



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.729 OF 2023

The State of Maharashtra
Through : Taluka Jalna Police Station,
Dist. Jalna.

..Appellant

Versus

1. Deelip s/o Dagdu Misal
Age: 28 years, Occ.: Nil,
R/o. Near Mantha Chowfuli
Jalna, Tq. and Dist.Jalna.

..Respondent
(Ori. Accused)

2. Santosh Kachru Shinde
Age: 39 yrs., Occu.: Labour,
R/o. Pushpaknagar, Mantha
Chouphuly, Jalna, Tq. & Dist.Jalna.

..Respondent
(First Informant)

...
Mr.S.D.Ghayal, APP for Appellant : Mr.S.D.Ghayal
...

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

DATE : 27 SEPTEMBER, 2023

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

1. On account of acquittal of respondent no.1 from charge under Section 302 and 201 of the Indian Penal Code (IPC) by learned Additional Sessions Judge-3, Jalna, in Special Case (Atro.) No.25 of 2018, appellant State preferred present appeal.

2. Heard for admission.

SUBMISSION ON BEHALF OF STATE

3. According to learned APP, prosecution has established its case on the evidence and testimonies of as many as 18 witnesses. It is pointed out that deceased Rekha, on account of marital discord, has come to reside with her brother PW1 Santosh Kachru Shinde, informant. That on 31-01-2018, she left the house on the pretext of bringing medicine for her sick child but she did not return. He further pointed out that her dead body was found lying in Anand Public School, Jalna with throat-slit injury and head injury. He further pointed out that investigation revealed that **PW2** Nitin Bansode, **PW3** Sachin Ambhore and **PW4** Vaibhav Ekhande spotted accused dragging and forcibly taking deceased Rekha in a Rickshaw and thereafter, she was found dead. That testimony of these three witnesses has been relied by prosecution. He pointed out that circumstance at scene of occurrence also shows that there was a brutal murder. That Medico Legal Expert's attributed death due to homicidal injury. Informant, his other sisters, mother have been examined by prosecution. That accused, who was reported to be of bad character, had assaulted deceased Rekha and therefore, was questioned by informant and other family members. According to him, they have deposed to that extent. Therefore, with such quality of evidence un-erriengly investigation revealed involvement of accused. Consequently, in the light of evidence of informant,

his sisters as well as independent witnesses, Police Officers and Medico Legal Experts, prosecution has cogently established case and hence he submits that prosecution has established the charges by leading above referred cogent evidence. But unfortunately learned trial Court has not appreciated above evidence in correct perspective and has rather given benefit of doubt. Resultantly, said judgment and order being bad in eyes of law, appeal deserves to be admitted as it requires re-appreciation of evidence.

4. In the light of submissions advanced by learned APP, we have gone through the papers placed before us, which were part of evidence adduced before the trial Court.

EVIDENCE ON BEHALF OF PROSECUTION

The oral evidence adduced by prosecution is as under :

PW1 Santosh Kachru Shinde is brother of deceased and informant. His evidence is at Exh.19.

PW2 Nitin Chandrabhan Bansode **PW3** Sachin Asaram Ambhore and **PW4** Vaibhav Suryakant Ekhande are independent witnesses and residing in the same locality where deceased resided. Their evidence is at Exhibits 28, 29 and 30 respectively.

PW5 Jubedabi Shaikh Baba is resident of Pushpak Nagar, Jalna, who also claims to have been seen deceased being dragged and taken to the spot. Her evidence is at Exh.31.

PW6 Dr.Sarvesh Mahesh Patil is Autopsy Doctor. His evidence is at Exh.34.

PW7 Sham Venkaty Gorpalley is the Muddemal carrier. His evidence is at Exh.44.

PW8 Sangita Vijay Pajge is sister of deceased. Her evidence is at Exh.47.

PW9 Rekha Sudam Lokhande is witness, who had seen quarrel between accused and deceased and then accused taking deceased in Auto Rickshaw and going towards school. Her evidence is at Exh.50.

PW10 Nimish Madhavrao Mehtre (API) and **PW11** Shivsing Supadsing Bahure (PSI) are Police Officers. Their evidence is at Exh.53 and 54 respectively.

PW12 Ishwar Sahebrao Jogdand independent witness. He did not support prosecution.

PW13 Sopan Dnyanoba Bangar (Dy.S.P) and **PW15** Ramrao Vitthalrao Chapalkar (Naik Police Constable) are Police Officers. Their evidence is Exh.62 and 69 respectively.

PW14 Sakhubai Kachru Shinde is mother of deceased. Her evidence is at Exh.65.

PW16 Vishwas Nagnathrao Bhore is Circle Officer. His evidence is at Exh.74.

PW17 Kalyan Maroti Borkar (Dy.S.P) is Police Officer. His evidence is at Exh.77.

PW18 Sachin Deelip Bari is investigating Officer. His evidence is at Exh.86.

ANALYSIS

5. Here it seems to be case of prosecution that accused - respondent no.1 had an evil eye on the deceased, who had parted company from her husband and was put up with PW1 Santosh, informant. According to PW1 Santosh, informant, his sister deceased Rekha went to bring medicine on a Scooty but she did not return and that her dead body was found in the premises of School. Here there is no direct eye witness and therefore, case is based on circumstantial evidence. However, prosecution strongly relies on evidence of **PW2** Nitin, **PW3** Sachin and **PW4** Vaibhav and these boys claim that on that night of 31-01-2018 when they were out of their house, they had seen accused, who they claim knowing to be of bad character, dragging and forcibly taking deceased in Auto Rickshaw. Apparently, inspite of seeing and residing in the same locality of PW1 Santosh - informant, they have not on their own immediately informed informant or Police. Even when **PW2** Nitin claims to be present at the time of inquest panchanama, but neither he nor his friends have reported Police or informant or family members of deceased about seeing deceased being taken in Auto Rickshaw. Therefore, their evidence being unnatural cannot be straightway accepted.

6. Though, **PW6** Dr.Patil, Medico Legal Expert has noticed and opined about death to be homicidal one, there is nothing on record to show involvement of accused apart from testimony of so called PW2 Nitin, PW3

Sachin and PW4 Vaibhav, whose evidence has already come under cloud for the reasons stated above. There is no other evidence to connect accused. No circumstances are brought on record to show complicity of accused. Though PW2 Nitin and PW3 Sachin, independent witnesses are examined to support allegation about quarrel and a girl being taken by a man, they have not reported immediately and even their statements are not recorded promptly. Rather it seems that after going through a newspaper item, their statements are recorded almost after one and half months. They have not even uttered about whatever they saw that night inspite of attending the funeral. Evidence of prosecution does not show that there was recovery of weapon or any article. Even otherwise sole circumstance of recovery discovery is itself not sufficient to rope-in accused persons in absence of evidence or circumstance pointing to their involvement in forcibly taking deceased and thereafter she being done to death. Though PW5 Jubedabi and PW9 Rekha are examined as independent witnesses, there are material omissions in their evidence, which were brought by defence while under cross-examination. Even they are not used for identification by conducting parade.

CONCLUSION

7. Consequently, there being nothing incriminating against accused and no iota of evidence in support of accusation about eve-teasing or forcibly taking

deceased, the case of prosecution cannot be accepted.

8. In our opinion, learned trial Court has considered such evidence on record and has correctly appreciated the same and has rightly held that prosecution has not proved its case beyond reasonable doubt. There are several shortfalls in evidence. Consequently, guilt cannot be fastened with such quality of evidence on record. Hence, having found no merits, we proceed to pass following order :

ORDER

Criminal Appeal stands dismissed, at threshold.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT