

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.613 OF 2021

Shrirang Pandurang Bhute
Since deceased Through
his LR's Mathurabai Shrirang Bhute .. **Appellant**

Versus

1. The State of Maharashtra
Through Police Inspector,
Sub Divisional Police Officer,
Tq. Bhokardan, Dist. Jalna.
2. Kumar s/o Anup Sonone
Age: 20 years, Occu.: Nil,
R/o. Near Datta Mandir, Suvarna
Nagar, Buldhana, Tq. & Dist. Buldhana .. **Respondents**

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Mr. Govind Kulkarni h/f Mr. H. P. Jadhav, Advocate for the appellant.
Mr. R. D. Sanap, APP for respondent No.1 – State.
Mr. S. J. Salunke, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 28th March, 2023.

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

. Present appeal has been filed by the informant under Section 372 proviso of the Code of Criminal Procedure to challenge the acquittal of respondent No.2 in Sessions Case No.226 of 2019 by

learned Additional Sessions judge, Jalna on 25.08.2021 from the offence punishable under Section 302 read with Section 34 and Section 120-B of Indian Penal Code.

2. The prosecution story in short is that dead body of one unknown person was found near the agricultural land of one Shrirang Suradkar. The dead body was noticed by one Prabhu Suradkar, who was going towards his agricultural land. The said dead body was beneath Neem tree. Therefore, he called the adjoining landholders. Thereafter the said fact was informed by P.W.7 Narayan Mali to P.S.I., Paradh Police Station around 19.15 hours on 15.06.2019. P.W.18 P.S.I. Shinde then visited the said spot and executed inquest panchanama as well as spot panchanama. They seized certain articles from the said place. Arrangement was made for sending the dead body for postmortem. It is then stated that at that time one Pravin Sudam Paighan was present at the said spot and he identified the dead body as that of his cousin Swapnil Shrirang Bhute resident of Masrul, Taluka and District Buldhana. After taking primary report from the medical officer, when it was noticed that the death is homicidal in nature, offence was registered vide Crime No.79 of 2019 against unknown person for the offence punishable under Section 302 of Indian Penal Code.

3. The investigating officer visited Masrul and recorded the statements of parents and friends of the deceased. He came to know that two unknown persons had visited the residence and agricultural land of the deceased. They have made inquiry about the deceased with his father. It was also revealed that deceased had given a phone call to the clerk working with Chatrapati Rajashree Shahu College, Paradh, namely, Bodkhe P.W.3 and made inquiry about the admission process. Deceased along with two unknown persons had visited the college and made inquiry in respect of admission. Thereafter on the basis of call details, location of the accused was traced out. During the custody, he had also disclosed name of another accused. Certain articles were seized from the custody of the accused. While under custody, accused had discovered the wooden rafter with which it is said that he had caused injury to the deceased. The said wooden rafter was a piece and the another piece of wooden rafter was found from the spot. Statements of further witnesses were recorded. The other accused turned out to be juvenile. After the completion of investigation, charge-sheet of the present respondent was filed with learned Judicial Magistrate First Class, Bhokardan, Dist. Jalna.

4. After the committal of the case, charge was framed and then prosecution has led evidence to prove the guilt of the accused. Prosecution examined in all eighteen witnesses and after hearing

both sides and considering the evidence on record, learned Sessions Judge, Jalna acquitted the accused by judgment and order dated 25.08.2021. Hence, present appeal under Section 372 of the Code of Criminal Procedure.

5. Heard learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. H. P. Jadhav for the appellant, learned APP Mr. R. D. Sanap for respondent No.1 – State and learned Advocate Mr. S. J. Salunke for respondent No.2.

6. With the help of learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. H. P. Jadhav for the appellant, we have gone through the material including the evidence which was before the Trial Judge. The points in nutshell the appellant intends to raise are :-

(i) Though the death of deceased Swapnil was homicidal in nature and it has been so proved, yet the learned Trial Judge has acquitted the accused by misinterpreting the evidence.

(ii) It has been proved by the prosecution that the cousin sister of deceased was having love affair with accused and once she had disclosed to the accused that deceased had

molested her, when she was small. Accused got annoyed with this fact and wanted to ask deceased as to why he had behaved like that with his cousin sister. That is stated to be the motive and in order to prove the said motive, the cousin sister of the deceased have been examined, who supported the prosecution story.

(iii) Case is based on last seen theory and in order to prove the same, prosecution has examined P.W.2 Vijay, P.W.3 Vitthal, who was serving as a clerk with Rajashree Shahu College, Paradh with whom deceased Swapnil along with both the accused had talked in the college around 2.00 to 2.30 p.m. Then P.W.3 Vitthal had identified the accused in test identification parade. On the said point even P.W.9 Shrirang – father of the deceased, has been examined with whom the accused persons had made inquiry about the Swapnil.

(iv) The prosecution case was also based on extra judicial confession, which was given by the accused to his girlfriend P.W.17.

7. Therefore, when sufficient evidence was produced on record to which there is support of various panchanamas also, the learned

Trial Judge ought to have held that the offence is proved beyond reasonable doubt. The case requires re-appreciation of evidence and, therefore, needs to be admitted.

8. We would like to say that at this stage we are considering the evidence for the purpose of admission and to whether case is worth admitting. For this purpose also it will have to be shown by the appellant that the learned Trial Judge erred in appreciating the evidence and the judgment of acquittal is perverse.

9. As aforesaid, the learned Advocate Mr. Govind Kulkarni appearing for the appellant has taken us through the depositions of all the witnesses. We would like to say that on all the points learned Sessions Judge has made discussion and a well reasoned judgment and order has been passed. It has been rightly stated from the testimony of P.W.6 Dr. Ashok, Medical Officer, who conducted autopsy, that the death was due to severe haemorrhage due to severe head injury and fracture of skull bones due to neurogenic shock. That means the death is homicidal in nature. However, the prosecution should further establish that the accused was the author of the crime. As aforesaid, there is no direct evidence in this case, but the prosecution case rested on circumstantial evidence. In case of case based on circumstantial evidence, the chain and events

should be complete and each segment of the chain should unerringly point towards accused as the author of the crime. The learned Sessions Judge has rightly started the discussion on the point of motive first, as unless there would have been motive, there could not have been murder. While appreciating the evidence of P.W.17 (we would like to mask the name of the girl for preserving her identity taking into consideration her future life) she has stated about the love affair between her and the accused. It is to be noted that when the accused was arrested, it is stated that he was merely 18 years of age. Her relationship with deceased is not disputed, but then she has stated that once she has disclosed the accused about molestation by deceased, when she was a child. Careful perusal of her testimony would show that she was studying in 10th standard and that incident of molestation was done by deceased against her when she was in 3rd standard. That means around 7 years had minimum lapsed to that incident. She has not disclosed, when she had made that disclosure to the accused. The time gap between such disclosure by P.W.17 and the death of Swapnil was the important fact. Another fact which she has told is that it was the telephonic conversation between her and the accused, which shows that there was a possibility for the prosecution, to bring on record by way of a CDR and/or SDR of both the mobile phones, to show that such conversation had taken place.

She has not given the mobile number, which she was using at the relevant time conveniently. P.W.17 appears to have never disclosed the behaviour of deceased with her to any of his family members. Under such circumstance, after so many years, when according to her she had disclosed the said fact to the accused and then accused i.e. her boyfriend getting annoyed with the deceased to the extent that he would kill him is unbelievable.

10. The prosecution story rests on last seen theory and as aforesaid, three persons have been examined to prove the same. Even if the testimony of these three persons is taken as it is, they had seen the deceased in the company of accused around 2.00 to 2.30 p.m. on 14.06.2019 and the dead body has been found around 19.15 hours on 15.06.2019. As per the testimony of P.W.2 Vijay, he had seen deceased around 1.00 to 1.30 p.m. at Masrul, Taluka and District Buldhana. P.W.3 Vitthal – clerk from the college had seen the deceased and the accused around 2.00 to 2.30 p.m. in college at Paradh, Tq. Bhokardan, Dist. Jalna and P.W.9 Shrirang says that he had seen two persons making inquiry with Swapnil between 1.30 p.m. to 2.00 p.m. at Masrul on 14.06.2019 and then within 10 minutes Swapnil was seen going with those two boys on the motorcycle. If they are put in chronology, then P.W.2 Vijay seen them first, then P.W.9 Shrirang – father of the deceased and then P.W.3 Vitthal. If we

consider the testimony of P.W.3 Vitthal as the person who had lastly seen, yet from the time he saw leaving deceased with accused and the dead body that was found, it is of much gap. It is more than 24 hours. Therefore, the said nexus cannot be said to have been established properly. The learned Trial Judge has rightly observed that when P.W.3 Vitthal has said that deceased had given phone call to him in the morning and asked about the admission process, then it could have been corroborated by placing CDR. Further, the visit of the deceased with accused in the college could have been supported by placing the CCTV footage of the CCTV's installed in the college. The discrepancy between his testimony with the other witnesses as well as his own statement under Section 161 and 164 of the Code of Criminal Procedure has been noted by the learned Trial Judge. The testimony of the father of the deceased would also indicate that he had not suspected anything against the accused persons when they had made inquiry with Swapnil. Rather there is no evidence on record produced by the prosecution as to how deceased and accused were knowing each other. If we consider the address of the accused, it appears that he was resident of Buldhana and as per P.W.17, she got acquaintance with accused in her school. There is no evidence that either the deceased was also student of the same school or at any earlier point of time P.W.17 had introduced deceased to the accused.

Therefore, on the point of last seen theory together also, the prosecution has failed.

11. The learned Trial Judge has found that the identification parade is also not properly conducted. It is also a very weak type of evidence. So also, the extra judicial confession alleged to have been given to P.W.17 is doubtful, as it is not supported by CDR or SDR, as it is stated to have been given on the mobile phone.

12. Taking into consideration a well reasoned judgment and order by the learned Trial Judge, we do not find it to be perverse. No case is made out for admitting the appeal. It deserves to be dismissed. Accordingly, the appeal stands dismissed.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm