

(2016) 01 BOM CK 0019
In the Bombay High Court
Case No : Criminal Appeal No. 402 of 2014

Ahmed Gulam Mohd. Sayyed

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Evidence Act, 1872 — Section 8
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 01 BOM CK 0019

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and Sadhana S. Jadhav, J.

Bench : Division Bench

Advocate : Nasreen S.K. Ayubi, Advocate, for the Appellant; A.S. Pai, APP, for the Respondent

Final Decision : Dismissed

Judgement

Sadhana S. Jadhav, J.—1. The appellant herein is convicted for offence punishable under section 302 of the Indian Penal Code and sentenced to suffer R.I. for life and to pay fine of Rs. 1,000/- i.d. to suffer R.I. for 3 months in Sessions Case No. 577 of 2007 by 10th Ad-hoc Additional Sessions Judge, Mumbai at Seweree vide Judgment and Order dated 27/6/2008. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as under:

(i) On 4th April, 2006 at about 7.50 a.m. PSI Sitaram Panindre of Powai Police Station received a phone call from a person who disclosed his identity as Faruq Kadar Khan informing him that a dead body of a woman is lying in an abandoned condition near Chandsaw Wali Dargah. PSI Panindre passed on the information to the Sr. P.I. Shri Rane and as per his directions, proceeded to the spot. He recorded inquest panchanama in the presence of two ladies panch witnesses and seized clothes of the deceased. The unidentified dead body was sent for post-mortem. He then lodged a report at the police station, on the basis of which C.R. No. 144 of 2007 was registered against unknown person for offence punishable

under section 302 of the Indian Penal Code.

(ii) In the course of investigation, it had transpired that the name of the deceased was Zarina Ahmed Gulam Mohammad Sayyed and that she is a permanent resident of Pune and that she was married to Ahmed Gulam Mohammad Sayyed (present appellant). It had further transpired that she was being harassed by her husband, since he suspected her chastity. She was therefore, residing with her parents and was working as house-maid in the house of one Ashok Kariya.

(iii) On 28th March, 2007 the couple i.e. present appellant and the deceased had travelled from Pune to Mumbai. They had stayed at the house of the cousin of the present appellant from 30th March, 2007 to 3rd April, 2007. That the accused had taken Zarina in Darga area and had committed her murder by stabbing her with a knife on her neck and abdomen.

(iv) After completion of investigation, charge-sheet was filed on 1/7/2007. The case was committed to the Court of Sessions and was registered as Session Case No. 577 of 2007. The prosecution has examined 16 witnesses to bring home the guilt of the accused.

3. P.W.1 Baburao Phulrare is panch for recovery of the clothes of the accused. He has proved the contents of the panchanama at Exh. 13, 14 and 15.

4. P.W.2 Sayyed Ibrahim Ismail Sayyed is the panch for recovery of bag from the accused, which was containing the wearing apparels of the deceased, wrist watch and other belongings of the couple.

5. P.W.3 Irfan Subhan Shaikh is the star witness of the prosecution, who had seen the accused in the company of the deceased just before she was found dead. He has deposed before the Court that on 3rd April, 2007 at about 1.30 p.m. he had gone behind Powai Darga for swimming. The accused was present alongwith one woman. He was trying to denude the woman of her inner clothing. P.W.3 had asked the accused to behave himself as it was a solemn place i.e. Darga. The accused had then left the spot alongwith the woman. P.W. 3 had seen the couple proceeding towards another tank, which was at a distance of hardly 5 to 10 minutes.

6. P.W. 3 has further deposed before the Court that on 4th April, 2007 in the morning he had learnt that a dead body of a woman is found near the tank. Out of curiosity, he had been to the said tank. He saw the dead body and was able to identify the dead body to be of the same woman whom he had seen on the preceding day in the company of a man. Initially, he did not disclose the fact to any one. However, his conscious did not permit him to maintain silence and therefore, on 5th April, 2007, he disclosed the said fact to his brother and alongwith the brother he went to the police station and reported to the police. The police had shown him the photographs of the unidentified dead body and immediately P.W. 3 had identified the same to be of the woman, whom he had

seen near the tank on 3rd April, 2007. He had identified the accused in the test identification parade. P.W. 3 has also identified the accused in the court.

7. In the cross-examination P.W. 3 has admitted that the place where he had gone for swimming is close to his house. On the relevant date, his friends had already gone there. He was at the tank for about 1 to 2 hours. He had seen the accused in the company of the deceased as they were on a higher slope. The defence has failed to make a dent in the testimony of P.W. 3.

8. P.W.4 Papa Khan is a panch to the disclosure memorandum of the accused made on 23rd April, 2007. In his presence the accused had disclosed that he had sold gold pendent and 12 golden beads belonging to his wife to Chamunda Jewellers at Pune. He had also disclosed that he had booked two tickets from Pune to Mumbai from Trimurti Travels at Pune. The memorandum panchanama is at Exh. 21. Panch, Police officers and the accused had proceeded to Pune. The accused had taken the investigating agency to Chamunda Jewellers. The owner of the said shop had handed over gold pendent and 12 beads to PSI Patil. It was weighing about 3 grams. The accused had then led the investigating agency to Trimurti Travels in front of Shivaji Nagar S.T. Stand. PSI Patil had seized the ticket books. Panchanama is at Exh. 22. The witness has identified the gold pendent and beads before the court. Witness has admitted that memorandum panchanama does not bear signature of the accused. However, the witness has not been shattered on any count.

9. P.W.5 Nirjmuddin Mohd. Shafi Sayyad happens to be cousin of the present appellant. He has deposed before the court that on 30th March 2007 accused had been to his house along with his wife Zarina. He was carrying a handbag and plastic bag. He has further deposed that during their stay at his house, there was quarrel in between accused and his wife. The accused had left with his wife on 3rd April 2007. On 4th April 2007 when P.W.5 returned home from his work, he was informed by his wife that one woman had been murdered near darga on a hill. On 15th April 2007, police had called upon P.W.5 to the police station and showed him photographs of dead body, whom P.W.5 identified as Zarina the wife of accused. In the cross-examination he has admitted that he did not know the reason for quarrel between the husband and wife. It appeared to him that they must have been living happily, and therefore, did not interfere with their quarrel. That Powai darga is at a distance of 40 to 50 feet from the house of P.W.5. After learning about the murder of an unidentified woman from his wife, he had not been to the spot, although the spot was in close vicinity of his house.

10. P.W.6 Prabhakar Yashwante is the Special Executive Magistrate who had conducted test identification parade. No fault can be found in the procedure conducting the test identification parade.

11. P.W.7 Nisar Ahmed Ajij Ahmed Khan has deposed before the court that on 1st April 2007 the accused had purchased a knife from his cutlery shop for Rs. 30/-. The said knife was having a plastic handle. He has identified the knife shown to

him, which was seized in the course of investigation in present case.

12. P.W.8 Razia Sultana Shaikh is a panch for the spot and inquest panchnama. She has proved the panchnama, which is at exhibit 32.

13. The station diary dated 17th April 2007 of Bund Garden police station, Pune shows that the mother of the deceased namely, Farida Khan and brothers Salim and Rashid had seen the photograph of unidentified woman and had identified it to be that of Zarina, who is daughter and sister respectively.

14. P.W.9 Rashid Khan is the brother of deceased of Zarina. He has deposed before the court that his sister Zarina was married to the accused on 11th August, 2002. They were residing at Ram Tekdi, Hadapsar, Pune. There were quarrels between the couple time and again. P.W.9 had persuaded the couple to maintain peace in their matrimonial life. That Zarina had informed him telephonically that accused had threatened her that if she accompanied her mother, he would kill her. Just one month prior to the incidence Zarina had called upon P.W.9 from the cell phone of her neighbour Nikita and informed him that she had been kept in confinement by the accused. P.W.9 had been to the house of Zarina and had found that her legs were tied with rope. He broke open the door, entered the room and had brought Zarina to their house. She had disclosed that she was being harassed and tortured by her husband. She was pregnant and accused did not want the issue and was insisting upon her to terminate her pregnancy. He was insisting upon her to eat papaya, eggs etc. He had assaulted her with iron pipe on her abdomen, due to which she had to undergo an abortion. P.W. 9 and his mother had sent Zarina to the house of Rekha Kariya to work as maid servant. The accused had been to the work place of Zarina and asked her to accompany him. P.W. 9 was informed about it by Rekha and Sunita. Thereafter, on 17/4/2007 he was shown the photographs of the dead body of Zarina. The testimony of the witness has not been shattered by the defence.

15. P.W. 10 Firoj Khan was working as a clerk in Manusha Masjid. The police had verified the Nikahnama with him in the course of investigation.

16. P.W. 11 Wahida Faisal Khan is the mother of the deceased Zarina. She has corroborated the testimony of P.W. 9.

17. P.W. 12 Prakash Ramchandra Raut is the carrier of the Muddemal articles to the forensic laboratory.

18. P.W. 13 Sanjay Thakur was attached to Powai Police Station as PSI at the relevant time. He has deposed before the Court that on 15th April, 2007 he had been to the house of Nijamuddin Mohammad Shafi Sayyad i.e. the cousin of the appellant. That the accused was being searched. On 17/4/2007 the accused had surrendered himself before Kondva Police Chowki within the jurisdiction of Wadwani Police Station. P.W. 13 had then obtained custody of the accused on 18/4/2007 as the offence was registered at Powari Police Station since the incident had taken place in the precincts of Powai Police Station. There is no

effective cross-examination as far as the actual incident or the fact that the accused had himself surrendered before the police station.

19. P.W. 14 Dr. Pravin Bagul was attached to Rajawadi Hospital. He had received A.D.R. No. 30 of 2007 from Powai Police Station. He had conducted autopsy on the dead body of Zarina. There were as many as 10 ante-mortem injuries on the person of Zarina and that injury Nos. 1 to 7 were inflicted on the vital part of the body and that injury Nos. 1 to 7 were sufficient in the ordinary course of nature to cause death. He has proved the post mortem report which is at Exh. 46.

20. P.W. 15 Sitaram Shankar Panindre was attached to Powai Police Station as PSI. He was the first person who received the information of a dead body of a woman lying in an abandoned condition near Darga. He has set the law into motion after recording the FIR which is at Exh. 48 and on the basis of which Crime No. 144 of 2007 was registered.

21. P.W. 16 Amogisidha B. Patil was also attached to Powai Police Station as P.I. On 4/4/2007 he had proceeded to the spot alongwith PSI Panindere and other police staff. He has deposed before the court that in order to ascertain the identity of the dead body as well as to locate her relatives wireless messages were sent to all police station in Mumbai. On 5th April, 2007 he had recorded the statement of Irfan Shaikh and Nijamuddin, the cousin of the appellant. Thereafter, he had searched for the accused in Pune and finally on 17th April, 2007 the accused had surrendered himself before Wanawadi Police Station. Thereafter, P.W. 16 had conducted investigation in accordance with law and had submitted the charge- sheet.

22. The learned Counsel appointed for the appellant has submitted that the appellant has been falsely implicated in the present case by the relatives of the deceased since the relations between the couple were no more cordial and that Zarina had withdrawn herself from the company of the accused.

23. This is a case of circumstantial evidence. The prosecution has established chain of circumstances in the following manner:

(i) P.W. 3 had approached the police on 5th April, 2007 itself i.e. within 24 hours after the dead body was found near the tank and disclosed to the police that on the previous day, he had seen same woman in the company of a man.

(ii) He had also disclosed the location where the couple was seen.

(iii) The house of the cousin of the appellant is at a distance of hardly 40 to 50 ft. from the tank and in the course of investigation, it had transpired that the dead body is of the wife of the cousin of Nijamuddin Shafi and thereafter, it had become easy for the prosecution to trace the accused.

(iv) On 17th April, 2007 the accused had voluntarily surrendered before Wanwadi Police Station.

(v) The accused had led the investigating agency to Chamunda Jewellers where

he had sold the ornaments of his wife.

(vi) The accused had also led the investigating agency to Trimurti Travels, from where the accused had travelled alongwith his wife to Mumbai.

(vii) There is no question of false implication because it is proved by cogent and convincing evidence that the accused had travelled from Pune to Mumbai alongwith his wife. They had stayed in the house of Nijamuddin and had left his house on 3rd April, 2007. The dead body was found on 4th April, 2007.

(viii) Whereabouts of the accused were not known after 4th April, 2007.

(ix) He had not made any enquiry about his wife after 4th April, 2007 and had finally surrendered himself before the police on 17/4/2007.

(x) The accused was identified in the test identification parade by P.W. 3 as the same person who was in the company of the deceased on 3/4/2015 near Dargah. Hence, the chain of circumstances is complete.

24. In the present case, the conduct of the accused needs to be appreciated under Section 8 of Indian Evidence Act. In case of circumstantial evidence in the absence of direct proof, when the evidence adduced by the prosecution is decisive, cogent and convincing, court should not hesitate to arrive at a conclusion that the accused is guilty of the offence with which he is charged, especially when every circumstance eliminates the innocence of the accused.

25. In view of the above observations, this Court would not hesitate to uphold the conviction of the accused for the offence punishable under Section 302 of the Indian Penal Code. Hence, the appeal being sans merits stands dismissed. The appeal is disposed of accordingly.

26. The learned Counsel Mrs. Nasreen S.K. Ayubi, has been appointed by this Court. She has put in the best of efforts to espouse the cause of the appellant. Her professional fees are quantified at Rs. 5,000/- to be paid to her within 3 months from today.

27. The office to communicate this order to the appellant who is in jail.