

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.348 OF 2016

Ravindra Anna Domale,
Age 21 yrs., Occ. Education and Agri.,
R/o Ambapur, Tq. Sakri,
Dist. Dhule.

... Appellant

... **Versus** ...

The State of Maharashtra
Through Police Station, Sakri,
Tq. Sakri, Dist. Dhule.

... Respondent

...

Mr. R.S. Deshmukh, Senior Counsel instructed by Mr. D.R. Deshmukh,

Advocate for appellant

Mr. A.V. Deshmukh, APP for respondent

...

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

DATE : 17th JULY, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

his conviction by learned Additional Sessions Judge, Dhule in Sessions Case No.190/2014 on 29.04.2016 thereby convicting him for the offence punishable under Section 302, 201, 404, 363 of the Indian Penal Code, 1860. It will not be out of place to mention here that the learned trial Judge has acquitted the appellant from the offence punishable under Section 376(2)(i) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012. Though the original accused/appellant has been acquitted of the charges of sexual assault, her identity is not disclosed including that of her father informant to keep the dignity.

2 It is the prosecution story that deceased was 07 years old girl. Informant is her father. Informant was residing with his two daughters, one son and wife. The deceased victim was the second child. The elder daughter of the informant was aged 09 and son was aged 03 when the incident took place on 15.08.2014. Informant is an agriculturist. On 15.08.2014 the informant along with his wife and son had gone to medical practitioner at Sakri around 10.00 a.m., as he was suffering from Malaria. His elder daughter was taking education at Dhule by residing in hostel. Deceased girl with the grandmother (informant's wife's mother) was at home, which is a village in Sakri taluka. Around 2.00 p.m. he received phone call from his close relative that since he would be going to a Yatra he would take

informant's daughter (deceased), but deceased is not at home, as to whether she has come along with informant. Informant informed him (relative) that his wife and son are the only persons along with him and the deceased would be at home. He should ask the grandmother, as to where she has gone, search her and he may take along with him to Yatra. Around 4.00 p.m. he got the treatment and, therefore, he along with his wife and son went to his house, till then also the deceased was not found. Informant made inquiry with his mother-in-law about the deceased. The mother-in-law told that deceased cleaned the utensils and thereafter she was behind the Palkhi (procession) of Davri Gosavi people in the village. Even the said close relative and his daughter also said the same thing, therefore, all the relatives and the informant started taking search of the girl. They could get the only information that she was behind the procession in the entire village. Therefore, they went to the place where those Davri Gosavi people had taken shelter. Prior to that on 15.08.2014 informant had lodged a missing report with Sakri Police Station. Thereafter he made inquiry with 1) Shyamrao Arjun Bhosale, R/o Wadegaon, Tq. Sangola, Dist. Solapur, 2) Shyamrao Bhimrao Ingole, R/o Sangola, Tq. Sangola, Dist. Solapur, 3) Vishwanath Mahadeo Bhosale, R/o Chikhmoddha, Tq. Sangola, Dist. Solapur and 4) Tanhubai Shyamrao Bhosale, R/o Wadegaon, Tq. Sangola, Dist. Solapur. Informant found that these four persons were giving evasive answers and,

therefore, he went to the Police Station and lodged First Information Report expressing suspicion over those four named persons. He gave the further description of the girl. On the basis of his said First Information Report offence vide Crime No.135/2014 for the offence punishable under Section 363 read with Section 34 of the Indian Penal Code came to be registered.

3 It appears to be the further prosecution story that search for the girl was undertaken by the Police Department also and till 05.09.2014 there was no clue to the Police Department. One Jibhau Haba Marnar got information on 05.09.2014 regarding a fact that one white bag is seen in the well of his agricultural land and the water of the well giving foul smell. He gave the said information to the police. The investigation squad went to the field with villagers and even Media persons. It was found that there was plenty of water in the well. Therefore, two persons were asked to go in the well on wooden cot which was tied with rope to pick up the said bag. Accordingly, the said bag was picked up. It was a money bag. It was giving very bad smell. This bag was opened in front of the people and the panchas. It was found that the bag was also containing stones and bags. From one of the bags the dead body of one small girl without flesh emerged. The dead body is said to have been identified by the informant on the basis of clothes. Spot panchnama was prepared. Articles were seized from the spot. The

inquest panchnama was prepared. The dead body was in a decomposed state, therefore, it was decided to have postmortem at the spot. It was conducted by video recording of the same. But when all the arrangements could not be made, the said dead body was sent to Government Medical College, Dhule. The dead body was examined by the Medical Officer at the spot. The articles on the person of the dead body were seized by drawing separate panchnama. It appears that it is the further prosecution story that inquiry was made with the witnesses in respect of suspects and then CDR of the mobile phones of the suspects were called. The accused has given some evasive answers and, therefore, his tower location was traced. On the inquiry/interrogation when the falsity in his statement was revealed, he came to be arrested around 01.10 p.m. on 23.09.2014. Thereafter, he had discovered certain articles, especially the gold from the Goldsmith to whom he had sold the gold ornaments, which were on the person of the deceased. He had discovered his clothes and the motorcycle used in the commission of the crime as well as rope. The seized articles were sent for chemical analysis and after completion of the investigation charge sheet came to be filed.

4 After the committal of the case charge was framed and trial was conducted. Prosecution has examined in all 19 witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing

both sides, the learned trial Judge has sentenced the accused to suffer imprisonment for life and pay fine of Rs.5,000/- (Rupees Five Thousand only), in default of payment of fine to suffer simple imprisonment for two months for committing an offence under Section 302 of the Indian Penal Code. He has been further sentenced to suffer simple imprisonment for two years and pay fine of Rs.1,000/- (Rupees One Thousand only), in default to suffer simple imprisonment for 15 days for committing an offence under Section 201 of the Indian Penal Code. He has been further sentenced to suffer simple imprisonment for two years and pay fine of Rs.1,500/- (Rupees One Thousand and Five Hundred only), in default to suffer simple imprisonment for 20 days for committing an offence under Section 404 of the Indian Penal Code. He has been further sentenced to suffer simple imprisonment for three years and pay fine of Rs.2,000/- (Rupees Two Thousand only), in default to suffer simple imprisonment for one month for committing an offence under Section 363 of the Indian Penal Code. Set off has been granted under Section 428 of the Code of Criminal Procedure and all the sentences have been directed to run concurrently. The case was referred to the Legal Services Authority for granting compensation to the informant under Section 357-A of the Code of Criminal Procedure. This judgment and sentence is under challenge in this appeal.

5 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the appellant and learned APP Mr. A.V. Deshmukh for the respondent.

6 It has been vehemently submitted by learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh that the case of the prosecution is resting on circumstantial evidence and, therefore, it was for the prosecution to prove that there should be a complete chain of events and each event should point out towards the accused as the assailant. Here, none of the witnesses examined by the prosecution had seen the deceased in the company of accused. The missing report Exh.37 was lodged by the father on 15.08.2014 and First Information Report Exh.38 was lodged by him on 17.08.2014 on suspicion against four named persons from the community of Davri Gosavi. The same was only under Section 363 read with Section 34 of the Indian Penal Code. The dead body was recovered from the well of Jibhau. The dead body was wrapped in gunny bag and it has been deposed by PW 1 Dr. Kapileshwar Chaudhary, who conducted the autopsy, PW 6 Ananda Marnar, panch to the spot panchnama and who was present at the time of taking out the dead body from the well, PW 9 Jibhau Marnar, PW 19 PI Mr. Ramesh Ratnaparkhi that the body was totally decomposed. Though PW 1 Dr. Kapileshwar Chaudhary has stated that he had taken the

various samples for DNA finger printing, histopathology and anatomical examination, he has categorically admitted that he had not taken the samples for DNA testing of the parents of the deceased. That means, everybody was under presumption that the dead body was that of the girl. No attempt was made to establish the identity. As per the First Information Report Exh.38, the girl was wearing yellow coloured black striped top and red coloured pant. However, PW 1 Dr. Chaudhary has said that the clothes found on the body were one green black printed top. There was no mention of pant. In order to show some connection of the accused the Investigating Officer has shown that there was discovery under Section 27 of the Indian Evidence Act by the accused and the pant was allegedly discovered by the appellant. Memorandum Exh.59 has been tried to be proved by PW 16 Sanjay Suryawanshi. If we consider the said panchnama what has been allegedly discovered by the accused is white colour nikkar, one purple colour pant of the girl, small amount of hair and one nail either of leg or hand. Therefore, the description of the clothes do not match with the First Information Report and, therefore, it is hard to believe that the dead body was that of the victim who was the daughter of the informant. The testimony of PW 1 Dr. Chaudhary would further show that the body was so decomposed and it was impossible for him to give opinion as to the probable cause of death. Merely because the dead body was taken out from a bag which was filled with stones

also, we cannot say that death was homicidal and then make the accused liable under Section 302 of the Indian Penal Code. As per the memorandum panchnama, the dead body was buried in the field for some days and then it is said that it was thereafter exhumed, was put in the said gunny bag and then the gunny bag was thrown in the well. Except the alleged confessional statement, which is inadmissible in evidence, there is nothing on record. All these aspects were not considered at all by the learned trial Judge and, therefore, there is perversity. The said decision deserves to be set aside.

7 Per contra, the learned APP strongly opposed the appeal and supported the reasons given by the learned trial Judge. It was submitted that though none of the witnesses, who had seen deceased and the accused together, has been examined; yet, the manner in which the dead body was buried first, exhumed, was put in gunny bag and thrown in the well, would certainly prove that it was a murder. The next connecting evidence is the discovery panchnama. The accused has shown the place where he has initially buried the dead body and from where he had exhumed the same, and then he had also discovered the clothes. Apart from the clothes there were pieces of hair and a nail. The DNA of those articles matched with the DNA samples taken from the dead body. That was sufficient for the identification of the dead body. The clothes were identified by the informant

as belonging to his daughter. All that has been done by the accused with an intention to screen himself. No doubt, the prosecution has failed to prove that accused had committed rape on the girl, but her murder has been proved. Further, he has also discovered the shop of the Goldsmith to whom he had sold the articles, which were on the person of deceased. He has misappropriated that amount and, therefore, he has been rightly convicted for the offence punishable under Section 404 of the Indian Penal Code. Ultimately the articles could not be recovered; yet, the fact has been proved that he had sold the articles to a Goldsmith. Video shooting has been done in respect of all the discovery that was made by the accused. There is no merit in the present appeal. It deserves to be dismissed.

8 Most of the facts have been narrated earlier and, therefore, we do not want to reproduce the same, however, the necessary facts would be taken a note of. At the costs of repetition, we would say that the girl went missing on 15.08.2014, in respect of which missing report Exh.37 was lodged by the father. In spite of search when she was not found, First Information Report Exh.38 was lodged on 17.08.2014, which was only under Section 363 read with Section 34 of the Indian Penal Code, that too, taking suspicion on four named persons. Of course, as the fact was not revealed as to what has happened to the girl, we can understand that the First Information Report

was only in respect of her kidnapping. At this stage itself we would like to say that though the accused is also from the same village, PW 5 – father had no suspicion over the accused. Rather his testimony does not even show that he was knowing the accused. The dead body was found only on 05.09.2014, when PW 9 Jibhau gave information about the gunny bag floating on the surface of the water in the well situated in his field to the police. If we consider the testimony of PW 5 – father and PW 9 Jibhau, we can get a fact that police had called informant to the well and after the bag was taken out and also the dead body, it is said that the father identified the dead body is that of daughter on the basis of the frock and the anklet. Here, we agree to the submissions by the learned Senior Counsel that the missing report does not give what were the clothes on the person of the girl, but says that she was wearing half gram gold *nath* in the nose and ear rings of 1-1 gram. There is no mention of anklet. Same is the case with the First Information Report Exh.38. The only thing is that in the First Information Report Exh.38 the description of the clothes has been given and it is said to be yellow coloured black striped top and red coloured long pant. PW 1 Dr. Chaudhary gives the description of the clothes as green black printed top, religious red thread around neck and white metal anklet in right ankle only. There is no explanation by PW 5 as to why there was anklet only in one leg or there is no explanation by the prosecution as to what happened to the second anklet.

Before the Court PW 5 – father was shown frock and pant, which he has identified but while giving the description he says that she was wearing yellow coloured black lining pant and violet coloured pant. There has to be difference between red colour and purple/violet colour. In cross-examination he admits that he had not stated before the police the pant which his daughter was wearing was of violet colour and the fact that he had not given description of anklet (painjan) in the First Information Report. In clear terms in his cross-examination he has admitted that police told him that his daughter has been murdered. Though he has denied that the dead body found in a well was not of his daughter, but the scientific method has not been followed by the Investigating Officer to get the identity established. PW 1 Dr. Chaudhary had taken the samples from the dead body which could have been used for matching DNA. It would not have been difficult for him to get the samples of the parents of the deceased i.e. PW 5 and his wife for matching the DNA with the dead body. It is hard to rest on the clothes for identification of a dead body. In clear terms, the prosecution witnesses have stated that the dead body was highly decomposed, that means, it was beyond identification on its own. If we consider postmortem report Exh.7, it says that it is the report of postmortem in respect of the girl and the name of the girl has been stated. Prior to postmortem, which was conducted on 06.09.2014, on 05.09.2014 itself the communication has been made by the

Investigating Officer to this witness PW 1 Dr. Chaudhary saying that the said dead body is that of the victim. The panchnama that was carried out at the spot i.e. the spot panchnama Exh.30 would show that the identification was done by the father at the spot only on the basis of frock and the alleged anklet (of course, the contents of the spot panchnama do not show the same in so many words, rather it is said that after witnessing the dead body he identified). The pant was subsequently seized from a different place. PW 5 father has not stated it in so many words as to how he identified the dead body. Therefore, the identification of the body itself is suspicious and it appears that the police were bent upon saying that it is the dead body of the girl.

9 None of the witnesses had seen the deceased in the company of the accused when she was alive. Therefore, the prosecution in this case is heavily relying on the discovery panchnamas. PW 2 Devidas Chavan has turned hostile and in his cross taken on behalf of the prosecution he has identified the gold articles i.e. two small ear rings and one small nose ring. But he has denied that those articles were discovered by the accused in his presence. Even if the Investigating Officer would have proved the said fact; yet, when the discovery panch has turned hostile, then it would be unsafe to rely only on the Investigating Officer. No doubt, in certain circumstances the

testimony of the Investigating Officer may inspire confidence and in that event such discovery may be considered, but, here, as the Investigating Officer has left so many lacunas and it appears that the investigation has been carried out with the sole intention, his testimony is unreliable.

10 PW 3 Rafeeqe Shaikh is the panch to the panchnama, wherein the photographer had produced CDs of various videographs. His testimony cannot be read in isolation unless that electronic evidence is said to have been proved properly.

11 PW 6 Ananda Marnar is the panch to the panchnama, wherefrom the bag was recovered from the well, it was opened and the dead body was discovered. Even if we take that he had proved the said panchnama, it was only in respect of the said recovery or taking out of the dead body from the well. In his cross-examination he has stated that the distance between Sakri and Ambapur is 03 k.ms. Then question arises – as to how nobody had noticed the accused taking the said gunny bag towards the said well and how the well owner had not noticed. Further, it has not been brought on record when the bag would have been thrown in the well, though the discovery is said to be on 05.09.2014.

12 PW 7 Santosh Marnar is the panch to the discovery panchnama

under Section 27 of the Indian Evidence Act. He has only stated that accused has produced a motorcycle in his presence. For rest of the discovery he has turned hostile. He has been cross-examined at length but he has turned hostile. He has then stated in the cross-examination that PW 6 Ananda is a relative of the informant, who was the co-panch to himself and thereby it has been brought on record by the accused that though PW 6 Ananda is supporting the prosecution, PW 7 Santosh has turned hostile to the same discovery panchnama under Section 27 of the Indian Evidence Act. Under this circumstance also the said discovery panchnama under Section 27 of the Indian Evidence Act ought not to have been accepted by the learned trial Judge.

13 PW 4 Tanu Marnar is the panch to the panchnama Exh.35, whereby water from the said well was taken for sample. PW 8 Mohan Rathod is the panch to the panchnama of seizure of yellow and black coloured top and anklet. PW 9 Jibhau Marnar is a hardware shop owner at Sakri, who says that the accused was brought by police to his shop and the accused has told that he has purchased 5 k.gs. cement from his shop. He has not identified as such the accused. In cross-examination he has stated that he had not issued any receipt for the sale of cement. He had not taken the name of the person who purchased the cement. Therefore, his connection with the

case cannot be said to be established. PW 11 Sindhubai Karande has been examined to show that she had given the motorcycle owned by her husband to the accused. She was unable to remember the date on which she had given the said motorcycle to the accused and, therefore, her testimony is also not beneficial to the prosecution to establish the link. PW 12 Pravin Pawar is the Mason, in whose presence the accused alleged to have memorandum Exh.42 and discovered the gold ring and ear rings which are then said to be wrapped in a cloth and kept under the cover in the house of the accused. Here, the steps taken by the Investigating Officer are doubtful. When the alleged memorandum panchnama was done on 26.09.2014, wherein the accused had alleged to have taken the police to S. Kantilal & Co. and alleged to have stated that the gold ear ring and the nose ring was stolen by him for Rs.5,900/-, it is said that it was confronted with the Jeweller, who denied and, therefore, the entire team returned and then on 03.10.2014 memorandum panchnama Exhs.42 and 43 appears to have executed. It has been then tried to be posed that accused was misleading the police. Accused was in fact, arrested on 23.09.2014, then why no search of the house of the accused was undertaken as per Section 100 of the Code of Criminal Procedure is not explained by PW 19. Everything need not come from the mouth of accused and then the investigating agency would rely on discovery under Section 27 of the Indian Evidence Act. In fact, it has become tool in

