



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

CRIMINAL APPEAL NO.668 OF 2019

Ravindra Natthu Sapkale,
Age : 46 years, Occ. Service,
r/o. Dhamangaon,
Tq. and Dist. Jalgaon
Vs.

..Appellant

The State of Maharashtra

..Respondent

Mr.Satej Jadhav, Advocate for appellant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : MARCH 01, 2024**

JUDGMENT (PER R.G.AVACHAT, J.) :-

The challenge in this appeal is to the judgment and order dated 14.08.2018, passed by learned Addl. Sessions Judge, Amalner, Dist. Judgment, in Sessions Case No.24 of 2014, whereby the appellant was convicted for the offences punishable under Sections 302 and 201 of Indian Penal Code and therefore, sentenced to suffer life sentence and imprisonment for three years, respectively, and fine with default stipulation. The appellant is, therefore, before us in this appeal.

2. The facts, giving rise to the present appeal, are as under:-

The appellant was a friend of Prakash (deceased). It so happened that on 30.10.2013, the appellant took Prakash with him

under the pretext of fishing in river Tapi at village Dhamangaon. One Tarachand Patil was also their friend. Tarachand would reside alone at his house. The trio had planned to catch fish and cook at the residence of Tarachand Patil for their dinner. As it was night time, they required battery (torch). Prakash asked his father (PW 7 - Shankar) to give him a torch. He refused. The appellant, therefore, went to him and requested for a torch with assurance to return the same after a while. The appellant was, therefore, given a torch. By 11.30 p.m., the appellant alone came to the house of the father of the deceased and returned the torch. On inquiry, he told that they did not go for fishing since Prakash (deceased) had quarrel with one Arun Baliram Sapkale.

3. It is the case of prosecution that the deceased Prakash did not return home that night and even for next two days. His father, brother and others took search for him with his friends and relations. The father, ultimately, lodged a missing-person's report (Exh.70) on 03.11.2013. On the same day, the dead body of Prakash was found in Tapi river near village Kurwel. The body was identified by his sister. Since the body was in decomposed state, post mortem was done at the bank of the river itself. Funeral took place thereat. The Medical Officer, who conducted autopsy, opined the cause of

death as *"cardio-respiratory arrest due to drowning however the body decomposed."*

4. On 17.11.2013, PW 1 - Ganesh, brother of deceased, lodged First Information Report (Exh.53), alleging therein the appellant to have committed murder of his brother Prakash. The crime, vide C.R. No.77 of 2013 was registered for the offences punishable under Sections 302 and 201 of Indian Penal Code. The appellant was arrested. The statements of the persons acquainted with the facts and circumstances of the case were recorded. The appellant made disclosure statement, stating therein, as to how did he commit murder. The clothes on the person of the deceased were seized. Upon completion of the investigation, the appellant was proceeded against by filing charge sheet. The case was committed to the court of learned Addl. Sessions Judge, Amalner, for trial. The trial court framed Charge (Exh.17).

5. The appellant pleaded not guilty. His defence was of false implication. To bring home the charge, the prosecution examined nine witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial court convicted the appellant and consequently, sentenced as stated above.

6. Heard.

7. Learned counsel for the appellant would submit that the case is based on circumstantial evidence. The cause of death does not indicate it to be a case of homicide. The clothes on the person of the deceased were found at the bank of the river. Friend of deceased, Tarachand Patil, has not been examined. According to learned counsel, suspicion however strong cannot take place of proof. He, therefore, urged for allowing the appeal.

8. Learned APP for the respondent supports the impugned judgment and order.

9. Considered the submissions advanced. Perused the evidence relied on. The case is based on circumstantial evidence.

10. In case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, the Apex Court has observed thus :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(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.”

11. In the present case, the only circumstance the prosecution proposed to rely on, is the appellant to have been in the company of the deceased before he (deceased) went missing and ultimately, found dead.

12. PW 8 - Dr. Vinod conducted autopsy at the bank of river Tapi. The post mortem report finds place at Exh.75. The deceased died of cardio-arrest due to drowning. However, the dead body was decomposed. From the aforesaid cause of death, one cannot reach to a conclusion that the deceased died of homicidal death.

13. PW 1 - Ganesh (informant), brother of the deceased and PW 7 - Shankar (father of deceased) testified that on the given day, i.e. on 30.10.2013, the appellant, deceased and their friend -

Tarachand had planned to go for fishing in Tapi river. They had planned to cook fish at the house of Tarachand for their dinner. The deceased, had, therefore, requested PW 7 - Shankar to give him a torch. He refused to give torch to the deceased. The appellant, therefore, came to him (PW 7 - Shankar) and requested to give torch with an assurance to return it after a while. PW 7 - Shankar, therefore, gave him torch. The evidence of both these witnesses further indicates that after a while, the appellant came back and returned the torch to PW 7 - Shankar. On inquiry with him about the whereabouts of deceased Prakash, he told that Prakash had quarrelled with Arun Sapkale and therefore, they did not go for fishing.

14. PW 1 - Ganesh was not a witness to the fact of PW 7 - Shankar handing over the torch to the appellant and getting it back. His evidence is based on what was learnt by him from his father (PW 7 - Shankar). The FIR (Exh.53.) has been lodged based on strong suspicion against the appellant. According to PW 1 - Ganesh, the deceased was expert in swimming and therefore, there was no possibility of his drowning in the river.

15. Admittedly, deceased Prakash was married. He was addicted to alcohol. His wife was not residing with him. She would

stay at her parental home. The deceased would stay away (separate) from his father and other brothers as well. The deceased went missing on the night of 30.10.2013. Still, his father PW 7 - Shankar lodged the missing-person's report three days thereafter, i.e. on 03.11.2013. On the day the missing-person's report was lodged, the dead body of Prakash was found floating in the river near village Kurwel. He was sporting underwear only. Admittedly, the shirt and trouser of the deceased were found at the bank of the river. Same was taken charge of under panchnama.

16. PW 4 - Anil testified that on the given day, he had been to river for fishing in the afternoon. He was there till evening. After fishing, he was returning to his house. It was 08.30 p.m., he saw both appellant and deceased Prakash sitting in the river-bed. The evidence of this witness was sought to be relied on to indicate that the appellant was in the company of the deceased soon before the deceased died due to drowning. Admittedly, this witness was not unknown to the family of the deceased. He knew that the deceased was missing for 2-3 days. He was also knowing about finding of dead body of deceased. He, still, did not relate either to the brother or the father of deceased about having seen the appellant with deceased in the river-bed. The conduct of this witness is unnatural. It is only

after registration of the FIR (Exh.53), he appears to have disclosed the same.

17. The FIR (Exh.53) was lodged on 17.11.2013, i.e. 18 days after the deceased went missing and 14 days after his dead body was found. There is unexplained delay in lodging of the FIR. The case of PW 1 that he repeatedly visited the police station to lodge report but the police avoided to register the same for one or the other reason, does not appeal to us. The police statement of PW 7 - Shankar, father of deceased, is silent to state therein that the appellant had told him to have brought Prakash back to village. This is material omission amounting contradiction.

18. The other evidence in the nature of panchnama of seizure of cloths of the deceased and the so called disclosure statement by the appellant indicating the manner in which he committed murder, is neither relevant nor admissible in evidence.

19. The fact remains that the post mortem report does not indicate it to be a case of homicidal death. Inference of accidental death also cannot be ruled out. The deceased was addicted to alcohol. His wife was not residing with him. He was residing separately from his father and brothers as well. His clothes were

found on the bank of river. Even the missing person's report was lodged after three days. The FIR (Exh.53) was lodged 18 days after the deceased went missing and 14 days after his dead body was found. The explanation offered for delay in lodging of the FIR does not appeal to us. Had the appellant really taken the deceased to the river-bed for fishing informing the father of deceased, he (PW 7 – Shankar, father of deceased) would have immediately lodged an FIR against the appellant on finding of the dead body of the deceased.

20. On appreciation of the entire evidence on record, we find the prosecution to have failed to make out even it being a case of homicide. Needless to mention, suspicion however strong, cannot take place of proof. For all these reasons, we are not at one with the findings recorded by the trial court. The appeal, therefore, succeeds. Hence, the following order:-

(I) The appeal is allowed.

(ii) The judgment and order dated 14.08.2018, passed by learned Addl. Sessions Judge, Amalner, in Sessions Case No.24 of 2014, convicting the appellant for the offences punishable under Sections 302 and 201 of Indian Penal Code and therefore, sentencing him to suffer imprisonment for life and rigorous imprisonment for

three years, respectively, and to pay fine with default stipulation, is quashed and set aside. The appellant is acquitted of the said offences.

(iii) The appellant be released forthwith, if not required in any other case.

(iv) Fine paid by the appellant, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP