IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 545 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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SIDDIK ISMAILE KUMBHAR
Versus
STATE OF GUJARAT

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Appearance:
DARSHAN M VARANDANI(7357) for the Appellant(s) No. 1
MR RONAK B RAVAL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI
Date : 29/01/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence dated 01.12.2018 passed by the learned 7th (Ad-hoc) Additional Sessions Judge, Bhuj-Kutchh in Sessions Case No.61 of 2015 for the offences punishable under Section 302 and 201 of the Indian Penal Code, whereby the appellant – accused has been sentenced for the offence punishable under Section 302 of the IPC to undergo imprisonment for life with fine of Rs.2,000/-, in default, to undergo two months SI and for the offence punishable under Section 201 of the IPC to undergo three years imprisonment with fine of Rs.200/-; in default to undergo ten days' SI, the appellant has preferred the present appeal under Section 374 of the

Code of Criminal Procedure, 1973 ("the Code" for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1. The complainant – Aamad Abdul Rehman Kureshi gave a complaint on 16/07/2015 *inter alia* stating that marriage of his sister – Halima was solemnized with one Gafur Aadam Lakha Sama prior to twenty years and they were doing some labour work. It is further the case of prosecution that on 13/07/2015 complainant went to Mumbai to attend some function and on 14/07/2015 his brother-in-law informed him over the phone that his sister Halima did not return to home after leaving in the noon for begging and he had made inquiry at his relatives; but did not find her. It is the case of prosecution that on 15/07/2015 the complainant came from Mumbai and met his brother-in-law and started for search of deceased. That thereafter in the noon at about 1:30 p.m. some smell was oozing out where they had gone and found the dead body of her sister and therefore, immediately the village people including the husband of the deceased were called and found that dead body of the deceased was lying covered in blood with injuries on the face, and neck. Since in regards to the incident, they had doubt over the appellant accused and his family members, as the appellant and deceased had some illicit relationship since last seven to eight years and time and again some quarrel was taken place and deceased was also asked not to keep any such relationship which had resulted into the offence in question.

2.2. Accordingly, FIR being CR No.50/2015 came to be registered with Mandavi Police Station. The Police after investigation charge-

sheeted the accused for the aforesaid offences before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 302 IPC, the case was committed to the Sessions Court. On conclusion of evidence on the part of the prosecution, the learned Sessions Court put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as provided under Section 313 of the Code. In the further statement, the respondent-accused denied all incriminating circumstances appearing against him as false and further stated that he is innocent and a false case has been filed against him. After examining the evidence, witness testimonies and submissions from both sides, the learned Sessions Court recorded the finding convicting the respondent-accused.

3. We have heard learned Advocate for the appellant – convict and learned APP for the respondent-State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Learned advocate appearing for the appellant – accused has submitted that since the entire case of the prosecution rests on the circumstantial evidence, the prosecution has failed to prove its case beyond the reasonable doubt and does not prove the entire chain and therefore, learned Sessions Court has erred in convicting the appellant – accused. It is further submitted that if the FIR in question is seen at the first instance, the complainant gave the name of the accused on the basis of the presumption of doubt and as such no specific role or description of the accused having seen at the place of offence pointing out the role of the accused in commission of the crime. It is therefore submitted that when the

conduct of the prosecution witnesses are highly unnatural and improbable and inconsistent and therefore, learned Sessions Court ought to have awarded the benefit of doubt to the appellant – accused.

4.1. It is further submitted that the learned Sessions Court has awarded the conviction on the appellant – accused on the basis of the scientific evidence and on the basis of the confessional statement made by the accused before the Police which has no evidentiary value in the eye of law. It is further submitted that as such no such witness who has last seen the accused together before the commission of crime has come forward and therefore, the theory on the basis of which the conviction has been recorded is erroneous and therefore the appellant – accused ought to have been acquitted.

4.2. It is further submitted that the learned Sessions Court has heavily relied upon the contents of the Panchnama drawn post the incident in question and the evidence of the Investigating Officer to hold the appellant – accused guilty for the offence of murder. Whereas, the case of the prosecution rests on the last seen together theory where no such independent witness is examined before the Court who have seen the deceased and the accused together prior to commission of the offence in question and therefore, it is submitted that present appeal may be allowed and the conviction and sentence recorded by the learned Sessions Court may be set aside.

4.3. In support of his submissions, learned advocate for the appellant – accused has relied upon the decision in case of ***Laxman Prasad Alias Laxman vs. State of Madhya Pradesh [(2023) 6 SCC 399]*** and ***Munikrishna alias Krishna etc. vs. State by Ulsoor PS [2022 SCC OnLine SC 1449]*** and has submitted that as per the ratio laid

down by the Hon'ble Apex Court if one link in chain of circumstances to be missing and not proved, the conviction based on circumstantial evidence is required to be set aside.

4.4. By making the above submissions, learned advocate for the appellant – accused would submit to allow this appeal and to quash and set aside the judgment and order of conviction and sentence.

5. Mr.Ronak Raval, learned APP appearing for the respondent – State submits that the impugned order of conviction and sentence does not require to be interfered with as the learned Sessions Court has after thorough appreciation of evidence has come to the conclusion and recorded the conviction of the appellant – accused on the basis of the evidence adduced before the Court. It is further submitted that the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that evidence of the witnesses examined before the Court has supported the case of prosecution and narrated the incident as it was happened. It was submitted that no such omission or contradiction in the evidence of the said witnesses have come on record to discard their evidence. He has further submitted that the prosecution witnesses have deposed before the Court narrating the entire chain of sequence whereby the involvement of the accused is proved which corroborates with the scientific evidence produced and proved by the prosecution and therefore, the judgment and order of conviction and sentence may not be interfered with.

6. Heard the learned Advocate for the appellant – accused Mr.Darshan Varandani and learned APP Mr.Ronak Raval for the

respondent – State and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

7. At the outset, if the case on hand is required to be seen, it is a case of a circumstantial evidence and while leading the case, the prosecution is required to establish mainly three links of chain (i) motive; (ii) last seen; and (iii) recovery of weapon of assault, showing involvement of the accused. Thus, while dealing with the evidence on record, the Court concerned is required to appreciate as to whether the aforesaid three aspect is completed to prove the case of prosecution or not and if no then the benefit of that would go to the accused as the prosecution has failed to prove its case beyond reasonable doubt while missing to complete the entire of circumstance.

8. Now, reverting to the facts of the case on hand is concerned, it appears from the record that PW 11 – Abdulgaffur A Sama (Exh.61) who was husband of the deceased made a phone call to PW 4 – Aamad Kureshi – brother of the deceased (Exh.34) who was at Mumbai at that time and informed him that Halima (deceased) had gone for begging; but did not return back. Thereafter, brother of the deceased returned from Mumbai and met husband of the deceased and they alongwith PW 15–Jayantilal Maheshwari friend of the complainant started to search the deceased, whereupon the dead body of the deceased was found and thereafter, the complaint was filed on the basis of suspicion against the appellant-accused and his family members. It also appears from the record that upon filing of the complaint, the appellant was arrested and the remand was sought and accused was sent for

medical examination; wherein a short history was recorded about committing sexual intercourse with Halimabai on 14/07/2015 (Exh.22), as also while on remand period the appellant had given confessional statement before the Police of having committed an offence and thereby the learned Sessions Court has come to the conclusion that deceased was last seen together with the accused and considered the statement before the Police as confessional statement and thereby recorded the conviction of the appellant.

9. Now, the evidence of the complainant PW 4 - Aamad Kureshi who is examined at Exh.34 is seen, he has deposed in his testimony that he went to Mumbai on 13/07/2015 and at that time his brother-in-law called him that his sister went for begging; but did not return and therefore, he came from Mumbai on 15/07/2015 and met him and thereafter started to search her and while doing so at the sim of Aasambiya Village, some smell was oozing out there-from and having gone there, they found the dead body of the deceased – Halima and thereafter called the Sarpanch of the Village and other persons and found that dead body of the deceased was covered in blood having injuries on the face and neck and found that she was murdered. Witness has further deposed that Police was called and complaint was given at Exh.35 against the Siddik Ismail Kumbhar, Salim Mamad Kumbhar and Anvar Pathan and Umar Pathan on the basis of suspicion since they were adducing threat to his sister (deceased) and often quarrel was taken place between them and therefore, doubt went upon them. Witness has further deposed about the procedure undertaken by the Police of drawal of the Panchnama and identified the accused – Siddhik Ismail Kumbhar before the Court. Witness has been cross-examined by the other side wherein he has admitted that complaint at Exh.35 was given

on the basis of suspicion of his sister having been murdered and he has stated in the complaint that there was a doubt.

10. Thus, as can be seen from the evidence of this witness, there is no direct evidence to link the accused with the crime in question and merely on the basis of suspicion, the complaint came to be lodged naming the accused-appellant. No doubt, this witness has also stated about the earlier incident of quarrel having taken place between the wife and children of the accused with the deceased – Halima as there was an allegation of there being illicit relationship between the accused and deceased since last seven to eight years and therefore doubt cast on the accused; but it would not be sufficient to link the accused with the crime. This witness has neither seen the accused with the deceased prior to commission of offence nor has any personal experience wherein in his presence some altercation was taken place between both the sides and therefore, the learned Sessions Court has materially erred in relying upon the evidence of this witness by holding that since five names were mentioned in the FIR on the basis of suspicion wherein the first name appears is of the present appellant which can be said to be the possible reason of suspicion. As there could not be any selective piece of evidence as to drag someone. Thus, the learned Sessions Court has materially erred in relying upon the evidence of this witness as the involvement of the appellant – accused is not proved in commission of the crime in question from the evidence of this witness.

11. Next important aspect upon which the learned Sessions Court has placed reliance is the statement made before the Police by the accused – appellant wherein the accused had made confession of

having committed a crime, however the said statement does not have any evidentiary value in the eye of law unless otherwise the same has been further recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure; which in the present case has not been done and therefore, the conviction recorded by the learned Sessions Court believing such confessional statement of the accused cannot have the leg to stand in the eye of law.

12. It also appears from the record that as is reflected from the evidence of the PW No.2 – Dr. M R Zola (Exh.20) who conducted the physical examination of the accused on 17/07/2015 after being arrested and the accused gave history before the said witness that he committed sexual intercourse with the deceased Halimabai w/o Adam Lakha Sama on 14/07/2015 (prior to her murder); however no such marks of injury or any other spot were noticed or found from his private part and samples were obtained and sent for FSL Examination. It also appears from the record that the doctor who examined the accused after being arrested does not indicate in the certificate that any injury on the body of the accused was noticed. However, the arrest Panchnama (Exh.49) records that bruises are seen on the nose of the accused which was as a result of his being running after committing the crime as admitted by him; however the said fact has no evidentiary value in the eye of law but, the learned Sessions Court has failed to consider such aspect in its spirit and recorded the conviction on the basis of the statement made by the accused before the police, which has no value in the eye of law.

13. Thus, considering the aforesaid two aspects, the learned Sessions

Court has believed the theory of last seen together to link the accused with the crime in question and hold the accused guilty considering the confessional statement recorded before the Police which is not admissible in the eye of law and gave history of committing sexual intercourse with the deceased before the Doctor who performed his physical examination; which in the considered opinion of this Court cannot be made basis for recording conviction of the appellant on the theory of last seen together.

14. It is required to be noted that theory of last seen together cannot be believed rather proved on the basis of confessional statement of the accused in absence of any eyewitness who has seen the accused with the deceased prior to incident in question. At this juncture, a beneficial reference can be made to the decision of the Hon'ble Apex Court in the case of ***Allarakha Habib Memon Etc. vs. State of Gujarat [2024 INSC 590]*** on the aspect of confessional statement and relevant observations made in paragraph No.40 and 41 reads thus:

"40. The trial Court as well as the High Court, placed extensive the confessions of the accused appellants Mohmedfaruk @ 39 Palak Safibhai Memon and Amin @ Lalo recorded by the Medical Officer, Dr. Arvindbhai(PW-2) while preparing the injury reports of the accused.

41. We find that these so-called confessions are ex-facie inadmissible in evidence for the simple reason that the accused persons were presented at the hospital by the police officers after having been arrested in the present case. As such, the notings made by the Medical Officer, Dr. Arvindbhai(PW-2) in the injury reports of Mohmedfaruk @ Palak and Amin @Lalo would be clearly hit by Section 26 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act'). As a consequence, we are not inclined to accept the said admissions of the accused as incriminating pieces of evidence relevant under Section 21 of the Evidence

Act. The circumstance regarding identification of place of incident at the instance of the accused is also inadmissible because the crime scene was already known to the police and no new fact was discovered in pursuance of the disclosure statements".

15. It further appears from the record that the mobile phone of the accused was recovered from the husband of the deceased. As per the evidence of PW-9 Bhimji Gabhabhai Jogi (Exh.56) & PW – 10 – Bhupendra Valji Jogi (Exh.59), who are the Panch Witness of recovery of mobile of the appellant have admitted in the cross-examination that the husband of the deceased informed the police in their presence that he got the mobile on 15.07.2015 in the morning at around 7 a.m. when he was walking on the said road and he had removed the SIM card from the said mobile and put his own SIM card. He put the said SIM card in his pocket, but thereafter lost the same. He used the said phone for one day only on 15.07.2015 and thereafter kept it at home. The call details from the mobile of the accused are from 14.07.2015 to 23.07.2015 and this Panchnama was drawn on 11.09.2015 so till the said date he was in possession of the said phone. Thus, the entire recovery seems to be doubtful and does not inspire any confidence.

16. It further transpires from the record that the learned Sessions Court had heavily relied upon evidence of PW - 8- Sulemansa Kadarsa Saiyed (Exh.50) - Panch witness of discovery Panchnama of clothes of the accused worn at the time of incident and the recovery of the weapon used in the commission of crime and produced Panch Slip at Exh-54 and the Panchnama of the place of incident at Exh-55. The learned Sessions Court believed the evidence of PW-8 that the accused made a confession to the police in his presence and also agreed to show the place where he had

kept the weapon used in commission of crime and the clothes he had worn at that time and thereafter they had gone to the said place, and the accused took out the said articles No.8, 9 & 10 from the said place, the clothes and the weapon.

17. At this juncture, a useful reference can be made to the decision of the Hon'ble Apex Court in the case of ***Shaik Shabuddin Vs State of Telangana [2025 INSC 1449]*** wherein similar such circumstances in paragraph 7 and 8 has held as under:

"7. Further, the High Court relied upon the confession made by the accused to one PW15 who was called to the police station as a witness. It was the prosecution version that PW25, the DSP Asifabad, the Investigating Officer, secured the presence of PW15 and one Md. Yunus as panch witnesses and the confession was made to them. There can be no reliance placed on such a confession at the behest of the police and the finding of the High Court that it could be relied on cannot at all be countenanced for the reason also that it was made while in police custody. The next aspect on which we have serious reservation is with respect to the recovery made of MO1/mobile, MO11/knife and MO21/cash as purportedly admissible under Section 27 of the Evidence Act. Even as per the prosecution story, the same were handed over along with the confession, to PW15, which material objects were said to be in the possession of the accused at the time of arrest. MOs 12 to 20/clothes were projected as seized under Section 27 which were worn by the accused at the time of arrest.

8. There was no concealment as such and in any event, on an arrest, when the material objects could have been seized from the body of the accused on a mere search by the police, the attempt to convert it as a recovery under Section 27 cannot at all accepted. It goes against the very principle of Section 27, insofar as the disclosure relied upon can only relate to the concealment and the recovery of material objects on such disclosure made, which recovery has to be made in the persons of witnesses. We find absolutely no reason to accept the circumstances as hereinabove stated, relied on by the High Court, to convict the accused."

The learned Sessions Court ought to have considered the fact that there was animosity between the PW-8 (discovery panch) and the appellant-accused, as the quarrel had occurred between the two in the past, and the discovery Panch was telephonically called by the police. Thus, the entire recovery of the weapon used in commission of the crime and the clothes of the accused comes under the shadow of doubt and the learned Sessions Court while believing the said aspect held the accused guilty which in the opinion of this Court warrants interference.

18. It further appears from the record that the learned Sessions Court has relied upon the evidence of PW-29-Krishnasinh Harialsinh Suryavamsi (Exh.98) - Investigating officer who has deposed before the Court that the accused has confessed the commission of crime and had shown the place where he had kept the clothes and weapon, mobile phone fall down while he was running after killing the deceased and the said mobile was recovered from the husband of the accused, drew the panchnama of the place shown by the accused. In spite of the fact that the mobile phone of the accused was recovered from the husband of the deceased, he was not questioned by the police; nor was any investigation was made by the Police which also smacks doubt on the evidence of this evidence.

19. Thus, in light of the appreciation of the aforesaid evidence, it appears that this is not a case where the entire chain of circumstantial evidence is completed as required under the law so as to indicate the guilt of the accused and also exclude any other theory of crime. In the present case, the conduct of PW-11

(husband of deceased) is required to be appreciated as for the two days he did not do anything for searching his wife nor did he approach the Police. The husband has deposed that during the time of the incident, he had gone to work on the tractor of Damji Maheshwari and along with him, there was one labourer and Rajak Hassan, however no such investigation that direction was done by the police; nor was cited as witnesses which creates a serious doubt on the version of the husband of deceased, as also the evidence of the Investigating Officer.

20. In a case of circumstantial evidence, the chain is required to be completed as mandated under the law so as to indicate the guilt of the accused while discarding any other theory of the crime. If one of the link goes missing and not proved, in view of the settled law on the point, the conviction is required to be interfered with. At this stage, with profit, we may refer to the decision in case of ***Laxman Prasad Alias Laxman (supra)*** where the Hon'ble Apex Court after referring to ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]*** and ***Shailendra Rajdev Pasvan vs. State of Gujarat [(2020) 14 SCC 750]*** has quashed the conviction by making observations in paragraph 2 to 4 as under:

"2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence

against the appellant of last seen and motive, affirmed the conviction.

3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:

(1) Sharad Birdhichand Sarda v. State of Maharashtra,
(ii) Shailendra Rajdev Pasvan v. State of Gujarat.

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."

21. Thus, in view of the settled law that one must look for a complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. The circumstances from which the conclusion of guilt is drawn should be fully proved, and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, and there should be no gap left in the chain of evidence; in the present case, the chain is not completed.

22. Furthermore, there is no eyewitness to the incident. Based on suspicion, the complainant lodged an FIR against the present appellant and his five family members, and the arrest was made based on suspicion; there was no concrete material against the appellant to prove his involvement in the commission of crime and merely on the suspicion his involvement was tried to be shown which cannot take the place of evidence. From the evidence so produced by the prosecution and the way examined and analyzed by the learned Sessions Court, the prosecution has failed to prove

that as alleged, there was an illicit relationship between the accused and the deceased. Though the prosecution has heavily relied upon the phone calls between the deceased and the accused; but mobile of the accused was found from the husband of the deceased which also smacks a doubt on the aspect of recovery of mobile phone of the accused. The conduct of the husband of the deceased also comes under the cloud of doubt as after missing his wife neither he approached the Police nor made any efforts to search her and waited for his brother-in-law to come from Mumbai who after having arrived at started search and lodged the complaint.

23. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned Sessions Court, the present appeal deserves to be allowed and is accordingly allowed. The judgment and order recording conviction and sentence dated 01.12.2018 passed by the learned 7th (Ad-hoc) Additional Sessions Judge, Bhuj-Kutchh in Sessions Case No.61 of 2015 for the offences punishable under Section 302 and 201 of the Indian Penal Code is quashed and set aside. The appellant is ordered to be set at liberty, forthwith, if not required in any other case. Bail Bond shall stand discharged. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

sompura/MVP