
(2015) 01 BOM CK 0308

In the Bombay High Court

Case No : Criminal Appeal Nos. 296 of 2011 and 270 of 2013

Hariom Vijay Pande and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 01 BOM CK 0308

Hon'ble Judges : V.K. Tahilramani, J; I.K. Jain, J

Bench : Division Bench

Advocate : Rohini Dandekar, for the Appellant; V.R. Bhonsale, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.K. Jain, J—Criminal Appeal No. 296 of 2011 has been preferred by original accused No. 2 Hariom Vijay Pande @ Pandit. Criminal Appeal No. 270 of 2013 is preferred by original accused No. 1 Rajesh Shyamnarayan Mishra. In both the Appeals, appellants have challenged the Judgment and Order of conviction and sentence passed by the learned Additional Sessions Judge (Borivali Division), Dindoshi, Goregaon, Mumbai on 16.12.2010 in Sessions Case No. 72 of 2009.

2. By the said Judgment and Order, the learned Additional Sessions Judge convicted the appellants under Sections 302 read with 34 of the Indian Penal Code and sentenced them to suffer life imprisonment with fine of Rs. 2,000/- each, in default rigorous imprisonment for one month each.

3. For the sake of convenience, we shall refer to the appellants as they were referred before the trial Court i.e. Hariom Vijay Pande @ Pandit as accused No. 2 and Rajesh Shyamnarayan Mishra as accused No. 1.

4. The prosecution case briefly stated is as under:-

Nanjibhai Babubhai Rathod (Thakur) was residing at Shivneri Welfare Society,

Kranti Chawl, Bhagatsingh Nagar No. 1, Link Road, Goregaon (W), Mumbai. His wife and children were residing away from him due to some matrimonial bickerings. Nanjibhai was staying alone. According to prosecution, he was addicted to liquor and under the influence of alcohol he used to come out of the house in objectionable condition. His relations with the neighbours were not cordial. He was not even paying water bill. At the relevant time, PW-2 Ganesh Satyawar Ghadge, a neighbour of Nanjibhai went to him to demand water bill. Nanjibhai told him that he was going to his village and on return he would pay the bill. On the next day Ganesh noticed that room of Nanjibhai was locked. He was under the impression that Nanjibhai might have left for village.

5. After 2-3 days, some foul smell was found spreading. Therefore, PW-2 Ganesh with the help of others cleaned the drainage and the area. But it did not work. So they went and peeped into the room of Nanjibhai by opening the window. They noticed someone sleeping with a bed sheet on his person.

6. Ganesh then informed the police. PW-18 API Balkrushna Sitaram Kamble was attached to Bangurnagar Police Station. On 20.01.2009, he was on PSO duty from 08:00 a.m. to 08:00 p.m.. At about 10:00 a.m., he received a wireless message from control room that foul smell was spreading from the room of Nanjibhai. Then API Kamble along with other police staff and photographer rushed to the spot.

7. PW-1 Yogesh Krishna Koyande, police constable attached to Bangurnagar Police Station was present there. He was on duty on mobile van No. I along with other police officials. He joined duty at around 09:00 a.m.. At 09:15 a.m., he received wireless message that foul smell was coming from a closed house situated at Shivneri Welfare Society, Goregaon (W), Mumbai. As the house was closed, lock was broken and API Kamble along with others entered the room. They saw blood and water mixed liquid lying on the floor. The insects were moving on bed sheet and the dead body which was in decomposed condition. The dead body was identified by PW-2 Ganesh and his father Satyawar as of Nanjibhai. Photographs of the dead body as well as the spot were snapped. One white towel was tied around the neck of the dead body. As the death was found suspicious, report was lodged by PW-1 police constable Yogesh Koyande against unknown persons for committing murder of Nanjibhai. The dead body was sent for Post Mortem. During investigation, statements of neighbours and other witnesses were recorded. Test identification parade was conducted by PW-12 Special Executive Magistrate Anand Manohar Nerulkar. Blood stained clothes of accused No. 1 and the deceased were seized. Key of the house was recovered at the instance of accused No. 1. On completion of investigation, charge sheet came to be filed. In due course, case was committed to the Court of Sessions.

8. Charge was framed against the appellants/accused under Sections 302 read with 34 of the Indian Penal Code. Appellants/accused pleaded not guilty to the said charge and claimed to be tried. Their defence was of total denial and false implication. On going through the evidence of prosecution witnesses, learned

Additional Sessions Judge convicted and sentenced the appellants as stated here-in-before. Appellants have questioned the correctness of Judgment of conviction and Order of sentence in the present Appeals.

9. We have heard the learned Advocates for the parties. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the evidence on record and the Judgment delivered by the trial Court, we are of the opinion that the prosecution has proved the case beyond reasonable doubt and the Appeals have no merits for the reasons stated below.

10. The prosecution case revolves round the circumstantial evidence. There is no direct evidence in the case. Prosecution examined in all 21 witnesses and relied upon the following circumstances.

