

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. (S).291 OF 2011

JASHIBEN @ JYOTSNA H VASAVA

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

O R D E R

This appeal arises out of an order dated 7th January, 2008 passed by the High Court of Gujarat whereby Crl.Appeal NO.1390 of 2007 filed by the appellant has been dismissed and her conviction for offences punishable under Section 302 read with Section 114 of the Indian Penal Code affirmed.

We have heard learned counsel for the State of Gujarat at some length who has taken us through the orders passed by the trial court and that passed by the High Court in appeal. The prosecution story is that the deceased-Banuben was married to accused no.1, who in turn was in an illicit relationship with the appellant herein. Since the deceased resented the illicit liason between the appellant and her husband-accused no.1, the husband, his mother arrayed as accused no.2 and the appellant all conspired to eliminate the deceased. The deceased appears to have gone missing on 5th December, 2006. Her dead body was found two days later on 7th December, 2006 on the bank of river

Narmada near village Zanore. With the completion of investigation, the police filed a charge-sheet against all the three persons named above before the jurisdictional magistrate who committed the case to the sessions before whom all the three accused persons pleaded not guilty and claimed a trial. At the trial, the prosecution examined as many as 18 witnesses apart from marking several documents in support of its version. The trial court, as noticed above, found the appellant and the two other accused, namely, husband of the deceased and her mother-in-law guilty of offences punishable under Section 302 read with Section 114 of the I.P.C. The husband and the mother-in-law were additionally found guilty under Section 498-A and Section 201 of the I.P.C. and sentenced to undergo imprisonment for life besides a fine of Rs.1,000/- each. Default sentence of a further imprisonment for a period of one year was also awarded.

It is not clear whether the husband and the mother-in-law of the deceased filed any appeal against their conviction and sentence. What is clear is that the appellant, the alleged paramour, preferred Criminal Appeal NO.1390 of 2007 against her conviction and sentence which was dismissed by the High

Court by its order dated 7th January, 2008, impugned in the present appeal.

This appeal, in our opinion, must succeed. We say so because apart from the statements of three brothers of the deceased, examined at the trial as PWs 9, 10 and 11, to establish the existence of an illicit relationship between the appellant and the husband, there is no other evidence worth the name to support the conviction of the appellant. Learned counsel for the respondent-State argued and in our opinion rightly so that the evidence on record sufficiently proves a strong motive for the commission of the offence by the husband or the appellant herein. But a motive by itself is not enough to sustain a conviction for a capital offence, or any other offence for that matter. Apart from the existence of motive, the only other evidence to which our attention was drawn by learned counsel for the respondent-State was the alleged recovery of an iron rod which according to the prosecution was used by the accused persons for an assault in the private area of the deceased. The recovery of iron rod, it is noteworthy, was allegedly made after the performance of the post-mortem examination of the deceased. The rod was not even

blood-stained to constitute an incriminating circumstance against the accused. There is no other circumstance much less a cogent one to suggest that the appellant was a privy to the commission of the offence or had abetted the commission of the crime in any manner. The courts below, in our opinion, committed an error in recording an order of conviction against the appellant on the basis of suspicion only.

In the result, this appeal succeeds and is hereby allowed. The appellant shall stand acquitted of the charges framed against her. As the appellant is on bail, her bail bonds shall stand discharged.

.....J
(T.S. THAKUR)

.....J
(ADARSH KUMAR GOEL)

.....J
(R. BANUMATHI)

NEW DELHI
DATED 16th OCTOBER, 2014.

ITEM NO.109

COURT NO.2

SECTION IIB

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(s). 291/2011

JASHIBEN @ JYOTSNA H VASAVA

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

(With office report)

Date : 16/10/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. Kamal Mohan Gupta, AOR

For Respondent(s) Mr. Jesal, Adv.
Ms. Hemantika Wahi, Adv.UPON hearing the counsel the Court made the following
O R D E R

In terms of the signed order, the appeal is allowed:

"In the result, this appeal succeeds and is hereby allowed. The appellant shall stand acquitted of the charges framed against her. As the appellant is on bail, her bail bonds shall stand discharged."

(MAHABIR SINGH)
COURT MASTER(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)