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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 352 OF 2012**

1] Chetan Ramdas Dumbre]
2] Nilesh Dnyaneshwar Vitekar]
Both R/o. Dumbarewadi, Otur,]
Tal. Junnar, Dist. Pune] ... Appellants
(Presently in Yerwada Central
Prison, Pune)
V/s.
The State of Maharashtra]
(through Junnar Police Station)] ... Respondent

Mr. Aashish Satpute, Appointed Advocate for the Appellants.
Mr. V.B. Kondedeshmukh, APP for the Respondent/State.

**CORAM : S.S. SHINDE &
N.R. BORKAR, JJ.**

**RESERVED ON : 10.01.2022.
PRONOUNCED ON : 17.03.2022.**

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

1] This appeal takes an exception to the judgment and order dated 20.10.2011 passed by the Additional Sessions Judge, Pune in Sessions Case No.925 of 2009. The appellants and one more accused were tried in the aforesaid sessions case for the offences punishable under sections 394 and 302 read with 34 of the Indian Penal Code, 1860 (for short "IPC").

2] By the impugned judgment and order, the appellants, who were accused nos.1 and 2 respectively before the trial court, have been convicted for the offence punishable under

section 302 read with 34 of the IPC and sentenced to suffer Imprisonment for Life and to pay fine of Rs.2,000/- each and in default of payment of fine, to suffer further Rigorous Imprisonment for one year. The appellants have been further convicted for the offence punishable under section 394 of the IPC and sentenced to suffer Imprisonment for Life and to pay fine of Rs.2000/- each and in default of payment of fine, to suffer further Rigorous Imprisonment for one year. Both the sentences are directed to run concurrently. The trial court has however, acquitted the accused No.3 of all the offences.

3] We have heard the learned appointed counsel for the appellants and the learned APP for the respondent/State.

4] The deceased Bajirao Shankar Deokar and his wife Sunanda Deokar were retired primary Teachers and on the date of incident which took place in the intervening night of 20.06.2009 and 21.06.2009 were residing at Vadgaon Anand, Dist. Pune.

5] According to the prosecution, on the date of incident the appellants/accused entered into the house of deceased, with intent to commit robbery and while committing the robbery, committed the murders of the deceased.

6] According to PW-1 Dr. Sanjay B. Deokar, the deceased were his parents. At the relevant time, he was residing at village Ale Phata and his parents were residing at village

Vadgaon Anand. He daily used to go to his parents' house in the morning and evening.

7] According to PW-1, on 20.6.2009, he had gone to his parents' house at about 7.30 p.m. On that day, during chit-chatting his father disclosed to him that accused No.1 with two others had been to their house and they were making inquiry about their family. His father further disclosed to him that since last few days, accused No.1 started parking his vehicle near their house. His father expressed that the behaviour of accused No.1 is suspicious. According to PW-1, he stayed at the house of his parents for 10-15 minutes and then came back to his village.

8] According to PW-1, on 21.6.2009, while he was at his office, he received phone call of PW-4 Nilesh Walunj, who used to deliver newspaper at the house of his parents. He asked him to reach to his parents' house as lights were on, there was loud sound of T.V. and main gate was locked. According to PW-1, he along with his assistant PW-19 Sandip Ghangale reached to his parents' house. PW-19 went inside the house by climbing the main gate. He saw that the backdoor of the house was open. He went inside and saw that parents of PW-1 were lying in dead condition. He came out and intimated to PW-1.

9] According to PW-1, he then went inside and saw that his father was lying in kitchen. He examined him and found him

to be dead. Then he went to prayer room. His mother was lying there and she was also dead. The cupboard was open and the articles were lying scattered.

10] According to PW-1, his mother used to wear gold earrings, one small gold Mangalsutra, one long gold Mangalsutra, four gold bangles and two gold rings. According to PW-1 the said ornaments were not there on the person of his mother.

11] PW-1 in his cross-examination has admitted that accused No.1 was not known to him prior to the incident. At the time of lodging of report, he was not aware of the address of accused No.1 nor he gave the address of accused No.1 to the police. He then volunteered that he stated name of the village of accused No.1. PW-1 has then stated that he however, cannot assign any reason as to how complete address of accused No.1 came to be mentioned in his report.

12] It is apparent from the evidence of PW-1 that accused No.1 was not known to him prior to the incident. It further appears that, the father of PW-1 for the first time disclosed about accused No.1 to PW-1 only on 20.06.2009, i.e., on the day of incident. Thus, there was no reason for PW-1 to know the complete address of accused No.1. However, in the first information report lodged by PW-1, he has mentioned complete address of the accused No.1. The only inference which can be drawn from this fact is that in first information

report, the name of accused No.1 came to be inserted subsequently. This creates doubt about the entire prosecution case.

13] According to the prosecution, PW-8 Sandip Divekar, PW-9 Vivek Shingte and PW-10 Dnyaneshwar Walunj saw the accused No.1 and two more persons standing in front of the house of deceased in intervening night of 20.06.2009 and 21.06.2009. The trial court has disbelieved these witnesses. The trial court in its judgment has recorded the following findings in respect of PW-8, PW-9 and PW-10:

“100] On going through the evidence of Sandip Divekar (PW 8), Vivek Shingte (PW 9) and Dnyaneshwar Walunj (OW 10), I am of the opinion that, their evidence is not worth believing to hold that they had seen the accused lingering around the house of deceased, just before the incident. Their evidence is not cogent and reliable as well as clinching to believe to be true. Hence, prosecution has failed to establish that accused were lingering around the house of deceased to get the opportunity to commit the offence.”

