



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.171 OF 2024

Sahebrao s/o. Gopichand Ghatvisave

..Appellant

Vs.

Rushikesh s/o. Bhausahab Lokhande
and ors.

..Respondents

Mr.S.R.Sapkal, Advocate for appellant

Mr.Sachin Panale, Advocate for respondent nos.1 to 5

Ms.V.S.Choudhary, APP for respondent no.6

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : FEBRUARY 26, 2024**

ORDER :-

Heard Mr.S.R.Sapkal, learned counsel for the appellant, Mr.Sachin Panale, learned counsel for respondent nos.1 to 5 and learned APP for respondent no.6. We have perused the papers on record.

2. This is an appeal by the informant, who is father of deceased Sachin. It is the case of prosecution that deceased Sachin went missing on 29.10.2017. The informant lodged a missing report with Ambhora Police Station on the same day. Thereafter, the informant submitted a complaint to Ambhora Police Station on 01.11.2017, that somebody kidnapped his son. The dead body of

Sachin was found in the field of one Iqbal Shaikh on 05.12.2017. The mother of the deceased told the informant that respondent no.2 - Akash had taken the deceased with him on 29.10.2017. Based on the said information, the informant lodged report against respondent nos.1 to 5 herein, for causing death of his son.

3. Upon completion of the investigation, respondent nos.1 to 5 were charge-sheeted. After trial, learned Addl. Sessions Judge, Beed, acquitted respondent nos.1 to 5, vide judgment and order dated 04.02.2023 in Spl. (Atrocity) Case No.04 of 2018, of the offences punishable under Sections 302, 364 and 201 read with Section 34 of Indian Penal Code and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. We have gone through the papers, which comprise copies of the evidence of witnesses recorded before the trial court and the impugned judgment.

5. Undisputedly, the case is based on circumstantial evidence. It is clear from the observations made in the impugned judgment that the report was lodged against respondent nos.1 to 5, on suspicion. Paragraph 51 of the impugned judgment is reproduced below :-

“51. It is important to note that evidence of PW-1 is totally based on the suspicion and he himself is telling that he is merely having suspicion that accused have committed murder of his son. Evidence of other witnesses are also similar to that effect. Further name of accused no.3 and 4 are not in any of the complaint application. Further if there was love affair of accused no.1 with the daughter of accused no.3, why deceased was killed by the accused is not understood. In that eventuality, accused no.3 would have done some over act against accused no.1 but it is strange that he took help of accused no.1 to kill the deceased. There is no evidence of any nature to support the base of the prosecution case and story that there was love affair between daughter of accused no.3 with accused no.1 and deceased Sachin who was the friend of accused no.1 handover one mobile to the daughter of accused no.3 on the say of accused no.1 and then she was talking with accused no.1 on the said mobile and it was noticed by accused no.4 and then incident happened. No such mobile phone is also seized by police and there is no explanation of any nature from the prosecution side for the same. Further there are material omissions in the statement of the witnesses as admitted by them in the cross-examination. There is no evidence to connect nexus of any of the accused with the present offence. The prosecution has totally and miserably failed to prove that death of Sachin was homicidal. According to Doctor, he has sent sample for DNA test but the Investigating Officer is saying that he has not collected any sample for DNA test. The medical evidence is against the

prosecution. Therefore, prosecution has miserably failed to prove that it is the accused who kidnapped deceased Sachin and ultimately committed his murder by hanging and destroyed the muddemal. Therefore, I record my finding in the negative so as to point nos.1, 2 and 3 are concerned.”

6. It is not disputed that the mother of deceased, who told the informant that her son was kidnapped by respondent no.2, has not been examined. It is, therefore, clear that except suspicion, there is nothing against respondent nos.1 to 5.

7. In view of the above, we do not see any merit in admitting the appeal and hence, we proceed to pass the following order:-

The appeal is dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP