

Bombay High Court

Ajamali Soharali @ Ahmedali ... vs The State Of Maharashtra on 15 December, 2017

7. cri apeal 1239-13 (j).d

RMA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1239 OF 2013

Ajamali Soharali @ Ahmedali Ansari]
Age - 20 Years, Occ. - Nil,]
R/o. Noor Sizing near Meelan Petrol Pump,]
In front of Siraj Hospital, Bhiwandi,]
Dist. Thane.]
Originally R/o. House No. 73,]
Mohalla Bankar Gaon Bankar Tanna,]
Uruwa Bazar, Dist. Gorakhpur, U.P.]
(Confined as Convict No. C-5645,]
Kolhapur Central Prison, Kalamba,]
Kolhapur.)]
] Appellant
	(Org. Accused)

Versus

The State of Maharashtra]
(at the instance of Bhiwandi City Police]
Station, Bhiwandi, Dist. Thane in C.R. No.]
I-68 of 2010 tried in Sessions Case No.]
254 of 2010]
] Respondent

Mr. Murtaza Najmi a/w Ms. Sana Bundeally i/by
Mr. Ashish Mehta, Advocate for the Appellant

Mrs. G.P. Mulekar, APP for the State

CORAM : SMT. V.K. TAHILRAMANI, Acting C.J. &
M.S. KARNIK, J.

DATE : DECEMBER 15, 2017.

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. This appeal is preferred by the appellant-original accused against the judgment and order dated 10.10.2012 jfoanz vkacsjdj 1 of 13

7. cri apeal 1239-13 (j).doc passed by the learned Additional Sessions Judge-2, Thane in Sessions Case No. 254 of 2010. By the said judgment and order, the learned Session Judge convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 1000/-, in default, R.I. for six months.

2. The prosecution case briefly stated, is as under:

(a) Deceased Yellava was residing with PW 1 Sushila at Patlu Chawl, Hanuman Tekadi, Bhiwandi.

Yellava was doing business of prostitution. On 26.2.2010 at about 10.00 p.m., the appellant asked Yellava for sexual intercourse. She told him that he will have to pay Rs. 300/- if he wanted to spend entire night with her. Accordingly, he paid Rs. 300/- to Yellava. Thereafter, she told him that he would have to pay Rs. 100/- more if he wanted to spend the entire night with her. On account of this, some exchange of words took place between jfoanz vkacsjdj 2 of 13

7. cri apeal 1239-13 (j).doc the appellant and Yellava. On hearing the exchange of words, Sushila went near Yellava and the appellant and she told the appellant that he would have to pay Rs. 400/- if he wanted to spend entire night with Yellava. The appellant spoke arrogantly with Sushila, hence, Sushila slapped the appellant. Thereafter, the appellant sat there for 10-15 minutes and then paid Rs. 100/- to Yellava. Sushila then went to the other room to sleep. In the morning, Sushila got up. She found that the front door was open and Yellava was lying dead beneath the bed with reddish and blackish mark on her neck. Blood was oozing from the mouth of Yellava. Sushila then lodged the FIR. Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed.

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3. Charge came to be framed against the appellant - original accused under Sections 302, 380 and 404 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence, this appeal.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant committed the murder of Yellava by strangulating her.

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5. The case is totally based on the circumstantial

evidence. We are of the opinion that the evidence of PW 1 Sushila is enough to conclusively prove that the appellant committed the murder of Yellava. Sushila has stated that Yellava was residing with her since 6-7 years prior to the incident. Yellava was doing the business of prostitution. On 26.2.2010 at about 10.00 p.m., the appellant came to the house of Sushila. He asked Yellava for sexual intercourse. Yellava told him that he will have to pay Rs. 300/- if he wanted to spend entire night with her. Accordingly, he paid Rs. 300/- to Yellava. Thereafter, she told him that he would have to pay Rs. 100/- more if he wanted to spend the entire night with her. On account of this, some exchange of words took place between the appellant and Yellava. On hearing the exchange of words, Sushila went near Yellava and the appellant and she told the appellant that he would have to pay Rs. 400/- if he wanted to spend entire night with Yellava. The appellant spoke arrogantly with Sushila, hence, Sushila slapped the appellant. Thereafter, the appellant sat there for jfoanz vkacsjdj 5 of 13

7. cri apeal 1239-13 (j).doc 10-15 minutes and then paid Rs. 100/- to Yellava. The appellant told that he would sleep with Yellava for sometime after which he would go for watching a movie and thereafter, he would return. Thereafter, the appellant along with Yellava went in the room. Meanwhile, Sushila went to pan shop. She returned back after sometime. Sushila then asked Yellava whether the appellant was there with her. Yellava told that the appellant had left but he will come back at 12 midnight. At 11.30 p.m., Sushila heard voice of quarreling in the galli, hence, she went there. She returned back at 12 midnight. At that time, Yellava was sitting on ota of the house. Yellava told that the appellant had come back and he was sleeping in the room. On hearing the voice of Sushila, the appellant also came out of the house. Sushila asked Yellava to have dinner but Yellava told that she did not want to take dinner. Then they went inside. Yellava then put a lock on the door from inside.

PW 1 Sushila has further stated that in the morning at about 6.00 a.m., when she came out of her room, she saw jfoanz vkacsjdj 6 of 13

7. cri apeal 1239-13 (j).doc the entrance door was open. Thereafter, she searched for Yellava. She saw the dead body of Yellava under the bed. Sushila saw that blood was oozing from the mouth of Yellava and there was reddish and blackish mark on her neck. Sushila got frightened. Sushila then went to the Police Station and lodged FIR. During the course of investigation, Sushila was called to Adharwadi Jail for identifying the appellant. She identified the appellant in the said test identification parade.

