

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.519 OF 2015

Ashwin Ramesh Pawara,
Age 28 yrs., Occ. Labour,
R/o Vadfhalya, Tq. Dhadgaon,
Dist. Nandurbar.

... Appellant

... Versus ...

The State of Maharashtra
Through Police Station Officer,
Mhaswad, Tq. Shahada, Dist. Nandurbar.

... Respondent

...

Mr. R.S. Pawar, Advocate for appellant
Mr. R.D. Sanap, APP for the sole respondent

...

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

DATE : 09nd JANUARY, 2023

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

1 Present appeal has been filed by the original accused challenging his conviction in Sessions Case No.36/2013 by learned Adhoc Additional Sessions Judge, Shahada on 22.05.2015. The appellant has been convicted

as follows :

- “3) The accused Ashwin Ramesh Pawara is hereby convicted of the offence punishable under Section 302 of I.P.C. and sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.2,000/- (Rupees Two Thousand only), in default to undergo Simple Imprisonment for two months.
- 4) The accused Ashwin Ramesh Pawara is hereby convicted of the offence punishable under Section 201 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default to undergo Simple Imprisonment for one month.
- 5) All the sentences of imprisonment shall run concurrently.

It will not be out of place to mention here itself that the concerned Judge has acquitted the appellant for the offence punishable under Section 376 of the Indian Penal Code and there is no appeal challenging the said acquittal.

2 Heard learned Advocate Mr. R.S. Pawar for the appellant and learned APP Mr. R.D. Sanap for the sole respondent. With the able assistance of both sides we have gone through the entire evidence which was before the learned Trial Judge.

3 The prosecution story in short is that the complainant Kalsing Parshi Valavi is a practicing Advocate. He resides at Khuntamodi, Tq. Akrani. He has three daughters namely Rajashree, Vijayshree and the victim. He has one son by name Prithviraj. He is practicing in Dhadgaon, Taloda and Shahada Court. His son Prithviraj is taking education at Mumbai. The victim aged 31 was taking education in B.A. Third Year at Dhadgaon Senior College. On 13.02.2013 the victim left the house of complainant by saying that she is going to secure a job in a spray company at Aurangabad and she would return to attend her examination on 28.03.2013. However, she did not return on 28.03.2013 to attend the examination. Therefore, the complainant tried to trace out her with relatives and other places, but she did not find. On 30.03.2013 he received information that on 27.03.2013 at about 9.30 a.m. one dead body of an unknown lady has been found within the jurisdiction of Mhasawad Police Station at Toranmal in Sitakhai Valley. Therefore, on 31.03.2013 he went to Mhasawad Police Station and saw the photographs of the said lady and identified that it was the dead body of his daughter i.e. victim. Thereafter, he went to the spot at Sitakhai Valley, Toranmal along with police. He identified one chappal of chocolaty colour and design, maroon colour saree which was found on the spot of incident, the blouse and petticoat which was on the person of deceased and confirmed that those clothes and chappal were belonging to victim. He came to know that she was

carrying pregnancy of six months. According to the complainant, since one year prior to the incident the victim and accused Ashwin were having close relations. Accused had visited his house once or twice. The complainant had warned the accused many times not to make contact with the victim. Due to love affair between the victim and accused, the accused had sexual relations with her by giving promise of marriage and therefore, due to sexual relations by the accused, the victim had conceived. The accused did not obey the promise of marriage and as she become pregnant, due to fear of defamation in the society, he took the victim to Toranmal hill station by speaking flatteringly and pushed her in deep valley of Sitakhai and committed her murder. He thrown the chappal and other articles of victim in valley in order to destroy the evidence. Therefore, the complainant lodged report against the accused.

4 The prosecution has examined in all 11 witnesses to bring home the guilt of the accused and the case is based on circumstantial evidence. We would like to lay our hands on the observations and the ratio laid down in **State of Maharashtra vs. Vilas Pandurang Patil** decided by this Court reported in **1999 Criminal Law Journal 1062**, wherein it has been held thus -

“We wish to emphasize what the law of circumstantial evidence requires -

- (a) the circumstances should be firmly established;
- (b) cumulatively they should unerringly point out to the guilt of the accused;
- (c) they should wholly be inconsistent with the inference of the innocence of the accused;
- (d) they should be incapable of being explained on any other reasonable hypothesis excepting the guilt of the accused.

We wish to emphasize that in case of circumstantial evidence, it has to be seen whether the circumstances in totality and not in isolation, lead to the inference of the guilt of the accused. If in totality, they lead to such an inference then, it is of no consequence that independently they do not establish his guilt.”

This ratio has also been confirmed by the Hon’ble Apex Court in following decisions :

- A) **Hanumant Govind Nirgudkar and another vs. State of M.P.**,
AIR 1952 SC 343,
- B) **Shivaji Sahebrao Bobade vs. State of Maharashtra**,
AIR 1973 SC 2622,
- C) **Sharad B. Sarda vs. State of Maharashtra**,
AIR 1984 SC 1622,
- D) **Padala Veera Reddy vs. State of Andhra Pradesh**,
1989 (Suppl.2) SCC 706,
- E) **Dhananjoy Chatterjee @ Dhana vs. State of West Bengal**,
1994 SCC (2) 220,
- F) **State (NCT of Delhi) vs. Navjyot Sandhu @ Afsan Guru**,
2005 (11) SCC 600.

It is, therefore, required to be seen as to whether the said chain of circumstances have been proved by the prosecution and each segment is pointing out towards the accused as the author of the crime.

5 PW 4 is the father of deceased and from his testimony it can be seen that his daughter had left the house on 13.02.2013 by informing that she would go to Aurangabad to work in a spray company. She was supposed to come to Khuntamodi, Tq. Akarni, Dist. Nandurbar, where PW 4 resides, on 28.03.2013 to appear for her B.A. Third Year examination, however, the father appears to be not in contact with the daughter from 13.02.2013 to 28.03.2013. When the daughter did not come to attend examination he started making inquiry by visiting the college, but she was not found in the college. It is to be noted that he has stated that the daughter was taking education in J.P. Valavi Kala Mahavidyalaya which appears to be from his town. When the daughter was supposed to go to Aurangabad, then, how she could have been found in the college, is a question and in his cross-examination he has clearly stated that he has not mentioned name and address of spray company of Aurangabad in his First Information Report. In the First Information Report he has not mentioned that since 13.02.2013 till the incident with whom his daughter was working at Aurangabad and where she was residing. He had no knowledge as to with whom the daughter was

working and where she was residing at Aurangabad. Thus, his statement that the daughter had affair with the accused and he had warned the daughter as well as accused for keeping relationship prior to 13.02.2013 appears to be either afterthought or only on the basis of suspicion. His testimony, independently cannot be considered as a link. Further, it can also be seen that though a sim card appears to have been found from the spot, the informant either in his First Information Report or at any later point of time has not given the mobile number of the girl. Question would have been, as to whether from 13.02.2013 to 28.03.2013 he could not have contacted the daughter on phone, would have been raised. There is no answer to this in the prosecution story. No doubt, the father has identified the articles which were on the person or around the dead body. To that extent, at the most, it can be said that the prosecution has proved that the dead body was of the daughter of the informant.

6 At this stage itself, we would like to consider the testimony of PW 7 Dr. Vijay, who had conducted the autopsy. He states that the dead body was brought to Rural Hospital, Mhasawad on 27.03.2013. He found 16 surface wounds and then there were corresponding injuries to column Nos.19 and 21 in Postmortem Report Exh.42. The probable cause of death that has been given as - "haemorrhagic shock due to multiple injury as mentioned in

column Nos.17 and 18". Even if we take the testimony of this witness as it is, we cannot certainly come to the conclusion that it is a homicidal death. For the reason that though the injuries are there the possibility of accidental injuries due to fall in the valley or suicidal jump ought to have been then ruled out. In his cross-examination PW 7 has stated that except injury Nos.1, 2, 14, 15 and 16 other injuries are possible due to fall in a valley of 50-60 feet. He admitted that in the police report it is mentioned that the deceased died due to fall in Sitakhai valley. He was deposing for the first time that the injuries were possible due to forcible push and fall on hard and blunt object. Further, he has admitted that when a person falls from 50-60 feet height the dead body takes speed. There is increase in the impact of the injuries due to fall by speed. Further, he has not mentioned in the PM. Notes that there was any substance like blood, liquid or water on the clothes owned by the deceased. He has not mentioned age of the injury and cause of the injury in the Postmortem Report. Therefore, taking into consideration the nature of the injuries, surface wounds noted as well as injury noted in column No.18, as aforesaid, in isolation it cannot lead to the conclusion that the death is a homicidal in nature, thereby ruling a possibility of suicidal or accidental death.

evidence and, therefore, we will have to consider the testimony of PW 4 as well as PW 7 also, whether it is giving a clear case of homicidal death and the author is the appellant.

8 PW 1 Dashrath, PW 2 Madhav and PW 3 Darasingh have been examined as the persons who had acquaintance with appellant as well as deceased. PW 1 Dashrath has deposed that accused had gone to his house on 25.03.2013 and also on 27.03.2013. Except this there is nothing in his testimony. He has stated that accused used to reside in the adjacent room of his house and he has categorically denied that he was knowing deceased. He has been cross-examined by the prosecution at length, however, nothing favourable has been transpired. PW 2 Madhav appears to be the college-mate of the accused and was knowing deceased. He has stated that accused along with deceased has gone to his room at Shahada on 26.03.2013 at about 1.00 a.m. He states that on next day morning he went to attend his duty in the grocery shop and returned around 12.30 p.m., but he could not find the accused and the deceased in his room at that time. Important point to be noted is that from this witness we cannot see the natural conduct, when a person is coming along with a girl at midnight, at that time, the obvious reaction would be to ask the reason of their arrival at an odd hours and then it appears that he left them in his room and went for his duty. What were the

dialogues between them about their intention to come at odd hours, how many days or hours they intend to reside, all these aspects are missing. At the most, he had lastly seen the deceased and the accused together in the morning of 27.03.2013 at Shahada. But the spot of the incident is at a different place. At this stage itself again going back to PW 7 - the Medical Officer has not given the probable time of death. The dead body was taken to the hospital as per Exh.42 at 6.00 p.m. on 27.03.2013 and the autopsy has been done between 6.00 p.m. to 6.40 p.m. It appears that the police officer has stated that the death has occurred before 9.30 a.m. It appears to be the inference that has been drawn by the police to that extent. This witness has also been cross-examined by the prosecution, however, he has not supported the further story. In his cross-examination conducted on behalf of the accused he has stated that he was knowing the deceased and she used to come to his house. He reiterated that deceased and accused had gone to his room around 1.00 a.m. on 26.03.2013, but as regards the death of time is concerned, he was unable to assign any reason as to why his police statement is not containing the said fact. No doubt, he has denied that in view of the pressure from the informant he had stated so. But taking his testimony as it is, it cannot be said that he is forming one segment from the chain of circumstances pointing out towards accused.

9 PW 3 Darasingh has turned hostile, but in his cross-examination conducted on behalf of prosecution he has admitted that accused and deceased had gone to his room on 25.03.2013. Thereafter he has not supported the prosecution story. Even if we take the said statement as it is; yet, the death is on 27.03.2013 and, therefore, accused and deceased come to his room on 25.03.2013 will not prove the prosecution story in any manner.

10 PW 5 Olsingh Naik is the Police Patil of village Toranmal. He had received information from one Uttam Naik on 27.03.2013 that he had seen a dead body of one lady in Sitakhai valley at a distance of 50 feet. He had informed the said fact to Police Constable and then along with the police persons he went to the spot. They had seen dead body of a lady near one tree at a distance of about 50 feet from Sitakhai. They had removed the dead body by taking help of a rope. The A.D. registered by him is at Exh.35. Station Diary entry appears to have been taken at 12.45 p.m. on 27.03.2013 and in A.D. Exh.35 Olsingh says that he had received the said information around 9.30 a.m. at his village and, therefore, it appears that in the police report, which was submitted with request for Postmortem, it is stated that the incident had taken place prior to 9.30 a.m. It ought to have been an endeavour on behalf of the prosecution to seek expert opinion about the time of death, so that it could have been inferred, as to what was the approximate

time and from the time the witness had seen them last, whether that witness can go through the ordeal of last seen together. When expert was available, there ought not to have been a scope for inference.

11 PW 6 Pahadsingh Naik is the panch to the inquest panchnama as well as spot panchnama. He has proved the same. As regards the spot panchnama is concerned, he had stated that police had found one sim card of yellow colour near the compound of valley and it came to be seized. Interesting to be noted is that the Investigating Officer is not explaining as to what investigation he has made in respect of the handset. Unless the sim card is inserted in a mobile handset it will not be activated and the mobile company documents in respect of the said sim card appears to be not collected and proved. Under such circumstance, though the sim card appears to have been seized, it has not been tried to be connected to the deceased. Unless it is proved that the said sim card was standing in the name of deceased or even the accused, serious note about the seizure of the same cannot be taken.

12 PW 8 is the brother of the deceased. He has deposed on the same line like his father. In fact, he says that he was taking education at Mumbai and he had come to know from his father that the deceased had left

the house on 13.02.2013 by saying that she is going to work in a spray company at Aurangabad. It also appears from his testimony that even he had not tried to contact his sister till 28.03.2013. In addition, he has stated that accused used to visit their house since about a year prior to death of the deceased and at that time the accused used to say that he used to love deceased. He has then stated that they had asked the accused not to visit their house. He was firm in saying that the deceased had concealed from the accused. It is to be noted from the Postmortem Report that there was fetus in the uterus of size of 24 weeks. Neither the father nor the brother have stated that when deceased left the house on 13.02.2013, prior to that deceased had informed them about the pregnancy. Under such circumstance, it appears to be the suspicion on the basis of which they are saying that deceased was pregnant from the accused. The prosecution has conducted a DNA test, however, the result of the analysis is, "No interpretable DNA profile is obtained from Exh.2 bone". Exh.2 is bone in an envelope labelled baby of deceased and, therefore, it appears that the learned Trial Judge had acquitted the accused of the offence punishable under Section 376 of the Indian Penal Code.

13 PW 9 Bhagwan Kumbhar has turned hostile, however, he appears to be the panch to the spot panchnama, seizure of clothes of the deceased,

seizure of clothes of accused and also the memorandum and panchnama under Section 27 of the Indian Evidence Act. He admitted the signatures on the panchnamas, however, the important piece of evidence would have been to connect the accused to the crime i.e. in respect of memorandum and discovery. Since he has turned hostile his testimony need not be considered at all. In his cross-examination taken on behalf of the accused, it has admitted that he has signed all the documents at his shop at one time. Even if for the sake of argument we consider that those documents have been proved through the Investigating Officer PW 10 Vijaysingh Rajput and PW 11 PHC Dhanraj Jadhav; yet, when the substantial evidence has not come, we cannot give importance to their testimony and cannot come to a conclusion that the burden has been discharged by the prosecution beyond reasonable doubt. The Investigating Officer PW 10 Vijaysingh Rajput on the point of sim card has stated that the sim card was that of the accused and from the CDR he found that the maximum calls were with the deceased. Except his words other mode of proof has not been led. The CDR has not been got exhibited by examining the nodal officer. The testimony of the police witnesses by itself is corroborative in nature and cannot be solely relied upon in absence of the substantive evidence.

prosecution it cannot be said that the chain of the circumstances was established by the prosecution and the segments containing the chain were pointing out towards the accused as the author of the crime. Learned Trial Judge erred in holding that the death is homicidal and the accused-appellant had thrown the dead body in the valley to screen himself. The evidence led by the prosecution was not of the standard to hold that the offence has been proved beyond reasonable doubt and, therefore, the conviction deserves to be set aside by allowing the appeal.

15 For the reasons stated above, we pass following order.

ORDER

1 The appeal stands allowed.

2 The findings, sentence and conviction to the appellant in Sessions Case No.36/2013 by learned Adhoc Additional Sessions Judge, Shahada, Dist. Nandurbar on 22.05.2015 stands set aside.

3 The appellant stands acquitted of the offence punishable under Section 302, 201 of the Indian Penal Code.

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

5 It is clarified that there is no change in the order as regards
destruction of muddemal.

(Abhay S. Waghwase, J.)

(Smt. Vibha Kankanwadi, J.)

agd