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SHANTANU SITARAM @ ANIL DIVEKAR

v.

THE STATE OF MAHARASHTRA

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(Criminal Appeal No.724 of 2012)

SEPTEMBER 22, 2017

[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

C *Penal Code , 1860 – s.302 r/w s.34; s.120B – Three accused – Prosecution case was that wife of A1 was found dead in car – The story set up in defence by A1 was that when he was going in car with his wife and daughter, three persons asked for lift who were permitted to sit in the rear seat and those three persons subsequently at the force of knife asked A1 to take the car at their desired place and assaulted A1 and put a noose in the neck of the deceased – The story was disbelieved by the trial court and accused were convicted u/s.302 r/w s.34 and u/s.120B – High Court upheld the conviction under s.302/34, however, acquitted them of offence u/s.120B – On appeal, held: The gold ornaments worn by the victim-deceased at the time of occurrence were recovered at the instance of A2 – Recovery of stick, piece of rope and knife were also at the instance of A2 – Medical evidence proved that ligature marks on the neck of deceased were possible by nylon rope recovered at the instance of A2 – Theory as put by A1 that he gave a lift to three unknown persons in the car who robbed them and assaulted them was disbelieved by lower courts – Injury in the manner as stated by A1 on his person was not corroborated by medical evidence and other materials on record – Statements made by A1 in s.313 Cr.P.C. as well as written statement submitted by him where he stated that he does not know A2 and A3 were found to be false as courts below found that there was evidence to prove that A2 and A3 were friends of A1 – Plea that since High Court acquitted the accused under s.120B they ought not to have been convicted under s.302 r/w s.34 also cannot be accepted – Chain of circumstances pointing the guilt towards all the accused – Interference with the order of conviction not called for.*

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Dismissing the appeals, the Court

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HELD: 1. There is evidence of PW.13, who was priest of both the families and who had performed the marriage of the deceased and A1 that he had seen A1 moving in the company of A2 and A3 before the day of occurrence. PW.29, father of A1 has also stated that accused Nos.2 and 3 are friends of accused No.1. A2 is rikshaw owner who was engaged to carry on the bakery items of A1. A3 is residing near the house of A1. At the instance of A2 the gold ornaments which were worn by the deceased at the time of occurrence and were missing from the body were recovered from the neighbour of accused No.1 and other gold articles which were deposited by the wife of A2 in Dapoli Urban Cooperative Bank for taking gold loan of Rs.14,200/- were also found out. The said gold articles were produced by the Bank Manager. In the identification parade all the gold items were identified by the father and mother of the deceased. Further recovery of stick, piece of rope and knife were proved by panch witnesses. The medical evidence of PW.10, was thoroughly considered by both the courts below and from the medical evidence it was proved that ligature marks on the neck of the deceased were possible by nylon rope recovered at the instance of A2. [Para 8] [949-D-G]

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2. The submission for the appellants that since the High Court has acquitted the accused under Section 120B IPC they ought not to have been convicted under Section 302 read with 34 IPC also cannot be accepted. The mere fact that evidence under Section 120B has not been proved does not in any manner affect the charge under Section 302 read with 34 IPC. A1 to A3 with common intention committed the crime which has been proved by the prosecution and the conviction of A1 to A3 under Section 302 read with 34 IPC cannot be faulted. Both the courts below have thoroughly examined the oral evidence and found the chain of circumstances fully proved pointing the guilt towards A1 to A3. [Paras 9 and 10] [950-B-D]

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A From the impugned Judgment and final Order dated 21.07.2011 passed by the High Court of Judicature at Bombay in Criminal Appeal No.518/2004

WITH

Criminal Appeal No.736 of 2012.

B Shree Prakash Sinha, Rakesh Mishra, Ms. Mohua Sinha, Nawalendra Kumar, Shekhar Kumar, Advs. for the Appellant.

Nishant Ramakantrao Katneshwarkar, Adv. for the Respondent.

The Judgment of the Court was delivered by

C **ASHOK BHUSHAN, J.** 1. These two appeals have been filed against the judgment of the Bombay High Court dated 21.07.2011 dismissing three criminal appeals filed by three accused questioning their conviction and sentence imposed by the Additional District Judge, Satara by judgment dated 04.03.2004 by which they were sentenced to suffer D rigorous imprisonment for life and to pay fine for the offence punishable under Section 302 read with 34 IPC and further to RI for three years and fine for offence under Section 201 read with 34 IPC and for three years and fine for offence under Section 120B IPC.

2. The facts of the case are:

E Accused No.1, Shantanu married deceased Supriya on 28.04.1999. Their daughter, Mrunal was born on 22.03.2000. Both, Shantanu and Supriya belong to same place that is Karad. With effect from 10.12.2000 Supriya along with her daughter was living at her parents' house which was in Karad itself. On 23.12.2000, Shantanu came to F Supriya's parents' house and took Supriya for a ride in car in the evening at about 8.30 p.m. Shantanu took Supriya hurriedly without even permitting her to change her nightgown which she wore at that time. Supriya along with her daughter aged about 9 months sat in the Fiat Car of Shantanu driven by him. When till 10 p.m. Shantanu did not return, Bhalachandra G Phadnis (PW.29), father of Supriya made a telephone call at the house of Shantanu enquiring about Supriya. He was told that they have not returned to the house. At about 10.30 p.m., near Shamgaon Ghat, Shantanu carrying her minor daughter waved one Shambaji Mane (PW.6) to stop, who was riding a motorcycle. Shamgaon Ghat was about 19 kms. from Karad; Shambaji Mane, who was returning from Karad

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to his residence did not stop the motorcycle but halted at Shamgaon village and told the incident of waiving hands by a man to 10/12 boys who were sitting near a fire place. After 10 to 15 minutes Shantanu carrying her minor daughter, riding one goods truck came at the place where Shambhaji Mane and 10 to 12 boys were standing. Shantanu told Shambhaji Mane, PW.6 that he, his wife and her daughter who were travelling by car near Shamgaonghat were robbed and assaulted by three persons and his wife was still laying in the car. Shambhaji Mane, PW.6 along with certain persons went to place of occurrence and found Supriya laying in the car in unconscious condition. Shantanu along with her daughter were also taken to the place of occurrence, by that time Supriya had died. Police was informed. Shantanu and her minor daughter were taken to the Police Out Post. On the information of Shambhaji Mane crime case under Section 394 and 302 IPC was registered. Shantanu was admitted in Hospital and after he was released from the Hospital, he was interrogated by the IO, PW.30, P.S.I. Mhase. On the basis of the interrogation, on 30.12.2000, the Police arrested Shantanu and two other persons A2, Rafik and A3, Deepak @ Ganesh S. Patil. At the instance of A2, on 30.12.2000 itself, recovery of an amount of Rs.1,000/- from his house and recovery of gold jewellery which Supriya was wearing at the time of occurrence was made from his neighbour, Damodar Gade. At the instance of A2, recovery of further stick, piece of rope, knife and other articles was made. All the articles were photographed by PW.22, Shantaram Shinde. Certain recoveries were also made at the instance of A3. Accused were charge-sheeted. Prosecution produced 30 witnesses to prove guilt. Autopsy and postmortem of body of Supriya was done on 24th December, morning. Postmortem report indicated following injuries on the dead body of deceased Supriya:

"(1) Ligature mark on anterior aspect of neck on thyroid cartilage upper 1/3 going midline, horizontally on either side crossing midline margining towards right side measuring about 11cm x 3/4th cm red in colour.

(2) Ligature mark below cricoid cartilage 2 cm below injury no.1 going horizontally on either side encircling lower part of neck cricoid cartilage measuring 25 cm. 3/4th cm red in colour cut section of both ligature mark shows white glistening. Parchment paper like band haematoma on both side present neck venus full of blood.

- A (3) *Contusion 1/2 below injury no.2 on right side 2.5 cm x 0.5 cm red in colour.*
(4) *Contusion on post part of neck L/3 left side 1.5 cm x 1 cm red in colour.*
- B (5) *Abrasion on post part of neck right on trapozious muscle lower part of neck, 2 in number 1/2 cm apart from each other measuring 1 cm – 0.75 cm red in colour.*
(6) *Abrasion on lower end of left ear lobule 1/2 cm x 1/4 cm red in colour.”*
- C 3. The trial court after hearing and considering the evidence on record convicted the accused and sentenced all the three accused as noted above. All the three accused filed criminal appeals before the High Court which have been dismissed by the High Court by a common judgment. Only accused Nos.1 and 3 have come up before this Court by filing criminal appeals. A2 has not even challenged the judgment of the High Court.
- D 4. Learned counsel appearing for Shantanu, accused No.1, in support of the appeal contends that the High Court having acquitted the appellants from the charge under Section 120B IPC, the conviction under Section 302 read with 34 IPC ought not to have been maintained. He
- E further submits that marriage of Shantanu with Supriya was a love marriage and there was no marital dispute between husband and wife. Evidence of Bhalchandra Phadnis, PW.29 and Mrs. Bhagyashri Bhalchandra Phadnis, PW.3 father and mother of deceased, Supriya that the complaints of misbehaviour by Shantanu were all at the instance
- F of the Police since Police failed to find out the real culprit and the accused was roped in. He further submits that Shantanu has no acquaintance with A2 and A3 and Shantanu himself was injured in the robbery and due to injuries was admitted in the Hospital. Both the trial court and the High Court made error in disbelieving the defence of A1. Present is a case of circumstantial evidence and chain of circumstances have not
- G been fully proved.

5. Learned counsel for A3, Deepak @ Ganesh S. Patil, also adopted the submission of A1. He further submits that he had no friendship with A1 and he has been unnecessary roped by the Police and there is no evidence against him.

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6. Learned counsel for the State refuting the submissions of the A
counsel for the appellants supported the judgment of the courts below
and submitted that the prosecution has fully proved the guilt by the oral
evidence, medical evidence on record and recoveries made. The chain
of circumstances has been fully established conclusively pointing out the
guilt towards accused.

7. We have considered the submissions of the parties and perused B
the records.

8. The trial court and the High Court have examined the oral C
evidence as well as medical evidence on record. The theory set up in
defence by A1 that when he was going by car along with her wife and
daughter, three persons had asked for lift who were permitted to sit in
the rear seat and those three persons subsequently at the force of knife
asked A1 to take the car at their desired place and assaulted Shantanu
and put a noose in the neck of Supriya has been disbelieved by both the
courts below. There is evidence of PW.13, Uday Girase, who was priest
of both the families and who had performed the marriage of Supriya and
Shantanu that he had seen A1 moving in the company of A2 and A3
before the day of occurrence. Bhalchandra Phadnis, PW.29, father of
Shantanu has also stated that accused Nos.2 and 3 are friends of accused
No.1. A2 is rikshaw owner who was engaged to carry on the bakery
items of A1. A3 is residing near the house of A1. At the instance of A2
the gold ornaments which were worn by Supriya at the time of occurrence
and were missing from the body were recovered on 30.12.2000 from
Damodar Gade, neighbour of accused No.1 and other gold articles
which were deposited by the wife of A2 Nilophar on 26.12.2000 in Dapoli
Urban Cooperative Bank for taking gold loan of Rs.14,200/- were also
found out. The said gold articles were produced by the Bank Manager,
PW.1. In the identification parade all the gold items were identified by
the father and mother of Supriya. Further recovery of stick, piece of
rope and knife were proved by panch witnesses. The medical evidence
of Dr. Jadhav, PW.10, has been thoroughly considered by both the courts
below and from the medical evidence it is proved that ligature marks on
the neck of Supriya were possible by nylon rope recovered at the instance
of A2. PW.22, Santosh Balakrishna Shete, who took the photographs
of recovery of all the items proved the photographs in his evidence. The
theory as put by A1 that he gave lift to three unknown persons in the car
who robbed husband and wife and assaulted them has been disbelieved.

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- A The injury in the manner as stated by A1 on his person has not been corroborated by the medical evidence and other materials on record. The statement made by A1 in 313 Cr. P.C. as well as written statement submitted by him where he stated that he does not know A2 and A3 has been rightly found to be false. A2 and A3 have been held to be friends of A1 by the courts below on the basis of cogent evidence.
- B 9. The submission of learned counsel for the appellants that since the High Court has acquitted the accused under Section 120B IPC they ought not to have been convicted under Section 302 read with 34 IPC also cannot be accepted. The mere fact that evidence under Section 120B has not been proved does not in any manner affect the charge under Section 302 read with 34 IPC. A1 to A3 with common intention committed the crime which has been proved by the prosecution and the conviction of A1 to A3 under Section 302 read with 34 IPC cannot be faulted.
- C 10. Both the courts below have thoroughly examined the oral evidence and found the chain of circumstances fully proved pointing the guilt towards A1 to A3. We, thus, do not find any merit in these appeals. Both the appeals are dismissed. Accused No. 1, Shantanu Sitaram is on bail, he is directed to be taken into custody forthwith.

Devika Gujral

Appeals dismissed.