

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 214 OF 2023

Salim S/o Babu Khan,
Age: 61 years, Occupation: Auto Driver,
R/o, Kantilal Chawal, H. No. 121,
Near Hanuman Mandir,
Alandi Road, Kalasgaon,
Pune - 411 015.

... Appellant
(Orig. informant)

Versus

1. State of Maharashtra,
Through Police Inspector,
Police Station, Kadim Jalna.
2. Munawar @ Manwar S/o Yusuf Shaikh,
Age: 33 Years, Occ : Truck Driver
R/o. Shersawar Nagar,
Old Jalna, Tq & Dist. Jalna.
3. Savita @ Manisha D/o Ramesh Jadhav,
Age: 25 Years, Occ: Nil,
R/o, Bus Stand Partur,
At present Flat No. 303,
Jangde & Khandare Apartment,
Beside Shivneri Hotel, Jalna.

... Respondents
(Orig. Accused No.1 & 2)

...
Mr. Gaurav L. Deshpande, Advocate for Appellant.
Mr. A. M. Phule, APP for Respondent No.1 - State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 05th JUNE, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. In the instant appeal, original informant/appellant has

invoked provisions under section 372 of the Code of Criminal Procedure (Cr.P.C.) thereby taking exception to the judgment and order of acquittal passed by the learned Sessions Judge, Jalna in Sessions Case No.49 of 2021 which was tried for commission of offence under section 302 of Indian Penal Code (IPC).

FACTS IN BRIEF IN THE TRIAL COURT

2. Present appellant (original informant) set law into motion by approaching Kadim Jalna Police Station, alleging that respondent no.2, a truck driver was married to his daughter Shama and out of their wedlock they had a son. According to him, accused no.1 maintained affair with accused no.2. On such count, there were frequent quarrels between them. Deceased used to regularly inform about treatment meted out to her. On 03.11.2020, accused - husband poured diesel on his daughter and incinerated her. His daughter suffered 100% burns and died on the spot and hence the FIR. On the strength of which, crime No.516 of 2020 registered for the offences punishable under sections 302, 201 and 120-B read with Section 34 of IPC.

3. Both accused were charge-sheeted and tried by the learned Sessions Judge vide Sessions Case No. 49 of 2021 in which prosecution had examined in all 8 witnesses and also relied on

documentary evidence. That, learned Sessions Judge conducted trial and on appreciating the oral and documentary evidence adduced by prosecution, reached to a finding that prosecution failed to prove that there was criminal conspiracy hatched by the accused persons for committing murder of deceased and thereby acquitted accused persons from all charges.

It is the above judgment and order of acquittal that is now questioned by way of instant appeal.

RIVAL SUBMISSIONS

4. Heard learned counsel for appellant – informant at length. Appraising us about the status and relations between deceased, accused no.1, accused no.2 and appellant herein, it is submitted that in spite of being married and in spite of having son, accused no.1 maintained extra marital relationship with accused no.2. Informant had learnt about it from none other than deceased daughter. That, only because deceased had objected to such relations, accused no.1 and accused no.2 conspired amongst themselves to do away with deceased. Accordingly, in such clear motive accused no.1 set deceased ablaze. That, there was no other reason nor it is suicidal or accidental death. According to learned counsel, circumstances at the scene of occurrence clearly suggest that it is murder and nothing less than that.

5. Learned counsel would further point out that apart from testimony of informant, there was other corroborative evidence in the form of testimonies of PW-3 Sopan, PW-5 Shami and PW-4 Rehan, very child of accused no.1 and deceased, who was present in the house at the time of incident and he too had deposed to that extent. Their evidence has remained unshaken on the material aspect of presence of accused and deceased suffering extensive burns, thereby clearly suggesting that it was misdeed of none other than accused. Learned counsel would add that in spite of such evidence, learned trial court has failed to appreciate the same in its correct perspective.

6. He would vehemently submit that investigating machinery had gathered material and had dispatched the same to the analyzer. C.A. reports were yet to be received. It was a crucial piece of evidence. That, however, learned trial Judge for the best reasons known to it did not wait for C.A. reports and hurriedly proceeded with the trial and passed judgment in absence of C.A. reports. That, it gave major set back to the prosecution case.

Resultantly, on above aspects he prays to allow instant appeal by granting the prayers raised herein.

7. We have given anxious thought to entire submissions advanced before us. We have thereafter carefully examined the entire material placed before the learned trial court. It seems that, case of prosecution is rested on oral evidence of 8 witnesses coupled with documentary evidence, like, panchanama, P.M. Report etc. Precise case of prosecution is that, accused no.1 had an affair with accused no.2. Deceased wife objected to the same and therefore, to eliminate her, both accused conspired and thereafter on 03.11.2020 accused no.1 poured diesel on the person of his wife Shama and ignited her. She died on account of 100% burns and hence the FIR.

