

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 503 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

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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 or any order made thereunder ? | |

SODHA PARMAR RAMANBHAI KHODABHAI

Versus

STATE OF GUJARAT

Appearance:

HCLS COMMITTEE(4998) for the Appellant(s) No. 1

MR. YOGENDRA THAKORE(3975) for the Appellant(s) No. 1

MR L B DABHI, ADDITIONAL PUBLIC PROSECUTOR for the
 Opponent(s)/Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 20/01/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE A.G.URAIZEE)

1. The present appeal under Section 374 of the Code of Criminal Procedure 1973, ('The Code' for short) is preferred by the appellant challenging the judgment and order of conviction and sentence dated 10th

February, 2012 passed by the learned Additional Sessions Judge, Aanand, in Sessions Case No.15 of 2009, by which, the the appellant is sentenced to suffer life imprisonment and to pay fine of Rs.10,000/-, in default, to undergone further sentence simple imprisonment of six months for offence under Sections 302 and 376 of the Indian Penal Code. Learned Judge ordered to run both sentences concurrently.

2. The facts in brief giving rise to present appeal are that the appellant was known to Kamlaben Ravjibhai Zala (PW-14) - original complainant and her sister, Reetaben and he used to visit their house frequently. PW-1 had a daughter viz., Mittal, who was aged about 14 years and was student of 9th Standard. PW-14 and her sister, Reetaben were working in a private company. On 17th July, 2008 between 8:30 and 9:30, the appellant came to the house of PW-1, at that time, PW-14 and her sister, Reetaben were not present at home and said Mittal was alone in the House. The appellant took undue advantage of her loneliness and committed rape upon her and with a view to hide the crime committed by him, he committed

her murder. Because of the said incident, PW-14 lodged a complaint, Exh.69 with Vidhyanagar Police Station, which has been registered as C.R.No.I-117 of 2008 for offence under Sections 376 and 302 of the Indian Penal Code ('IPC' for short).

3. On the basis of the said complaint, the investigation was carried out and upon conclusion of investigation, charge-sheet came to be filed in the Court of learned Chief Judicial Magistrate, Valsad. The learned Chief Judicial Magistrate committed the case of the Sessions Court under Section 209 of the Code as the case was exclusively triable by the Court of Sessions, wherein it has been registered as Sessions Case No.15 of 2009. Thereafter, the learned Sessions Court framed the charge vide Exh.6 against the appellant, however, the appellant-accused pleaded not guilty and claimed to be tried.

4. In order to bring home the charge against the appellant, the prosecution adduced following oral evidence:

Oral Evidence

| Sr. No. | Particulars | Exhibit No. |
|---------|--|-------------|
| 1 | Dr. Chetan Biharilal Jani, who performed P.M. of the deceased. | 13 |
| 2 | Himmatbhai Bhagavatsinh Sodha, Executive Magistrate who carried out identification parade of the accused. | 22 |
| 3 | Manubhai Ramabhai Hihor, Circle Inspector who prepared the map of the place of offense. | 25 |
| 4 | Manishabahen Bharatbhai Parmar, panch witness in the panchanama of the dead body. | 30 |
| 5 | Gunvantbhai Shanabhai Parmar, panch witness in panchanama of the palce of the offence. | 36 |
| 6 | Jashubhai Motibhai Vaghela, Panch Witness in panchnama for seizing the clothes of the deceased | 42 |
| 7 | Vipulkumar Babubhai Patel, Panch Witness in panchnama for physical condition of the accused and seizing the mobile of the complainant. | 45 |
| 8 | Anilbhai Ramanbhai Daraji, Panch Witness in indentification parade. | 54 |
| 9 | Jagdishbhai Ishwarbhai Patel, Panch Witness in sezing the cello tape. | 55 |
| 10 | Alpeshbhai Philipbhai Rathod, Panch Witness in seizing mobile phone of Bharatbhai Chhaganbhai and Raibahen Ramanbhai. | 60 |
| 11 | Kaminibahen Shaileshbhai Patel, eye witness who saw the accused. | 64 |
| 11 | Rikinbhai Yogeshbhai Gauswami, Panch Witness of panchanama of the palce of offense. | 65 |
| 12 | Kamalabahen Ravjibhai Zala, The Complainant(Mother of the deceased) | 68 |

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| 13 | Shahadatkhani Rashidkhan Pathan, person who did mobile recharge. | 75 |
| 14 | Bharatbhai Chhaganbhai Solanki, the witness. | 78 |
| 15 | Chandulal Ramjibhai Katariya, owner of the factory in where the accused was working. | 81 |
| 16 | Ratilal Jivabhai Sadat, P.S.O. who registered the offense. | 84 |
| 17 | Hiteshbhai Jivabhai Patel, Police constable who obtained the mobile calls details. | 86 |
| 18 | Devshankar Rajaram Dhamal, P.S.I., who carried out primary investigation of the incident. | 88 |
| 19 | Dhanjibhai Thakarshi Vadaliya, Investigating Police Inspector who filed the charge sheet. | 103 |

5. The prosecution also relied upon on the following documentary evidence :

Documentary Evidence

| <u>Sr. No.</u> | <u>Detail of Documents</u> | <u>Exhibit no.</u> |
|----------------|------------------------------------|--------------------|
| 1 | Yadi for Postmortem | 14 |
| 2 | Certificate of Postmortem | 15 |
| 3 | Certificate of Cause of Death | 16 |
| 4 | Yadi of Identification Parade | 23 |
| 5 | Panchnama of Identification Parade | 24 |
| 6 | Yadi to draw the Map | 26 |
| 7 | Map of the place of offence | 27 |

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| 8 | Slips found out from muddamal article -trouser | 31 |
| 9 | Slip found out from muddamal article no.8 | 32 |
| 10 | Slip found out from <i>dupatta</i> -muddamal article no.9 | 33 |
| 11 | Slip found out from <i>Paijama</i> -muddamal article no.11 | 34 |
| 12 | Inquest Panchnama | 35 |
| 13 | Panch Slip found out from muddamal article no.13 | 37 |
| 14 | Panch Slip found out from muddamal-cotton pod with blood | 38 |
| 15 | Slip found out from muddamal-controlled cotton pod | 39 |
| 16 | Panchnama of the place of offence. | 40 |
| 17 | Panchnama of the muddamal seized at the time of P.M. of the deceased. | 43 |
| 18 | Receipt found out from the Shirt of muddamal article no.20 | 46 |
| 19 | Receipt found out from Trouser of muddamal article no.21 | 47 |
| 20 | Mobile phone found out vide muddamal article no.22 and a slip of blank paper packed in the mobile. | 48 |
| 21 | Panchama of the clothes found out and shown by the accused which he had put on at the time of committing the offence. | 49 |
| 22 | Panchnama of the mobile phone found out from the house of the accused and which was identified by the complainant. | 52 |
| 23 | Slip found out from muddamal-cellotape. | 56 |

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| 24 | Panchnama of the Cello tape and Activa which was used by the accused. | 57 |
| 25 | Panchama of the mobile phone of the witness Bharat Chhagan. | 61 |
| 26 | Panchnama of the mobile phone which was in the name of the accused and his wife. | 62 |
| 27 | Panchnama of the place of offence shown by the accused. | 66 |
| 28 | Original Complaint. | 69 |
| 29 | True Copy of the Register about recharge of mobile phone. | 76 |
| 30 | Photo copy of the Abstract of the Attendance Sheet of the accused in Ashaba Electronics | 85 |
| 31 | Abstract of Station Diary | 86 |
| 32 | Call details of mobile (SIM) no.9904886724 | 87 |
| 33 | Reports of the place of offence done by the F.S.L. Officer | 89 & 90 |
| 34 | Form for Postmortem | 91 |
| 35 | Receipt of handling over the dead body | 92 |
| 36 | Report to cancel section 511 of I.P.C. | 93 |
| 37 | Report of registration of the offence. | 94 |
| 38 | Copy of the Abstract regarding the attendance of the deceased in the school. | 95 |
| 39 | Slip found out from muddamal article no.7 | 96 |
| 40 | Slip found out from muddamal article no.10 | 97 |
| 41 | Slip found out from muddamal article no.5 | 98 |

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| 42 | Slip found out from muddamal article no.6 | 99 |
| 43 | Slip found out from muddamal article no.16 | 100 |
| 44 | Letters of F.S.L. | 104 & 105 |
| 45 | Muddamal Dispatch note | 106 |
| 46 | Letter dtd. 06-07-2008 of F.S.L. | 107 |
| 47 | Muddamal Dispatch note dtd. 05-09-2008 | 108 |
| 48 | Letter dtd. 13-08-2008 of F.S. L. | 109 |
| 49 | Report of F.S.L. dtd. 12-08-2008 | 110 |
| 50 | Letter dtd. 18-09-2008 of F.S.L. | 111 |
| 51 | Report of F.S.L. dtd. 16-09-2008 | 112 |
| 52 | Serological Report dtd. 10-09-2008 of F.S.L. | 113 |
| 53 | Letter dtd. 02-02-2009 of F.S.L. | 114 |
| 54 | Report of Physics Department | 115 |
| 55 | Letter dtd. 22-10-2008 of F.S.L. | 116 |
| 56 | Letter of F.S.L. - dtd. 11-11-2008 | 117 |
| 57 | Report of F.S.L. - dtd. 10-11-2008 | 118 |
| 58 | Serological Report dtd. 06-11-2008 | 119 |
| 59 | Abstract of the shop about the recharge of mobile phone | 120 |
| 60 | Slip of F.S.L. found out from the Shirt of muddamal article no.20 | 121 |
| 61 | Yellow Slip of F.S.L. found out from trouser of muddamal article no.21 | 122 |
| 62 | Panch Slip found out from the Cello | 123 |

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| | tape of muddamal article no.24 | |
| 63 | Slip of F.S.L. found out from muddamal article no.23 | 124 |

6. Upon conclusion of evidence of prosecution, the statement of the appellant—accused under Section 313 of the appellant came to be recorded, wherein he pleaded that false case is foisted upon him. However, he examined DW-1 as defence witness in support of his defence.

7. After hearing of learned Additional Public Prosecutor and learned advocate for the appellant and upon appreciation of oral as well as documentary evidence adduced during the course of trial, the learned Sessions Judge convicted the appellant and imposed condition as mentioned in operative portion of the impugned judgment and order and the said judgment has been assailed by the appellant – accused in the present appeal.

8. I have heard Mr. Yogendra Thakore, learned advocate for the appellant and Mr. L.B. Dabhi, learned Additional Public Prosecutor for the respondent-State.

9. Mr. Yogendra Thakore, learned advocate for the appellant vehemently submitted that the case against the appellant is purely on circumstantial evidence. He submitted that the prosecution has failed to establish and prove each and every circumstances which would lead to only one hypothesis that it was the appellant alone who had committed the alleged offence. It is his further submission that statement of witnesses were recorded after six days which cast-out about prosecution case against the appellant. In support of this submission, he has placed reliance upon the decision of the Supreme Court in the case of **Shahid Khan versus State of Rajasthan** reported in **2016 (IV) SCC 96**. It is his further submission that the keys of the house were with PW-14 and, hence, there is no explanation from the prosecution as to how the said witness returned from work as the door of the house was locked from outside. It is his further submission that it emerges from the cross examination of PW-12 that she was not able to tell when she had seen appellant i.e. when he was entering or exiting the house. It is his submission that it is highly unlikely that the accused had kept his blood

stained clothes after committing crime. He also submitted that the prosecution has failed to prove the motive behind crime. It is, therefore, submitted that the conviction recorded against the appellant may be set aside and he may be acquitted of the charges leveled against him.

