

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 286 OF 2021

Dilip Rushi Dharne,
Aged 47 years, Occupation – Labourer,
R/o Dhumankheda (Nawagaon),
Taluka – Sindewahi, District – Chandrapur. **APPELLANT**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station, Sindewahi, Taluka -
Sindewahi, District – Chandrapur. **RESPONDENT**

Mr. A.M. Kukday, Counsel appointed for the appellant,
Mr. T.A. Mirza, Addl.PP for the respondent/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATED : 09th DECEMBER, 2022

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Dilip Rushi Dharne is assailing the judgment dated 10-2-2020 rendered by the learned Additional Sessions Judge, Chandrapur in Sessions Case 86/2017, which convicts him for offence punishable under Section 302 of the Indian Penal Code (IPC) and imposes sentence of life imprisonment and to payment of fine of Rs.5,000/- (Rupees Five Thousand) and in default, to suffer simple imprisonment for one year.

2. The accusation held proved is that the appellant-Dilip Rushi Dharne, who shall be referred to as the 'accused' hereinafter, strangled his father Rushi Dharne to death on or prior to 7-00 a.m. on 11-5-2017 at the house of the deceased.

3. We have heard the learned appointed Counsel Mr. A.M. Kukday for the accused and the learned Additional Public Prosecutor Mr. T.A. Mirza for the respondent-State. We have scrutinized the material on record and have given due consideration to the reasons recorded by the learned Sessions Judge.

4. The genesis of the prosecution lies in the report lodged by the informant Mrs. Nirmala Chaudhari, who is the sister of the accused and the daughter of the deceased, at Police Station Sindewahi on 11-5-2017. The gist of the report is that Mrs. Nirmala Chaudhari resides at Bormala with her family. Her married sister Shalu resides at Warur and the accused is residing in a house adjacent to the house of the deceased, with his family. The deceased possesses agricultural land admeasuring 2.5 acres at Dhumankheda, out of which 2.00 acres of land is in cultivating possession of the accused and the remaining 0.5 acre in cultivating possession of the deceased. In 2016, the deceased was sanctioned subsidy as financial assistance for construction of house

under the Gharkul Scheme. The accused used to pick up quarrels with the deceased on the issue of the amount received under the scheme. On 11-5-2017 between 7-0 a.m. and 8-00 a.m. she received phone call from her cousin Shriram Nannaware informing that her father had expired. She was further informed by Shriram Nannaware that on the previous day at 3-00 p.m. there was a quarrel between the accused and the deceased. She went to her father's house at Dhumankheda and saw the body lying on the ground. She noticed that blood was oozing from nose and mouth of the deceased and noticed strangulation marks on the neck. She suspected that her father was done to death by the accused.

On the basis of report lodged by Mrs. Nirmala Chaudhari, offence punishable under Section 302 of the IPC was registered vide Crime 213/2017. The investigation took the usual course. The spot panchanama was recorded. A nylon rope was seized from the spot. Statements of witnesses were recorded. The incriminating articles were referred to the Regional Forensic Science Laboratory for forensic examination. The autopsy report was obtained and after completing the investigation, the final report was submitted in the Court of the jurisdictional Magistrate who committed the case to the Sessions Court.

5. The learned Sessions Judge framed charge under Section 302 of

the Indian Penal Code. The accused abjured guilt and claimed a trial. Prosecution examined seven witnesses. The defence is of total denial and false implication by the informant. The accused did not step into the witness box nor did he examine any witness in defence.

6. PW 1-Mrs. Nirmal Keshao Chaudhari is the first informant. PW 2-Shriram Nilkanth Nannaware is the cousin who telephonically informed Mrs. Nirmal Chaudhari that her father had expired. PW 3-Deepak Sambhaji Ghutke is the panch to the spot and seizure panchanama (Exhibit 32), the inquest panchanama (Exhibit 18) and the seizure of the blood sample and nail clippings and clothes of the deceased (Exhibit 34). PW 3-Deepak Ghutke is examined by the prosecution to prove that the police seized clothes of the accused, as well as the blood sample and nail clippings. While PW 3-Deepak Ghutke admits his signature on panchanamas (Exhibits 35 and 36), he denied that the police seized the blood sample, nail clippings and the clothes of the accused, in the examination-in-chief. However, in further examination-in-chief by the prosecutor, he admitted the said seizure (Exhibits 37 and 38). PW 4-Maya Dhanraj Barekar is the maternal aunt of the deceased who is examined on the aspect of motive. She has deposed that there was a quarrel between the accused and the deceased during the course of which the accused threatened the deceased with dire consequences.

She is also examined to establish that at 9-30 p.m. on 10-5-2017 she saw the accused coming from the direction of his house in frightened condition. PW 5-Dr. Dhiraj Ramrao Meshram conducted the autopsy. PW 6-Patru @ Chaskar Gopala Nannaware is examined to establish that on the day previous to the incident there was a quarrel, and further on the conduct of the accused on 11-6-2017. PW 7-Amol Sharad Sangale is the Investigating Officer.

7. Irrefutably, there is no ocular evidence. The prosecution case entirely rests on circumstantial evidence. The learned Sessions Judge has considered the following circumstances, as duly established beyond reasonable doubt, and as forming a chain so complete as would exclude any hypothesis other than the guilt of the accused.

- (i) The death is homicidal,
- (ii) The accused had motive to commit the crime,
- (iii) Recovery of nylon rope from the spot,
- (iv) The accused was seen in frightened condition near his house on the fateful night.

8. It is not even argued by Mr. A.M. Kukday that homicidal death is not proved. We have re-appreciated the evidence of the doctor, who conducted the post-mortem, and having done so, we are in complete

agreement with the finding recorded by the learned Sessions Judge that the death is homicidal.

9. Significantly, it is not even the case of the prosecution that the accused and the deceased were residing in the same house. What has come on record, is that while the accused was residing with his family in house situated at the rear side of the house of PW 2-Shriram Nannaware, the house of the deceased is situated in front of the house of the witness. Indeed, none of the witnesses has deposed that the accused and the deceased resided in the same house.

10. The position of law is too well settled and we need not burden the judgment by making a copious reference to the authorities which articulate that conviction can be based on circumstantial evidence only if every circumstance is established beyond reasonable doubt, and from the circumstances which are established the only inference possible is that innocence of the accused is excluded by human probability. In other words, the chain of circumstances must be so complete and confidence inspiring, as would satisfy the judicial conscious that the every hypothesis other than the guilt of the accused is excluded.

11. We find that if the evidence is tested on the touchstone of the

well recognized principles of appreciating the circumstantial evidence, the prosecution has failed to bring home the charge.

12. We fail to appreciate how the recovery of the nylon rope from the house of the deceased is an incriminatory circumstance against the accused. It is not not in dispute that there is absolutely no evidence, forensic or otherwise, to connect the accused with the nylon rope recovered from the spot. The recovery of the nylon rope may possibly corroborate the case of the prosecution that the deceased was done to death. However, the said recovery is hardly a relevant circumstance in ascertaining whether the chain of circumstantial evidence is so complete as would exclude the possibility of the innocence of the accused.

13. In so far as motive is concerned, there is no gainsaying that motive is an important circumstance in prosecution based on circumstantial evidence. The prosecution has attempted to establish motive by bringing on record that there were quarrels between the accused and the deceased on the issue of the amount received under the Gharkul Scheme and PW 4-Maya Barekar has spoken of the threat issued by the accused. Even if we were to assume that the motive is not slender and is substantial or formidable, in our considered view, in the

absence of further clinching evidence as would complete the chain, conviction on the basis of the alleged motive would be unsustainable.

14. The only other circumstance which is considered by the learned Sessions Judge is the testimony of PW 4-Maya Barekar that at 9.30 p.m. on 10-5-2017 she saw the accused coming from the direction of his house in “frightened condition”. Such evidence is too fragile to form a link in the chain of circumstances in the absence of any cogent material to fix the time of death of the deceased. Further, the fact that according to the witness, the accused was in a frightened condition when she saw him coming from the side of his house at 9-30 p.m. on 10-5-2017 is not sufficient, even if the said evidence is considered along with the alleged motive, to hold that the possibility of the innocence of the accused is excluded.

15. It is trite law that strong suspicion is not a substitute for proof. The circumstances which are noted by the learned Sessions Judge may, if at all, raise suspicion. However, in our view, it would be extremely hazardous to uphold the conviction on the basis of the circumstances noted by the learned Sessions Judge.

16. We are satisfied that the accused is entitled to acquittal, and we

order accordingly.

17. The appeal is allowed.

18. The accused is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

19. Fine paid, if any, be refunded to the accused.

20. The accused be released from custody unless the custody is required in any other case.

21. The fees of the learned Counsel appointed for the accused be quantified and paid in accordance with the rules.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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