

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 1123 of 2007****With****CRIMINAL APPEAL NO. 1124 of 2007****With****CRIMINAL APPEAL NO. 1147 of 2007****With****CRIMINAL APPEAL NO. 1164 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**NARSINHBHAI SONJIBHAIBHAI VASAVA....Appellant(s)**

**Versus**

**STATE OF GUJARAT....Opponent(s)/Respondent(s)**

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**Appearance:****MR. M.M. BAROT, ADVOCATE for the Appellant(s) No. 1****MR. L.R. PUJARI, LEARNED for the Opponent(s)/Respondent(s) No. 1**

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE K.J.THAKER**

Date : 28/06/2013

**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE K.J.THAKER)**

1. All these appeals arise out of the same incident as also the judgment and order passed against the accused is common. Therefore, these appeals are decided together by this common judgment.

2. Challenge in these appeals is to the common judgment and order dated passed by the learned Additional Sessions Judge, Fast Track Court No.3, Baruch, in Sessions Case No.57 of 2007 dated 31.07.2007, whereby the learned Trial Judge has convicted the appellant, original accused Nos.1 to 4 under sections 302 and 201 of Indian Penal Code (for short, "the IPC") r/w. Section 120(B) of the IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/- each, in default, to undergo further imprisonment for six months.

3. The facts in a nutshell are as under;

3.1. The complainant herein, Damaniyabai Deepsinhbhai, was residing at Varkhadi, Taluka Jhagdiya, District-Bharuch, with his family. The family of the complainant consists of his wife and four sons amongst whom the second son, Natwarbhai, has love affairs with

one Radha, daughter of Jesingbhai. On 03.03.2007, during night hours Natwarbhai eloped with Radha. On 8.3.2007, their parents came to know that both of them took shelter at the house of one Budhiyaben. Thereafter, in the afternoon at about 02 hours, father of Natwarbhai went at the house of Budhiben, who informed him that the they were at her house, but in the morning, father, nephew and mother of Radha took her at their home and Natwarbhai also left the house chasing Radha.

3.2. Upon search, it was informed by a villager that his son, Natwarbhai is died by hanging himself with the branch of a tree with the help nylon string situated at the outskirts of Varkhadia village. Therefore, his father went there and found the dead body of his son. Thereafter, complainant had filed a complaint before the Valiya Police Station. In pursuance of the said complaint, necessary investigation was carried out and the appellants came to be arrested. On completion of investigation, charge-sheet was filed before the competent Court. Since the case was Sessions triable, it was committed to Sessions Court, Bharuch. The appellants pleaded not guilty and therefore, charge was framed and trial was initiated.

3.3 During the trial, the prosecution has examined the nine witnesses, viz. P.W.1, Narpatbhai Ramabhai Vasava was examined at Exh.11, P.W.2, Ranchodbhai Jatarbhai was examined at Exh.13,

P.W.3, Narpatbhai Mangabhai Vasava was examined at Exh.16, P.W.4, Dr. Amrennarayan singh was examined at Exh.22, P.W.5, Damaniyabha Deepsinghbhai was examined at Exh.26, P.W.6, Budhiben Sanabhai Vasava was examined at Exh.28, P.W.7, Radhaben Jaisinghbhai was examined at Exh.29, P.W.8, ASI Kantibhai Jenabhai was examined at Exh.30 and P.W.9 Anilkumar Karsanbhai Paramar was examined at Exh.34. .

3.4. The prosecution had also relied upon the following documents evidences so as to bring home the charges against the appellants-accused.

<b>S.No.</b>	<b>Particulars</b>	<b>Exhibit Nos.</b>
1	Inquest Panchnama	12
2	scene of offence Panchanama	14
3	Cloths Panchanama of the deceased	17
4	Panchama of the body of the accused	21
5	Post mortem report	24
6	Medical Certificate of cause of death of deceased	25
7	Complaint	27
8	Map of scene of offence	32
9	Photographers of scene of offence	35-39
10	Video C.D. of scene of offence	40
11	Bill of Photographer and video C.D.	41
12	Station Diary	31
13	Yadi written by Police Sub-Inspetor, Valia to	23

	Medical Officer, Primary Health Centre	
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3.5. At the end of trial, the Court below recorded the further statement of the accused u/s.313 of the Criminal Procedure Code and ultimately, passed the impugned judgment and order of conviction, which is under challenge in these appeals.

4. Since, Mr. Anil Mehta is not present, today, we are appointing Mr. Barot as *Amicus Curie* on behalf of legal Aid. We have heard the learned counsel for the respective parties and considered the documents forming part of the appeals as well as original record summoned from the trial Court.

5. On perusal of the complaint given by the complainant on March 09, 2007, the said facts are corroborated by the evidence of the complainant on oath. Nothing incriminating has been born out from the cross-examination of the complainant. Even it has not been suggested during the course of cross-examination of this witness by the defence as to whether the deceased had not come with him from village Soliya or that the deceased was not with him at the last moment. Thus, it is clear from the evidence from this witness that the deceased had lastly gone with the accused from village Soliya, however, he did not reach his village Varakhadi with them.

6. PW-6 Budhiben Shanabhai, who is one of the most important witnesses, has been examined vide Exhibit 28. This witness clear corroborates the say of the complainant as well as the contents of the complaint lodged by the complainant. This witness has further deposed that when her brother (deceased Natvar) was taken by the accused, he was hale and hearty and the accused hung him on the “peepal” tree. She further states that when the accused were asking her brother as to why he had run away with Radha, at that time, her brother had replied that he was to marry Radha. This witness identifies the clothes of the deceased Natvar, which he had worn at the time when he was taken by the accused persons. Thus, by the evidence of this witness, it is established that this witness had last seen the deceased Natvar and, therefore, she was able to identify the clothes worn by the deceased Natvar.

7. The prosecution has also examined PW-7 Radhaben Jesingbhai vide Exhibit 29, however, she has been declared as a hostile witness as she has not supported the case of the prosecution. It has been rightly observed by the trial Court that it is obvious that no daughter would give evidence against her parents and brothers even if she wants to help her beloved.

8. PW-4 Dr.Ambren Narayansing has been examined by the prosecution vide Exhibit 22. This witness has stated in his evidence

that he had started *post mortem* on March 09, 2007 at 10-30 a.m. and the same was completed at 12-15 p.m. He has narrated the condition of the body and further stated that there was a brown colour ligature mark around the neck of the deceased Natvar. There were black colour patch marks on both the legs of the deceased. There were bruises on the right knee joints. This witness has categorically stated that injuries indicated in column No.17 of the *post mortem* report were *ante mortem* injuries. The *post mortem* report has been produced on record vide Exhibit 24. The cause of death certificate has been produced on record vide Exhibit 25, which indicates that the cause of death is on account of cardio respiratory failure due to asphyxia because of strangulation. Further, this witness Dr.Ambren has categorically stated that strangulation can be done by fixing rope in the neck of a person through another person and pulling the same. In the cross-examination, this witness has admitted that the death had taken place prior to about 24 hours to 30 hours from the time of *post mortem*. He has categorically denied the suggestion that the death might have taken place at about 22 to 24 hours prior to the time of *post mortem*. This witness has also denied the suggestion that in cases of strangulation, there are some cases of suicide and saliva mixed with blood is only found in strangulation. He has also denied the suggestion that the injury No.1 in Column No.17 can be possible in the case of suicide.

9. On overall perusal of the evidence of the PW-4 Dr. Ambren Narayansing, it is crystal clear that his evidence corroborates the facts of the prosecution case that as per the conspiracy hatched by the accused, the deceased Natvar was to be separated from Radha and thereafter, she was taken away and since the deceased Natvar was following them, he was strangled and thereby killed near crematorium in the outskirts of village Varakhadi and thereafter, with an intention to destroy evidence, they placed rope in the neck of Natvar and hung him on the branch of “peepal” tree situated near crematorium. The said facts are also clear from the cross-examination of the said PW-4 Dr. Ambren, whereby he has stated that in case of hanging or suicide, such an injury indicated at Sr. No.(i) in Column No.17 of the *post mortem* note at Exhibit 24, cannot sustained. Therefore, on the basis of the evidence of the PW-4, there is a reason to believe that first of all, the deceased Natvar was strangled by way of tying rope or saree in his neck and thereafter, with a view to come out of the said offence, they appear to have hung his dead body on the “peepal” tree.

10. Even on perusal of the evidence of the panchas, it is stated by the panch witness of inquest panchnama (Exhibit 12) PW-3 Narpatbhai Ramabhai Vasava, who has been examined vide Exhibit 11, that he and another panch Mukeshbhai were called as panchas by Valiya Police personnel at 09-00 p.m. He has further stated that when



he reached there, he saw that the dead body of Natvarbhai Damaniya was hanging on the “peeple” tree with a rope and his father Damaniyabhai had identified the dead body as of his son. This witness has categorically stated that the legs of the dead body were touching the earth and there were bruises on the knee. Thus, this panch witness supports the case of the prosecution.

11. On perusal of the evidence of the prosecution witnesses, it can be said that there is no eye-witness to the incident in question, but on evaluation of the evidence brought on record by the prosecution along with the circumstantial evidence as well as evidence of the Doctor, the chain of incident is proved. Further, the defence has failed to prove their case by way of cross-examination of the prosecution witnesses and nothing incriminating has been brought on record by way of such cross-examination which may help the defence. All these circumstances appearing against the appellants remain unimpeachable.

12. Admittedly, there is no eye-witness to the occurrence. The conviction is based on the circumstantial evidence. The trial court recorded the conviction against the appellants on the basis of the evidence of PW-3, PW-4, PW-5 and PW-6. It is now established principle of law that the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other

hypothesis except that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. The trial Court on appreciation of the evidence found the following circumstances well established against the appellants :

(i) That PW-6 Budhiben had lastly seen the deceased Natvar going with the appellants on the date of incident.

(ii) That the appellants had motive to commit the offence of murder since the deceased Natvar had eloped with Radha, daughter of appellant No.1.

(iii) That there were antemortem injuries on the person of the deceased as per the evidence of the Medical Officer at Exhibit 22, which is corroborated with the post mortem note at Exhibit 24.

(iv) The certificate of cause of death clearly indicates that the death is caused on account of cardio respiratory failure due to asphyxia because of strangulation.

(v) Further, the Medical Officer has stated that the death might have taken place prior to about 24 hours to 30 hours from the time of *post mortem*.

(vi) That PW-6 Budhiben had identified the clothes of the deceased Natvar, which he was wearing at the time of leaving the house of his sister Budhiben.

All these circumstances as well as the other circumstances narrated hereinabove appearing against the appellants remain unimpeached.

14. In our view, the testimony of Pws-3, 4, 5 and 6 alongwith other incriminating materials relied upon by the prosecution taken cumulatively would consistently point to the guilt of the accused and inconsistency with their innocence. In our view, the prosecution has been able to establish the chain of circumstances beyond all reasonable doubt consistently pointing out to the guilt of the accused.

15. For the foregoing reasons, all the four appeals are hereby dismissed. The impugned judgment and order dated July 31, 2007 passed by the learned Additional Sessions Judge, Fast Track Court No.3, Bharuch, in Sessions Case No.57 of 2007, is hereby confirmed. However, the life would not be till last breath and his case may be considered by the appropriate authority.

If any of the accused has been on bail, he shall surrender to the concerned Jail Authority within a period of six weeks from today. Bail

bond, if any, shall stand cancelled. R & P be sent back to the trial Court concerned.

**(K.S.JHAVERI, J.)**

**(K.J.THAKER, J)**

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