

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 109 OF 2022

Manohar s/o Govindrao Chokhat
Aged about : 69 years, Occ.: Business,
R/o: Ram Nagar, Chandur (Rly.),
District – Amravati.

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... Appellant

Versus

1. Nitin s/o Ghanshyam Gangan,
Aged about 29 years, Occ.: Business,
2. Ghanshyam s/o Motilal Gangan
Aged about : 57 years, Occ.: Business,
3. Saul. Pushpa w/o Gahanshyam Gangan
Aged about 54 years, Occ.: Household,

All No.1 to 3 are Resident of Maa Kali Nagar,
Chandur (Rly.), Dist. Amravati.
- 4 Kishor s/o Motilal Gangan,
Aged about 50 years, Occ.: Business,
R/o. Banait Nagar, Chandur (Rly.),
Dist. Amravati.
5. The State of Maharashtra,
Through Police Station Officer,
Police Station Chandur (Rly.),
Dist. Amravati.

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...Respondents

Mr. R.S. Akbani, Advocate for appellant.

Mr. Jaikumar Wankhede, Advocate for respondent Nos.1 to 4.

Mr. A.M. Kadukar, APP for respondent No.5.

CORAM : VINAY JOSHI, AND
BHARAT P DESHPANDE, JJ.

DATED : 10.04.2023.

JUDGMENT : (PER: Bharat P. Deshpande, J.)

. **Admit.** Heard finally by the consent of the learned counsel appearing for the respective parties at the admission stage itself.

(2) This is an appeal filed by the complainant/father of the deceased challenging the judgment and order dated 27.07.2021, passed by the Additional Sessions Judge, Amravati, in Sessions Case No.06/2013, whereby the learned Sessions Judge, acquitted respondent Nos.1 to 4, for the offences punishable under Section 302 read with Section 34 and 120-B of the Indian Penal Code.

(3) Mr. Akbani, learned counsel appearing for the appellant would submit that the trial Court committed error in acquitting all the accused persons, even though, prosecution succeeded in proving the circumstance of last seen together and that deceased was having love affair with accused No.1-Nitin. He would submit that there was clear cut motive proved by the prosecution, as Nitin performed marriage with another woman about one and ½ month prior to the date of incident and since, the relations between Nitin and the deceased continued, there were clashes between the families.

Even, threats were given by accused Nos.2 and 3 to the complainant and his family members. He would submit that motor cycle on which Nitin and the deceased were seen together was also attached. He would submit that these circumstances were sufficient enough to point out finger against accused persons. However, the trial Court swayed away on other material and committed error in acquitting all the accused persons.

(4) Mr. Wankhede, learned counsel appearing for respondent Nos.1 to 4, supported findings of the learned trial Court and would submit that prosecution is miserably failed to prove circumstantial evidence against accused persons and the link of such circumstances is found broken at many stages. Even the story of last seen together is not at all established, conclusively. He would submit that complainant when gave missing report, did not even raised any suspicion about the accused persons and more specifically, Nitin, which clearly goes to show that the contents of the FIR are only an after thought. He then would submit that while considering appeal against acquittal, this Court should be slow enough to disturb the findings, when two views emerges from the material placed on record or two

views are possible.

(5) Mr. Kadukar, learned APP appearing for the State would submit that findings of the learned trial Court are based on the material on record. However, he would submit that at least accused No.1/Nitin, who was seen with the deceased lastly, ought to have been convicted.

(6) The rival contentions fall for consideration as under:

1. Whether prosecution succeeded in proving that accused Nos.1 to 4 hatched criminal conspiracy and in furtherance of it, committed murder of deceased Nitu, with a motive to protect marriage of accused No.1-Nitin.

(7) In *nutshell*, it is a case of the prosecution that there was love affair between deceased and accused No.1-Nitin, however, subsequently marriage of Nitin was performed with another woman. In spite of his marriage with another woman, relationship between accused No.1 and Nitu/deceased continued, which resulted in frequent

quarrel between two families. Accused Nos.2 and 3 threatened complainant and his family members and warned them to control Nitu, failing which the consequences would be deterrent. This meeting took place on 09.08.2011, when accused Nos.2 and 3 came to the house of complainant. On 11.08.2011, deceased-Nitu was not found in their house and therefore, search started. Complainant lodged missing report on 12.08.2011, with Chandur Railway Police Station, District – Amravati. A dead body of Nitu was found on 14.08.2011, near one temple in a nallah and thereafter, complainant lodged his report against accused persons. FIR was registered for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and accordingly, investigation was completed.

(8) The charge-sheet was filed against all the accused persons for hatching conspiracy and eliminating Nitu, so as to protect a marriage of accused No.1-Nitin.

(9) Prosecution examined in all ten witnesses in support of the charges levelled against accused persons. Admittedly, entire case of the prosecution is based on the circumstantial evidence. The learned trial Court observed that death of Nitu was homicidal and it

was due to strangulation of neck.

(10) The circumstances which prosecution relied upon is as follows:

(1) Accused No.1 Nitin and deceased Nitu were in love with each other even prior to the marriage of accused No.1.

(2) Such relationship of accused No.1 with deceased Nitu continued after his marriage with another woman, which created friction between two families and thereafter, accused Nos.2 and 3 threatened the complainant.

(3) Accused No.1 was lastly seen with deceased Nitu on 11.08.2011, during evening time, while proceeding on motor cycle.

(4) Seizure of the motor cycle and clothes of accused No.1.

(5) Seizure of mobile phone and sim card from accused No.1.

(6) Seizure of another sim card at the instance of accused No.1.

(11) Learned counsel for the appellant strongly submitted that last seen theory has been proved which is sufficient enough to hold accused No.1 guilty, for the said offence, as he failed to explain under Section 313 of the Code of Criminal Procedure. In this regard and before going to the merits of the matter, we must consider that the present appeal is against a decision of acquittal of the accused and therefore, the parameters to consider the appeal as laid down by the Hon'ble Apex Court in various decisions are as under:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial Court.

(ii) Accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal.

(iii) Though, the powers of appellate Court in considering

the appeals against acquittal are as extensive as its powers in appeals against convictions but appellate Court is generally loath in disturbing the finding of fact recorded by the trial Court. It is so because the trial Court had an advantage of seeing the demeanour of the witnesses. If the trial Court takes a reasonable view of the facts of the case, interference by the appellate Court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial Court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of appellate Court in interfering with such conclusions is fully justified and

(iv) Merely because the appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by trial Court is a possible view. The evenly balanced views of the evidence

must not result in the interference by the appellate Court in the judgment of trial Court.

(12) Keeping in mind the above settled proposition of law culled out from the catena of decisions, it is clear that unless the conclusion reached by the trial Court is found to be palpably wrong or based on erroneous view of law or if such conclusions are allowed to stand, they are likely to result in grave injustice, reluctance on the part of the appellate Court in interfering with such findings is fully justified.

(13) We have perused the evidence of material witnesses as well as reasons given by the trial Court for not accepting the circumstances which prosecution tried to establish the charges.

(14) First of all, the aspect of motive as far as Nitin/accused No.1, is concerned, has not been established at all. It has been brought on record that Nitin and deceased Nitu were in relationship, inspite of the marriage of Nitin with another woman. Deceased Nitu was adamant to continue such relationship and that there was no opposition from Nitin though he married another woman.

(15) As far as the parents of the Nitin are concerned, no doubt there is some material to show that they went to the house of complainant and cautioned him to control Nitu, however, that cannot be considered as motive to eliminate Nitu.

(16) The other circumstance in connection with last seen theory, admittedly, no witness deposed that they saw Nitu in company with the parents i.e. accused Nos.2, 3 and 4. The only material which has been brought on record is that Nitin/accused No.1, was seen lastly with the deceased Nitu. However, such material of last seen theory has been disbelieved by the trial Court on the ground that PW-3 and PW-7, are not found trustworthy witness *qua* the theory of last seen together.

(17) On perusal of their depositions and the reasons given by the trial Court, we see no reason to disturb such findings, as it is more probable. There are discrepancies with regard to colour of vehicle on which the deceased along with Nitin was found travelling.

(18) The other material collected by the prosecution i.e. mobile phone of accused No.1, along with sim cards, hardly, support the case of prosecution as a link for the simple reason that the

investigating agency failed to collect the CDR/SDR and the location of the said mobile or the sim card, at the relevant time.

(19) In the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116*, the Hon'ble Apex Court culled out certain propositions in connection with a matter based on circumstantial evidence. The basic circumstances which prosecution has to prove in a case based on circumstantial evidence are as under:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established,

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) The circumstances should be of a conclusive nature and tendency,

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(20) These principles as laid down by the Hon'ble Apex Court are considered as five golden principles, in connection with proof of a case based on circumstantial evidence.

(21) Applying the above settled proposition of law, we observed that the findings of the trial Court are considered to be possible view and the same cannot be termed as perverse or illegal. The presumption of innocence in favour of the accused is strengthened by order of acquittal and that too by a reasoned judgment of the trial Court. Such finding cannot be lightly brushed aside on the ground that another view is possible.

(22) Having said so, the appeal filed by the complainant must fail and thus, the appeal stands dismissed.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

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