



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 2282-2284 OF 2011

STATE OF MAHARASHTRA

.....APPELLANT(S)

VERSUS

MONIKA KIRAN SURYAWANSHI & ORS. RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(s). 2286-2288 OF 2011

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present criminal appeals are being preferred before this Court against the judgment and order dated 10.3.2010 in Criminal Appeal No. 61/2008 with Criminal Appeal Nos. 72/2008 and 332/2008, passed by the Hon'ble High Court of judicature at

Bombay, bench at Aurangabad, by which the Hon'ble High Court had set aside the order of conviction under section 302, 201 read with section 34 and under section 120(B) of Indian Penal Code (herein after referred to as 'IPC') passed by the learned Trial Court and acquitted the respondent numbers 1 to 3.

BRIEF FACTS

The factual matrix of the case can be unfolded as under:

2. The accused No. 1 Monika was married to the deceased Kiran Suryawanshi, who was serving in I.C.I.C.I. Bank in the year 2001 and it was a love marriage and they were residing at plot no. 103, Shramsafalya Colony, at Deopur and they were also blessed with one daughter namely Hemal out of the said wedlock. It is alleged that, the accused no. 2 Prakash is neighbour of accused no. 1 and was staying in plot no. 104, Shramsafalya Colony, Deopur and he had love affair with accused no. 1 Monika whereas accused no.3 Dnyaneshwar and accused no. 4 Deepak are friends of accused no. 2.

3. It is also alleged that the conspiracy was hatched by accused nos. 1 and 2 along with accused nos. 3 and 4 to eliminate Kiran Suryawanshi and then to bury his dead body and accused nos. 2 and 3 went near Nakane Dam with intention to bury the body. It is

further alleged that accused no. 1 administered some sedative tablets and injections to victim Kiran Suryawanshi and thereafter his head was smashed with the help of grinding stone and thereafter his body was wrapped in a plastic bag and bed sheet. Pursuant to the conspiracy, accused Nos. 2 and 3 had hired a motorcycle of their friend namely Rahul Jagdale and after accused no. 1 Monika killed the victim Kiran, the dead body of Kiran was being carried on the said motorcycle in the morning of 15.02.2007. While they were carrying the said dead body on the motorcycle, P.W.19 Police Constable Rajendra Mohite saw them and noticed that something was kept in between them and, therefore, he stopped them immediately and questioned them, but the accused nos. 2 and 3 gave evasive replies. Since the said place came under the jurisdiction of Deopur Police Station, P.W.19 Rajendra Mohite called his friend Prabhakar Bramhane, attached to Deopur Police Station by telephone, who arrived on the said spot along with Constable Mukhtar Shaikh and on seeing them, the accused nos. 2 and 3 were frightened. P.W.19 Rajendra Mohite noticed a human foot protruding out of the bundle when he saw it carefully and, therefore, questioned both the accused nos. 2 and 3 and they disclosed their names as Prakash Nagraj Patil and Dnyaneshwar Gangaram Mahale,

respectively. On further questioning, they disclosed that it was a dead body of Kiran Suryawanshi.

4. On the night between February 14 and 15, 2007, P.S.I. Sharad Kulkarni of the Deopur Police Station was on patrolling duty when he encountered Constables Bramhane, Mukhtar Shaikh, and Rajendra Mohite questioning two men on a motorcycle (MH18P8077). Upon intervention, P.S.I. Kulkarni noted that the men, later identified as accused nos. 2 and 3, gave evasive replies. His suspicions were confirmed when he noticed a human leg protruding from a bundle on the vehicle. He immediately secured the scene, took the suspects into custody, and summoned government photographer Bapu Wadekar (P.W.7) to document the opening of the bundle, which contained the body of the victim, Kiran Suryawanshi. A formal seizure panchanama of the motorcycle was conducted in the presence of witness Santosh Jadhav.

5. The investigation escalated when accused no. 2, Prakash, allegedly used his mobile phone to alert accused no. 1, Monika, about their detention. Following this admission, P.S.I. Kulkarni dispatched officers to bring Monika i.e. accused no. 1 to the scene. After registering Crime No. 21/2007 under sections 302, 120B, 201, and 34 of IPC, the case was handed over to P.S.I. Govind Tamhankar.

Detailed procedural steps followed, including the preparation of an inquest panchanama at the Civil Hospital and systematic personal searches of all three accused. These searches yielded critical evidence, including three mobile phones, cash, a credit card, and travel documents, all of which were seized under various panchanamas (Exhibits 90 and 46) during the process of investigation subsequently the formal arrest of the suspects was effected.

6. Following the initial arrests, P.S.I. Govind Tamhankar led a search of accused no. 1 Monika's residence, which yielded several pieces of incriminating evidence. Most notably, a mobile phone found on a file was identified as belonging to the deceased, Kiran Suryawanshi. Within the kitchen, investigators seized samples of half-consumed rice, fish, and mutton for forensic analysis, alongside a steel pot containing an unidentified powder and two small, partially filled liquor bottles. Physical evidence of a struggle or crime was also documented, including a slab of tile and an ordinary tile, while bloodstains and clots were discovered near the door's 'Koba' and below the 'Ota' (kitchen platform) all of which were officially attached under Exhibit 54.

7. The investigation then moved into a more formal evidentiary phase. P.S.I. Tamhankar recorded statements of the witnesses including police personnel, Constable Rajendra Mohite and Mukhtar Shaikh, as well as various panch witnesses. All three accused were referred to a Civil Hospital for medical examinations, where doctors collected nail clippings and swabs to preserve biological evidence. Furthermore, the scene at Monika's house was documented by government photographer Bapu Wadekar. By February 16, 2007, the police had further consolidated their case by recording a supplementary statement from P.S.I. Kulkarni and seizing the clothing worn by all three accused persons under Exhibits 48 and 93. As the investigation progressed between February 18 and May 7, 2007, P.S.I. Govind Tamhankar executed a series of recovery procedures based on the voluntary disclosures of the accused. Under Memorandum Panchanama (Exhibit 94), accused no. 1, Monika, led the police to her residence in Shramsafalya Colony. From a hidden spot near a bush, she produced a grinding stone, broken glass pieces from an injection vial, a used syringe, and blood-stained clothes and a handkerchief, all of which were seized as critical physical evidence (Articles 29–33).

8. The scope of the investigation soon widened to include the logistics of the crime. Accused no. 2, Prakash, led the police to several commercial establishments such as a shop owned by Anita Agrawal, where they had rented a pickaxe and spade (Articles 51 and 52); a shop owned by Asif Shaikh, where they purchased rope; and another shop where syringes were bought. Prakash also pointed out a ditch near Nakane Talao that had been dug for the disposal of the body. Further searches in the city of Kannad led to the residence of Jitendra Neve, from whom tablets were sourced, and to Prakash's own rented room. There, police used a previously seized key to access computer of accused no. 2, Prakash, which contained photographs of Monika and letterheads from Janseva Blood Bank.

9. In the final stages, P.S.I. Tamhankar arrested accused no. 4, Deepak, at Manas Hospital in Aurangabad and recorded statements of other set of witnesses, including the owner of Apna Lodge, the victim's family, and mobile service providers to establish a digital trail. Expert opinion was sought from Dr. Ajit Patil to figure out the grinding stone's role in the injuries, and all physical evidence was sent for Chemical Analyzer (C.A.) testing. Following the receipt of the C.A. reports (Exhibits 50 and 56), a comprehensive charge sheet was filed on May 7, 2007. Due to the gravity of the charges, the case was

committed from the Magistrate's Court to the Sessions Court at Dhule for trial. Charge was framed against the accused. The accused pleaded not guilty and claimed to be tried. The prosecution has examined in all total 26 witnesses.

10. Vide judgment and order dated 07.02.2008 in Sessions Case No. 54/2007, Ld. Sessions Judge, Dhule convicted accused nos. 1, 2 and 3 and sentenced them to life imprisonment. On being aggrieved by the judgment of conviction, the accused nos. 1, 2 and 3 filed Criminal Appeal Nos. 61/2008, 72/2008 and 332/2008 before the Hon'ble Bombay High Court, Bench at Aurangabad.

11. Vide judgment dated 10.3.2010 in Criminal Appeal No. 61 of 2008 with Criminal Appeal Nos. 72 of 2008 and 332 of 2008, passed by the Hon'ble High Court of judicature at Bombay, Bench at Aurangabad, had acquitted accused nos. 1, 2 and 3 on the ground that circumstantial evidence is not sufficient to convict the accused.

12. Aggrieved by the said judgement of the High Court, the appellants i.e. the State of Maharashtra and the father of the deceased have approached this Court. During the pendency of the appeal, father died and the said appeal is prosecuted through mother i.e. Rekhabai Ramesh Suryawanshi.

CONTENTIONS

13. Mr. Sanjay Kharde, learned Senior Counsel representing the appellants made the following submissions in support:

13.1. The learned counsel for the appellants submitted that accused no. 1 had extra marital relations with accused no. 2 and therefore, they had conspiracy and, in the night, some sedative tablets and injections were administered to the deceased and also the head of the deceased was smashed by grinding stone.

13.2. The learned counsel for the appellants also submitted that as per the evidence of doctor, he has found two marks of injections and the cause of death was because of the head injury and therefore, there is no doubt that the death of deceased was homicidal and thereby he supports the case of prosecution.

13.3. The learned counsel for the appellants also submitted that after the arrest of accused no. 1, at her instance, the grinding stone was seized from the hidden place kept by accused no.1.

13.4. The learned counsel for the appellants also submitted that accused nos. 2 and 3 were caught red-handed while carrying dead body. There was blood on the plate of silencer of the motorcycle. It is further submitted that as per the C.A. report the blood on the silencer was of blood group 'A' and it was of the deceased. There were material

circumstances which show that there was a conversation between accused nos. 1 and 2 and it is proved by the concerned officer of the mobile company.

13.5. The learned counsel for the appellants also submitted that accused nos. 2 and 3 dug a ditch for burying the dead body and it was shown by accused nos. 2 and 3 to the Investigating Officer. The circumstances brought on record unerringly point towards the guilt of the accused.

14. *Per contra*, learned counsel for the respondent made the following submissions:

14.1. Mr. Vinay Navare, learned Senior Counsel for accused no. 1 urged that, the main pivot of the prosecution case is rested upon the circumstantial evidence as there is no direct evidence.

14.2. Further it was submitted that victim Kiran met with an accident and succumbed to the injuries and accused nos. 2 and 3 contended that they were never caught at the spot and that the dead body of the deceased must have been found in unattended condition and accused no. 2 was in his house, from where he was arrested.

14.3. Again, the learned counsel for accused no. 1 submitted that there is absolutely no positive legal evidence adduced/ produced on the prosecution record to prove and establish that there was any

love affair between accused no. 1 and accused no. 2 and mere production of record of telephone calls of cell phones between accused nos.1 and 2 cannot be construed as proof of a love affair between them.

14.4. It is further submitted that, in the said context, prosecution has examined P.W.13 Jitendra Neve, whom accused no. 2 allegedly had shown a photograph of accused no. 1 Monika on the computer, stating that she was his lover and prosecution has also examined P.W.18 Lalit Bhavsar, who allegedly handed over packet of gift to accused no. 1 Monika and later on when P.W.18 allegedly questioned accused no. 2, he stated that accused No. 1 was his lover and beyond that there is nothing on record to prove and establish the love affairs between accused nos.1 and 2.

14.5. It was further submitted that, the claim in the F.I.R. that it is the accused no. 1 who contacted accused no. 2 calling him to the house is false contention and has not been supported by printout data of mobile communications.

14.6. The learned counsel for accused no. 1 submitted that in the statement by accused no. 1 recorded under Section 313 of the Code of Criminal Procedure (hereinafter referred as 'CrPC') that the said house search panchanama was prepared falsely and she

claimed that no such panchanama was drawn and her signatures were taken on the blank papers.

ANALYSIS

15. Heard Ld. Counsel for the appellants as well as Ld. Counsel for the respondent. We have also perused relevant documents on record and the judgments passed by the Courts below.

16. Hon'ble High Court of judicature at Bombay, bench at Aurangabad, vide its judgment dated 10.03.2010 had set aside the order of conviction under section 302, 201 read with section 34 and under section 120(B) of IPC passed by the learned Trial Court and acquitted the respondent no.1 to 3. The High Court on analytical assessment and appreciation of the evidence as well as evaluating the submissions of learned counsels appearing for the respective parties assigned the detailed reasons for recording the acquittal of respondent nos. 1 to 3. It may not be out of place to refer to the conclusions arrived at by the High Court in the judgment impugned herein:-

“We are inclined to accept the submissions advanced by learned counsel for the accused Nos. 1 to 3 since as canvased by learned respective counsel for accused Nos.1 to 3, the prosecution has failed to prove and establish the guilt against the accused Nos.1 to 3 by circumstantial evidence proving each and every circumstance to be incriminating as aforestated and

chain thereof unerringly excluding the hypothesis that the accused Nos. 1 to 3 alone are the perpetrators of the crime and none else and there are vital lacunae and infirmities and deformities in the case of prosecution as enumerated and pinpointed by the learned counsel for accused Nos. 1 to 3 as mentioned hereinabove. As regards accused No. 1, the circumstantial evidence led by the prosecution in respect of alleged extramarital love affairs between her and accused No. 2 through P.W.13 Jitendra Neve and P.W.18 Lalit Bhavsar and the evidence of last seen the deceased Kiran Suryawanshi in his house by P.W.25 Rajendra Goswami on the fateful night is weak type of evidence as well as the evidence of telephone calls produced by the prosecution on record and printouts thereof also cannot be construed as incriminating evidence against the accused Nos. 1 and 2 herein for the reasons mentioned hereinabove and further the evidence of seizure of recovery from the house of accused No. 1 and/or at the behest of accused No. 1 and the concerned C.A. reports thereof would not connect the accused with the alleged crime since there are lapses and laches therein, more particularly, the alleged articles seized from the house of the accused No. 1 and/or seized at the instance of accused No. 1 were not sealed and, therefore, the said evidence does not lead to prosecution case to any logical conclusion to connect the accused No. 1 with the alleged crimes. Pertinently, no blood was found on the mattresses, Chaddar and pillow in the house of accused No. 1 and the said aspect also speaks volumes for itself. Moreover, prosecution has failed to prove and establish the very time of offence and time of death of the victim by cogent evidence and the said lacuna also sustains fatal blow to the prosecution case and, therefore, the accused No. 1 is entitled for the benefit of doubt.

50. As regards accused Nos. 2 and 3, except accosting accused Nos. 2 and 3 by P.W.19 Rajendra Mohite at about 5.00 a.m. during the intervening night between 14.02.2007 and 15.02.2007 on motorcycle near the Panchayat Samiti Office carrying bundle of dead body of deceased Kiran Suryawanshi, there is no other convincing legal incriminating evidence against the accused Nos. 2 and 3 to connect them with the alleged crimes and the probable defence put forth by the accused Nos. 1 to 3 that the victim met with an accident and succumbed to injuries cannot be ruled out. Besides, as

mentioned hereinabove, there is no direct/ circumstantial evidence to prove and establish any crime between the accused persons in respect of the conspiracy to commit the murder of deceased Kiran Suryawanshi and prosecution has not adduced/ produced convincing legal evidence in that respect on record and, therefore, the said charge under Section 120B of the Indian Penal Code also is short of worth believing against accused Nos. 1 to 3 since the conviction and sentence inflicted upon them by the trial Court shall not sustain for the reasons mentioned hereinabove and we are also inclined to give benefit of doubt to accused No. 1 in respect of charges levelled against her under Section 201 read with Section 34 of the Indian Penal Code. Hence, we are inclined to give benefit of doubt to accused Nos. 1 to 3 in respect of charges levelled against them for offences under Sections 302 read with Section 34 of the Indian Penal Code and also under Section 120B of the Indian penal Code.

51. However, we are of the considered view that the conviction and sentence rendered by learned trial Judge against the accused Nos. 2 and 3 for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code shall sustain since there is incriminating evidence against them that they knowingly caused the evidence of the commission of the offence to disappear with the intention of screening them from legal punishment and since while attempting to dispose of the dead body of deceased Kiran Suryawanshi during the fateful night between 14.2.2007 and 15.2.2007, they were accosted by P.W.19 Rajendra Mohite while proceeding on motorcycle carrying a bundle containing the dead body of deceased Kiran Suryawanshi, in furtherance of their common intention and, therefore, the conviction and sentence awarded to accused Nos. 2 and 3 in that respect deserves to be confirmed. In the said context, it is material to note that the learned trial Court has awarded sentence of R.I. for one year and to pay fine of Rs.1000/, in default to suffer further R.I. for three months each to accused Nos. 2 and 3 on the said count, but it is material to note that the respondent/State has not filed any appeal for enhancement regarding the said sentence.

52. In the result, Criminal Appeal No. 61/2008 preferred by accused No. 1 Monika Kiran Suryawanshi is allowed and conviction and sentence inflicted upon her for the offences punishable under Sections 302 read with Section 34 of the

Indian Penal Code and Section 120B of the Indian penal Code as well as Section 201 read with Section 34 of the Indian Penal Code by judgment and order dated 07.02.2008 by learned Principal Sessions Judge, Dhule in Sessions Case No. 54/2007 stands quashed and set aside and the said accused No. 1 Monika Kiran Suryawanshi is acquitted of the said charges and she be set at liberty forthwith if not required in any other case. Fine, if paid, be refunded to her.

53. Criminal Appeal No.72/2008 preferred by accused No. 2 Prakash Nagraj Patil and Criminal Appeal No. 332/2008 preferred by accused No. 3 Dnyaneshwar Gangaram Mahale are partly allowed and conviction and sentence awarded to them for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and also under Section 120B of the Indian Penal Code by judgment and order dated 7.2.2008 by learned Principal Sessions Judge, Dhule in Sessions Case No.54/2007 stands quashed and set aside and the accused Nos. 2 and 3 are acquitted of the said charges. Fine, if paid by them in that respect, be refunded to them. However, the conviction and sentence inflicted upon accused Nos. 2 and 3 for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code by judgment and order dated 07.02.2008 by learned Principal Sessions Judge, Dhule in Sessions Case No. 54/2007 stands confirmed and appeal preferred by accused Nos. 2 and 3 stands dismissed to that extent. Since accused Nos. 2 and 3 have undergone the sentence of one year for the said conviction for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code, they be released forthwith if not required in any other case.

54. We quantify the fees payable to Shri M.A. Tandale, learned counsel appointed for accused No.3 in Criminal Appeal No. 332/2008, at Rs.5000/- (Rupees five thousand only)."

....emphasis supplied.

ROLES AND STATUS OF THE ACCUSED

17. Admittedly, the deceased Kiran died homicidal death but the moot issue for determination was whether the evidence brought by the prosecution in support of its case is sufficient enough to establish the link between the death of the deceased and the alleged offenders accused persons. Needless to state that it is not sufficient enough for the prosecution to submit before the Court that the death of the deceased is homicidal but it is a duty of the prosecution to establish its case against the accused persons with justifiable and legal evidence so as to prove their guilt beyond reasonable doubt.

18. Before evaluating the merits of the circumstantial evidence, it is imperative to clearly delineate the alleged roles of the accused persons, the deceased, and their legal status:

A. **The Deceased (Kiran Suryawanshi):** The victim of the homicidal death, who was employed at ICICI Bank and was the husband of accused no. 1.

B. **Accused No. 1 (Monika Kiran Suryawanshi):** She is the wife of the deceased. Their marriage in 2001 was a love marriage, and they resided together at plot no. 103, Shramsafalya Colony, Deopur, with their daughter. The prosecution alleged that she had an extramarital affair with accused no. 2, and pursuant to a conspiracy,

she administered sedative tablets and injections to her husband before smashing his head with a grinding stone. She was convicted by the Trial Court but entirely acquitted by the High Court of all charges under Sections 302, 120B, and 201 read with Section 34 IPC.

C. **Accused No. 2 (Prakash Nagraj Patil):** A neighbour residing at plot no. 104, Shramsafalya Colony, who allegedly had a love affair with accused no. 1. The prosecution alleged he conspired with accused no. 1 to commit the murder and was subsequently caught red-handed transporting the victim's dead body on a motorcycle. He was acquitted by the High Court of the major charges of murder and conspiracy (Sections 302 and 120B IPC) but was convicted for causing the disappearance of evidence under Section 201 read with Section 34 IPC, receiving a sentence of one year of rigorous imprisonment. As he had already undergone this sentence, he was directed to be released.

D. **Accused No. 3 (Dnyaneshwar Gangaram Mahale):** A friend of accused no. 2. He was alleged to be a co-conspirator who helped dig a ditch near Nakane Dam to bury the body and was intercepted by the police while riding pillion on the motorcycle carrying the deceased's body. Similar to accused no. 2, he was acquitted by the

High Court under Sections 302 and 120B IPC, but convicted under Section 201 read with Section 34 IPC. Having served his one-year sentence, he was released.

E. **Accused No. 4 (Deepak Ramesh Patil):** Another friend of accused no. 2, who was arrested later at Manas Hospital in Aurangabad by Investigating Officer P.W.26 (PSI Govind Tamhankar). He was alleged to have supplied the sedatives. He was acquitted by the Trial Court of all charges, as the evidence regarding the sedatives was thoroughly inconclusive. He is not a subject of the present appeals.

THE LEGAL STANDARD FOR CIRCUMSTANTIAL EVIDENCE

19. The case of the prosecution rests entirely upon circumstantial evidence, as there is no direct ocular witness to the murder of Kiran Suryawanshi. In cases pivoting on circumstantial evidence, the law is well-settled. As laid down by this Court in the landmark judgment of ***Sharad Birdhichand Sarda v. State of Maharashtra***¹, the prosecution must establish a complete and unbroken chain of circumstances that unerringly points to the guilt of the accused, excluding every other reasonable hypothesis of innocence. The

¹ 1984 SCC (4) 116

circumstances must be conclusive in nature, establishing that the accused, and the accused alone, is the perpetrator of the crime. We find that the High Court correctly applied this standard in identifying vital lacunae, infirmities, and deformities in the prosecution's case.

20. If we consider the factual and legal points of the case at hand then first of all we need to analyse the motive which is alleged to be the extramarital affair between the accused nos. 1 and 2. The prosecution posited that accused no. 1 and accused no. 2 were engaged in an illicit romance, providing the motive for the conspiracy. To prove this, reliance was placed heavily on the testimonies of P.W.13 (Jitendra Neve) and P.W.18 (Lalit Bhavsar). P.W.13 testified that accused no. 2 showed him a photograph of accused no. 1 on a computer, boasting she was his lover. P.W.18 stated that accused no. 2 asked him to hand over a gift packet to accused no. 1.

21. However, during cross-examination and legal scrutiny, this motive severely flounders. The defence correctly argued that there is absolutely no positive legal evidence on record to prove a *reciprocal* love affair. At its highest, the evidence of P.W.13 and P.W.18 depicts a one-sided infatuation harboured by accused no. 2 towards accused no. 1. There is no cogent evidence proving that accused no. 1 reciprocated these feelings or harboured any animosity toward her

husband. Mere production of telephone records does not substitute substantive proof of an illicit affair leading to murder. Thus, the motive is inherently weak and insufficient to anchor a conviction for murder.

(emphasis supplied)

The 'Last Seen' Theory

22. The prosecution examined P.W.25 (Rajendra Goswami), an office colleague of the deceased, to establish that the victim was last seen alive in his house with accused no. 1. P.W.25 claimed he dropped the deceased at his residence between 8:30 p.m. and 9:00 p.m. on the fateful night of 14.02.2007, and waited until he went inside.

23. The defence effectively rebutted this by pointing out the unnatural conduct of P.W.25, there was no logical reason for him to wait outside until the deceased entered the house, especially when P.W.25 had his own scooter. Furthermore, accused no. 1, in her statement under Section 313 of the CrPC, provided a highly probable defence wherein she stated that her husband wished to attend a party with friends (including accused no. 2) and left the house that at night despite her opposition. Given the prosecution's failure to conclusively establish the exact time of the offence or the exact time

of death, the High Court rightly dismissed the “last seen” evidence of P.W.25 as a weak type of evidence.

DIGITAL AND TELEPHONIC EVIDENCE

24. The prosecution sought to establish a conspiracy through call detail records. It was alleged in the FIR that accused no. 1 called accused no. 2 to her house after ensuring her husband was asleep. However, the printout data directly contradicts the prosecution’s own narrative.

25. The evidence reveals that the Reliance mobile phone (No. 9370534374) seized from accused no. 1 was actually registered in the name of her mother, Surekhabai Walvi. Further, during the house search panchnama (Exhibit 54), an Airtel mobile phone (No. 9860494427) belonging to the deceased was found inside the house. This strongly supports the defence theory that the deceased forgot to carry his mobile phones when he went out that night. Crucially, the call logs showed incoming calls from accused no. 2’s phone to accused no. 1’s phone, suggesting the deceased might have been using accused no. 2’s phone to contact his own home. Most crucial for the prosecution is the total absence of any outgoing call from accused no. 1’s phone to accused no. 2’s phone on the night in

question. Therefore, the FIR's claim that accused no. 1 summoned accused no. 2 is a false contention unsupported by the digital trail.

Anomalies in Seizures, Recoveries, and the Murder Weapon

26. The most fatal blows to the prosecution's case lie in the deeply flawed investigation conducted by P.W.26 (PSI Govind Tamhankar). The prosecution relied on the house search panchnama (Exhibit 54) and the memorandum of recovery under Section 27 of the Evidence Act (Exhibits 48, 94, and 95). At the behest of accused no. 1, the police allegedly recovered a blood-stained grinding stone (allegedly used for committing murder of accused), a syringe, broken glass, a nighty, and a kurta.

27. Accused no. 1 vehemently challenged these recoveries, stating in her Section 313 CrPC statement that the house search panchnama was falsely prepared and that her signatures were taken on blank papers. Notably, the search panchnama (Exhibit 54) did not even bear her signature, raising grave suspicions. Furthermore, the alleged recovery of the grinding stone and syringe (Exhibit 94) was made from a dumping place near her house which is a public area accessible to anyone, which heavily dilutes its evidentiary value.

28. On critical assessment of evidence, the High Court identified massive lapses in the handling of the seized physical evidence. The

alleged articles seized from the house of accused no. 1 and at her behest were not sealed at the spot. High Court was insisted in relying on - ***Ashraf Hussain Shah v. State of Maharashtra***², wherein paragraph 14 clearly states that the prosecution must not only prove that the articles were sealed upon seizure, but must also lead link evidence to prove they were kept in a sealed condition until they reached the Chemical Analyzer. This strict procedural requirement is mandated to completely eliminate the suspicion that blood might have been planted on the articles subsequent to recovery. In the absence of seals, the Chemical Analyzer (CA) reports (Exhibits 50 and 56) connecting the blood group 'A' to the grinding stone and clothes become highly doubtful and cannot be construed as incriminating evidence. Useful reference can be made to the judgment of the High Court in para no. 17 of ***Tulshiram Bhanudas Kambale v. State of Maharashtra***³, a recovery made under Section 27 of the Indian Evidence Act, 1872 without affixing lac seals holds absolutely no evidentiary value.

29. This court in the case ***Salim Akhtar alias Mota v. State of Uttar Pradesh***⁴, in support of the proposition held that if an article

² 1996 SCC OnLine Bom 683

³ 1999 SCC OnLine Bom 227

⁴ (2003) 5 SCC 499

is not sealed, it raises doubt about factum of recovery. Furthermore, P.W.1 (Dr. Ajit Patil), who performed the post-mortem, noted severe head injuries, including a comminuted fracture of the frontal bone, and opined that the injuries were caused by a heavy, blunt object like a grinding stone. Yet, shockingly, no blood was found on the mattresses, chaddar, or pillow in the house of accused no. 1. This physical impossibility speaks volumes and entirely contradicts the prosecution's fundamental narrative that deceased Kiran Suryawanshi was brutally bludgeoned to death in his bed.

THE CHARGE OF CONSPIRACY (SECTION 120B IPC)

30. To secure a conviction under Section 120B of the IPC, the prosecution must establish a meeting of minds and an agreement to commit an illegal act. As cited by the defence and held in ***Ashok Hiralal Yadav v. State of Maharashtra***⁵ at paragraph 9, once a conspiracy is proved, the act of one conspirator becomes the act of the other. However, the foundational prerequisite—the agreement itself—must be proved through direct or circumstantial evidence. Here, the prosecution entirely failed to adduce any convincing legal

⁵ 2009 SCC OnLine Bom 1281

evidence demonstrating that accused nos. 1, 2, and 3 hatched a pre-planned conspiracy.

31. In the case of **State (NCT of Delhi) v. Navjot Sandhu**⁶ (in para no. 97, it was held as under:

“97. Mostly, conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (per Wadhwa, J. in Nalini case at p. 516). The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible" (Tanviben Pankajkumar case, SCC p. 185, para 45). G.N. Ray, J. in Tanviben Pankajkumar observed that this Court should not allow suspicion to take the place of legal proof.