the hand of the investigating agency. Now, PW 12 Pravin Pawar says that after giving memorandum the accused took them to his house and discovered those gold articles. In his cross-examination he has admitted that when they went to the house of the accused some ladies were present in the house. He does not say that they had made inquiry with those ladies as to whether the said seized articles belong to any one of them. This witness was unable to give the Grampanchayat House number. According to him, on that day no photographs were snapped and no photo shooting was done. It appears that the Investigating Officer has made a pick and choose for some discovery panchnama. He has photographed the entire procedure and for other it is not. This witness further says that the said ornaments were taken out by the accused from under the cover situated in the bed room. They had not made any inquiry as to who was ordinarily using the said bed room. The dimensions of the covered have not been taken. It is hard to believe that such gold articles would have been so allowed to be below the covered. Therefore, taking into consideration all the contents of those panchnamas it gives a picture that they are created documents.

14 PW 13 PHC Mr. Rajendra Nandre is the Carrier. PW 14 Gulab Marnar is the person who had discovered the bag in the well for the first time and then informed it to PW 9 Jibhau Marnar. He has also stated that when

he found that the water from the well was giving obnoxious smell he had started the electric motor and thereafter the police and many villagers arrived. He says that it was very difficult to identify the dead body. PW 15 Sheetal Jain is a Goldsmith who had weighed the gold ornaments and valued it, after it were seized by police. PW 16 Sanjay Suryawanshi is panch to the discovery panchnama. PW 17 Sangapal More is the Photographer, who had taken many photographs and had photographed certain panchnamas. PW 18 Jitendra Jagdale is also another Photographer and Videographer. Important point to be noted is that those photographs and the videos were never utilized by the prosecution and were never shown to any of the witnesses for its identification. PW 19 Ramesh Ratnaparkhi is the Investigating Officer. Important point to be noted is that after the missing report was lodged, he says that they had put the suspects on the radar and their call details were checked. In clear terms he is saying in examination-in-chief itself that he arrested the accused at 1.10 p.m. on 23.09.2014 saying that he was more suspicious about the accused. When nobody had raised any suspicion over the accused how his mobile alleged to have been put on surveillance, is a question. Those call details or what was transpired by obtaining the said CDR has not been proved by the prosecution.

evidence against the accused. When the prosecution case was based on circumstantial evidence, the golden principles laid down in **Sharad Birdhichand Sarda vs. State of Maharashtra** [AIR 1984 SC 1622] ought to have been followed by the learned trial Judge. The prosecution was not able to prove the motive which is one of the essential ingredients to prove the case based on circumstantial evidence. The identification of the dead body itself was based on wrong footing. The cause of death was not given by the medical expert. The further link was not established beyond reasonable doubt and, therefore, we hold that the learned trial Judge erred in holding the accused guilty of committing offence punishable under Section 302, 201, 404, 363 of the Indian Penal Code. The learned trial Judge ought to have acquitted the accused from all the charges. This is not a case where the Appellate Court is taking second possible view, but the interference is required, as the trial Court failed to appreciate the evidence properly and failed to consider the basic legal principles in respect of circumstantial evidence. The appeal deserves to be allowed. Hence, the following order.

ORDER

1 The appeal stands allowed.

2 The conviction and sentence awarded to the appellant in

Sessions Case No.190 of 2014 by learned Additional Sessions Judge, Dhule on 29.04.2016 after holding him guilty of committing offence punishable under Sections 302, 201, 404 and 363 of the Indian Penal Code stands quashed and set aside.

3 The appellant **Ravindra Anna Domale** stands acquitted of the offence punishable under Sections 302, 201, 404 and 363 of the Indian Penal Code.

4 He be set at liberty, if not required in any other case.

5 Fine amount deposited, if any, be refunded to the appellant after the statutory period is over.

6 We clarify that there is no change in respect of order of disposal of muddemal.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)