

(2022) 11 BOM CK 0043
In the Bombay High Court
Case No : Criminal Appeal No. 179 Of 2014

Amol Ambadas Bankar And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 302, 364
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2022) 11 BOM CK 0043

Hon'ble Judges : A.S. Gadkari, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : Subir Sarkar, S.S. Hulke

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. This is an Appeal against the Judgment & Order dated 4. 02.2014 passed by the Additional Sessions Judge, Malshiras in Sessions Case No. 22 of 2010 convicting the Appellants under :-

(i) Section 364 r/w 34 of Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 1000/- each, in default to suffer further rigorous imprisonment for one year;

(ii) Section 302, 120(B) r/w 34 IPC and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 1000/-each, in default to suffer further rigorous imprisonment for two years;

(iii) Section 201 r/w 34 IPC and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1000/- each, and in default to suffer further rigorous imprisonment for six months; all the aforesaid three sentences to run concurrently.

2. The facts of prosecution case which emerge from record are as under:-

2.1. Shahaji Sadhu Mote (deceased) resided with his parents, brother and wife at village Motewadi-Phondshiras. He was Gramesevak of the village. He got married to Punam @ Usha (PW-20) on 06.12.2009.

2.2. On 22.01.2010, Shahaji left his residence at about 10:00 a.m. and did not return. He was supposed to go to Mhaswad for giving his tractor on hire. Since he did not return for the next two days, his family members searched for him and his whereabouts. Finally on 25.01.2010 his father Sadhu Mote (PW-6) lodged a missing report in Natepute Police Station.

2.3. During inquiry and investigation, it was revealed that Punam (PW-20), wife of Shahaji had a love affair with Appellant No. 1 prior to her marriage with Shahaji. It is the prosecution case that since Appellant No. 1 and Punam could not get married, he eliminated Shahaji. For that, he befriended Shahaji, developed cordial relations with him and lured him with offer of customers who would take his tractor on hire. That Appellant No. 1 along with three others hatched a conspiracy with three others to murder Shahaji and in furtherance of his plan, on 22.01.2010 called Shahaji to meet him at Mhaswad Chowk, Malshiras. At that time, Appellant No. 2 met Shahaji and both travelled on Shahaji's motorcycle. Since Shahaji and Appellant No. 2 had to reach Mhaswad, he handed over his motorcycle to Ashok Londhe (PW-17) at 4:00 p.m. and asked him to deliver it in Natepute. According to prosecution, Shahaji along with Appellant No. 2 and three others travelled in one Maruti Omni Car to Mhaswad. Initially they went to village Gondavale and took darshan and had snacks in Priyanka Hotel at Gondavale belonging to Vaishali Padmankar (PW-15). Shahaji was last seen by PW-15 at 6:00 p.m. on 22.01.2010.

2.4. According to prosecution, Shahaji was murdered by strangulation of his neck with a nylon rope by the Appellants and with intention to destroy the evidence, they buried his dead body in one old well / ditch at the base of Jalbhavi Ghat. They also disposed of his personal articles namely clothes and shoes by throwing them at two different places.

2.5. All four accused (including Appellants) were arrested on 04.02.2010. Appellant No. 1 recorded his statement and willingly led the Investigating Officer (I.O.) and his team to the spot where Shahaji's dead body was buried. PI Rajesh Shingte (PW-19), the I.O., before proceeding to the spot took along with him panchas, Tahsildar, Medical Officer and photographer. They all reached the base of Jalbhavi Ghat and with the help of local villagers recovered the dead body of Shahaji from a dry well. After recovery of the dead body, Tahsildar (PW-18) and I.O. (PW-19) prepared the inquest panchnama (Exh. 96). Shahaji's dead body was identified by his cousin uncle Dattu Mote and his father (PW-6). Photographs were taken of the entire process of unearthing the dead body from the well (Articles A-1 to A-12). Spot panchnama (Exh. 31) was prepared by the I.O.

2.6. Dr. Ganesh Waghmode (PW-16) conducted the postmortem on the dead body at the spot where it was recovered. He prepared the postmortem notes

(Exh. 109). He opined that there was a single ligature mark around the entire neck of Shahaji's dead body and fracture of the hyoid bone.

2.7. I.O. PW-19 recovered and seized one blue colour underwear and black colour waist-cord which was present on the dead body of Shahaji.

2.8. On 06.02.2010 Appellant No. 1 led the I.O. to village Kati where he resided. From the cattleshed near his house, one hoe, spade and one motorcycle (Honda Glamour) belonging to Appellant No.1 were seized. At his instance, another motorcycle (Bajaj Kawasaki) was seized from the house of original accused No. 3 (acquitted by the trial Court).

2.9. On 06.02.2010, Appellant No. 2 expressed his willingness to discover the nylon rope by which Shahaji was strangled and led the I.O. to the roadside near village Goradwadi where he had concealed / threw it of. Recovery and seizure panchnama was prepared and one nylon rope and one shoe (Bata make) was recovered at the instance of Appellant No. 2.

2.10. On 08.10.2010, the I.O. recovered and seized one Maruti Car bearing No. MH-42/A-1805 from one Ranjeet Deorao Borate who informed him that Appellant No. 1 had borrowed the car for his personal use on 22.01.2010. On taking inspection of the said car, I.O. found chilly powder and faint blood spots on the backside of the left front seat. 2.11. On 16.02.2010 I.O. recovered and seized three mobile phones belonging to Appellants and original accused No. 3 from Balu Borate, maternal uncle of Appellant No. 1. On 16.02.2010, I.O. sent the seized material and muddemal to the Forensic Laboratory for chemical analysis report. The second shoe (Bata make) of Shahaji was recovered and seized from Neera Canal between Malshiras and Mhaswad.

2.12. On 02.03.2010, I.O. requested the Tahsildar (PW-18) to conduct test identification parade (TIP) of all four accused (including Appellants). Report of TIP was received.

2.13. According to prosecution, Appellant No. 1 wanted to continue his love affair with Punam, wife of Shahaji and therefore, he eliminated Shahaji by hatching a conspiracy with three other accused. After completing investigation, chargesheet against all four accused persons was submitted in the Court of Judicial Magistrate First Class at Malshiras. Since the offence under Section 302 is triable by the Court of Sessions, the case was committed to the Sessions Court for trial.

2.14. Charge (Exh. 8) was framed against Appellants and co-accused. It was read over and explained to them in vernacular. They pleaded not guilty and claimed to be tried. Their defence being of total denial.

3. In order to bring home the guilt of accused, prosecution led the evidence of 22 witnesses in all. By the impugned Judgment, Appellants (original accused Nos. 1 and 2) were convicted whereas original accused Nos. 3 and 4 were acquitted.

4. We have heard Mr. Subir Sarkar, learned Advocate for the Appellants and Mr.

S.S. Hulke, learned APP for the State with their able assistance perused the entire record of the case.

5. Prosecution case is based upon circumstantial evidence. Prosecution has heavily relied upon motive, recovery of articles evidence and last seen together theory.

6. In so far as motive is concerned, deposition of PW-20 i.e. Punam, wife of Shahaji and paramour of Appellant No. 1 is relevant. PW-20 has deposed that after her marriage on 06.12.2009 with Shahaji, she resided with Shahaji. That, Shahaji owned a tractor and used to give it on hire. That, he never carried a mobile phone. She has deposed that that after 16th day of marriage, Shahaji disclosed to her that he had a love affair with one girl and she was taking education in Solapur and he married Punam only at the insistence of his parents. She has further deposed that he however assured her to forget the past and lead a happy married life.

6.1. In her examination-in-chief, she has further deposed that on 22.02.2010, Shahaji went to Mhaswad and never returned back. That, police recorded her statement on 31.01.2010. She has deposed that she knew all four accused persons (including the Appellants) and they lived in village Kati, Tahsil Indapur. That, she knew Appellant No. 1 and there was a love affair between them prior to her marriage. That, since Appellant No. 1 belonged to a different caste, she could not marry him. Hence, Appellant No. 1 was disturbed.

6.2. In her cross-examination, she has deposed that after discovery of Shahaji's body and his cremation thereafter, she never went back to her matrimonial house and returned back to her paternal home. That, she did not disclose about her love affair to the Police nor Shahaji. She has deposed that one year prior to her marriage with Shahaji, her love affair with Appellant No. 1 had ended as both of them decided to stop as they could not marry each other since they belonged to different castes. That, thereafter she married with Shahaji as per her wish and there was no impediment / quarrel in her marriage on account of her previous love affair. That, Appellant No.1 did not interfere with her marriage. In further cross-examination, she has deposed that Shahaji left his house on 22.01.2010 with some cash for transacting some business relating to letting out his tractor at Mhaswad.

6.3. Though in her examination-in-chief, she has stated that Appellant No. 1 was disturbed since he could not marry her, in cross-examination she has attempted to negate the same by stating that she had never stated to the Police that after the end of their love affair, Appellant No. 1 was disturbed.

6.4. From the above deposition, it is clearly discernible that after her marriage with Shahaji, Appellant No. 1 was uneasy and disturbed. Further PW-20 has herself deposed about her love affair with Appellant No. 1 prior to her marriage with Shahaji. Thus, Appellant No. 1 had a very strong motive to kill Shahaji as that would have entailed return of Punam to her matrimonial house. Though in

her cross-examination Punam has attempted to protect Appellant No. 1, it cannot be derivated that he did not have any intention to kill Shahaji since Punam in her examination-in-chief has categorically deposed that pursuant to her marriage with Shahaji, Appellant No. 1 was disturbed. The love affair between Punam and Appellant No.1 thus cannot be denied and therefore the theory of motive stands proved.

7. Next we may look at the recovery evidence in the present case which has also been strongly relied upon by the prosecution. Admittedly until the discovery of dead body of Shahaji, none knew about his whereabouts. Though Shahaji went missing on 22.01.2010, his dead body was recovered at the instance of Appellant No. 1 only on 04.02.2010 i.e. after a period of 13 days. PW-4 – Parshuram Kadam, the pancha witness to the memorandum panchnama (Exh. 51) has deposed that Appellant No. 1's statement was recorded by P.I. Shingte (PW-19), the I.O. and they along with Appellant No. 1 proceeded to the spot of burial of Shahaji at the base of Jalbhavi ghat. That towards the western side of nala / stream, there was one old dry well with a ditch upto 7 feet in depth and Appellant No. 1 pointed out the said spot where dead body of Shahaji was buried. Deposition of PW-4 and PW-19 in this respect is corroborative and supportive with each other. Further deposition of PW-4 Parshuram Kadam, PW-12 Vaibhav Navadkar, PW-16 Dr. Ganesh Waghmode and PW-19 I.O. clearly corroborates the detailed procedure of removal of the dead body of Shahaji from the well/ditch (spot) in which it was buried. Reading of their depositions clearly brings out the consistency and corroboration of the oral testimonies given by these four prosecution witnesses. We have also perused the photographs (Articles 1 to 12) of the process of unearthing and removal of the dead body of Shajaji from the well. The requisitions namely Exh. 94, 94A, 107 and 108 issued to the above four prosecution witnesses cannot be doubted and hence their presence at the spot stands established. The dead body of Shahaji has been identified by his uncle Dattu Mote. Though it has been submitted on behalf of Appellant that there is ambiguity about identification of the dead body of Shahaji, the said argument is put to rest by virtue of Exh. 123 i.e. the DNA report produced in evidence by the prosecution witness i.e. PW-19.

7.1. The DNA report clearly opines that the results of DNA typing of the DNA extracted from the blood samples of Bhamabai (mother of Shahaji), PW-6 Sadhu Pote (father of Shahaji) and the bone of deceased Shahaji were typed at 15 STR loci and gender specific Amelogenin locus by PCR amplification technique and for all the 15 STR loci analyzed with PCR, there was a clear match of the obligate paternal as well as maternal alleles with the bone sample of deceased Shahaji. The DNA report issued by Dr. Mrs. V.R. Rathod, Assistant Chemical Analyser to Government Forensic Laboratory, Mumbai opines that it is concluded that PW-6 and Bhamabai are the biological parents of deceased Shahaji. Hence the fact that the dead body recovered at the instance of Appellant No.1 was that of Shahaji and this fact stands duly proved without doubt.

7.2. It is further seen that memorandum panchanama (Exh. 38) and recovery panchnama (Exh. 39) show the recovery of the nylon rope and one Bata company boot (shoe) from the bushes at some distance from Malshiras-Mhaswad Road near village Goradwadi at the instance of Appellant No. 2. PW-2 Dattatray Kadam, the pancha witness has deposed as witness to the above panchnamas. The testimony of PW-2 cannot be doubted. Further seizure panchanama (Exh. 5) of the second boot of deceased from Neera canal is proved by PW-14 Parshuram Kadam, the pancha witness. Both the shoes of Bata company make have been identified by PW-6 Sadhu Mote, father of Shahaji as belonging to Shahaji. Thus, the articles belonging to Shahaji having an important bearing have been identified by the prosecution witnesses. Further seizure panchanma (Exh. 55) relates to recovery and seizure of a blue coloured underwear and waist-cord found on the dead body of Shahaji at the time of postmortem.

8. Another important piece of recovery is with respect to discovery of the hoe and spade used by the Appellants for burying the dead body of Shahaji in the well near Jalbhavi ghat. Both these articles have been recovered (Exh.18) at the instance of Appellant No. 1 from the cattleshed near his house at village Kati in the presence of PW-9 Ashok Kale, the pancha witness. The deposition of this pancha witness is believable and cannot be doubted.

9. Though prosecution has relied upon the TIP conducted by PW-18, Nayab Tahisldar on 06.03.2010, we may observe that since the recovery of the dead body of Shahaji on 04.02.2010, it has come in evidence of the prosecution witnesses that photographs and names of all four accused were repeatedly flashed and published in the local newspapers, they having been arrested for the said crime. In view thereof, conducting the TIP thereafter on 06.03.2010 would not stand to test and therefore though prosecution has relied upon the TIP confirming identification of the Appellants through the evidence of PW-7 Dnyaneshwar Kolhatkar and PW-18 Nayab Tahsildar and the Appellants have been identified by Bhamabai, mother of Shahaji, we are not relying upon the same. However though we may not rely upon the TIP result, the identification of Appellants in Court cannot be doubted. Thus, the aforementioned evidence put forth by the prosecution clearly establishes recovery of incriminating material indicting the Appellants for commission of the crime. The recovery evidence clearly corroborates and supports the prosecution case and the strong motive with which the prosecution has come to this Court.

10. In the present case prosecution has relied upon the evidence of PW-15 and PW-17 in support of the last seen together theory. PW- 17 Ashok Londhe has deposed that on 22.01.2010 Shahaji and Appellant No. 2 both met him near Akluj Square, Malshiras at around 4:00 p.m. That, they both were riding Shahaji's motorcycle. On meeting, Shahaji handed over his motorcycle to him and asked him to deliver it at village Natepute since he had to proceed to Mhaswad for some urgent work. He has deposed that Shahaji did not inform him about the nature of work for which he was required to go to Mhaswad. This

evidence establishes that Shahaji was seen last together in the company of Appellant No. 2 on 22.01.2010.

11. PW-15 Ms. Vaishali S. Padmankar is the owner of Priyanka Hotel at village Gondavale. In her deposition she has stated that when the Police Authorities had shown the photograph of Shahaji to her, she had identified him as a person who had visited her hotel to have snacks with 3-4 persons on or around the date of incident. She has not specifically recollected the date of Shahaji's visit. However, she has identified the Appellants during the TIP but she could not identify the Appellants in Court while recording her substantial evidence. It is also seen that her statement was never recorded by the Police under Section 161 of the Cr.P.C. The evidence of the aforesaid two witnesses establishes that Shahaji was seen alive lastly on 22.01.2010. PW-17 has deposed that he in fact met and interacted with Shahaji. At that time Appellant No. 2 was the pillion rider on his motorcycle and after handing over the motorcycle to him Shahaji left alongwith Appellant No. 2. In so far as PW-15 is concerned, she identified Shahaji since he visited her hotel for having snacks in village Gondavale. It has also come in evidence that Shahaji alongwith 3-4 persons had paid a visit to Village Gondavale on 22.01.2010 before proceeding to Mhaswad. The medical evidence in this regard supports the fact that Shahaji was alive on or around 22.01.2010. It has been clearly opined by PW-16 Dr. Ganesh Waghmode in the postmortem report that death of Shahaji had occurred around 13-14 days prior to the date of recovery of his dead body which was on 04.02.2010. This clearly corroborates and supports the deposition of the aforesaid two witnesses who had last seen Shahaji alive on 22.01.2010.

11.1. Thus, on a minute perusal of the record of the case and the deposition of the prosecution witnesses, it is clearly established that in so far as Appellant No. 1 is concerned, he had a very strong motive to eliminate Shahaji considering his affinity and love affair with his wife Punam (PW-20). The recovery evidence as discussed hereinabove assumes significance since it is recovered at the instance of Appellants. It is important to note that Shahaji was killed within 1½ month of his marriage with Punam (PW-20). It has also come in evidence and investigation that after Punam's marriage to Shahaji, Appellant No. 1 developed intimacy and close relation with Shahaji on the pretext of searching customers for letting his tractor on hire and used to frequently make phone calls to Shahaji.

12. It has also come on record that prior to the date of incident, Appellant No. 1 had made two phone calls to Shahaji, which information has been revealed by Shahaji's mother – Bhamabai Mote. The evidence and deposition of PW-20 Punam i.e. the widow of deceased Shahaji clearly points to the motive in the present crime. Hence, her deposition is extremely significant in that respect and is the sine qua-non in the chain of circumstances established and proved by the prosecution. The recovery evidence and medical evidence clearly corroborates and supports the theory of motive. In so far as the last seen theory together is concerned, evidence given by PW-17 cannot be doubted as he had specifically

seen Shahaji in the company of Appellant No. 2. In so far as PW-15 is concerned, she had also seen Shahaji in the company of 3-4 people on the same date. Thus, the chain of circumstances stands clearly established and proved by the prosecution in the present case beyond all reasonable doubts. The chain of circumstances seen in the present case begins with Shahaji having gone untraced and missing from 22.01.2010. On that very date PW-17 has met Shahaji at Akluj Square, Malshiras at 4:00 p.m. alongwith Appellant No. 2. On that very date PW-15 has seen Shahaji in the company of 3-4 persons at 6:00 p.m. at village Gondavale. This was followed by the arrest of Appellants and the subsequent discovery of the dead body of Shahaji at the instance of Appellant No. 1 duly witnessed by the Medical Officer, Nayab Tahsildar and I.O. which stands duly proved vide panchanamas (Exh. 51 and 52). This is supported by the medical evidence given by PW-16 Dr. Ganesh B. Waghmode and the weapons and instruments used by the Appellants for burying the dead body of Shahaji at the instance of Appellant No.

1. The aforesaid facts with a very strong motive for Appellant No. 1 to eliminate Shahaji clearly prove the conspiracy between Appellants and in furtherance of their plan, they committed his murder by strangulation with the help of nylon rope and attempt to destroy the evidence.

13. It is pertinent to note that the Maruti car which was used by Appellants has also been recovered and seized by the I.O. The owner of the said car has stated that Appellant No. 1 had hired his car on 22. 01.2010 for personal work.

14. The aforesaid discussions and findings in respect of murder of Shahaji and the subsequent evidence describing the burying of his dead body in the well at the base area of Jalbhavi Ghat clearly proves that the Appellants are the author of the present crime. The facts and circumstantial evidence brought on record by the prosecution are sufficient enough to hold that prosecution has proved the complete chain of circumstances in the present case to establish the guilt of the Appellants. We have no doubt in our mind that on the basis of the aforementioned circumstantial evidence, the Appellants have committed the present crime. Hence, we do not find any infirmity or error to interfere with the Judgment and Order passed by the learned trial Court in the present case.

15. Considering the material on record and in view of the above discussion and findings, the Appeal stands dismissed.

16. Before parting with the Judgment, we would like to place on record appreciation for the efforts put in by Mr. Subir Sarkar, learned Advocate appointed by the High Court Legal Services Committee, Mumbai for espousing the cause of Appellants. He was thoroughly prepared in the matter and rendered proper and able assistance to the Court.