(i) Accused were seen putting lock to the door of the house of deceased on 15.01.2009 at 07:00 p.m. and

(ii) Recovery of key from PW-5 Arunchandra Buban Roy at the instance of accused No. 1.

11. So far as the factum of homicidal death is concerned, reliance is placed by the prosecution on the medical evidence, FIR, inquest panchanama and spot panchanama. As stated above, FIR was lodged by police constable PW-1 Yogesh Koyande. It is proved at Exh. 14. From FIR, it can be seen that body of Nanjibhai was found in decomposed condition with a towel tied around the neck of body. Inquest panchanama Exh. 20 and spot panchanama Exh. 17 do substantiate the contention of prosecution that the death was unnatural. PW-15, Dr. Anil Akaram Kate performed post mortem on the dead body on 20.01.2009. Dr. Kate was attached to Borivali Post Mortem Centre on that day. On performing post mortem, he found the following ante-mortem injuries on the person of the dead body.

(1) Grooved ligature marks over the neck encircling complete neck; on front side 5 cm below chin passed on both sides of neck latterly and horizontally and 5 cm below both the ears lobules respectively. Size of ligature mark was 32 cm and width was 3 cm. The marks were reddish and Blackish in colour.

(2) On dissection of neck and ligature mark, internal injuries were found with hemorrhage sternocleidomastoid and hyoid, cartilage was ruptured and there was fracture of hyoid bone with blood clots at fracture site of hyoid bone.

12. The Medical officer opined cause of death due to grooved ligature marks over the neck. On receiving viscera report, final cause of death was ascertained. It was due to violent asphyxia due to strangulation. Post Mortem Report was proved by Dr. Kate at Exh. 45. This voluminous evidence clearly established that the death in question was a homicidal death.

13. The next crucial question in the present case is the authorship of the accused

in causing death of Nanjibhai. It is the case of prosecution that on 15.01.2009, accused along with wife of accused No. 1 went to Nanjibhai for getting the room on rent. That time Nanjibhai misbehaved with the wife of accused No. 1. So both the accused in furtherance of their common intention caused the death of Nanjibhai.

14. The prosecution has also come with a case that accused wanted to grab the amount of Rs. 14,000/- to be given to the deceased on 16.01.2009 towards deposit as Nanjibhai agreed to let out the room to them on deposit of Rs. 15,000/- and monthly rent of Rs. 2,000/-. Accused were in Mumbai on 15.01.2009 but on 16.01.2009 they fled away to their native place in Uttar Pradesh with Rs. 14,000/- taken by accused No. 1 from his friend.

15. PW-2 Ganesh Ghadge is the star witness examined in the case. He was a neighbour of Nanjibhai who was residing alone adjoining his room. According to him, on 15.01.2009 when he returned from duty at about 07:00 p.m. to 07:30 p.m., he noticed that both the accused were locking the room of the deceased. He saw accused No. 2 locking the house. After 2-3 days aggressive odour started coming from the room of Nanjibhai. On 20.01.2009 they cleaned the drainage and surrounding area but it did not work. So the window of the room of Nanjibhai was opened and they saw one person lying in the room covered with bed sheet. The blood was lying on the floor. They informed police. On arrival of police, dead body and articles were taken into custody. On 24.02.2009 and 27.03.2009 Ganesh identified accused Nos. 1 and 2 in the identification parade held by Special Executive Officer PW-12 Anand Nerulkar. Nothing substantial could be elicited in the cross-examination of PW-2 Ganesh Ghadge to disbelieve his testimony. There is no reason for him to grind an axe against the accused. On test identification parade his evidence is fully corroborated by Special Executive Officer PW-12 Anand Nerulkar. Relying upon his testimony, the trial Court came to the conclusion that Nanjibhai was residing alone in the house and accused were seen on 15.01.2009 locking the door of his room. We find no reason to interfere with the reasons recorded by the trial Court in believing the evidence of PW-2 Ganesh Ghadge and placing reliance on the same.

16. Another clinching circumstance against the accused is recovery of key at the instance of accused No. 1. The evidence of PW-5 Arunchandra Roy is relevant here. He was running a cycle repairing shop from 09:00 a.m. to 09:00 p.m. in front of Siddharth Hospital, Goregaon (W), Mumbai. He was acquainted with accused No. 2. He stated that accused No. 2 was working as security guard and used to visit his shop. On 15.01.2009 accused No. 2 had been to his shop between 05:00 p.m. and 06:00 p.m. That time accused No. 2 asked PW-5 Arunchandra Roy to allow his brother and brother's wife to stay in a vacant room. Accused No. 2 also informed PW-5 Arunchandra Roy that his brother and his wife had come to Mumbai from their native place. He introduced them to the witness Arunchandra Roy. So Arunchandra Roy allowed them to stay overnight in his room. Thereafter, on 16.01.2009 between 09:00 a.m. and 09:30 a.m.,

daughter Rashi informed PW-5 Arunchandra Roy that accused had left. He also identified the person introduced by accused No. 2 as his brother. PW-5 Arunchandra Roy further stated that accused No. 1 demanded key of the room which was locked and used by them during night. Thereafter, accused opened the room. All entered inside. Accused No. 1 then took out the key of lock from the window situated above wash room. The said key was taken into custody by police. It's panchanama was drawn in the presence of PW-4 Chetan Rathod.

17. According to PW-4 Chetan Jawarsingh Rathod, accused No. 1 gave memorandum to discover a key from the room which was locked. The said memorandum has been proved at Exh. 20. After memorandum was recorded, accused No. 1 led them to the room situated at Bhagatsingh Nagar No. 1. Accused opened the room from the place above wash room near the door. It's seizure panchanama was drawn. The same is proved by PW-4 Chetan Rathod at Exh. 21. He has identified the key recovered at the instance of accused No. 1 at Article "E".

18. The evidence of this witness is assailed on the ground that he acted as panch in two-three cases. The trial Court on consideration of the evidence of PW-4 Chetan Rathod and PW-5 Arunchandra Roy came to the conclusion that their testimonies receive corroboration through the evidence of investigating officer PW-19 Rajan Abaji Mane and relied upon the same. It is apparent from the testimony of PW-4 Chetan Rathod and PW-5 Arunchandra Roy that they have no reason to side the prosecution and depose against the accused. Their evidence is natural and inspires confidence. Through their evidence prosecution has succeeded in establishing recovery of key at the instance of accused No. 1.

19. As the prosecution case is exclusively based on circumstantial evidence, motive plays a vital role. It is the case of prosecution that accused Nos. 1 and 2 and wife of accused No. 1 were in Mumbai on 15.01.2009. In this respect, prosecution case is two fold. It is stated that on 15.01.2009, accused No. 1 his wife and accused No. 2 had been to Nanjibhai for getting a room on rent. That time Nanjibhai misbehaved with the wife of accused No. 1 and so accused strangulated him and caused his death. Another submission is that the post conduct of accused is relevant as in the night on 16.01.2009 they left for Uttar Pradesh by Mahanagari Express and did not return. It has come in the evidence of prosecution witnesses that Nanjibhai agreed to let out the room to accused on deposit of Rs. 15,000/- and monthly rent of Rs. 2,000/-. The evidence of PW-16 Rajendra Mishra shows that on 16.01.2009 accused informed him that they were going to the native place. Accused were acquainted to him. He also stated that both the accused and wife of accused No. 1 Bittu had been to his house and after dinner they left for their native place in Uttar Pradesh by Mahanagari Express.

20. PW-8 Dinesh Guruv Pujari was the Bank officer serving at Bharat Co-operative Bank, Andheri (W) branch, Mumbai. On 16.01.2009 he was on duty. He stated that one bearer cheque of Rs. 14,000/- was tendered by Rajesh Mishra for encashment. He identified accused No. 1 as Rajesh Mishra. Before encashment,

signature of accused No. 1 was taken on the reverse of cheque and amount was paid to him. This witness identified the cheque at Exh. 29.

21. PW-17 Dilip Prahlad Ahiwale is the Additional Chief State Examiner of documents. Through his evidence, it is established that disputed signature resembles the admitted signature. To establish further link that signature on the rear side of cheque was of accused No. 1, prosecution placed strong reliance on the evidence of PW-4 Chetan Rathod. In his presence, specimen hand writing and signature of accused No. 1 was taken and accordingly, panchanamas at Exhs. 22 and 24 were drawn. It is clear from the evidence of above witnesses that hand writing on cheque Exh. 29 was of accused No. 1 Rajesh Mishra.

22. To show that cheque Exh. 29 was issued to accused No. 1, prosecution examined PW-11 Pramod Devaram Shinde. He is the owner of hair dresser shop situated at Jawahar Nagar, Goregaon (W), Mumbai. One Ashokkumar Naik was serving in his saloon. He was having a cell phone which was being used by accused No. 1. Accused No. 1 was serving in the said saloon for two years. It appears that before one month of the incident, accused No. 1 proceeded on leave and went to his native place. After one month, he called him and informed that he is going to resume duty as he is in need of money for paying deposit of a room to be hired. Then accused No. 1 along with his wife approached him and demanded Rs. 14,000/- for paying deposit of the room. On the next day, he issued a cheque of Rs. 14,000/- signed by Kirit Parekh, who is his friend. He stated that thereafter, accused did not turn up. Thus, there is sufficient evidence on record to indicate that accused encashed the said cheque. Instead of paying deposit for a room, they fled away to their native place in Uttar Pradesh along with the money on 16.01.2009. It has come on record that accused No. 1 was newly married that time and he was in need of money. In such circumstances, subsequent conduct of the accused would be also relevant.

23. In the light of the above, we find that there are clinching circumstances proved by the prosecution indicating that accused and accused alone are responsible to cause the unnatural death of Nanjibhai. The trial Court relying upon those circumstances held the accused guilty of the offence of murder under Section 302 read with 34 of the Indian Penal Code. We have no reason to take the view different then taken by the trial Court. We find the Appeals devoid of merits and substance and hence Appeals are dismissed.

24. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Rohini Dandekar at Rs. 5,000/-.