above left ear of size 5x ½ x ½ cm.
- (4) Contusion with laceration right eye 2x1 cm.
- (5) Laceration over the left submental region 1 x ½ x ½ cm.
- (6) There are not fractures on palpation. There is no bony injury.
- (7) That column no.21 shows digested food and water 200 ml. Smell of alcohol present.
- (8) The cause of death was “death due to multiple injury over the head”.
- (9) It is established that the deceased had consumed alcohol and had food more than three hours prior to his death. The Doctor has not stated the time of the death. The dead body was noticed on 11/12/2013 and post-mortem lividity and rigor mortis was present in both upper and lower limbs.

11. Upon considering the admitted facts, it is clear that the accused and the deceased were last seen in the company of each other by PW. 7. The broken headlights and the broken mirror would show that the accused and the deceased must have met with an accident on the said highway as the broken parts of the motorcycle were found on the spot.

12. The question for determination would be as to whether the prosecution has proved that the deceased Sanjay had met with a homicidal death. The injuries noticed in column No.17 are in the form of lacerations and contusions. There is no fracture on palpation. It would not prove that there was an assault on the head. Laceration and abrasions could be caused due to accident also.

13. Despite this, it was incumbent upon accused to have disclosed to the family members that they had met with an accident and after the accident the deceased had sustained injuries but was abandoned by the accused. In all probabilities, the death had occurred since the deceased was not given medical aid instantly. P.W. 4 in his substantive evidence has stated that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. But in the very next breath, it is also admitted that the said injuries are possible if a person is forcefully dashed against a wall. The act could also be accidental. The spot panchanama at **Exh.33** would show that the incident had occurred on a flyover which has a concrete wall and is about 6 feet in length. On the east side, there is agricultural land and on the west side, it is a concrete road. There is an iron railing on the side which is supported by a cement pillar. The cement pipe is about 3½ feet from the ground and at a distance of about 8 feet of the body the broken parts of the motorcycle are noticed. There are signs of skidding

of the motorcycle on the grass. There are signs which show that a vehicle had dashed against the wall. All this would be indicative of the fact that in all probabilities, it was an accidental death.

14. Section 8 of the Indian Evidence act reads follows:-

“8. Motive, preparation and previous or subsequent conduct. - Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceedings, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”

15. The conduct of the accused after the incident also needs to be appreciated. It could be a fear of being implicated that he had restrained himself from disclosing about the accident with which they had met. In order to cover up the whole episode, he had visited the house of the deceased on the next day and made a farce of inquiring about the whereabouts of Sanjay.

16. There is a long distance between “may be” and “must be” and it is incumbent upon the prosecution to travel the said distance and establish the culpability of the accused. The Supreme Court in the case of **Sarwan**

Singh Vs. State of Punjab¹ has held as follows :-

“The prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence.”

17. There is evidence to show that the accused has abandoned Sanjay after the incident. The evidence of last seen together by itself would not lead to the conclusion that the death was at the hands of the accused. There is no recovery of weapon nor it is the case of the prosecution that the accused had used any weapon to cause the head injury. All the injuries are in the nature of laceration. The accused has caused disappearance of evidence and hence, Section 201 of the Indian Penal Code would be attracted.

18. The prosecution has failed to establish that Sanjay had died a homicidal death. Hence, the accused deserves to be acquitted under section 302 of IPC. Hence, the following order :-

ORDER

- (i) Appeal is partly allowed;
- (ii) The conviction of the appellant for the offence punishable under Section 302 of IPC vide judgment and order dated 17th January 2015 passed by the learned Additional Sessions Judge, Latur is hereby quashed and set aside;

1. 1957 AIR 637

- (iii) The appellant/accused Ganesh Madhav Rajpanke is hereby convicted for the offence punishable under section 201 of IPC and is sentenced to suffer R.I. for seven years;
- (iv) The appellant has undergone sentence under section 201 of IPC;
- (v) Appellant be released forthwith, if not required in any other offence;
- (vi) Fine amount is maintained;
- (vii) Appeal is disposed of accordingly.

(S.G. DIGE, J.)

(SMT. SADHANA S. JADHAV, J.)