



Judgment

241 apeal80.24

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

CRIMINAL APPEAL NO.80 OF 2024

Namdeo s/o Narhari Wankhede,
aged about : 35 years, occupation:
r/o Borala, post Julka,
tahsil Malegaon, district Washim.

..... **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through P.S.O.Jaulka,
district Washim.

2. Smt.Leelabai wd/o Vishwas Kamble,
r/o Gram Borala, Malegaon,
tahsil Julka, district Washim. Respondents.

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Shri Amol Jaltare, Counsel for the Appellant.
Shri Pradeep Wathore, Counsel for R-2/Complainant.
Ms.T.H.Udeshi, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 03/07/2024

PRONOUNCED ON : 08/07/2024

JUDGMENT

1. Heard learned counsel Shri Amol Jaltare for the
appellant, learned counsel Shri Pradeep Wathore for respondent
No.2/complainant, and learned Additional Public Prosecutor
Ms.T.H.Udeshi for the State. **Admit.** Heard finally.

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2. By this appeal, the appellant has challenged order below Exhibit-97 dated 4.12.2023 passed by learned Additional Sessions Judge, Washim in Sessions Trial No.26/2023 whereby the application filed by him for grant of bail has been rejected.

3. The appellant (the accused) is arraigned as an accused in Crime No.41/2023 registered under Sections 302, 364, and 120-B of the Indian Penal Code and 3(2)(v) and 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the SC and ST Act).

4. The crime is registered on the basis of report lodged by one Leelabai Vishwas Kamble (the informant), the wife of deceased, alleging that her husband was abducted on 18.12.2023 around 2:00 pm and after few hours, his dead body was found. The cause of death was strangulation. It is further alleged that in the year 2022, the Gram Panchayat Elections were held in which her husband was elected as a Member and he became Up-Sarpanch of the village. There was political rivalry between her husband and a group of Wankhede family. Since four brothers from Wankhede family and the accused were annoyed with the deceased, on

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18.2.2023, at around 2:00 pm, the informant had been along with her husband to a dispensary. While they were on the way to home, at about 3.30 pm, the deceased went to a side for urination and within two minutes, the informant heard shouts from that side and witnessed that three persons forcefully were putting her husband in a four-wheeler and taking him away. The said persons threw some articles of the deceased on road while leaving the place. Some boys of the village also saw the occurrence and noted registration number of the said four-wheeler. After some time, the informant learnt that her husband was found dead and, therefore, she approached the police station and lodged the report.

5. Learned counsel for the accused submitted that material collected during course of investigation is not sufficient to show involvement of the accused in the incident. Neither there are eyewitnesses to the occurrence nor persons who abducted the deceased have been identified. Merely because there was a rivalry between them, a suspicion was raised against the accused. The entire case is based on circumstantial evidence. Now, the investigation into the crime is completed and chargesheet is

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already filed. He also pointed out inconsistency from various statements recorded. He submitted that in statements of witnesses, who are boys of the village who allegedly witnessed the incident, the vehicle number, though informed to the informant, is not mentioned in the First Information Report. The statements of these witnesses are recorded subsequently. The alleged incident took place on 18.2.2023. Whereas, statements of alleged eyewitnesses Gopal Khursude and Ganesh Rathod are recorded on 20.2.2023.

As per statement of Gopal Khursude, he was along with Ganesh Rathod and Lakhan Tiwari. As per his statement, he witnessed number of the vehicle. Whereas, Ganesh Rathod and Lakhan Tiwari are silent regarding number of the vehicle.

Learned counsel for the accused submitted that as per statements of these witnesses, faces of persons taking the deceased in their car were covered with scarves. Whereas, statements of Vinod Tayde and Ravindra Tayde disclose that it was the accused who was driving the said car. In the light of the above inconsistencies, the prosecution cases creates a doubt regarding

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the actual occurrence. He submitted that now the investigation is already completed and the chargesheet is already filed. Moreover, co-accused Datta Dukare, Keshao Wankhede, and Sandip are already released on bail. As such, the accused be released on bail.

6. Learned Additional Public Prosecutor for the State and learned counsel for the complainant strongly opposed the appeal on ground that as during the investigation sufficient material is brought on record showing involvement of the accused, the appeal deserves to be dismissed. Learned Additional Public Prosecutor took me through various statements as well as vehicle seizure panchanama and submitted that vehicle is owned by the accused.

7. Perusal of the First Information Report shows that the respondent was filed by the wife of the deceased and she came to know about involvement of the accused on the basis of information given to her by Gopal Khursude and Ganesh Rathod, the alleged eyewitnesses to the incident. Recital of the First Information Report reveals that the informant has not identified the accused as well as other co-accused who forcibly abducted the deceased.

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In statements, Gopal and Ganesh stated that four persons abducted the deceased and their faces were covered with scarves. Only Gopal narrated about registration of number of the vehicle used in the process of abduction. These witnesses also do not speak about identity of abductors.

In statement, witness Vinod Tayde states that he has also seen the occurrence and the accused driving the car.

This statement is to be considered in the light of statements of Gopal and Ganesh who witnessed abductors taking the deceased in the said car who specifically stated that faces of abductors were covered with scarves.

8. Perusal of postmortem report indicates that cause of death of the deceased is of strangulation. Ligature marks were seen. CDRs were collected. There were calls between Keshao and the accused and between accused and the co-accused.

9. Thus, an attempt was made to show that the accused was in constant touch with the co-accused.

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10. Though tower location was collected, the same is not helpful. Though clothes of Keshao were seized, no blood stains were noted on it.

11. The prosecution placed reliance on a circumstance that co-accused Datta purchased insecticide. However, it is a case of poisoning, but the death was due to strangulation. As such, contention of the prosecution, that the said insecticide was purchased to eliminate the deceased, is not sustainable.

12. In short, there is no eyewitness to the incident in question. Insofar as identity of the accused is concerned, the same is also doubtful. Considering inconsistent statements recorded, involvement of the accused is based on circumstantial evidence. At this stage, it would not be appropriated to comment the nature of the evidence. As the investigation is already completed and chargesheet is already filed, the nature of evidence collected is circumstantial in nature.

13. In this view of the matter, the appeal deserves to be allowed, as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The order below Exhibit-97 dated 4.12.2023 passed by learned Additional Sessions Judge, Washim in Sessions Trial No.26/2023 is quashed and set aside.

(3) Appellant - Namdeo s/o Narhari Wankhede, be released on bail, in connection with Crime No.41/2023 registered with respondent No.1/police station under Sections 302, 364, and 120-B of the Indian Penal Code and 3(2)(v) and 3(2)(va) of the SC and ST Act, on he executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(4) He shall not enter into village Borala, post Julka, tahsil Malegaon, district Washim, till culmination of the trial.

(5) He shall furnish his residential address whereat he intends to reside to the trial court.

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(6) He shall not induce or threat or promise to any of witnesses connected with the crime in question and shall not tamper the prosecution evidence.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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