

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.563 OF 2021

Latabai w/o Sufilal Mehra
Age: 57 years, Occu.: Labour,
R/o. Hind Nagar, New Mondha
Jalna, Tq. and Dist. Jalna.

.. Appellant

Versus

1. The State of Maharashtra
Through Police Inspector,
Taluka Jalna Police Station,
Tq. and Dist. Jalna.
2. Amol Vasantrao Pathak
Age: 46 years, Occu.: Business.
3. Vaishali Amol Pathak
Age: 42 years, Occu.: Household.
4. Ujwal Amol Pathak
Age: 20 years, Occu.: Education,

All R/o. Pathak Mangal Karyalay,
Kacheri Road, Jalna
Tq. & Dist. Jalna

.. Respondents

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Mr. Suvidh S. Kulkarni, Advocate for appellant.
Mrs. P. V. Diggikar, APP for respondent No.1 - State.
Ms. Anuradha B. Ghule, Advocate for respondent Nos.2 to 4. (Absent)

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

DATE : February 21, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed by the original informant - victim under Section 372 of the Code of Criminal Procedure to challenge the acquittal of respondent Nos.2 to 4 - original accused Nos.1 to 3 in Sessions Case No.334 of 2019 by learned Sessions Judge, Jalna on 26.08.2021. The original accused Nos.1 to 3 have been acquitted of the offences punishable under Sections 302, 307, 201, 120-B read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. Suvidh S. Kulkarni for the appellant and learned APP Mrs. P. V. Diggikar for respondent No.1 - State. Learned Advocate Ms. Anuradha B. Ghule for respondent Nos.2 to 4 is absent. With the able assistance of learned Advocate for the appellant and learned APP, we have gone through the material evidence, which was before the learned Trial Judge.

3. Informant is the mother of deceased Pooja and grandmother of injured Siddhi. Appellant lodged report with Taluka Jalna Police Station on 13.09.2019 stating that her daughter Pooja was married to one Vinayak Bhale, who is the brother of accused No.2, about four to five years prior to the incident. Then she stated that there was love affair between Pooja and accused No.1 and, therefore, Pooja left her husband and performed marriage with accused No.1. Thereafter,

Pooja and accused No.1 started residing separately in a rented premises. Pooja gave birth to Siddhi, who is the daughter of Pooja and accused No.1. According to the appellant, accused No.2 used to go to the house of Pooja, abuse her and give threat to kill. She further states that about two to three months prior to the incident at about 03.00 a.m., when Pooja was alone in the house, ten persons had arrived and had broken the glass of her window. As she resisted, those persons ran away. Accused No.3 is the son of accused No.1 and accused No.2. He had also once abused and threatened to kill Pooja about two months prior to the incident. However, when appellant went to Pooja's house around 7.00 p.m. on 12.09.2019, she noticed that Pooja was lying on the ground. Though she was called twice, she did not get up. She looked for Siddhi. Siddhi was found unconscious in cradle. Appellant then informed the incident to accused No.1 on phone and lodged report with Taluka Police Station, Jalna, as Pooja was found dead.

4. During the course of the investigation, inquest panchamama as well as spot panchanama was prepared. Dead body was sent for postmortem. Siddhi was examined and treated by the medical officer. Statements of witnesses were recorded. Accused persons came to be arrested. Clothes of all the accused were seized and after the investigation, charge-sheet was filed.

5. It appears that prosecution has examined in all fourteen witnesses to bring home the guilt of the accused and after considering their evidence, the learned Trial Judge has acquitted all the accused persons. Hence, this appeal.

6. Being the first Court of appeal, we have scanned the evidence. The prosecution is mainly relying on the testimony of P.W.1 Latabai Mehra, P.W.7 Surendra Mehra and P.W.8 Ravi Mehra. P.W.7 Surendra and P.W.8 Ravi are the brothers of deceased Pooja and sons of P.W.1 Latabai. All of them had agreed to a fact that Pooja has married to accused No.1, who was already married to accused No.2. Perusal of the testimony of Latabai would show that she has tried now to pose herself as eye witness on the point of last seen together in respect of accused Nos.2 and 3. She has now stated that when she reached near Pooja's house, she had seen accused Nos.2 and 3 leaving the spot on motorcycle. No such statement was made by her in her FIR. She has made improvements to a considerable extent and in her cross-examination, she has admitted that there is no evidence with her to prove that Pooja was married to accused No.1. She admitted that there was no divorce between Pooja and her husband Vinayak. Later on, in her cross-examination, she had stated that she reached Pooja's house around 6.00 p.m. by rickshaw and nobody had met her on the road. With such kind of improvements, her testimony is unbelievable

to establish the connection of the accused persons to the crime. No doubt, it can be seen from the testimony of P.W.12 Dr. Rajendra Gadekar that Pooja's death is homicidal in nature. He has given the cause of death as "death due to asphyxia due to strangulation". However, to connect the death of Pooja to the accused, there has to be some evidence. Except the interested witnesses, there is no other evidence on record. When P.W.1 Latabai went to the spot, already Pooja was dead. Thereafter, P.W.5 Shrimant Wagh arrived. Shrimant Wagh resides on the first floor of the same room where Pooja was residing. He only says about the call given by Latabai while she was crying when she found Pooja in dead condition. P.W.7 and P.W. 8 i.e. the brothers of deceased have given the same version as their mother, however, they have also admitted that after leaving husband, Pooja started residing with accused No.1. They have not stated that she had performed marriage with accused No.1. It appears from the cross-examination of P.W.7 Surendra that the house in which they are staying is in fact constructed by accused No.1 and even when accused No.1 was in jail, they had taken amount from him for Siddhi. He admits that accused No.1 is taking care of Siddhi even now and, therefore, it can be said that he was interested in deposing against the accused. Both of them are also not eye witnesses.

7. The testimony of other witnesses is to prove the various panchanamas. Even if it is considered that they have been proved, yet the core evidence is absent, which can connect the accused with the crime. We, therefore, held that the learned Trial Court rightly appreciated the evidence and had come to the conclusion. There is no merit in the present appeal. It deserves to be dismissed at the threshold. Accordingly, it is dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm