

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 446 OF 2022

Samadhan Ramrao Ghanghav,
Age: 35 years, Occu: Agri.,
R/o. Koda, Tq. Bhokardan,
Dist. Jalna.

... Appellant
(Ori. Informant)

Versus

1. Aruna w/o Santosh Ghanghav,
Age: 26 years, Occu: Agri.,
R/o. Dhondkheda, Tq. Bhokardan,
Dist. Jalna.
2. Sheshrao Kaduba Kolhe
(Since died, case abated against him)
3. Kantabai Sheshrao Kolhe,
Age: 50 years, Occu: Agri.,
R/o. Dhondkheda, Tq. Bhokardan,
Dist. Jalna.
4. The State of Maharashtra,
Through the Police Station Officer,
Police Station, Paradh, Tq. Bhokardan,
Dist. Jalna.

... Respondents
(No.1 to 3 Orig. accused
& No.4 Orig. prosecution)

...

Mr. Dinesh U. Manwatkar, Advocate for the Appellant.

Mr. R. V. Dasalkar, APP for the Respondent-State.

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

DATE : 18.01.2023

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

1. Present appellant, who is informant, by invoking provisions under Section 372 of the Code of Criminal Procedure (Cr.P.C.), is questioning sustainability and legality of Judgment and Order dated 12-04-2022 passed by the learned Additional Sessions Judge-1, Jalna in Sessions Case No.88 of 2017 by which respondent Nos.1 and 3 stood acquitted from commission of offence under Sections 302, 323, and 506 read with 34 of Indian Penal Code (IPC).
2. Heard learned Advocate for the appellant.
3. It is submitted before us that present appellant is the brother of deceased Santosh. It is pointed out that deceased Santosh was married to respondent No.1 Aruna. That immediately after marriage, respondent No.1 Aruna was insisting deceased Santosh to reside separately from others. That, thereafter respondent No.1 Aruna and her parents all three of them pressurized deceased Santosh to get partition of land done and thereafter, compelled him to sell it. Thereafter, again these accused persons pressurized deceased Santosh to get more land transferred in the name of accused No.1 and on failure, they threatened him with dire consequences and as such they harassed him.

Appellant points out that on 09.03.2017, he had personally seen accused Nos.2 and 3 entering the village Dhondhkheda from Maroti Temple

side and immediately on the same night the appellant received information that his brother Santosh was reported to have committed suicide. It is further submitted that when appellant and others saw the dead body, there were marks on the neck and therefore, foul-play was suspected and thereby report was lodged. It is pointed out that after post mortem, even medical expert opined death to be by "Asphyxia due to strangulation". Thus, according to the appellant full-proof case was made out regarding case of murder of his brother Santosh, thereby attracting offence under Sections 302, 323 and 506 read with 34 of IPC. It is further submitted that inspite of such overwhelming evidence about involvement of respondents accused, learned trial Judge failed to consider and appreciate the crucial evidence gathered by the investigating machinery and thereby acquitted accused persons by Judgment and order dated 12-04-2022 and hence instant proceedings with prayer for setting aside the Judgment and order under challenge.

4. After hearing above submissions, we have carefully gone through the record before us including Judgment under challenge. Thereupon, it is emerging that at the trial, prosecution has adduced oral evidence of PW2 appellant Samadhan at Exh.49, PW3 Shrirang nephew of deceased Santosh at Exh.48, independent witness PW4 Fayyazkha at Exh.49, pancha witness PW1 at Exh.44 and PW7 autopsy Dr.Ishwarnand at Exh.69. In the trial Court, prosecution advanced a case that wife and parents in law of deceased Santosh

pressurized and threatened him to initially reside separately and thereafter disposing of the land by seeking partition in the land. Admittedly, there being no direct evidence, case of prosecution was rested entirely on circumstantial evidence. No doubt, prosecution had succeeded in showing the death of Santosh to be homicidal as the autopsy Doctor in his report has opined the cause of death as “Asphyxia due to strangulation”. However, it has further to be established that respondent Nos.1, 2 and 3 were only responsible for strangulation. Consequently, prosecution was required to establish strong circumstances forming complete chain of evidence ruling out innocence of accused.

5. From the evidence adduced before the trial Court, it seems that recourse was taken to the theory of last seen together. On going through the deposition of PW2 brother Samadhan and PW3 nephew Shrirang, it seems that same are mirror images of each other. Though both of them claim to have seen accused Nos.2 and 3 entering the village Dhondhkheda from Maroti Temple side but where was Maroti Temple and whether accused persons had an opportunity to meet the deceased has not come on record. It is seen that crucial evidence of PW4 Fayyazkha and PW5 Pandu is not found to be supporting story of the prosecution on last seen together. It is trite law that such theory can be applied only when the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is

so small that possibility of any person other than accused being the author of crime becomes impossible. Here brother and nephew of deceased have merely seen accused Nos.2 and 3 entering the village. There is nothing beyond such version. Nobody has seen deceased and accused Nos.2 and 3 together prior to death of deceased.

6. Here in the case in hand also, the only circumstance, which is pressed into service by prosecution in the trial Court, was last seen together. As discussed above, testimony of brother and nephew of deceased does not take us beyond seeing the accused Nos.2 and 3 entering the village. Therefore, for above reason also it is doubtful as to whether said theory of last seen together comes into play. Be it so. In our opinion, when the case is based on circumstantial evidence, prosecution is expected to also discharge the burden to prove motive of accused. Here, merely depositions are that the deceased was pressurized by his wife and in-laws for residing separately and for partition of land.

7. It has come on record that the land which had already come to part of deceased was sold by him. Seeking separate residence in itself would not be ill motive so as to commit murder by strangulation. Therefore, there being no cogent and reliable evidence on record regarding involvement of accused persons, the learned trial Court, by taking each aspect into consideration and

testimony of each of the witnesses relied by prosecution, has rightly come to the conclusion that though death of deceased Santosh was due to strangulation, there is no evidence regarding accused / respondents to be responsible and hence accused respondents / were acquitted.

8. Having minutely considered the impugned Judgment under challenge, we are convinced that all legal requirements have been tested. Learned trial Court was convinced that the circumstances relied by prosecution do not form a complete chain and therefore, conclusion arrived at by the learned trial Judge being the only possible view that could emerge, we do not find it a case to set aside the Judgment under challenge by allowing the appeal. Hence, we proceed to pass the following order :

ORDER

- (i) Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT