

(2011) 06 BOM CK 0055
In the Bombay High Court
Case No : Criminal Appeal No. 1123 of 2004

Hindu Babuji Londhe

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2011) 3 Crimes 179

Hon'ble Judges : R.G. Ketkar, J; D.D. Sinha, J

Bench : Division Bench

Advocate : Murtaza M. Najmi, for the Appellant; U.V. Kejriwal, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Heard the learned Counsel for the Appellant and the learned Addl. Public Prosecutor for the State.

2. This Criminal Appeal is directed against the judgment and order dated 3.4.2003 passed by the Addl. Sessions Judge, Pune, in Sessions Case No. 209 of 2000 whereby the Appellant came to be convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer R.I. for life and was also directed to pay a fine of Rs. 2,000/-, in default R.I. for six months. The Appellant is also convicted for the offence punishable u/s 201 of the Indian Penal Code and sentenced to suffer R.I. for one year and to pay a fine of Rs. 500/-, in default to suffer R.I. for three months. Both these substantive sentences are directed to run concurrently. Original Accused No. 2 Suresh Waman Padwal and accused No. 3 Kailas Kisan Date were acquitted of all the charges. The State Government has not preferred an appeal against the acquittal of original accused Nos. 2 & 3.

3. The prosecution case, in a nutshell, is as follows:

On 11.4.1999 Mr. Jaising Dattu Narawade lodged a complaint with the police

station, Shirur, alleging therein that on 10.4.1999 when he returned to his house at about 7.00 p.m., his brother deceased Kaluram was not in the house and, therefore, he made inquiry about his brother's whereabouts. Witness Jaisingh was told that the deceased came to the house at about 6.30 p.m., however left the house for going to the village Pimparkhed and did not return home on that day. Jaisingh also stated in the complaint that since his brother did not return home on 10.4.1999, he went to the square in the village to make inquiry. At this square, he met Ankush Pokharkar and Sarpanch Londhe. Both of them told the complainant that one dead-body was lying near Murali's stream. The complainant along with Pokharkar and Londhe went to the spot and found one dead-body lying in the well which was half constructed. Jaisingh identified the dead-body as that of his brother Kaluram. There were injuries on the head and face of the deceased.

4. It is the case of the prosecution that one cap stained with blood and a pair of chappel was lying on the spot. The complainant suspected that his brother Kaluram may have been killed as he was examined by the prosecution as an eye-witness in the murder case of Dadabhau Shankar Pawar. The complaint exh.84 was lodged with Police Station, Shirur. On the basis thereof, the offence came to be registered u/s 302 of the Indian Penal Code vide crime No. 39/99. The prosecution, after completion of the investigation, filed a charge-sheet in the Court against the Appellant and other two persons. Charge u/s 302 read with Section 34 of the Indian Penal Code was framed against the accused which was read over and explained to the accused who denied the same and claimed to be tried. The prosecution, though examined as many as 18 witnesses in order to prove the charge, the material evidence on the basis of which the conviction is awarded to the Appellant is of P.W.8 D.L. Date, P.W.9 H.K. Chaskar and P.W.10 R.R.V. Gophane coupled with the medical evidence. All these witnesses were examined by the prosecution to establish the fact that the deceased Kaluram was last seen with the Appellant on the evening of the earlier day i.e. on 10.4.1999 and the dead body of the deceased Kaluram was found in the well on 11.4.1999.

5. The learned Counsel for the Appellant has submitted that the evidence of last seen is a weak type of evidence and the conviction cannot be based on the solitary evidence of deceased last seen with the accused unless it is corroborated by other evidence. It is submitted that in the instant case, the conviction is based only on the sole evidence of last seen which has not been corroborated by any other evidence adduced by the prosecution. The counsel for the Appellant has submitted that even the evidence of last seen adduced by P.W.9 H.K. Chaskar and P.W.10 R.R.V. Gophane is cryptic and does not inspire confidence. It is submitted that both these witnesses stated in their respective testimonies that on 10.4.1999 at about 6.00 p.m. in the liquor shop of Ranganath Gophane, both these witnesses along with the Appellant consumed liquor and, thereafter, deceased and the Appellant went on a bicycle which belonged to the deceased.

