

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 240 OF 1998

1. Chandrakant Bhikaji Walawalkar

Age : 22 yrs, R/o. Madure,

Tal. Sawantwadi, Dist. Sindhudurg

2. Ravi @ Lahu Mahadeo Choukulkar,

Age : 22 yrs, (abated as per order
dated 18.1.2014)

R/o. Chandgad, Dist. Kolhapur,

Both at present in jail i.e. District
Central Jail, Kolhapur

....Appellants
Accused

V/s.

The State of Maharashtra

.....Respondent

* * * * *

Ms. Devyani Kulkarni, appointed for the appellant.

Mrs. Sharmila Kaushik, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Friday, 29th January, 2021.

ORAL JUDGMENT :

1. The learned Sessions Judge, Solapur by judgment and order dated 30th December, 1997 passed in Sessions Case No. 87 of 1997 convicted the appellant and

the deceased co-accused under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs.2,000/- each.

2. Pending Appeal, appellant-original accused no.2 died.

3. I have perused the evidence with the assistance of the learned Counsel for the applicant and learned Prosecutor for the State.

4. It is unfolded in the evidence that, accused and the complainant had been to Solapur on the pleasure trip in Vehicle MH-09/G-863. On 10th August, 1995 enroute, they had lunch at Siddheshwar Hotel at around 3:00 p.m. and they left for Pune at around 5.30 p.m. It is unfolded in the evidence of the complainant (P.W.8) that, the appellant no.1 (accused no.1), was driving the jeep and at around 7.30 p.m., both alighted from the jeep to answer nature's call. They returned after fifteen minutes and soon thereafter, Ravi (deceased accused), attempted to strangle him by putting a wire around his neck and accused no.1 caught

hold of his hands and facilitated Ravi, to strangle him. Resultantly, the complainant fell unconscious. At around 11:30 p.m i.e. nearly after four hours, he regained consciousness. In the given situation and circumstances, complainant claims, from the place of the incident, he travelled to Siddheshwar Hotel, where three of them had taken lunch on the same day. He narrated the incident to Mr. Basavraj, owner of the Siddheshwar Hotel who was examined as P.W.5. Basavaraj had seen telephone wire around his neck and advised him to lodge complaint. It appears from his evidence that, before narrating the incident to Basavraj, he had narrated it to unknown person at Petrol Pump. Initially, he had been to Solapur City Police Station , but, he was advised to lodge the report at Mohol Police Station, since the incident had taken place in their jurisdiction. Complainant said, one journalist, helped him to lodge the report on 13th August, 1995 against the accused under Section 307 read with Section 34 of the Indian Penal Code.

5. Prosecution in support of the charge framed under Section 307 of the Indian Penal Code, had examined

11 witnesses. Upon appreciating the depositions, the learned trial Judge, convicted the accused as aforesaid and sentenced them to suffer rigorous imprisonment for 7 years.

6. Prosecution in attempt to prove the charge had examined, Dr. Zadbuke, Medical Officer attached to Primary Health Center, Mohol. He had examined the complainant, whereupon he found abrasions over the right elbow joint and ligature mark on neck starting from nape of neck passing on the right side of anterior over the posterior triangle. As it appears from his evidence, the complainant was examined on 13th August, 1995 and it further appears, a wire which was allegedly used for strangulating the complainant was shown to him. Now, so far as the wire is concerned, the prosecution has not conclusively proved that, it was allegedly used by accused no.2 in an attempt to strangle the complainant. Firstly, the complainant would say that, when he regained consciousness, he found a wire around his neck. Thereafter, he narrated the incident to a unknown person at Petrol Pump and thereafter to Basavraj, owner of Siddheshwar Hotel, P.W.5. Evidence suggests, vide Panchanama-Exhibit-11, dated 13th August 1995, a 4 ft long

metal wire of 0.3 cm thick was seized. However, panch-Dattatraya, did not support the prosecution. Be that as it may, wire found and seen by Basavraj was telephone wire and not wire seized by the Police. Thus, the recovery of wire allegedly used by the accused has not been proved.

7. It may be stated that, the vehicle in which the accused and the complainant went on pleasure trip was seized during the investigation but owner of the jeep was not examined to prove that, he had permitted the accused to drive and use the jeep for pleasure trip. Thus, to be stated that, in this case, all the circumstances on which the prosecution is relying on to connect the accused to the alleged crime were not proved. Moreso, evidence of complainant has not been corroborated on material allegations of assault. The evidence of the complainant is unclear and does not inspire confidence. To say, assuming he was assaulted or accused attempted to strangle him, as a natural conduct, he was expected to report the incident to his family. However, his evidence does not even suggest, that he made efforts to contact family members. Prosecution had examined complainant's father (P.W.3). He deposed, on

15th August, 1995, his son came to Sawantwadi with Police and at that time, blood was oozing from his mouth; but the fact was not disclosed by him in his previous statement. Even otherwise, when Dr. Zadbuke examined the complainant on 13th August 1995, he did not notice injury to mouth. Thus, his evidence is of no assistance to the prosecution, as he exaggerated.

8. Prosecution's case is based on circumstantial evidence. Although there can be no straight jacket formula for appreciation of circumstantial evidence but, to convict a person on the basis of circumstantial evidence, as laid down by Hon'ble Apex Court through a plethora of pronouncements, it must follow certain tests which are as follows:

1. *Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;*
2. *those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;*

3. *the circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; &*

4. *the circumstantial evidence, in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence- in other words, the circumstances should exclude every possible hypothesis except the one to be proved.*

9. Besides, when conviction is based on circumstantial evidence, the prosecution ought to have brought on record, the motive for commission of the offence. If the motive of accused is not established in a case which is to be assessed on parameter of circumstantial evidence, then same is taken in favour of the accused as held by the

Hon'ble Apex Court in the case of **Anwar Ali V/s. State of Himachal Pradesh, (2020) 10 SCC 166.**

10. In the case in hand, the prosecution has neither established the motive nor any witness had identified the accused to establish that, before the alleged incident, complainant and accused were together. The best person to depose this circumstance was, Basavraj, owner of the restaurant where accused and the complainant had lunch at 3:00 p.m. on the date of the incident.

11. The circumstances on which prosecution sought to rely upon, were not firmly established. That too to say, there is no definite and conclusive evidence to hold that, accused and the complainant had travelled together in the jeep, in as much as, the jeep owner was not examined. Further, there is no evidence to suggest that, complainant was seen in the company of the accused before the incident. In other words, there is absolutely, no evidence of last seen together. There are improvements in the evidence of the complainant and his father. Similarly, there are material contradictions in the evidence of witnesses in respect of the

wire found on the person of the complainant and recovered under the panchanama. Besides, motive has not been proved.

12. In the consideration of evidence on record and for the reasons stated above, the Appeal is allowed. Resultantly, conviction and sentence awarded in Sessions Case No.87 of 1997 is set aside. Bail Bond stands cancelled and sureties are discharged. Fine, if any be refunded to the appellant no.1.

(SANDEEP K. SHINDE, J.)