14] We have perused the evidence of PW-8, PW-9 and PW-10. According to PW-8, on 17.06.2009 at about 10.00 p.m. he had seen the accused standing near the house of deceased. According to him, he had asked the accused as to whether they had come to commit theft and they got frightened. According to him, the accused told him they were going to Dhaba and their bike got slipped. According to PW-8, the accused then started their bike and went away from there. In cross-examination, PW-8 has admitted that he never saw the

accused prior to the day on which he saw them. He has further admitted that after 17.06.2009 for the first time, he is seeing the accused today in the court. In spite of the fact that accused were unknown to PW-8, no identification parade was conducted.

15] The evidence of PW-9 and PW-10 is similar to the evidence of PW-8. However, according to them, they had seen the accused on 20.06.2009. According to PW-9, he had seen the accused standing near the house of deceased at about 8.00 p.m., whereas according to PW-10, he had seen them there at about 6.30 p.m.. It is difficult to believe that the accused would come at 6.30 or 8.00 p.m. with intent to commit robbery in the house of deceased and would stand near the house of the deceased so that they can be sighted by other people. The trial court has disbelieved PW-8, PW-9 and PW-10 and no submission is made on behalf of the prosecution that they have been wrongly disbelieved.

16] The trial court has, however, convicted the accused Nos.1 and 2 on the basis of alleged recovery of ornaments at their instance.

17] According to PW-3 Yogendra Deokar, on 22.6.2009 he was called by the police in the police station, Narayangaon. According to him, in his presence accused No.1 disclosed to the police that he is ready to show the shop where he sold the stolen necklace. According to PW-3, accused No.1 took them

to jewellery shop at Narayangaon, Bazarpeth. According to him, the jeweller handed over necklace to the police.

18] In the cross-examination, PW-3 has admitted that he and the complainant belong to same caste. He has admitted that he cannot tell the names of police personnel who were present in the vehicle.

19] At this stage, it would be appropriate to refer to the evidence of jeweller, PW-2 Ramesh Gujar. According to PW-2, he runs jewellery shop at Narayangaon under the name and style "Devnarayan Jewellers". On 21.6.2009, he opened his shop at 9.00 a.m.. At about 11.00 a.m., two persons came to his shop on motorcyle. They asked him to melt Mangalsutra. He asked them whether they have receipt. They told him that they have not brought receipt. One of them told that Mangalsutra belongs to his wife. He further told PW-2 that his sister is serious and therefore, they need money urgently and he will produce the receipt on the next day.

20] According to PW-2, the said persons stated to him that he wants to purchase small Mangalsutra on melting big Mangalsutra. He told them that he will not accept Mangalsutra unless the receipt is brought. Thereupon, they started weeping. He then checked Mangalstura. It was of gold. He broke the black beads and then weighed the Mangalstura. It was found to be 37.500 grams. He then showed them small Mangalstura which was costing about Rs.16,500/-. He sold a

small Mangalstura and paid cash of Rs. 21, 250/-. He prepared the receipt and at that time the said person disclosed his name of Chetan Dumbre, resident of Otur.

21] According to PW-2, on 22.6.2009, accused Nos.1 and 2 were brought to his shop by police and he handed over Mangalsutra which was purchased by him from accused Nos.1 and 2.

22] In the cross-examination, PW-2 has admitted that he maintains daily account of his business, however, as on today, the account on the day on which the accused came to his shop is not available. He did not obtain the signature of the person who sold the ornament on receipt at Exhibit-65. He has admitted that till today, he does not know the name of person who was accompanying accused No.1. He has admitted that in the statement to the police, he has not stated that the accused were weeping.

23] There are material omissions in the evidence of PW-2 including the fact that the accused No.1 had told him that he would bring the purchase receipt on next day. It is unlikely that PW-2 would not obtain the signature of a person who had come to sell the ornaments on sale-purchase receipts. Considering the overall facts and circumstances, in our view, it would not be safe to rely upon the evidence of PW-2.

24] Apart from above, according to PW-3, the panch witness, PW-2 had handed over neckalce to the police. PW-3 has specifically stated that he is not related to the complainant, however, PW-22 Shrikrishna Kokate, the Investigating Officer, has admitted that PW-3 is a closed relative of the complainant (PW-1). Considering the overall facts, it would not be safe to connect the accused with alleged crime on the basis of alleged recovery of Mangalsutra.

25] According to PW-1, on 28.8.2009, he and his brother, his wife Vaishali and sister Manjusha were called at the police station and they were asked to identify the ornaments in presence of panch witnesses and Tahsildhar. According to PW-1, he identified the Mangalsutra of his mother amongst other Mangalsutra which were there. PW-1 has admitted that the identification was held only for Mangalsutra.

26] As the recovery of Mangalsutra itself is doubtful and therefore, it's identification by PW-1 is of no consequence. It appears that except Mangalsutra, no other ornaments were got identified.

27] Considering the overall facts and circumstances, the trial court was not justified in arriving at the conclusion that the prosecution has proved it's case beyond reasonable doubt. In the result, the following order is passed.

ORDER

- a] Criminal Appeal is allowed.
- b] The impugned judgment and order dated 20.10.2011 passed by the Additional Sessions Judge, Pune in Sessions Case No.925 of 2009 convicting **appellant No.1 Chetan Ramdas Dumbre** and **appellant No.2 Nilesh Dnyaneshwar Vitekar** for the offences punishable under sections 302 and 394 read with 34 of the IPC is set aside and they are acquitted of the said offences.
- c] The appellants are in jail, they be released forthwith unless their custody is required in connection with any other crime.
- d] The appellants shall execute P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each and one surety of like amount in terms of section 437-A of the Code of Criminal Procedure, before the concerned trial court at Pune.

(N.R. BORKAR, J.)

(S.S. SHINDE, J.)