

(2018) 03 BOM CK 0044

In the Bombay High Court

Case No : CRIMINAL APPEAL NO. 309 OF 2003

ANIL S/O VAKILA WANKHEDE & 3 OTHERS.

APPELLANT

Vs

THE STATE OF MAHARASHTRA.

RESPONDENT

Date of Decision : 25-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 120-B, 203, 302
Indian Evidence Act, 1872 — Section 25, 26, 27

Citation : (2018) 03 BOM CK 0044

Hon'ble Judges : R.K.DESHPAN, J, M.G.GIRATKAR, J

Bench : Division Bench

Advocate : R. M. Daga, J. D. Bastian, K. R. Deshpande

Final Decision : Allowed

Judgement

M.G. Giratkar, J

1. Appellants assailed the judgment of learned 2nd Adhoc Additional Sessions Judge, Nagpur dated 7th May 2003 in Sessions Trial No.402/1996 by

which appellants are convicted as under :

1) Accused No. 1) Anil s/o Vakila Wankhede, Aged 23 Years, R/o Ajni Railway Quarter, Nagpur.

2) Rajesh Abil Anthoney, Aged 29 yrs, R/o Ajni Railway Quarter, P.S. Imamwada, Nagpur.

3) Prakash Sadashiv Nayar, Aged 20 Yrs R/o Ajni Railway Quarter, P.S. Imamwada, Nagpur.

4) Nalini Kuldeep Patel, Aged 30 yrs, R/o Adivasi Coloney, Ajni, Nagpur. are convicted for the offences punishable under Sections 302, 109,

120^B, read with Section 34 of Indian Penal Code. They are sentenced to suffer imprisonment for Life and also to pay a fine of Rs. 1000/- each.

In default of payment of fine they shall suffer one year's Rigorous Imprisonment.

2) Accused No. 4) Nalini Patel is convicted for the offence punishable under Section 203 of Indian Penal Code and sentenced to suffer one year

Rigorous Imprisonment and to pay a fine of Rs. 1000/â?. In default of payment of fine she shall suffer one year Rigorous Imprisonment more.

3) Accused No. 1) Anil Wankhede, Accused No. 2) Rajesh Anthoney and Accused No. 3) Prakash Nayar are acquitted of the offence punishable

under Section 203 r/w Section 34 of I.P.C. Accused persons shall suffer sentences concurrently.

2. The case of the prosecution against the appellants in short is as under.

(i) Appellant no. 4 was married with deceased Kuldeep Patel on 16â?1987. Appellant no. 4 was serving as Nurse in the hospital of Dr. Santani and

Dhande. Appellant no. 1 was also serving in the hospital of Dr. Santani. Appellant nos. 1 and 4 had love affair. They performed marriage on 22â?2â??

1996 in the temple of Mahakaleshwar, opposite to District Court, Nagpur. There was no divorce between deceased Kuldeep and appellant no. 4. At

the time of incident, they were residing jointly in the tenanted premises. Appellant no. 1 with the help of appellant nos. 2 and 3 killed deceased by

gupti (knife). On the spot of incident, one Luna and gupti were found. On 25â?1996 at about 8.00 a.m., Police Station, Ajni received message on

phone that one unknown person's body in dead condition was lying in the ground of Sant Anthony High School. Police went to the spot. Police had

taken inspection of Luna. They found documents of ownership. Said Luna was owned by appellant no. 4. Police went to the house of appellant no.

4. They came to know from landlord that appellant no. 4 was serving as a Nurse in the hospital of Dr. Santani and Dr. Dhande, Ramdaspath,

Nagpur. Police went to said hospital and talked with appellant no. 4. She was brought on the spot. Appellant no. 4 identified dead body of deceased

Kuldeep Patel.

(ii) Police recorded statement/report of appellant no. 4. Crime was registered. During investigation, appellants were arrested. After conclusion of

the investigation, chargeâ?sheet came to be filed in the Court of Judicial Magistrate First Class, Nagpur who committed the same to the Court of

Sessions for trial.

(iii) Charge was framed at Exhibit 20. Same was readover and explained to the

appellants/accused. They pleaded not guilty and claimed to be tried.

Prosecution has examined 19 witnesses. At the conclusion of the trial, learned trial Court convicted the appellants as stated above.

3. Heard learned counsel S'Shri Daga and Bastian for the appellants. Learned counsel has pointed out evidence on record and submitted that there

was no any eye witness of the incident. The case of the prosecution only based on circumstantial evidence i.e. only recovery of weapon from the

accused. Learned trial Court wrongly recorded its finding holding that in the confessional statement, accused admitted their guilt. Learned trial Court

not aware about the Sections 25 and 26 of the Indian Evidence Act. Any statement made before police is not admissible except in respect of

discovery of weapon. Learned trial Court wrongly convicted the appellants, at last, prayed to allow the appeal. Shri Daga, learned counsel for the

appellant nos. 1 and 4 in support of his submissions, relied on the decision in the case of Bhaurao s/o Maroti Keskar Vs. State of Maharashtra and

another reported in 2018(1) Mh.L.J.(Cri.) 673.

4. Heard learned Additional Public Prosecutor Mrs. Deshpande for the State/respondent. She has supported the impugned judgment.

5. Perused the evidence on record. There was no any eye witness of the incident. The prosecution relied on the circumstantial evidence. Now, it is

well settled law that circumstances must be proved which unerringly points out finger towards the accused and none else. Hon'ble Supreme Court in

the case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116 has laid down five guiding principles as under :

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established,

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been

done by the accused.

Division Bench of this court in the case of Bhaurao s/o Maroti Keskar vs. State of Maharashtra and another reported in 2018(1) Mh.L.J. (Cri.) 673

observed as under:

(c) Criminal Trial " Suspicion, however grave cannot take place of proof " Each link of chain of circumstances claimed by prosecution has to be

proved beyond reasonable doubt and that such chain of circumstances has to point towards only one hypothesis and i.e. of guilt of accused. (Para 26)

6. In the light of the principles laid down by Hon'ble Supreme Court, the Court has to see whether the circumstances are proved, whether those

circumstances are strong and only points out towards the guilt of accused and none else. In the present case, none of the panch witnesses supported

to the case of prosecution. The evidence brought on record show that appellant no. 4 was married with deceased.

Appellant no. 1 was working with her in the hospital of Dr. Santani.

They were in love and performed marriage. Even after the marriage with appellant no. 1, appellant no. 4 was residing with deceased in the tenanted

premises. Except this, nothing is brought on record to show that appellant no. 4 made a conspiracy to kill deceased. Evidence of brother of deceased,

P.W. 9 Anil Patel shows that appellant no. 4 was the wife of his brother. There used to be quarrel between them. Except this, nothing is brought on

record against the appellant no. 4. Evidence of P.W. 2 and P.W. 5 show that appellant no. 4 married with deceased and thereafter she married with

appellant no. 1.

7. From the reading of the impugned judgment, it is clear that learned trial Court wrongly relied on the memorandum statements of accused persons

for the discovery of weapon. Learned trial Court has observed that accused persons were arrested and their memorandum of admission of offence

were recorded. They have admitted the guilt. Learned trial Court wrongly relied on Chemical Analyser Reports, Exhibit Nos. 40, 41 and 42. As per

the Chemical Analyser Reports, blood stains on clothes were of Group 'B'. Blood group of deceased was not determined. Learned trial Court

wrongly held that Blood Group 'B' must be of deceased. Without any evidence, learned trial Court wrongly recorded its finding that Blood Group 'B'

was of deceased. It is pertinent to note that seizure panchanama of articles not

duly proved. None of the panch witnesses supported to the case of prosecution.

8. Prosecution has failed to prove any of the circumstances against the appellants. Statements/confessions of accused to discover the weapon is not wholly admissible. The only part of discovery is admissible. As per Sections 25 and 26 of the Indian Evidence Act, admission of guilt before the Police

Officer is not admissible. Only exception is Section 27. As per Section 27, only statement of accused in respect of discovery is admissible. Other

incriminating part in the confessional statements cannot be taken into consideration. Learned trial Court without considering the law under Sections 25 and 26 of the Indian Evidence Act wrongly held that appellants admitted their guilt. Chemical Analyser Report is not substantive piece of evidence.

Moreover, blood group of deceased was not determined. None of the panch witnesses proved the seizure of weapon. Learned trial Court wrongly

relied on the evidence of Investigating Officer and wrongly convicted the appellants. Hence, appellants are entitled for acquittal. Therefore, we are inclined to allow the appeal.

In the result, we proceed to pass the following order.

ORDER

(i) The appeal is allowed.

(ii) Impugned judgment is hereby quashed and set aside. Appellant Nos. (1) Anil s/o Vakila Wankhede, (2) Rajesh Abil Anthoney, (3) Prakash

Sadashiv Nayar and (4) Nalini Kuldeep Patel are acquitted of the offences punishable under Sections 302, 109, 120ÂB read with Section 34 of the Indian Penal Code.

(iii) Appellant No. 4 Nalini Kuldeep Patel is acquitted of the offence punishable under Section 203 of the Indian Penal Code.

(iv) Appellants/accused are on bail. Their bail bonds stand cancelled.

(v) Fine amount, if paid, be refunded to the appellants/ accused.

(vi) R & P be sent back to the trial Court.