

(2012) 12 BOM CK 0146
In the Bombay High Court
Case No : Criminal Appeal No. 740 of 2005

Buvaji Sahadeo Hajare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 354

Citation : (2013) 1 ABR 618 : (2013) ALLMR(Cri) 1369 : (2013) 1 BomCR(Cri) 620

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : H.S. Venegavkar, for the Appellant; J.P. Kharge, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival submissions on this criminal appeal preferred by the appellant-accused challenging the judgment and order of conviction dated 31.3.2004 passed by the learned Additional Sessions Judge, Satara in Sessions Case No. 1 of 2003. By the said impugned judgment and order the appellant-accused was convicted for the offence punishable u/s 302, of IPC for committing murder of both the victims, one Pandurang Vithoba Hirave and one Manubai Pandurang Hirave and was sentenced to suffer imprisonment for life and to pay fine of Rs. 5,000/-, in default to suffer further RI for three years. It appears that the trial Court convicted the appellant-accused and awarded sentence of life imprisonment and fine for each offence of murder. However, the substantive sentences were directed to run concurrently.

2. The case of the prosecution, in nut shell, is as under:-

Deceased Pandurang and deceased Manubai were husband and wife and were residing at Limbachiwadi, taluka Khandala, District Satara. Complainant PW-2 Vishnu Dhebe is also resident of village Limbachiwadi. He is related to the victims

and is a son of sister of deceased Pandurang. The couple had no male issue but had only one daughter by name Prabhavati (PW-5). She was married to one Ananda Dhebe. PW-5 Prabhavati and her husband were residing along with parents of PW-5 i.e. the victim couple. PW-8 Jayashri Hirve is also related to the victim couple as she is cousin daughter-in-law of deceased Pandurang. She was residing in the neighbourhood of the victim couple. One Laxmibai PW-6 was also residing in the neighbourhood of the couple. The appellant-accused Buvaji is also resident of the same village Limbachiwadi and was known to the family of the victim couple and also their other relations.

3. According to the case of the prosecution, about 20 years prior the deceased Pandurang had purchased some agriculture land from the father of the appellant-accused. An amount of Rs. 11,000/- was also taken as a loan by the appellant-accused from the deceased, about seven to eight years prior to the incident which took place on the night of 23.9.2002. Allegedly, the appellant-accused was raising quarrel with the victim deceased Pandurang on account of such sale of agriculture land and loan amount of Rs. 11,000/- and the appellant-accused was refusing to repay the said amount.

4. Also, according to the case of the prosecution, the appellant-accused was of bad character and had outraged the modesty of PW-6 Laxmibai Dhebe about five months prior to the incident. Out of said incidence of outraging the modesty a criminal complaint was also lodged against the appellant-accused and in fact he was arrested and kept in detention and the matter was still pending till the date of the incident in the present matter.

5. It is also the case of the prosecution that on 23.9.2002 at about 5:00 pm in the evening the appellant-accused had been to the house of Jayshri PW-8 and caught hold of her hand with bad intention, probably asking for sexual favour. This was revealed to the victim couple and other relatives and on this the appellant-accused was reprimanded by the victim couple and at that time victim Pandurang had warned the appellant-accused not to indulge in such activities otherwise he would face bad consequences. Apparently, this was the immediate cause for the incident occurred on the night of 23.9.2002 in which the victim couple was severely assaulted on their heads while in sleeping condition and their murder was committed by the appellant-accused.

6. According to the case of the prosecution, on the night of 23.9.2002 the victim couple had left their house at village Limbachiwadi and went to their agriculture field called as Adka for sleeping under one cattle-shed like structure having roof above but no walls around. Apparently, it was the daily habit of the couple to go to Adka and sleep there instead of sleeping in the village house. The daughter of the couple i.e. PW-5 Prabhavati and her husband as usual were sleeping in the house of the couple at village.

7. Also, according to the case of the prosecution, there was some commotion at Adka where the victim couple was sleeping and in fact the appellant-accused had

reached there on that night and assaulted the couple while both the victims were sleeping. He assaulted them on their heads and other parts of body by means of wooden log/bamboo stick. Noticing this commotion at Adka one person by name Arvind Mandare got awakened from sleep and he noticed that there was some commotion from the side of cattle-shed in the field of victim couple. Thereafter, said Arvind awakened PW-2 Vishnu, who in turn, awakened Prabhavati PW-5 and her husband Ananda. PW-2 Vishnu, PW-5 Prabhavati and her husband reached near the cattle-shed and noticed the presence of the appellant-accused there. They witnessed the situation from about 15 feet distance and found that the victim couple i.e. Pandurang and his wife were lying on the ground in severely injured condition in a pool of blood. It is noticed that the appellant-accused was standing by the side holding one bamboo stick/ wooden log. He was accosted by PW-2 Vishnu as to what he was doing there. On this, allegedly the appellant-accused told that he had beaten the maternal uncle and aunt of Vishnu and if Vishnu also come forward he will show him. Thereafter, the appellant-accused ran from the spot towards hilly area beyond the said agriculture field of the victim. The complainant Vishnu and others reached near the victim couple. They found out that victim Manubai was already dead. However, victim Pandurang was alive. Arrangements were made to take them to the house of victim couple at Limbachiwadi village. Vehicle was brought for taking victim Pandurang to the hospital. However, on arrival of the vehicle it was noticed that said Pandurang had also succumbed to the injuries and died. Victim Manubai was already dead when found at the spot of the offence. In the same vehicle which was brought, PW-2 Vishnu went to the police station Khandala and lodged his complaint (Exh. 31). It was lodged at 5:15 am. In the complaint, the name of the present appellant-accused was given as assailant. Offence was registered against the appellant-accused for the offence punishable u/s 302, of IPC. PI Shinde PW-10 took over the investigation after the complaint was lodged and registered by PSI Bhure PW-11.

8. During investigation inquest panchnamas were conducted on the dead bodies of Pandurang and Manubai. Scene of offence was visited and spot panchnama (Exh. 34) was conducted. Various articles found on the spot were taken charge of including the bloodstained mud and other samples. As, by that time the appellant-accused was absconding, his house was visited, his photograph was collected from his house and was published along with the letter addressed to all the police stations within the jurisdiction. Statements of witnesses were recorded, dead bodies were sent for post-mortems and post-mortem reports were obtained (Exhs. 18 and 19). Clothes from the persons of the dead bodies were taken charge of under panchnama.

9. During investigation whereabouts of the appellant-accused were revealed and on 27.9.2002, the appellant-accused was apprehended from the area of one company on the road from Pandavdara to Gavadewadi. At the time of arrest, during the personal search of the accused one spear with wooden handle was found. It was also taken charge of. Thereafter, during the investigation on

4.10.2002 at the instance of the appellant-accused a wooden log article-25 was recovered. In that panchnama one PW-3 Santosh took part as panch witness.

10. At the conclusion of the investigation seized articles were sent for chemical analysis and CA reports Exhs. 71, 72 and 73 were obtained. On completion of investigation, charge-sheet was filed and the matter was committed to the Court of Sessions and it ended in conviction of the appellant-accused as mentioned above.

11. Defence raised on behalf of the appellant-accused is two fold. One is that of alibi and secondly that he was falsely implicated in the matter out of strained relations appellant-accused had with the complainant Vishnu PW-2. According to the appellant-accused, the main prosecution witnesses PW-2 Vishnu, PW-5 Prabhavati, PW-6 Laxmibai, PW-8 Jayshri Hirave are the close relatives of the victim couple and they have falsely implicated the appellant-accused in the offence of double murder, mainly at the instance of PW-2 Vishnu. According to the appellant-accused he had a quarrel with complainant Vishnu on account of some loan transaction and, therefore, with the help of PW-6 Laxmibai, complainant Vishnu had arranged to lodge a complaint u/s 354, of IPC against the appellant-accused and admittedly in that matter the appellant-accused was arrested and put behind the bar for sometime prior to bail. Even after that matter, according to the appellant-accused, it was designed by PW-2 Vishnu to implicate the accused in this matter of murder of the victim couple.

12. Prior to appreciating the defences raised above on behalf of the appellant-accused, certain admitted position is required to be mentioned in order to have proper perspective of the matter and scope of the present appeal. The post-mortem reports Exhs. 18 and 19 are admitted on behalf of the appellant-accused during the trial. The incident happened on the mid night of 23.9.2002 and immediately at 5:15 am on 24.9.2002 the FIR was lodged by PW-2 Vishnu. About four to five months prior to the incident, there was another incident in which the appellant-accused had outraged the modesty of PW-6 Laxmibai and on that count a criminal complaint was lodged against the appellant-accused and he was put behind the bars for some period and that matter was pending.

13. Bearing in mind the above position, now defence raised on behalf of the appellant-accused is discussed. So far as the defence of alibi is concerned, the appellant-accused had examined three defence witnesses. DW No. 1 is his friend Vivek Kasurde, DW No. 2 Sangita is wife of the appellant-accused and DW No. 3 Prabhavati Chavan is sister of the appellant-accused. According to DW-1, he had accepted regarding the earlier case of outraging the modesty of a woman alleged against the appellant-accused by Laxmibai PW-6. He also admitted regarding arrest of the appellant-accused in the matter. However, according to this witness on 23.9.2002 at about 11.00 a.m. he along with the appellant-accused had been to Wait for some other work of getting change in the caste certificate of some relative of DW-1. According to this witness, they both were at Wait till 5.00 p.m. or even till thereafter and on the night of 23.9.2002 the appellant-accused had

visited the house of his sister Prabhavati Tulshiram Chavan DW-3 and stayed at her house at village Atit. Admittedly, the distance between Atit and village Limbachiwadi is 20 to 25 kms. DW No. 3 has also deposed before the Court regarding stay of the appellant-accused at her place at village Atit on that entire night and leaving only on the next day. Regarding leaving the village Limbachiwadi along with DW-1 and staying at the house of Prabhavati Chavan DW No. 3, Sangita Hajare (DW No. 2) is examined on behalf of the defence. She is the wife of the appellant-accused. She deposed in consonance with the said defence raised on behalf of the appellant-accused. From the substantive evidence of IO, PW-10 it is evident that statements of said DW-1 and DW No. 2 were recorded by the police during investigation. However, it is not at all the case of these witnesses that immediately they informed the Investigating agency as to presence of the appellant-accused at some other place away from Limbachiwadi and his stay on the night of 23.9.2002 at the residence of his sister Prabhavati Chavan, DW No. 3 at Atit village.

14. On this defence of alibi, we have carefully gone through the substantive evidence of DW Nos. 1, 2 and 3 and also the substantive evidence of prosecution witnesses PW Nos. 2, 5, 6 and 8 so also the substantive evidence of Investigating Officer PW No. 10. According to case of the prosecution and also according to DW-2 Sangita wife of the appellant-accused on the next day morning i.e. on 24.9.2002 police visited house of the appellant-accused and they met Sangita and enquired about whereabouts of her husband i.e. the appellant. As he was not found at the house, his photograph was obtained and was circulated to all other police stations and other police stations were kept on alert for look out the appellant-accused for his arrest. Apparently, that time Sangita had knowledge that her husband has been shown as an accused in the offence of double murder. However, she did not try to contact her husband. Though, according to her, he was away and was staying with his sister Prabhavati Chavan. This conduct of not communicating the appellant-accused immediately, goes to show that the defence of alibi raised by the appellant-accused is after thought. It is an admitted position that apart from the evidence of DW Nos. 1, 2 and 3, there is no material, much less any documentary evidence to show that the appellant-accused has travelled different villages for going to Wait, then coming back to Atit. In our considered view, the appellant-accused had failed to establish his defence of alibi.

15. So far as another defence of false implication due to strained relations with PW-2 Vishnu, apart from the suggestion given to PW-2 Vishnu regarding some monetary transactions between the appellant and PW-2, there is nothing brought on record to show that both were on cross-terms. Otherwise also if at all it is accepted that out of some political rivalry in the village Gram Panchayat politics, PW-2 Vishnu had to take revenge on the appellant-accused, till it would be far fetched to accept the submission on behalf of the appellant-accused that the entire story of double murder has been concocted and for that purpose immediately within three to four hours of the incident an FIR was concocted

taking the name of the appellant-accused as assailant.

16. Again on this aspect, it is established beyond reasonable doubt by the prosecution that the appellant-accused was reprimanded by the victim couple due to the incidence taken place at about 5.00 p.m. on 23.9.2002 when the appellant-accused had visited the house of PW-8 Jayshri Hirave and caught hold of her hand. Apparently, that time the victim couple was present and they reprimanded him. On this aspect, it is tried to argue on behalf of the appellant-accused by Advocate Shri Venegaonkar that there is rather difference in the substantive evidence of PW-2 Vishnu and PW-5 Prabhavati on one side and PW-8 on the other side. It is pointed out that according to PW-8 on 23.9.2002 there were total three incidences, the appellant-accused visiting her house, catching holding of her hands and remaining at the house for about an hour or so. According to PW-8, the first such incidence occurred at about 12.00 noon, second one at about 5.00 pm and third one at about 10.00 p.m. As against this, PWs 2 and 5 are silent regarding the first and third incident and they speak only of the incident took place at 5.00 p.m. By pointing out this, it is submitted on behalf of the appellant-accused that this entire story as to the appellant-accused catching hold of the hand of Jayshri Hirave is a concoction and this evidence is fabricated in order to suit the case of the prosecution for showing alleged motive for doing away with the victim. Apparently, during second incidence which. occurred at 5.00 p.m. the other persons were. present and had witnessed the situation and reprimanded the appellant-accused and as such regarding the first and third incident they had not mentioned anything because of lack of knowledge. In any event, this argument advanced on behalf of the appellant-accused does not sound to reason and logic and even for the sake of argument it cannot be accepted being far fetched.

17. Apart from the above main argument, certain other points were also raised on behalf of the appellant-accused in order to show that the prosecution witnesses PW Nos. 2, 5, 6 and 8 are not trust worthy. It is pointed out that PW-2 had improved his story as to himself, Prabhavati and her husband stopped on the spot after seeing the wooden log in the hand of the appellant-accused. There is no specific mention regarding stopping by these witnesses on seeing the wooden log in the hand of the appellant-accused as it has not been stated by PW-2 Vishnu in his complaint and as such it is an improvement. It is also brought to our notice that according to PW-5, it takes about three minutes from her house i.e. the house of the victim to reach to the spot at the cattle-shed. Whereas, according to PW-2 Vishnu, it takes about 14 minutes to reach the spot from Limbachiwadi village. By pointing out this discrepancy in the timing, it is argued that these witnesses are not giving true and correct account of the events and as such they never visited the scene of offence and never saw the appellant-accused there. On this aspect, it must not be lost sight of the fact that witnesses are not much educated and are rustic villagers and one cannot expect from such witnesses to correctly and accurately give the time or equate the walking distance in terms of minutes. In other words, certain latitude is required to be

given to these witnesses while giving the distance which can be crossed in particular time gap.

18. It is also brought to our notice that the panchas allegedly taken for the arrest panchnama are not examined and as such the story of the prosecution as to arrest of the accused from the particular place, as detailed by police officer cannot be accepted. On this aspect, it is a factual position that the appellant-accused was not found at his residence when immediately on the next day morning police had reached the house of the appellant-accused and enquired with his wife DW-2 Sangita and only on 27.9.2002 the appellant-accused was traced out and was put under arrest. Though the panchas as to arrest panchnamas are not examined, it is not at all mitigating circumstance to the case of the prosecution considering the substantive evidence of PW-2, 5, 6 and 8.

19. It is also tried to argue that PW-11 had no authority to arrest the appellant-accused and as such the arrest is bad in law. However, there was no much force in the said argument considering the allegations against the appellant-accused as to his involvement punishable u/s 302 of IPC and is arrested by a competent police officer.

20. It is also argued that the doctor who had performed post-mortems on the dead bodies has not been examined, in order to opine whether the wooden log Art. 25 recovered at the instance of the appellant-accused could have been the weapon of assault causing the injuries found on the dead bodies. On this aspect, it must not be lost sight of the fact that the appellant-accused had admitted both the said post-mortem reports. If the doctor who conducted post-mortems would have been brought before the Court for giving evidence, it would have been an added advantage to the case of the prosecution as to getting opinion of expert on the weapon of assault and the injuries. However, absence of such evidence will not negate the case of the prosecution as otherwise it has been established by the substantive evidence of prosecution witnesses as detailed above.

21. Lastly, it is argued that there is change in the scene of offence as stated by PW Nos. 2 and 5. According to PW-2 Vishnu, dead bodies were found on the ground and not in the bullock cart. Whereas, according to PW No. 5, bedding which was used by the couple for sleeping was having blood stains. When the learned advocate for the appellant-accused was asked to show such specific substantive evidence of PW No. 5, he could draw our attention only to the portion appearing in paragraph No. 8 of notes of evidence to the following effect.

It so happened that when we found my parents lying on the cart road the bullock cart was in the shed. The bed which my parents took with them for sleeping was kept in the bullock cart. Vakhal was smeared with blood. I do not know what the police did with the said Vakhal.

22. By pointing out this, it is argued on behalf of the appellant-accused that this Vakhal is the bed and it was lying in the bullock cart whereas according to PW No. 2 there was no blood stains on the bedding which was kept in the bullock-

cart. On plain reading of substantive evidence of PW No. 5 as referred above, we do not gather any such situation as argued by learned Advocate for the appellant-accused. The substantive evidence of PW No. 5 cannot be construed to say that bed which was used by the victim couple on that night was also stained with blood. In any event, there is no variance interse between the substantive evidence of PW Nos. 2 and 5.

23. Again on this count, our attention is drawn towards the map produced before the trial Court and it is argued that in the map, it is specifically mentioned that two dead bodies were in the bullock cart and the bullock cart was stationed below the cattle-shed having only roof and no side walls. On carefully examining the said map it is revealed that it bears the signature of the person who has drawn the map and said signature is with the date 5.12.2002. Said map is in fact admitted by the defence and was allowed to be exhibited and marked as Exh. 74. There is nothing on record that the said map was drawn immediately on the spot prior to removal of the dead bodies from the spot. Moreover, it cannot be said that whatever mentioned in the said map which was drawn in December, 2002 is to be taken into consideration so as to disbelieve the story of the prosecution and that also only on the aspect of the finding of the dead bodies whether inside the bullock cart or on the road by the side of the cart. In any event, all these arguments cannot be accepted in view of the overwhelming substantive evidence of PW Nos. 2, 5 and other prosecution witnesses. In the result, there is nothing to interfere with the impugned judgment and order. Consequently, there is no merit in the present appeal and same is disposed of accordingly with the following order:-

ORDER

- (1) Criminal Appeal No. 740 of 2005 is dismissed.
- (2) Office to communicate this judgment and order to the appellant who is in jail custody through the concerned jail authority.