
(2016) 10 BOM CK 0119
In the Bombay High Court
Case No : Criminal Appeal No. 24 of 2015

Diwakar s/o Dilip Karmore

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Evidence Act, 1872 — Section 27, Section 3
Penal Code, 1860 (IPC) — Section 201, Section 302

Citation : (2017) 2 AIRBomRCri 124 : (2017) ALLMRCri 2024

Hon'ble Judges : B.P. Dharmadhikari and A.S. Chandurkar, JJ.

Bench : Division Bench

Advocate : Mr. R.M. Daga, Advocate, for the Appellant; Mrs. M.H. Deshmukh, Assistant Public Prosecutor, for the Respondent-State

Final Decision : Disposed Off

Judgement

A.S. Chandurkar, J.—This Appeal filed under section 374(2) of the Code of Criminal Procedure takes exception to the conviction of the appellant, under Section 302 and Section 201 of the Indian Penal Code. By the judgment dated 15.12.2014, the appellant has been sentenced to suffer life imprisonment in Sessions Case No. 148/2012 by the learned Additional Sessions Judge, Chandrapur.

2. It is the case of the prosecution that one Kumari Shital There, who was a collegegoing student and residing at Ghuggus had left her house on 3.9.2012 for going to the place of her friend. However, she did not return back and hence, on 5.9.2012 her father lodged a missing report. On 7.9.2012, Gadchandur Police received information as to the discovery of dead body of a girl. After conducting its identification from the clothes and other articles, said fact was informed to the parents of the said girl. On the basis of the report lodged by mother of the said girl, an offence came to be registered. On completion of investigation, the appellant was charged of having committed offences punishable under Sections 302 and 201 of the Penal Code. The appellant did not plead guilty and hence was

tried. At the conclusion of the trial, the appellant came to be convicted in the manner stated herein above. Being aggrieved, the appellant has challenged his conviction.

3. Shri R.M. Daga, learned counsel for the appellant submitted that the conviction of the appellant was totally unjustifiable. He submitted that the case of the prosecution was based purely on circumstantial evidence and none of the circumstances that were relied upon by the trial Court formed a chain that could lead to the guilt of the appellant. According to him, there were various infirmities in the evidence on record. The incriminating articles that were seized by the prosecution did not, in any manner, incriminate the appellant. He took the Court through the evidence of the prosecution witnesses and submitted that on considering the entire evidence, the guilt of the appellant had not been established.

4. On the other hand, Mrs. M.H. Deshmukh, learned Assistant Public Prosecutor supported the conviction of the appellant. She submitted that the chain of circumstances that were referred to by the learned Judge of the Sessions Court clearly indicated the involvement of the appellant. The said chain led to his guilt and, therefore, his conviction by the Sessions Court was justified. She referred to the discovery of incriminating material at the instance of the appellant and submitted that the defence sought to be raised by him could not be accepted. It was, therefore, submitted that the Appeal was liable to be dismissed.

5. With the assistance of the learned counsel for the parties, we have gone through the entire evidence and we have also given due consideration to their respective submissions. The case of the prosecution is based purely on circumstantial evidence. As various circumstances have been taken into consideration by the trial Court for completing the chain leading to the guilt of the appellant, reference to the same can be first made. In paragraph 44 of the judgment of the trial Court, it has been held that the circumstances mentioned therein have been duly proved. The said circumstances are reproduced hereinafter :

"44. From the entire evidence on record, prosecution has proved following circumstances:

- (1) Accused and deceased are residents of the same village Ghuggus.
- (2) Deceased Shital used to go to the house of her grandmother for sleeping.
- (3) Accused also used to go to the house of grandmother of the deceased Shital and used to talk with deceased and her grandmother.
- (4) There were love affairs between accused and deceased Shital.
- (5) Though accused was married, he tried to contact with the deceased. However, deceased was not giving response.
- (6) Lastly there were calls on mobile between accused and deceased on 2.9.2012

and 3.9.2012.

(7) Dead body of the deceased was found in the hills of Manikgarh. The spot was discovered by accused.

(8) Not only that accused had produced chappal and odhani of the deceased.

(9) Accused has produced fragments of mobile of the deceased which he has given to her.

(10) Accused was holding Mobile No. 8626009733 and 8626009711.

(11) Since the incident deceased Shital was not found alive.

(12) Merely because there are some discrepancies in the colour of the clothes of the deceased as narrated by her father is not a ground to disbelieve that the said dead body was not belonging to the deceased Shital."

According to the learned counsel for the appellant, the circumstances at Sr. Nos. (1) to (6) were not being disputed by the appellant. According to him, the circumstances at Sr. Nos. (7),(8) and (9) were material circumstances and, according to him, if the same were displaced, the entire chain of circumstances would be broken thus demolishing the case of the prosecution.

6. Circumstance No.7 that has been relied upon by the trial Court is the discovery of the dead body of the deceased and the spot being shown by the appellant. At Exh.44 is the oral report of one Ananta Bavle dated 7.9.2012, in which it has been stated that at about 6.30 am on 7.9.2012, when said Ananta Bavle was at home, two ladies named, Anusuyabai Rathod and Sayatrabai Pawar had informed him that on the previous day, while they were grazing their cattle in the evening, they noticed a dead body of a lady near some bushes on the road adjoining Manikgarh Fort. The first information report dated 9.9.2012 Exh. 22 lodged by Shobhabai There, who was mother of Shital, indicates that on 7.9.2012 the police authorities had informed her that a body of a lady with the description of the clothes worn by her, had been found and, on that basis, her husband and other relatives had been to identify the same. In her deposition at Exh.20 she has reiterated these facts. It is to be noted that the appellant came to be arrested on 9.9.2012 at about 11.55 a.m. It is, thus, obvious that even before the arrest of the appellant, the body of said Shital had been discovered from the spot as narrated by Ananta Bavle at Exh.44 and the father of Shital, Purushottam There PW 2 had identified her clothes on 7.9.2012. Hence this observation of the learned Judge of the trial Court that the spot in question where the dead body of Shital was found was discovered by the appellant, is contrary to the evidence on record. Hence, this circumstance is not proved by the prosecution.

7. The next circumstance relied upon by the learned Judge of the trial Court is that the appellant had produced the chappal and odhani of the deceased. In the missing report dated 5.9.2012 that was lodged by the father of Shital, it has

been stated that she was wearing a black colour Salwar and green colour Kurta. This oral report is at Exh.24. The same does not refer to any odhani on the body of Shital. At Exh.25 is the identification of the clothes of deceased Shital. The same refers to a black coloured Salwar and a greenish pyjama with sky coloured odhani. There is also reference to a locket. The father of said Shital identified her clothes and stated that she had left the house wearing the same clothes. According to the prosecution, the appellant on memorandum under Section 27 of Indian Evidence Act had discovered snuff coloured odhani as well as a pair of sandals. This recovery was on 11.9.2012. Insofar as the odhani is concerned, PW 2 Purushottam There, the father of the deceased, was examined vide Exh.23. In his cross-examination, he stated that while Shital had a blue coloured odhani on her person, the odhani before the Court was of snuff colour. It can, thus, be seen that what was discovered by the appellant under Section 27 of the Indian Evidence Act was a snuff coloured odhani, while according to the father of the deceased, his daughter had a blue coloured odhani.

PW 14-Vijay Kalaskar, the Medical Superintendent examined vide Exh.13 has stated that on 19.9.2012 a brown coloured scarf was brought for his opinion. In his cross-examination, he admitted that he had received the scarf in an unsealed condition and that he had not sealed it after his examination. Thus, the said odhani discovered by the appellant is not a material piece of evidence that can support the case of the prosecution.

It is also to be noted that though there is a reference to discovery of pair of sandals, the same have not been identified by any witness examined by the prosecution. Further, PW 1 Shobhabai at Exh.20 in her cross-examination stated that on the basis of the description of the clothes she thought that the dead body shown to her was of her daughter and that she had personally not seen the clothes of her daughter. Thus, this circumstance that the odhani and chappal had been discovered at the instance of the appellant does not lead the case of the prosecution any further, considering the discrepancy in the colour of the odhani.

8. The next circumstance that has been taken into consideration is the production of fragments of a mobile handset of the deceased by the appellant. It is to be noted that this seizure has been effected below Exh.57. The said seizure does not indicate that it is under memorandum under Section 27 of the Indian Evidence Act. The said seizure has been effected on 13.9.2012 while seizure under Section 27 of the Indian Evidence Act has been effected a day earlier. As per the seizure panchnama at Exh.57, while search was being taken of the mobile handset of the deceased alleged to have been destroyed by the appellant, a blue coloured piece of mobile cover and keypad were seized. This seizure not being a memorandum by itself, does not assist the case of the prosecution inasmuch as it has not been brought on record that the blue coloured part of the mobile cover and keypad belonged to Shital. Hence the said circumstance taken into consideration by the learned Judge of the trial Court is also not a material circumstance for the purposes of completing the chain of circumstances.

9. As regards the identity of the body found to be that of Shital, the evidence in that regard is also shaky. PW 1 Shobhabai, mother of Shital, admitted that she had not been to the spot where the dead body had been noticed and only on the basis of the clothes she thought that the said dead body was of her daughter. She also admitted that she had personally not seen the clothes of her daughter. PW 2 Purushottam, father of Shital, also admitted that he had not seen the corpse of his daughter. The Investigating Officer PW 13 admitted that the dead body which was found, was identified by the relatives of Shital on the basis of seized clothes and articles shown to them. He, however, admitted that the body of the deceased was not shown to the relatives. Thus, the case of the prosecution proceeds on the basis that the body discovered on 6.9.2012 as reported by Ananta Bavle Exh. 44 on 7.9.2012, was of Shital only on the basis of the clothes on said body.

10. The report of the Chemical Analyser at Exh.65 indicates that no blood was detected on the clothes of the appellant. Similarly, even on the pair of sandals that were seized at the instance of the appellant vide Exhs.52 and 53, there were no bloodstains. The other evidence on record brought by the prosecution with regard to the call details of the appellant, also do not establish the location of the appellant at the place where the dead body was found.

11. It is well-settled that where the case of the prosecution is based purely on circumstantial evidence, each circumstance leading to the guilt of the appellant has to be independently proved and such chain should lead only to the involvement and guilt of the accused alone. As noted above, the chain of circumstances in the present case does not lead us to come to the conclusion that it was only the appellant who alone was guilty of having committed the offences with which he was charged. It cannot be said beyond reasonable doubt that the appellant alone is guilty for the same. The appellant would, therefore, be entitled for being acquitted. At the same time, it must be noticed that there were lacunae in the investigation. The missing report at Exh.24 does not indicate that any photograph of missing Shital was obtained from her father. The parents of Shital were not shown the body which was stated to be of Shital. There was no investigation with regard to the discovery of brown coloured odhani when, according to the parents of Shital, she was having a blue coloured odhani. The said brown coloured odhani was also not sealed when it was sent to the Medical Superintendent nor was it sealed after it was examined by him. All these aspects have ultimately resulted in weakening the case of the prosecution resulting in the appellant's acquittal.

12. In view of the aforesaid discussion, the following order is passed

ORDER

(i) Judgment of conviction delivered by the learned Additional Sessions judge, Chandrapur on 15.12.2014, in Sessions Case No.148 of 2012, is quashed and set aside.

- (ii) The appellant is acquitted of offences punishable under Sections 302 and 201 of the Indian Penal Code.
- (iii) Muddemal property be disposed of after appeal period is over as directed by the trial Curt.
- (iv) The appellant be set at liberty if his custody is not required by the State in any other matter.