EVIDENCE ON RECORD AND ITS APPRECIATION

8. PW-1 Salim seems to be father, appellant herein. On minutely going through his testimony in witness box, we find him deposing about frequent quarrels taking place between his daughter and accused no.1, but in chief itself, he has stated that he has unable to state reason for the said quarrels. He further stated that, 15 days prior to the incident, deceased daughter telephoned him and told that there were quarrel between her and accused no.1 and that accused no.1 was expressing his desire to perform another marriage and was asking deceased to leave. According to appellant-informant, she also told him that, accused no.1 had

stored 10 liters diesel in the house. It is his specific accusation in his substantive evidence that, accused had set his daughter on fire. But, in his examination-in-chief itself, he has unable to state why he had done so. Therefore, aspect of motive is rendered doubtful.

9. In cross-examination, though he initially stated that, he had reported about telephonic talk with deceased 15 days prior to the incident, subsequently, he corrected himself and stated about not stating so in his report (Exh.67). He also admitted about not stating in the report (Exh.67) regarding accused telling his daughter that he wanted to perform another marriage and that she should leave and also about husband storing 10 liters diesel in the house.

Therefore, apparently above version in examination-in-chief having stated for the first time in the court is an improvement. As stated above, it is his own version that he is unable to assign any reason as to why accused set his daughter on fire and for what reason.

10. Another witness for prosecution is PW-3 Sopan and he is also a driver like accused no.1 and they both seem to be rendering services in one and the same logistic. His evidence shows that, on insistence of accused no.1, he introduced accused

no.2 to him, but he does not know how wife of accused no.1 had expired. Therefore, his testimony does not seem to be of any avail to the prosecution.

11. Another important witness for prosecution is PW-4 Rehan, son of accused no.1 and deceased, who is a child witness. He seems to be 8 years old and in his evidence it has come that, there were frequent quarrels between his parents and that his father would return home, quarrel with his mother and beat her with a belt. He stated that, his mother was burnt to death by his father. He further stated that, at the such time, he was sleeping in the living room, in the night. His neighbouring friend Sohail woken him up. He stated that he had seen fire in the kitchen of his house. Then he deposed that, it is Sohail who told him that his mother was burnt. However, prosecution has not examined Sohail. Therefore, though child was in the house, he himself speaks about he to be sleeping and hearing about the occurrence from Sohail.

12. PW-5 Shami brother of deceased spoke about accused forwarding three videos to him, further requesting him, not to show to anyone. In such videos, accused was in the company of a lady while song was been played in the background. In his substantive evidence, he speaks about learning from his sister that

there were quarrel between her and accused no.1 on the count of those videos. But, in cross-examination he answered that, he had not stated in his statement to police about sister telling him about quarrels between her and accused no.1 on the count of videos. During cross-examination at the hands of accused no.2, this witness has admitted that the police has not seized his cell phone.

13. PW-6 Devidas and PW-7 Prashant are police personnels, who registered crime and carried out investigation respectively. PW-8 Dr. Santosh Jaybhaye is the autopsy doctor, who had opined about probable cause of death due to 'shock due to extensive 100% burns', which were superficial to deep thermal burns. In cross-examination at the hands of learned counsel for accused no.1, this medical expert had answered that, police had not sent him any sample nor had made query with him whether the inflammable substance was petrol, kerosene or diesel. He further stated that, it is difficult to say whether death was suicidal or homicidal.

14. The above is the evidence with which prosecution undertook trial of respondent nos.2 and 3. Having carefully gone through the above discussed evidence, in our considered opinion, at the first count, prosecution had miserably failed to firmly and cogently establish the very motive behind the occurrence. There is

no evidence whatsoever in support of charge of conspiracy on the point of meeting of minds of both accused to give effect to their motive. Unfortunately, informant-appellant herein, himself is unable to assign any reason behind the quarrel. His substantive evidence seems to be full of improvement. There is no iota of evidence regarding presence or involvement of respondent no.3. Mere presence of respondent no.2 in the house itself is not sufficient to implicate him. Medical evidence is not sure about death to be homicidal, suicidal or accidental. On the contrary, evidence of prosecution itself suggest that, respondent no.2 attempted to break open the door of bathroom in which incident took place. Therefore, there is material suggesting other possibilities.

15. Admittedly, there is no eye witness and entire case is based on circumstantial evidence. Therefore, case being based on circumstantial evidence, it was expected of prosecution to prove all the circumstances beyond reasonable doubt. But, it seems that apparently prosecution failed to do so and therefore, we do not find it to be a fit case for admission.

Hence the criminal appeal is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)