

VAISHALI
ANIL
TIKAM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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by VAISHALI
ANIL TIKAM

APPLN FOR LEAVE TO APPEAL (STATE) No.130 OF 2019

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The State of Maharashtra

.. Applicant

vs.

Anand Mallikarjun Waghmare and Ors.

.. Respondents

Mrs. A.A. Takalkar, APP for State/Applicant

Ms. Anjali Raut i/b. Mr. Vikrant Phatate for Respondent Nos.1 to 3

CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

DATE : 5th JANUARY, 2024

P. C.:-

- 1) By the present Appeal preferred under Section 378 (3) of the Cr.P.C., the State has questioned correctness of Judgment and Order dated 4th February, 2019 passed in Sessions Case No. 282 of 2016, by the Learned Additional Sessions Judge, Solapur acquitting the Respondents for the offences punishable under Sections 302 and 201 of the Indian Penal Code.
- 2) Heard Mrs. Takalkar, learned APP for the State/Applicant and Ms. Anjali Raut, learned Advocate for Respondents. Perused entire record produced before us.
- 3) It is a prosecution case that, the deceased Shobha M. Waghmare was sister of the Respondents. All the four were residing in a common house.

That, on 17th June, 2016, deceased and the Respondents watched T.V programmes upto 11.15 p.m. Thereafter, deceased and Respondent No.3 slept in the living room of their house, whereas, Respondent Nos. 1 and 2 slept in their respective bedrooms. On 18th June, 2016, at about 6.00 a.m., Respondent No.2 heard groaning of Shobha from the living room (hall). He went there and he noticed Shobha lying on the floor and was unconscious. All the Respondents made Shobha to sleep in supine condition and sprinkled water on her face. Respondent No.1 also tried to resuscitate Shobha by giving oxygen through his mouth. All the Respondents rubbed her hands and legs, however, Shobha did not respond. Therefore, they immediately took her to Railway Hospital from an auto-rickshaw. The doctor at Railway Hospital examined Shobha and declared her brought dead.

3.1) The dead body of Shobha was thereafter forwarded to Civil Hospital, Solapur, where PW-9 conducted autopsy. He gave his preliminary opinion for the cause of death as 'compression over the neck' and noted that, the death of Ms. Shobha was unnatural. PW No.1 i.e. Mr. Vijaykumar Badole, PSI attached to Salgar Vasti Police Station, Solapur lodged FIR on behalf of State.

4) After completion of investigation, the Investigating Agency submitted

charge-sheet in the Court of Judicial Magistrate First Class (Court No.8) Solapur. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the Learned Magistrate committed the said case to the Court of Sessions for trial. The trial Court framed charge below Exhibit 34 against the Respondents for the offences punishable under Sections 302 and 201 r/w. 34 of the Indian Penal Code. The Respondents denied the charge, pleaded not guilty and claimed to be tried. In support, the prosecution examined in all 9 witnesses. The trial Court, after recording evidence and after hearing the Advocates for the respective parties, was pleased to acquit the Respondents by its impugned Judgment and Order dated 4th February, 2019.

5) A minute scrutiny of evidence on record of all the witnesses indicates that, the prosecution has miserably failed to establish the motive behind commission of the present crime. It is the settled position of law that, for a case based on circumstantial evidence, establishing motive by the prosecution is *sine-qua non*. Except the fact that, Shobha was residing with the Respondents in their common house in the intervening night of 17th June, 2016 and 18th June, 2016, itself is of no avail to the prosecution. The prosecution has also not examined the doctor at Railway Hospital of Salgar Vasti Village where Shobha was firstly taken by the Respondents for medical

treatment. As the prosecution has failed to prove the basic ingredient of motive behind commission of the present crime, presumption under Section 106 of the Evidence Act, according to us, does not come into fray only because deceased was residing with the Respondents in the said house. There is nothing on record to indicate that the deceased was having any quarrel or dispute with the Respondents either prior to the date of her death or in the night of 17th June, 2016. The immediate neighbor (PW No. 2) of Respondents is silent on the said aspect. PW No.2 has deposed about the only fact that, he saw Respondents taking Shobha to the hospital from an auto rickshaw in the morning. According to us, there is no substantial evidence put-forth by the prosecution to prove the guilt of the Respondents beyond reasonable doubt. It is the settled position of law that, suspicion, however, strong it may be, cannot take the place of legal proof. According to us, present case is *sans* of legally admissible evidence against the Respondents.

6) After perusing the entire evidence on record and impugned Judgment of the trial Court, we are of the opinion that, the view adopted by the trial Court is a probable view taken in the facts and circumstances of the present case. The Application is devoid of merits and is accordingly dismissed.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)