10. Mr. L.B. Dabhi, learned APP has supported the findings and conclusion given by the learned Sessions Judge in the impugned judgment. Accordingly to his submission, the prosecution has successfully proved the chain of circumstances which leads to only one hypothesis that it was the appellant who had committed the offence. It is his further submission that PW-12 had seen the appellant entering into the house of PW-14 when the deceased victim was alone in the house. It is his submission that mobile phone belonging to PW-14, which she used to leave with the deceased, was found from the appellant. He also submitted that the clothes worn by the appellant at the time of commission of offence had blood stains of blood group 'B', which was the blood group of the deceased. He also submitted that when PW-14 returned from work, she found house bolted from outside and

lock was only hanging in open condition. He submitted that DW-1-Arjunbhai Udaybhai Parmar examined by the appellant does not help him in any manner as it is clear from the deposition of this witness that he did not know the appellant. He, therefore, submitted that the impugned judgment does not warrant any interference and, hence, the present appeal may be dismissed.

11. It undisputedly appears from the evidence made available on the record by the prosecution that the case against the appellant is based on the circumstantial evidence. It is also undisputed fact that the appellant was known to PW-14 and his deceased daughter aged about 14 years and that he was frequently visiting the house of PW-14.

12. It emerges from the evidence that PW-14 is divorcee, who was living with her deceased daughter and sister, Reetaben. PW-14 was working in Dolphin Watch Company and her timing was from 8:00 a.m. to 5:30 p.m. On the day of incident i.e. on 17th July, 2008, PW-14 had gone to her job leaving behind the deceased, Mittal alone in the house as her sister,

Reetaben had gone to Surasamal.

13. It is also emerging from the evidence of PW-12, who happens to be neighbour that he had seen appellant going into house of PW-14. Moreover, it appears from the evidence of witness that he had also identified the appellant in Test Identification Parade. She also identified the clothes which the appellant had worn at the time of alleged offence. It is thus very clear that nothing adverse to the prosecution could be elicited in her evidence. It is thus very clear that the appellant was seen by PW-12 entering in to the house.

14. The evidence of Doctor viz. Chetan Bhaharilal Jani (PW-1) is also very material. He had conducted postmortem upon the dead body of deceased, Mittal. It emerges from his evidence in graphic details about the kind of brutality to which deceased minor Mittal aged about 14 years was subjected by the appellant – accused. It emerges from the evidence of this doctor that the deceased was subjected to rape. This witness also stated in his evidence that after committing raped, her mouth was gagged by putting sellotape and

injuries were inflicted in abdomen by knife. It also emerges from the medical evidence that the wooden stick (Velan) which is used in making chappati, was inserted in the vagina of the deceased. In the opinion of this doctor, the deceased had died due to injury suffered in abdomen.

15. The other important circumstance, which is pointing towards the appellant, is that clothes worn by the appellant at the time of committing crime was having blood stains of blood group 'B' and the said blood group was of the deceased.

16. The appellant in order to hide the crime committed by him had thus committed murder of deceased, Mittal after committing forceful sexual assault on her. The mobile phone of PW-14, which was kept with the deceased, was found from the possession of the appellant. The appellant – accused is unable to explain this circumstance, which also points finger upon the appellant that he had committed the barbaric act of rape and murder of the deceased, Mittal.

17. The decision of the Supreme Court in the case of

Shahidkhan (Supra) relied upon by Mr. Yogendra Thakore, learned advocate for the appellant is of no help. Merely because the statement of witness was recorded after six days itself would not enough to discredit or disbelieve the other evidences, which leads to only hypothesis that it was the appellant, who had committed the crime.

18. The learned trial Judge has in detail considered and has dealt with oral as well as documentary evidence adduced by the prosecution for convicting the appellant. I am in complete agreement with the reasons assigned by the learned trial Judge and, hence, the impugned judgment and order of sentence in my view does not warrant any interference.

19. For the forgoing reasons, the appeal fails and is hereby dismissed.

20. Record and proceedings be transmitted to the Trial Court forthwith.

(S.R.BRAHMBHATT, J)

(A.G.URAIZEE, J)

Pallavi