32. Also, this Court in its judgment of **Maghavendra Pratap Singh Alias Pankaj Singh v. State of Chhattisgarh**⁷, [to which one of us Justice Sanjay Karol is a member] in para no. 33 held as under:

“For the charge of criminal conspiracy under Section 120-B IPC, to be established, an agreement between the parties to do an unlawful act must exist. In some cases, direct evidence to establish conspiracy may be

⁶ (2005) 11 SCC 600

⁷ (2024) 12 SCC 401

absent, but when the lack of evidence is apparent, it is not safe to hold a person guilty under this section. To prove the offence of criminal conspiracy, it is imperative to show a meeting of the minds between the conspirators for the intended common object.”

33. Because the alleged motive of a love affair failed, the last-seen theory collapsed, and the forensic evidence from the house was fatally compromised by a lack of sealing, the chain of circumstances to prove that accused no. 1 conspired with accused nos. 2 and 3 is broken. Consequently, the accused persons are entitled to the benefit of the doubt for the charges under Sections 302 read with 34, and Section 120B IPC.

CONVICTION UNDER SECTION 201 IPC (ACCUSED NO. 2 & 3)

34. While the prosecution failed to prove the charges of murder and conspiracy, the circumstances surrounding the disposal of the body present a distinctly different legal position for accused nos. 2 and 3.

35. The evidence of P.W.19 (Police Constable Rajendra Mohite) is pivotal. On the intervening night of 14.02.2007 and 15.02.2007, at approximately 5:00 a.m., P.W.19 was returning home when he intercepted accused nos. 2 and 3 riding a motorcycle near the Panchayat Samiti Office. He noticed a suspicious bundle kept between them and observed a human foot protruding from it. When

questioned, accused nos. 2 and 3 gave evasive replies but eventually disclosed their identities as Prakash Nagraj Patil and Dnyaneshwar Gangaram Mahale.

36. P.W.19 immediately summoned his colleagues, including P.W.22 (PSI Sharad Kulkarni), who was on patrol. P.W.22 opened the bundle and discovered the dead body of Kiran Suryawanshi wrapped in a plastic bag and bedsheet, with his hands tied. Furthermore, upon examining the motorcycle (which was hired from their friend P.W.17 Rahul Jagdale), the police found blood stains on the silencer plate. The CA report confirmed that the blood on the silencer was of blood group 'A', matching the deceased.

37. Accused nos. 2 and 3 were caught red-handed. The physical reality of them transporting the deceased victim's tied body at 5:00 a.m. undeniably establishes that they knowingly caused the evidence of the commission of an offence to disappear with the explicit intention of screening the offenders from legal punishment. Therefore, the High Court was entirely correct in its considered view that the conviction and sentence awarded to accused nos. 2 and 3 for the offence punishable under Section 201 read with Section 34 of the IPC must be sustained. The Trial Court had awarded them a

sentence of rigorous imprisonment for one year and a fine of Rs. 1000/- each, which they have already undergone.

CONCLUSION

38. In light of the exhaustive analysis above, we find no error in the well-reasoned judgment of the High Court. The prosecution's case against the accused for murder and conspiracy, resting entirely on circumstantial evidence, suffers from vital lacunae, specifically the failure to establish a motive, the unreliability of the 'last seen' witness, contradictory telephonic records, the devastating failure to seal recovered articles at the spot, and the complete absence of blood in the bedroom where the brutal murder supposedly occurred. The chain of circumstances is broken, and the hypothesis of guilt is not exclusively established.

39. Accordingly, the acquittal of accused no. 1 (Monika Kiran Suryawanshi), accused no. 2 (Prakash Nagraj Patil), and accused no. 3 (Dnyaneshwar Gangaram Mahale) for the offences punishable under Section 302 read with Section 34 IPC and Section 120B IPC is hereby upheld and sustained.

40. Furthermore, the conviction and sentence inflicted upon accused nos. 2 and 3 for the offence under Section 201 read with Section 34 IPC is also confirmed. As accused nos. 2 and 3 have

already undergone the sentence of one year for the said conviction, their release, as directed by the High Court, requires no interference.

41. The appeals preferred by the State of Maharashtra are devoid of merit and are accordingly dismissed.

.....J.
[SANJAY KAROL]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
JULY 13, 2026.