

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 880 OF 2012

WILFRED ROZARIO FERNANDES

APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA

RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order dated 07.12.2010 passed by the High Court of Judicature at Bombay in Criminal Appeal no. 1345/2002, whereby the High Court has dismissed the appeal and confirmed the judgment and order dated 21.10.2002 passed by the Additional Sessions Judge, Greater Bombay in Sessions Case no. 12/1998. The trial Court had convicted the appellant/accused - Wilfred Rozario Fernandes for the offence punishable under Section 302 of the Indian Penal Code, 1860¹ and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- (Rupees one thousand only), in default thereof, to undergo a further imprisonment for a period of three months.

2. The case of the prosecution in nutshell is that on 05.10.1997, PSI D.M. Agarwal, who was on duty at Sahar Airport, received a phone call at 00.20 hours from Constable S.P.

1 for short, "IPC"

Nalavade (PW-1) informing him that a male dead body with cut-throat injuries was found lying in Talav Pakhadi Maidan, Sahar Village, Andheri (East). On making enquiry, a First Information Report (FIR), (Exhibit-4), came to be registered at the instance of Constable S.P. Nalavade (PW-1). On the next day, the dead body was identified as that of Sachin Harisingh Bogati by his father Harisingh Bhajansingh Bogati. The Investigating Officer (I.O.), after completing the investigation, had submitted the chargesheet against the appellant/accused. The prosecution having led the oral and documentary evidence before the trial Court to prove the charges levelled against the appellant, the trial court on appreciating the said evidence, convicted and sentenced the appellant as stated hereinabove. The same has been confirmed by the High Court vide the impugned judgment and order.

3. Since the case was based on circumstantial evidence, the circumstances held proved against the appellant/accused - Wilfred Rozario Fernandes by the Trial Court have been stated in paragraph 35 of its judgement. The same reads as under: -

"35. Prosecution is required by this point to prove and attribute the authorship of the injuries to the accused. As stated earlier the entire prosecution case is based on circumstantial evidence. It would be therefore expedient to give the chain of circumstances on which prosecution has adduced its evidence. The said chain consists of the following links.

- a) Accused, victim and Siraj (PW7) are the residents of the same locality and they are friends.
- b) Accused is unemployed and at the material time and he resides with his sister, Maria (PW11) and brother-in-law (PW10).
- c) There are quarrels over money between victim and the accused and motive behind this crime is one such recent quarrel between accused and victim and victim slapping accused.
- d) The accused and victim are last seen together at midnight between 05.10.1997 and 06.10.1997.
- e) The conduct of the accused in absconding immediately after the incident, staying at Goa and Belgaum and thereafter his surrender at Sahar police station on 10.10.1997.
- f) Recovery of the blood-stained shire of the accused under Section 27 of the Evidence Act at Belgaum.
- g) Evidence led by the prosecution on the aforesaid circumstances and the response of the accused to the incriminating circumstances put to him while recording his statement under Section 313 of Code of Criminal Procedure."

4. The trial Court had also, in detail, considered the evidence with regard to the appellant/accused being seen in the company of the deceased - Sachin Harisingh Bogati lastly on the previous night of the incident in question, as also, the medical and forensic evidence which comprised of the reports of

the Chemical Analyser marked as Exhibits-61, 62, 63 and 64.

5. It was held that the chopper, which was found near the body of the deceased, was having blood stains of the Blood Group - B, which was the same chopper used for inflicting the cut-throat injuries on the body of the deceased. It was also proved that the full shirt which the accused had worn and which was recovered under the Recovery Panchnama (Exhibit-15), also had the stains of the blood with the Blood Group - B, which was found to be of the deceased.

6. It is significant to mention that the appellant/accused in his statement under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.), had failed to explain the incriminating circumstances appearing in evidence against him. This factum was also taken as an additional link to establish the guilt of the appellant/accused.

7. The Trial Court after appreciating the entire evidence on record had passed a very well written judgement.

8. The High Court also, after having considered and appreciating the evidence, had concurred with the findings of the trial Court holding that all the circumstances established in the case taken together were clear pointers towards the guilt of the appellant-accused.

9. Having regard to the concurrent findings of facts recorded by the trial Court and the High Court, we are not inclined to interfere with the impugned judgment and order passed by the High Court. The appeal is accordingly dismissed.

10. Since the appellant/accused - Wilfred Rozario Fernandes is on bail, he is directed to surrender before the trial Court within three weeks and latest by 13.09.2023.

11. Pending application(s), if any, shall stand disposed of.

.....J.
(BELA M. TRIVEDI)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
AUGUST 23, 2023.

ITEM NO.109

COURT NO.15

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCriminal Appeal No. 880/2012

WILFRED ROZARIO FERNANDES

Appellant(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

Date : 23-08-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE BELA M. TRIVEDI
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s)

Mr. Viresh B. Saharya, AOR
Mr. Akshat Agarwal, Adv.

For Respondent(s)

Ms. Rukhmini Bobde, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.
Ms. Soumya Priyadarshinee, Adv.
Mr. Ankit Ambasta, Adv.
Mr. Amit Kumar Srivastava, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Since the appellant/accused - Wilfred Rozario Fernandes is on bail, he is directed to surrender before the trial Court within three weeks and latest by 13.09.2023.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed order is placed on the file)