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**(2015) 01 BOM CK 0278**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 1034 of 2005**

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|---------------------------------------|------------|
| Akram Mohd. Munawar Shaikh and Others | APPELLANT  |
| Vs                                    |            |
| The State of Maharashtra              | RESPONDENT |

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**Date of Decision :** 20-01-2015

**Acts Referred:**

Evidence Act, 1872 — Section 27  
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

**Citation :** (2015) ALLMR(Cri) 2661

**Hon'ble Judges :** P.V. Hardas, J; Shalini Phansalkar Joshi, J

**Bench :** Division Bench

**Advocate :** Yug Mohit Chaudhary, for the Appellant; H.J. Dedhia, APP, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dr. Shalini Phansalkar Joshi, J—The Appellants are the Original Accused, who stand convicted for the offences punishable under Sections 302 and 201 r/w. 34 of the IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 5,000/- each, in default to suffer R.I. for six months and further sentenced to suffer R.I. for two years and to pay fine of Rs. 2,000/- each, in default to suffer R.I. for three months, by the Additional Sessions Judge, Greater Bombay by his Judgment dated 30th September, 2005 in Sessions Case No. 490 of 2002, by this Appeal challenges their conviction and sentence. Facts, which are necessary, for deciding this Appeal can briefly be stated thus:--

"Appellants and deceased Suresh were friends inter se. On 19th February, 2002, at about 11:30 p.m., Suresh left the house along with the Appellants. However, he did not return. On the next day, his dead body was found lying at Darukhana, which is in the vicinity of his house. The dead body was fished out by the fire brigade officers. His father PW-2 Balu Kumbhar identified his dead body. PW-13 PI Laxman Bhingade, on receipt of the information, went to the spot, conducted the Inquest Panchanama (Exhibit-25) and referred the dead body for post

mortem. In the post mortem conducted by PW-1 Dr. Bhushan Jain, the ligature mark was noticed around the neck, leading to the cause of death as "asphyxia due to strangulation". Hence, after the initial ADR No. 11 of 2002, on the complaint (Exhibit-21) of PW-2 Balu Kumbhar, C.R. No. 15 of 2002 came to be registered against the Appellants for committing murder and disposing of dead body of Suresh."

2. During the course of investigation, the statement of several witnesses came to be recorded. The Appellants were arrested. At the instance of Appellant No. 1 Mohd. Akram, the rope used in commission of the offence came to be seized under Section 27 of the Evidence Act. At the instance of Appellant No. 2, since deceased, the Panchanama of the Spot, where the offence took place, was drawn vide Exhibit-27. The clothes of the deceased, which were seized at the time of Inquest Panchanama (Exhibit-28), and the clothes of the Appellants, seized under Panchanama (Exhibit-30), were sent to the Chemical Analyzer and after completion of due investigation, Charge-Sheet came to be filed in the Court.

3. The post mortem on the dead body was conducted by PW-1 Dr. Bhushan Jain, who was attached, at the relevant time, to J.J. Hospital. On external examination, he found the following injuries on the dead body of the deceased:--

"(i) CLW over left forehead in supra orbital region above medial 1/3 of eye brow of size 1 x 0.5 cm muscle deep margins reddish.

(ii) Contusion over right forehead in supra orbital region above lateral 1/2 of eye brow of size 2 x 1 cm. Reddish.

(iii) Contusion over right mastoid region of size 5 x 4 cm. Reddish.

(iv) Abrasion over nose anteriorly of size 2 x 1 cm. Reddish.

(v) Contusion over chin anteriorly of size 1.5 cm. x 1 cm. Reddish.

(vi) Contusion over chin lateral to injury No. 5 on left side of size 1.5 cm. x 1 cm. Reddish.

(vii) Horizontal, completely encircling ligature mark around neck anteriorly situated at the level of thyroid cartilage and posteriorly at the level of C5 vertebra of size 39 x 0.5 cm. It is reddish in colour, more prominent on front side of neck. Peeling of skin at places upper edge of groove ecchymosised. Base of the ligature mark dry, hard parchment like. On dissection of the neck underneath the ligature mark reveals bleeding into skin layers, dry white glistening parchment like fat, blood infiltration seen underneath muscles thyroid capsules thyroid gland. Superior horn of right thyroid cartilage fractured anteriorly inverted, infiltrated staining seen at fractured margins. Mucosa of the larynx, trachea and bronchitis grossly congested. Lymph/nodes above the ligature mark. Congested and engorged.

(viii) Abraded contused nail marks seen over neck anteriorly below injury No. 7 near midline two in number on right side one midline two in number on right side

one below another of size 0.6 x 0.2 cm each and on left side one in number of size 0.6 x 0.2 cm. Situated obliquely. Both ends directed towards midline reddish in colour. On cut section bleeding into underlying structures seen.

(ix) Muscoal abrasions seen over upper lip in relation to central incisor teeth.

(x) Abrasion over dorsum of left hand of size 4 x 3 cm. reddish.

(xi) Abrasion over wrist right posteriorly 3 x 2 cm. Reddish.

(xii) Abrasion over dorsum of right hand of size 4 x 2 cm. Reddish."

4. On internal examination, he found the following injuries on the dead body of the deceased:--

"Subgadial contusion seen over right frontoparietal region of size 4 x 3 cm. Reddish. Right supra orbital region of size 3 x 2 cm. Reddish and left supra orbital region of size 3 x 2 cm. Reddish.

Brain - Meninges congested. Brain matter congested and oedematous. On cut section petechal haemorrhage seen over white matter.

Pleura- congested and as per column No. 17.

Larynx Trachea and Bronchi/congested and oedematous. No free fluid seen. Both lungs congested and oedematous. On cut section petechial haemorrhage seen.

Heart - Right side with full of blood. Left side empty.

Features natural. Eyes closed. Pupils dilated and fixed. Mouth partly open. Tongue clintched between teeth. Oozing of blood through nostrils. Oozing of whitish froth through the mouth."

5. According to him, all these injuries were ante-mortem in nature and Injury No. 7, i.e. the ligature mark, was sufficient in the ordinary course of nature to cause the immediate death. Accordingly, he has issued the Post Mortem Report (Exhibit-18).

6. On the case being committed to the Sessions Court, the Trial Court framed the charge against the Appellant vide Exhibit-2 for the offences punishable under Sections 364, 302 and 201 r/w. 34 of the IPC. The Appellants abjured the guilt and claimed trial, raising the defence of false implication.

7. In support of its case, Prosecution examined in all 14 witnesses and on appreciation of the said evidence, the Trial Court convicted and sentenced the Appellants and the Original Accused No. 2, since dead, for the offences punishable under Sections 302 and 201 r/w. 34 of the IPC and acquitted them for the offence punishable under Section 364 r/w. 34 of the IPC.

8. We have heard the submissions advanced at the Bar by the learned Counsel for the Appellants Shri. Yug Mohit Chaudhary and Mr. H.J. Dedhia, the learned A.P.P. In our considered opinion, in order to deal effectively with the rival

contentions raised by them, it would be useful to refer to the circumstances and the evidence of witnesses, on which the Prosecution is placing reliance.

9. This case is based on circumstantial evidence alone and only three circumstances are relied upon by the Prosecution, firstly, that of motive; secondly, last seen; and, thirdly, discovery of the rope at the instance of Appellant No. 1 Mohd. Akram.

10. To prove the motive for commission of the offence, Prosecution has relied upon the evidence of PW-2 Balu, PW-3 Vaishali, the wife of the deceased, and PW-10 Reshma Shaikh. It is deposed by these witnesses that PW-10 Reshma Shaikh was initially the girl friend of Appellant No. 1 Mohd. Akram and, subsequently, it was suspected by the Appellant No. 1 Mohd. Akram that she has started having relations with deceased Suresh. Hence, as deposed by PW-3 Vaishali, three to four months before the incident, the Appellants had raised quarrel with the deceased and gave threats to kill him. So far as PW-1 Balu is concerned, he has not deposed anything about his earlier quarrel. However, PW-3 Vaishali, the wife of the deceased, has deposed about the same by stating that such threatening was given to the deceased in her presence by standing inside their house. However, in the same breath, she has stated that, even after the alleged threats, her husband, i.e. Suresh, used to accompany the Appellants and they were friends as such. Even PW-1 Balu, Suresh's father, has also admitted that Appellants used to come to their house even after the alleged incident of quarrel and Suresh used to move around with them. Their evidence further shows that on the date of incident also, Suresh had voluntarily accompanied them and left along with them after taking meals. Neither his father nor his wife found anything suspicious or unnatural in Suresh accompanying the Appellants. Even after the dead body of Suresh was found, initially, no suspicion was raised against any of the accused person. Hence, ADR number was registered. Only subsequently the Appellants were implicated therein. Even the evidence of PW-10 Reshma, it nowhere discloses that the relations between the Appellants and deceased had become so strained. Therefore, as regards the motive part, the Prosecution has failed to prove the same by bringing convincing and reliable evidence on record. Even otherwise, motive alone cannot become sufficient to prove the guilt of the Accused. There has to be some more incriminating circumstances to implicate the Accused with the offences alleged.

11. The next circumstance relied upon by the Prosecution is that of deceased last seen in the company of the Appellants. It is deposed by PW-2 Balu and PW-3 Vaishali that after taking the meals on that night, Suresh left along with the Appellants and she saw them going towards weighing bridge of Potiya. Suresh, however, did not return and on the next day, early in the morning, his dead body was found. However, this circumstance of Suresh being last seen in the company of the Appellants is not taken by Prosecution to its logical conclusion, because the Prosecution itself has examined PW-9 Ranjana Thappa, who has deposed that

on that night, initially, Appellant No. 1 Mohd. Akram came to her. He was her regular customer. She went with him in the room and after the job was over, he left within ten minutes. Thereafter some time Suresh came. She had some casual talk with him as he was not her regular customer and thereafter Suresh left at about 2:15 a.m. Thus, as per her evidence, she has seen Suresh alone in the night at about 2:05 a.m. and she was with him for 10 to 15 minutes. Therefore, the circumstance that Suresh was last seen in the company of the Appellants on that night is not proved at all by the Prosecution. Conversely, as per the own witness examined by the Prosecution, Suresh was lastly in the company of PW-9 Ranjana Thappa.

12. The next and the last circumstance relied upon by the Prosecution is that of the recovery of the rope at the instance of Appellant No. 1 Mohd. Akram. As per the evidence of PW-13 PI Bhingade, the Investigating Officer, and PW-7 Panch Witness Tanaji, during Police custody on 21st February, 2002, Appellant No. 1 Mohd. Akram gave a disclosing statement that he will produce the rope and then he took the Police and Panch to the place from where the rope was taken out from the water tank. However, PW-7 Panch Witness Tanaji has stated that he cannot identify or even describe the rope. Further, he has admitted that only his signatures were obtained on the Panchanama after returning to the Police Station. He has also not stated anything about the disclosure statement of the Appellant No. 1, which was material to prove the recovery of the rope.

13. Though there is evidence of Investigating Officer, PW-13 PI Bhingade on this aspect, there is no identification mark on the rope and mere recovery of the rope in the absence of any connecting material will not be sufficient to prove the chain of circumstances, which is necessary to be established by the Prosecution by bringing cogent, reliable and convincing evidence on record, which Prosecution has failed to do in the present case.

14. Except for these three alleged incriminating circumstances, which Prosecution has failed to prove in this case, there is no other evidence on record to prove the complicity of the Appellants in the offences for which they are tried. Consequently, Criminal Appeal is allowed and the conviction and sentence of the Appellants/Original Accused No. 1 and Original Accused No. 3 is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by them, be refunded to them. Since the Appellant No. 1/Original Accused No. 1 - Mohd. Akram Mohd. Munawar Shaikh is in jail, he be released forthwith, if not required in any other case. Bail Bonds of Appellants stand cancelled.