Thus, the evidence of PW 1 Sushila shows that on the night between 26.2.2010 and 27.2.2010, the appellant had come to the house of Sushila and told Yellava who was residing with her that he wanted to have sexual intercourse with her. Some quarrel took place between Yellava and the appellant in relation to the amount which was to be paid to Yellava. The evidence of Sushila further shows that at 12 midnight, the appellant, Yellava and Sushila were in the house. Sushila then went to her room to sleep. Thus, at that time, Yellava and the appellant were sleeping in the room.

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7. cri apeal 1239-13 (j).doc In the morning, Yellava was found dead and the appellant was not seen anywhere.

6. The evidence of Sushila ruled out the possibility of any other person coming into the house for committing the murder of Yellava. Moreover, there is nothing to show that any one else had the motive to commit the murder of Yellava. On the other hand, the evidence of Sushila shows that the appellant had the motive to commit the murder of Yellava in as much as Yellava had earlier agreed to spend the entire night with the appellant for an amount of Rs. 300/-, however, thereafter, she demanded an additional amount of Rs. 100/- on account of which altercation took place between the appellant and Yellava.

7. Learned counsel for the appellant submitted that it is very much possible that Yellava could have committed suicide. He submitted that there is no medical evidence to show whether the strangulation was caused on account of jfoanz vkacsjdj 8 of 13

7. cri apeal 1239-13 (j).doc Yellava committing suicide by hanging herself or on account of the appellant strangulating her and causing her death. He submitted that the exact direction of the injury on the reddish and blackish mark on the neck is not found on record, hence, it is possible that it is a case of suicide and the appellant has been falsely implicated in this case. To support this contention, he placed reliance on the decision of the Supreme Court in the case of Jose @ Pappachan Vs. Sub-Inspector of Police, Koyilandy & Anr. 1. He pointed out that in the said case the doctor in categorical terms conceded that he could not say as to whether it was a case of suicidal or homicidal hanging, hence, the accused in the said case was given the benefit of doubt and he was acquitted.

In the present case, as stated earlier, the dead body of Yellava was found under the bed. Her dead body was not found in hanging condition in the house. Looking to the circumstances in which the dead body of Yellava was found, it rules out the possibility of suicide and it clearly points out 1 (2016) 10 SCC 519 jfoanz vkacsjdj 9 of 13

7. cri apeal 1239-13 (j).doc to a case of homicidal death. The inquest panchnama clearly shows that there was reddish and blackish mark on the neck of Yellava.

8. Learned counsel for the appellant further submitted that the time gap when PW 1 Sushila saw the appellant with Yellava and the dead body of Yellava being found is so big that an inference can not

be drawn that the appellant committed the murder of Yellava. To support this contention, he placed reliance on the decision of the Supreme Court in the case of Nizam & Anr. Vs. State of Rajasthan 2. In the said case, the deceased had left in the truck of the appellants and the dead body of the deceased was found after three days. It was, in these circumstances, the Supreme Court observed that the gap between the time when the deceased had allegedly left with the appellant and the finding of the dead body is not so small as to draw an inference against the appellant. It was further observed that in view of the gap between the time when the deceased left in the truck of the appellants and recovery of his body and also place and 2 (2016) 1 SCC 550 jfoanz vkacsjdj 10 of 13

7. cri apeal 1239-13 (j).doc circumstances in which his body was recovered, the possibility of others intervening cannot be ruled out. However, such are not the facts in the present case. The appellant was seen with Yellava in the house in which Yellava was residing. The appellant had come to spend the night with Yellava. In fact, the appellant had paid Rs. 400/- to Yellava to spend the night with her. At 12 midnight, Yellava had locked the door of the house. At that time, the appellant was very much in the house. In the morning, the dead body of Yellava was found under the bed with reddish and blackish marks on the neck and the door of the house was open and the appellant had disappeared. As stated earlier, the facts in the present case are not similar to the facts in the case of Nizam (supra), hence, this decision would not be of any help to the appellant.

9. The defence in cross-examination of PW 3 Police Inspector Hiremath has brought on record Exh. 18 which is a receipt in relation to purchase of a mobile phone. It is jfoanz vkacsjdj 11 of 13

7. cri apeal 1239-13 (j).doc brought on record in the cross-examination that the receipt is in the name of the deceased. The receipt Exh. 18 shows the IMEI No. of the mobile phone as 358224022834018. PW 2 panch witness Kallappa has stated that when the appellant was brought to the Crime Branch, at that time, one mobile phone bearing IMEI No. 358224022834018 was found with the appellant. The evidence of PW 4 API Paikar shows that they arrested the appellant. At that time, they found one mobile of Samsung company with him which was seized in presence of panchas. The evidence of PW 3 PI Hiremath shows that the receipt of the said phone stood in the name of the deceased and the said phone was seized from the possession of the appellant. This is one more factor which shows the involvement of the appellant.

10. On going through the evidence in this case, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant committed the murder of Yellava by strangulating her. Thus, we find no merit in the jfoanz vkacsjdj 12 of 13

7. cri apeal 1239-13 (j).doc appeal. The appeal is dismissed.

[M.S. KARNIK, J]

[ACTING CHIEF JUSTICE]

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