



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 APPLN. FOR LEAVE TO APPEAL BY STATE NO. 66 OF 2020

The State Of Maharashtra

VERSUS

Pramod Udaysing Shinde

...

Mrs. Uma S. Bhosale – Asst. Public Prosecutor for Applicant/State

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CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.

DATED : 04TH MARCH, 2024

PER COURT : -

1. This is the Application by the State for seeking leave to Appeal against the Judgment and Order dated 18.04.2019 passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No.221/2012, acquitting the respondent for the offence punishable under Sections 363, 366-A, 376, 302, 201 of the Indian Penal Code, 1860.

2. Heard learned Asst. Public Prosecutor for the Applicant/State. Perused the papers on record.

3. The Prosecution's case in brief is that, the informant's minor daughter aged eight years was missing from 26.02.2012. The dead body

of the victim was found on 04.03.2012. An FIR was lodged by victim's father on 16.03.2012. It is not in dispute that the only evidence against the respondent is of 'last seen together'. For the said last seen together, the prosecution has examined PW6 and PW7, who were the minor girls. According to them, when they had gone to the agricultural field, they saw the victim in the company of the Respondent, however, their statement was recorded belatedly after twenty days from the missing report and that sixteen days from lodging the First Information Report. There is no other evidence against the Respondent. The observations made by the learned Additional Sessions Judge in the impugned Judgment read thus : -

- 42) As stated earlier PW.6 Ashiwini @ Bugi and PW.7 Swati proved that deceased was last seen in the company of accused on 26.02.2012. Her deadbody was traced on 04.03.2012 in the field of PW.3 Sk. Faruq. The accused was arrested on 16.03.2012. His clothes were seized on same day vide seizure panchanama Exh.36. As per the evidence of PW.3 Sk. Faruq memorandum statement of accused was recorded in his presence. His evidence shows that API Surwase had recorded the memorandum statement. API Surwase had called PW.3 Sk. Faruq. The articles were seized from the field of Narayan Janjal. He identified those articles viz; article nos. 6, 7, 8, 9, 10, 11 & 12.
- 43) It is pertinent to note that as per the evidence of PW.3 Sk. Faruq, knicker of victim was recovered from the spot shown by the accused and pink hair pin stuck with some hair was also recovered from that spot. The hair pin stuck with the hair and the hair seized from the field of PW.3 Sk. Faruq belonged to the victim. It is pertinent to note that the statements of PW.6 Ashiwini @ Bugi & PW.7 Swati were recorded on 16.03.2012 and then on 22.03.2012. As per their version they had been to house of Pawan where the accused was also present.
- 44) Except PW.3 Sk. Faruq, PW.6 Ashiwini @ Bugi and PW.7 Swati none of the witnesses had stated about the complicity of the accused in the aforesaid crime. The evidence of PW.1 Bahadur Shinde, PW.2 Kautiksing Shinde, PW.4 Syed Bismilla, PW.5 Rizwana and

PW.8 Dr. Kailash Zine does not reveal the involvement of accused in commission of crime. Evidence of PW.3 Sk. Faruq clearly shows that police persons had not signed the memorandum panchanama Exh.36 in his presence. The memorandum panchanamas Exh.36, Exh.37 and Exh.38 bear the signatures of PW.10 investigating officer Smt. Pallavi Barge. However, it is contradictory to the evidence of PW.3 Sk. Faruq. PW.3 Sk. Faruq had not stated about presence of PW.10 Pallavi Barge on police station and thereafter on spot. The child witnesses PW.6 Ashiwini @ Bugi and PW.7 Swati could not answer the questions put to them regarding to the affairs of day of procession. Memorandum statement Exh.36 and the evidence of child witnesses were the only link to connect the incident and accused. However, considering the fact that PW.6 Ashiwini @ Bugi had not answered several question put her in her crossexamination. Her evidence is not trust worthy in credit. So far as, PW.7 Swati is concerned, her evidence shows that the victim was missing and announcement was made at 4.00 p.m.

4. In view of above, we do not find merit in the Application for Leave to Appeal and hence it is **dismissed**.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde