
(2014) 03 BOM CK 0141
In the Bombay High Court
Case No : Criminal Appeal No. 656 of 2008

Dattatraya Shrirang Desai

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 27

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302

Citation : (2015) ALLMR(Cri) 1070 : (2014) 3 BomCR(Cri) 23

Hon'ble Judges : P.V. Hardas, J; A.S. Gadkari, J

Bench : Division Bench

Advocate : Atul S. Sarpande, for the Appellant; H.J. Dedhia, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

A.S. Gadkari, J.—The Appellant, original accused, has questioned the correctness of his conviction and sentence by the present Appeal, thereby challenging the judgment and order dated 19 April 2008 passed by the Additional Sessions Judge, Thane in Sessions Case No. 379 of 2006, convicting the Appellant for an offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 10,000/-, in default of fine, to undergo rigorous imprisonment for two years. The facts which emerged from the record and which can be summarized briefly be stated thus:

(a) P.W. 9 Mira Bhoite heard some commotion outside her house at about 6.30 a.m. on 17 July 2006 and when she opened the door, she saw that Lata was shouting for help and calling her mother. She further saw that Lata was lying on the road. P.W. 9 Mira noticed that Lata was in injured condition. P.W. 9 Mira thereafter went to see Lata near the spot. At that time Lata was calling "Mummy, Mummy", As P.W. 9 Mira was knowing Lata, who was residing in the same locality, immediately went to the house of P.W. 2, Parshuram Gunderi, who is the

close relative (uncle) of Lata and informed him about the said fact.

(b) P.W. 2 Parshuram Gunderi thereafter along with P.W. 9 Mira Bhoite and his wife-P.W. 5 Sharda went to the spot and saw that Lata was lying in a pool of blood. P.W. 2 Parshuram lifted Lata in his arms when Lata uttered the words "Datta, he kay kela. Datta, he kay kela". After the arrival of the brother of Lata, P.W. 2 Parshuram along with other persons took her to the IGM Hospital where the doctor examined Lata and declared her dead.

(c) P.W. 1 Pandhari Nalpelli is the father of deceased Lata. He knew the Appellant as being his neighbor. P.W. 1 Pandhari was aware about the love affair between deceased Lata and the Appellant. On 17 July 2006 in the morning deceased Lata had been to the latrine and somebody subsequently informed P.W. 1 Pandhari that Lata was injured and was taken to IGM Hospital. He thereafter rushed to the Hospital and saw the bleeding injuries on the neck, face, hands and chest of Lata. P.W. 1 Pandhari noticed that Lata was dead. He was informed by his wife P.W. 4 Rekha Nalpelli that Lata was found injured lying near the house of P.W. 9 Mira Bhoite. P.W. 1 Pandhari expressed his strong suspicion over the Appellant. P.W. 1 Pandhari thereafter lodged his complaint with the police station and expressed a strong suspicion against the Appellant behind the said crime.

(d) P.W. 12 Prakashsinh Pardeshi, Police Inspector, was then attached to the Narpoli Police Station, Bhiwandi. He received the complaint lodged by P.W. 1 Pandhari dated 17 July 2006 which was registered by PSO Mr. Chavan. The said complaint was registered u/s 302 of the Indian Penal Code. The same was numbered as CR No. I-174 of 2006. The said complaint is at Exhibit 9 on record. P.W. 12 PI Pardeshi thereafter deputed PSI Giddhe to the spot. PSI Giddhe prepared the inquest panchanama and sent the dead body for postmortem. The further investigation was carried out by P.W. 12 PI Pardeshi. PI Pardeshi went to the spot of incident and prepared the spot panchanama. The said spot panchanama is at Exhibit 14 on record. P.W. 12 PI Pardeshi thereafter recorded the statement of witnesses. PI Pardeshi arrested the Appellant on 19 July 2006 under arrest panchanama which is at Exhibit 19 on record. He also seized the clothes on the person of the Appellant i.e. shirt which is article No. 8 and pant (trouser) which is article No. 9 on record and other relevant articles. That on 22 July 2006 the Appellant gave information regarding the concealment of the knife. The said information was recorded in the form of memorandum which is at Exhibit 25. The knife came to be recovered at the instance of the Appellant which is article No. 10 and the same was seized under the recovery panchanama which is at Exhibit 26. During the course of investigation P.W. 12 PI Pardeshi recorded the necessary statements and sent the articles to the Chemical Analyzer for analysis along with covering letter dated 4 October 2006. The said letter is at Exhibit 38 on record. During the course of investigation P.W. 12 PI Pardeshi collected the postmortem report and after completion of the investigation, he submitted charge-sheet before the Court of competent jurisdiction.

(e) P.W. 7 Dr. Jayashee Mhaske was working as a Medical Officer in IGM Hospital,

Bhiwandi. She received the dead body of Lata on 17 June 2006 and conducted the postmortem examination on the said body. She found the following external injuries on the body of deceased Lata which were mention in column No. 17 of the postmortem report:

1. Incised wound over right upper eyelid 2 x 0.5 cm.
2. Incised penetrating injury over left cheek 1" x 1" Cavity deep.
3. Incised penetrating injury over left side of neck 1" x vessel deep. left carotid & jugular Vessel cut a pooling blood.
4. Incised wound below left nipple-1" x 1" cavity deep between ribs.
5. Incised wound over left hyperchlorhydria 1" x cavity deep. transverse in the left.
6. Incised wound over left side of umbilicus oblique in nature 1" x cavity deep.
7. Incised wound over left elbow 1" x muscle deep.
8. Incised wound over left shoulder 1" x muscle deep.
9. Incised wound over left wrist 1" x muscle deep.

P.W. 7 Dr. Jayashree Mhaske opined that the age of the injuries was within six to eight hours prior to the examination and were caused by hard and sharp object. The postmortem report is at Exhibit 22 on record. P.W. 7 Dr. Jayashree has stated that injuries 3 and 5 mentioned above were fatal injuries. P.W. 7 Dr. Jayashri thereafter opined as to the probable cause of death as "cardio-respiratory failure due to haemorrhagic shock due to injury to major vessels of neck and vital organs".

After the case was committed to the Court of Sessions, the Trial Court framed charge below Exhibit 2A. The said charge was read over to the Appellant. However, the Appellant denied the charge and claimed to be tried. Counsel appearing for the Appellant has submitted that taking into consideration the evidence of P.W. 2, 5, 6, 8 and 9, it cannot be said that the chain of circumstances as propounded by the prosecution is complete He has, therefore, submitted that the circumstances, as put forth by the prosecution, that the Appellant was having strong motive to commit the act and some bloodstains were found on his pant (trouser) are the only circumstances against the Appellant and the same are very weak in nature. He has further submitted that the prosecution has failed to determine the blood group of the Appellant and the bloodstains which were found on the clothes of the Appellant cannot be said to be of the deceased only as the Chemical Analyzer has given a report to the effect that the blood group of the deceased was found to be inconclusive. Counsel for the Appellant therefore submitted that as the prosecution has failed to establish a complete chain of circumstances, the Appellant may be given a benefit of doubt. Per contra, the learned Additional Public Prosecutor supported the

impugned judgment and order and prayed that the present Appeal may be dismissed and the conviction and sentence of the Appellant should be upheld.

2. In order to effectively deal with the submissions advanced before us by Mr. Sarpande, learned counsel appearing for the Appellant and Mr. Dedhia, learned Additional Public Prosecutor appearing for the State, it would be useful to evaluate the evidence of the prosecution witnesses.

3. P.W. 1 Pandhari is the father of deceased Lata. He has stated in his testimony that he knew the Appellant. The Appellant was his neighbor. He has further stated that there was a love affair between Lata and the Appellant. The Appellant used to come for meals to a mess run by Nirmala Injamori which was near his house. That he came to know about the love affair between deceased Lata and the Appellant some time prior to the date of the incident. He had called a meeting of the Appellant and Lata and tried to persuade the Appellant by telling that he and Lata are Telugu and the Appellant is Maratha and it was not possible to perform their marriage. He has further stated that at that time Lata had told the Appellant that she will not marry with the Appellant against the wish of her parents. That thereafter the Appellant left the house and came after some time with self inflicted blade injuries on his person. He returned the gift given by Lata and then went away. P.W. 1 Pandhari has further deposed that after some days, the parents of the Appellant came to his house. At that time deceased Lata was at Ghatkopar with her relatives. The parents of the Appellant insisted to call Lata and therefore Lata was called from Ghatkopar. He has further deposed that the Appellant and his relatives were five persons. They had a meeting and during the course of meeting, the parents of the Appellant asked Lata, as to whether she was ready and willing to marry with the Appellant. At that time, Lata replied that she will not marry with the Appellant against the wish of her parents. Thereafter the Appellant and his relatives went to their native place. P.W. 1 Pandhari in his testimony has further stated that on 17 July 2006 in the morning Lata had been to be latrine. That he saw crowd in his lane and came to know that Lata was injured and she was taken to IGM Hospital. He immediately rushed to the Hospital and found that Lata was declared dead. He thereafter went to the police station and lodged his complaint. P.W. 1 Pandhari expressed his suspicion against the Appellant for committing the said crime.

4. During the course of cross examination of P.W. 1 Pandhari, an addition has been elicited to the effect that the Appellant did not enquire from his relatives and family members in the hospital how the incident occurred. However, the said witness has immediately given an explanation stating that as he was not in a position to enquire about the incident, he did not make any enquiries about the same. In his cross examination P.W. 1 Pandhari has further admitted that his relatives and brother-in-law were with him in the police station at the time of lodging the complaint.

5. P.W. 2 Parshuram Gunderi is the co-brother of P.W. 1 Pandhari. In his testimony he has stated that he knew the Appellant. He has stated that there

was a love affair between deceased Lata and the Appellant. He has further stated that on 17 July 2006 at about 6.30 a.m. P.W. 9 Mira Bhoite informed his wife (P.W. 5) that Lata was lying in front of her house. Thereafter he along with the said two ladies went to the spot and saw Lata was lying in a pool of blood. He lifted her in his arms and Lata uttered the words "Datta, he kay kela. Datta, he kay kela". P.W. 2 Parshuram has further stated that there was crowd of people. He has further categorically stated in his testimony that Lata was alive for some time. After the brother of Lata came there, he took Lata in auto-rickshaw to IGM Hospital where the doctor checked Lata clinically and after ten minutes declared her dead.

6. P.W. 2 Parshuram has been cross examined by the Appellant. In the cross-examination he has admitted that he did not know since when Lata was lying at the spot. He has further admitted that he did not talk with Lata. This witness has volunteered that Lata talked with him and the persons standing there heard it. He has denied the suggestion that Lata did not uttered the words "Datta, he kay kela. Datta, he kay kela".

7. P.W. 3 Bhumayya E. Pallalla is the witness to the panchanama of scene of offence i.e. spot panchanama which is at Exhibit 14 and is a formal witness.

8. P.W. 4 Rekha Nalpelli is the mother of deceased Lata. She has stated in her testimony that she knew the Appellant. She has further stated that the Appellant had a love affair with her daughter Lata. She has stated that she persuaded the Appellant that he was from different caste and therefore it was not possible to get married with her daughter. Even though the Appellant was insisting for marriage, she has further stated that her daughter had refused to marry with the Appellant. She has further stated in her testimony that the Appellant had been to her house along with his parents and they had a discussion. On the same day, when asked to Lata about the marriage, Lata had refused to marry with the Appellant. Thereafter the Appellant and his parents went away. P.W. 4 Rekha has further stated in her deposition that on 17 July 2006 at about 6.30 a.m. when she was in the bathroom/latrine, her sister Sharda-P.W. 5 came there shouting and informed her that her daughter Lata was lying unconscious in the lane. P.W. 4 Rekha thereafter went to the spot. She noticed that there was a pool of blood and Lata was already taken to the Hospital. She thereafter went to the Hospital. By the time she went to the Hospital, Lata was no more. Thereafter P.W. 4 Rekha became unconscious in the hospital. This witness has been cross examined by the Appellant at length, but no fruitful material has been elicited during the cross examination.

9. P.W. 5 is Sharda Mundeli and it appears from the record that she is wife of P.W. 2 Parshuram Gunderi. P.W. 5 Sharda in her testimony has stated that she knew the Appellant. That the Appellant had a love affair with Lata. That on 17 July 2006 at about 5.30 a.m. she was fetching water. That one Meera Bhoite-P.W. 9 from her lane informed her that somebody has assaulted Lata. That she along with her husband (P.W. 2-Parshuram) thereafter went to the spot and saw that

Lata was lying in a pool of blood and there were bleeding injuries on her person and Lata was unconscious. She further noticed a big incised wound on the neck of Lata. That when P.W. 5 Sharda Gunderi tried to lift Lata, she saw the injury but she could not lift her. She told her husband P.W. 2 Parshuram to take care of Lata and she went to her sister P.W. 4 Rekha to inform her about Lata. She has further stated that her husband took Lata to Hospital in auto-rickshaw.

10. It is pertinent here to note that P.W. 2 Parshuram Gunderi along with his wife i.e. P.W. 5 Sharda together went to the spot of the incident and found Lata lying in a pool of blood. P.W. 5 Sharda in her examination in chief has specifically stated that when she went to the spot of incident along with her husband, she saw Lata was lying in a pool of blood, there were bleeding injuries on her person and Lata had become unconscious. P.W. 2 Parshuram in his examination in chief has stated that when she went to the spot along with his wife and P.W. 9 Mira Bhoite, he saw Lata was lying in a pool of blood. P.W. 2 Parshuram lifted Lata in his arms and Lata uttered the words "Datta, he kay kela. Datta, he kay kela". P.W. 9 Mira Bhoite, in her examination in chief had stated that when she saw Lata, Lata was saying "Mummy, Mummy". P.W. 9 Mira Bhoite has further given an admission in her examination in chief that when she went to the house of P.W. 2 Parshuram, to inform him about Lata and to call him and his wife, that Lata is calling them, Lata became unconscious. Thus, it is clear that P.W. 9 Mira Bhoite is the first witness to see Lata in an injured condition and becoming unconscious. P.W. 5 Sharda nowhere stated that Lata uttered any words and she had seen Lata unconscious when she went to the spot along with her husband. Therefore, in our opinion, the testimony of Parshuram-P.W. 2 regarding the utterances of Lata to the effect that "Datta, he kay kela. Datta, he kay kela" does not inspire any confidence to us. There is a substantive contradiction in the versions of P.W. 9 Mira Bhoite and P.W. 5 Sharda on one hand and P.W. 2 Parshuram on the other hand. Assuming for the sake of argument that Lata uttered the words. "Datta, he kay kela. Datta, he kay kela" to P.W. 2-Parshuram, no positive inference can be drawn from the said words which would point out the finger of guilt towards the Appellant. The said words uttered by Lata are omnibus in nature and does not lead to any final conclusion that the Appellant was responsible for causing injuries on the person of Lata.

11. P.W. 6-Deepak Kalbande is a pancha witness to the arrest panchanama of the Appellant which is at Exhibit 19, the memorandum statement of the Appellant is at Exhibit 25 and the recovery panchanama of the knife u/s 27 of the Indian Evidence Act is at Exhibit 26 on record. P.W. 6 Deepak in his examination in chief has stated that on 19 July 2006, he was called by police to act as pancha in Narpoli Police Station and in his presence, the police seized the clothes on the person of the accused i.e. one shirt of half sleeves and one trouser. P.W. 6 Deepak has further stated that there were bloodstains near the buttons of the shirt. In his cross examination, he has admitted that the labels put on articles No. 8, 9 and 14 bear his signature and the date put on the labels of the said articles is 29 July 2006. He has further admitted in the cross examination that he

was called to the police station on 29 July 2006 by the police to act as a pancha and the clothes of the Appellant were seized along with the said articles. We have perused Exhibit 19 which is the arrest panchanama of the Appellant. The arrest panchanama which is at Exhibit 19 has been proved at the hands of this witness i.e. P.W. 6 Deepak. It is worth to note that there is overwriting in the date "19" which is written in Marathi vernacular, so also there is overwriting at the end of the panchanama at the hands of the scribe which is written as 19. It gives strong suspicion in our mind that the Marathi vernacular "20" has been converted by overwriting the date as "19". In the said arrest panchanama it has been stated that there are bloodstains on the shirt of the Appellant near button No. 4 and bloodstains on the right side of the trouser.

12. It is difficult for us to appreciate that the Appellant was roaming for atleast two days with the same clothes on his person till his arrest at the hands of the Investigating Officer. The Investigating Officer who is P.W. 12 PI Pardeshi has nowhere in his testimony given any explanation about the overwriting on the date at Exhibit 19 and has also not stated anything from where and how the accused came to be arrested.

13. P.W. 8-Rajendra M. Shamarambham is the another panch witness to the said arrest panchanama which is at Exhibit 19. The memorandum statement of the Appellant which is at Exhibit 25 and the recovery panchanama of knife which is at Exhibit 26 are on record. P.W. 8 Rajendra has deposed on the same lines as has been deposed by P.W. 6 i.e. another pancha witness Deepak. P.W. 8 Rajendra has proved the memorandum statement of the Appellant which is at Exhibit 25 and the recovery of knife at the hands of the Appellant i.e. the recovery panchanama as contemplated u/s 27 of the Criminal Procedure Code which is at Exhibit 26. Exhibit 26 discloses that a knife having a blade of 5 x 1/2 inch long and width of one inch has been recovered at the instance of the Appellant. The blade of the said knife has a sharp edge on one side and zigzag hacksaw blade on the other side and was having bloodstains on the same. It is pertinent to note here that when the police seized the said knife from the spot, there is no record to hold that the said knife was sealed in the presence of the pancha witnesses.

14. P.W. 10 is Dr. Ravindra Rapolu. This witness has been examined only with a view to establish a fact that the Appellant had self-inflicted injuries in the month of July 2006. In his cross examination, this witness has admitted that he has not kept any record to support his contention, as he failed to produce any details about the injuries and any other contemporaneous record.

15. P.W. 11 is Mohammad Iqbal Khan Sayyed Khan who is the shop owner from where the Appellant had purchased the knife which was used in the commission of the said offence. P.W. 11 Mohammad Iqbal has stated in his examination in chief that the Appellant had been to his shop on 16 July 2006 and this witness has sold the knife to the Appellant which is article No. 10 for Rs. 200/-. This witness has identified the said knife i.e. article 10 in the examination in chief. In the cross examination, P.W. 11 Mohammad Iqbal has admitted that there is no

specific mark on the knife i.e. article No. 10 to identify that it is sold from his shop only. It appears to us thus that this witness has been examined from the point, to connect that piece of evidence which establishes a link that the Appellant with premeditation purchased a knife just a day prior to the date of incident. In the cross examination this witness had admitted that he has no record about the selling of the said knife to the Appellant neither he had issued any receipt for selling of the said knife. He has further specifically admitted in his cross examination that 100 to 200 customers visit to his shop every day.

16. P.W. 12 is the Investigating Officer PI Prakashsingh Pardeshi who was then attached to Narpoli Police Station, Bhiwandi. As stated herein above, this Investigating Officer has not offered any explanation with respect to the overwriting on Exhibit 19 which is the arrest panchanama pertaining to the date 19 (i.e. 19 July 2006). He has also in his examination in chief stated that he arrested the Appellant on 19 July 2006 under the arrest panchanama and he simplicitor seized the clothes of the Appellant which are article No. 8 and 9 on record. In his cross examination an omission has been elicited by the Appellant that article No. 10 i.e. the knife which was seized under panchanama Exhibit 26 was sealed and then the labels under the signature of panchas were affixed to it along with date on the same. As stated herein above, Exhibit 26 is absolutely silent about the sealing of the knife in presence of the pancha witnesses and P.W. 12 PI Pardeshi in his cross examination has tried to improve his case. P.W. 12 PI Pardeshi has proved in his deposition Exhibit 38 which is the letter/requisition dated 4 October 2006 sent by him to the forensic science laboratory, Kalina, Mumbai, thereby requesting them to perform chemical analysis on various articles sent by him. Exhibit 39 is the result of analysis of the blood sample of deceased Lata NalPELLI. Exhibit 40 is the report of analysis of various articles sent by P.W. 12 PI Pardeshi for chemical analysis.

17. It is to be noted here that the Chemical Analyzer could not ascertain the Blood Group of deceased Lata and has given opinion that the grouping of Blood Group is inconclusive. Exhibit 40 is the chemical analysis report of various articles in which item No. 8 is the half shirt seized on the person of the accused by P.W. 12 PI Pardeshi, item No. 9 is the full pant (trouser) and item No. 10 is the knife recovered by the police. The Chemical Analyzer has given opinion that item No. 8 shirt is stained with blood at places and appears to have been washed. The Chemical Analyzer has further given opinion that item No. 9 full pant (trouser) is stained with blood on the left front upper portion and item No. 10 i.e. the knife is stained with blood on the blade. However, while giving the final opinion, he has stated that the bloodstains found on item No. 8 are disintegrated and unsuitable for grouping. That item No. 9 i.e. the full pant (trouser) is having some blood of "A" Group. The bloodstains on the knife i.e. item No. 10 are disintegrated and unsuitable for grouping. It is important to note here that the Investigating Agency has not taken any efforts to determine the blood group of the Appellant and in the absence of determination of the blood group of the Appellant, particularly with reference to the fact that the blood

group of the deceased could not be ascertained as the Chemical Analyzer has found that the same is inconclusive, it was incumbent on the part of the prosecuting agency to determine the blood group of the Appellant. The discovery of bloodstains of "A" Group on item No. 9 i.e. the full pant (trouser) of the Appellant is a circumstance far too feeble to establish that the Appellant has murdered Lata. "A" Group is not an uncommon group of blood and as no effort was made to exclude the possibility of the Appellant belonging to the same group by the investigating agency, this piece of evidence cannot be safely relied upon. Therefore no compelling inference arise that the bloodstain which was found on the trouser of the Appellant was of deceased Lata only.

18. After taking into consideration all the evidence of the prosecuting witnesses, the cumulative effect of the circumstances which were put forth by the prosecution for establishing the guilt of the Appellant are not beyond the shadow of doubt. That the test requires the exclusion of other alternative hypothesis that the Appellant only is responsible for the commission of the said crime, cannot be said from the evidence on record, that it complies with the test of proof beyond reasonable doubt. The Hon"ble Supreme Court in Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, has observed that, "Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." It is also the settled position of law that suspicion, however, strong it may be, is in itself insufficient for conviction on its sole basis. It is also settled position of law that in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In case of resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime.

19. The present case is based on circumstantial evidence and as stated herein above, the prosecution has relied on mainly two circumstances i.e. there were bloodstains on the pant (trouser) of the Appellant and the knife which was recovered at the instance of the Appellant was having bloodstains. As stated herein above, the blood group on the pant (trouser) of the Appellant could not be determined and the Blood Group "A" was found on the pant (trouser) of the Appellant. The third circumstance which was relied upon by the prosecution is of suspicion expressed by P.W. 1 Pandhari i.e. father of deceased Lata coupled with the motive as the deceased had refused to marry with the Appellant. After scrutinizing the entire evidence on the record minutely, we are of the opinion that the evidence adduced by the prosecution is not cogent and sufficient to say that the accused is the only person who is responsible for the murder of Lata.

The chain of circumstances as propounded by the prosecution, in our opinion, is incomplete and would not lead to the irresistible inference that the Appellant only had committed the crime. We, therefore, extend benefit of doubt to the Appellant. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the Appellant is hereby quashed and set aside and the Appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the Appellant, be refunded to him. Since the Appellant is in jail, he be released forthwith, if not required in any other case.