6. The learned Counsel for the Appellant has submitted that so far as the

evidence of P.W.8 Dadabhau Date is concerned, it only reveals that on 10.4.1999 at about 10.30 p.m. while he was going to his house, he saw the Appellant. This witness asked the Appellant whether he was Hindu. The Appellant replied in the affirmative. The evidence of this witness further shows that on the next date i.e. on 11.4.1999, he came to know that Kaluram was killed on the previous night. The counsel for the Appellant has submitted that the evidence of these three witnesses is hopelessly inadequate to bring home the guilt of the Appellant for the offence charged and, therefore, the impugned judgment and order passed by the trial Court is liable to be quashed and set aside.

7. The learned Asset. Govt. Pleader supported the judgment of the trial Court and contended that the testimony of P.W.9 and P.W.10 shows that the deceased was last seen in the company of the Appellant on 10.4.1999 at 6.00 p.m. in the liquor shop and the dead-body of the deceased was found immediately on the next date in the well. It is submitted that in the instant case, the evidence of last seen is clinching, trustworthy and reliable. The accused has not stated anything at the time of recording of the statement u/s 313 of the Code of Criminal Procedure to show that he parted the company with deceased Kaluram after they left the liquor shop of Regnant Gophane. It is, therefore, contended that the evidence adduced by the prosecution on the point of last seen coupled with the medical evidence proves the charge of murder beyond all reasonable doubt against the Appellant.

8. The learned Addl. Public Prosecutor fairly conceded that the statement of original accused No. 2 Suresh Waman Padwal recorded by the Magistrate u/s 164 of the Code of Criminal Procedure does not further the case of the prosecution insofar as the Appellant is concerned. It is also not disputed that on the point of last seen, the prosecution has examined only two witnesses i.e. P.W.9 H.K. Chaskar and P.W.10 R.R.V. Gophane. However, according to the Addl. Public Prosecutor, the same is sufficient to prove the charge framed against the Appellant and, therefore, the trial Court was justified in convicting the Appellant for the offence charged.

9. We have considered the contentions canvassed by the respective learned Counsel. At the outset, we would like to express that the evidence of last seen is a weak type of evidence and, therefore, unless it is corroborated by other evidence, it is difficult to award the conviction only on the basis of the evidence of last seen. In the instant case, it is not at all in dispute that the conviction of the Appellant for the offence u/s 302 as well as Section 201 of the Indian Penal Code came to be awarded by the trial Court only on the basis of evidence of last seen adduced by P.W.9 H.K. Chaskar and P.W.10 R.R.V. Gophane, coupled with the medical evidence.

10. The scrutiny of evidence of P.W.9 H.K. Chaskar shows that on 10.4.1999 at about 6.00 p.m., this witness had gone to the liquor shop of Regnant Gophane where he saw deceased Kaluram and the Appellant consuming liquor. This witness also consumed liquor. On the next date, this witness came to know that

the dead-body of deceased Kaluram was found in the well situate near Kidnaper, Kurd. In cross-examination of this witness, he has admitted that he did not go to the police station to give his statement and denied the suggestion given by the defense that this witness did not go to the liquor shop of Regnant Gophane on 10.4.1999 and saw the Appellant and the deceased consuming liquor in the said shop. Similarly, the evidence of P.W.10 Regnant shows that he was a resident of Pimparkhed and was doing the business of sale of country liquor. On 10.4.1999 at about 6.00 p.m. deceased Kaluram and the Appellant Hindu Londhe came to his shop, both of them consumed liquor and, thereafter, left the liquor shop. This witness has given the description of clothes worn by the Appellant as well as deceased Kaluram when they visited the shop on 14.4.1999. This witness in the cross examination has admitted that his statement for the first time was recorded by the police after four to five days. The testimony of both these witnesses even if accepted as it is only demonstrates that on 10.4.1999 at about 6.00 p.m. the Appellant and the deceased Kaluram went to the liquor shop of P.W.10. They consumed liquor and left the said shop. It is not in dispute that the dead body of deceased Kaluram was found on the next date i.e. on 11.4.1999 in the well. The evidence of both these witnesses, in our view, is not at all clinching nor is sufficient to establish the complicity of the Appellant in the crime in question and the same is, therefore, hopelessly inadequate to prove the charge of murder against the Appellant. There is a huge gap of more than 12 hours when the deceased was last seen with the Appellant and the finding of dead body of the deceased and, therefore, only on the basis of the uncorroborated testimony of these two witnesses, we are of view that the prosecution utterly failed to bring home the guilt of the accused for the offence charged.

11. The evidence of Dadabhau Date (P.W.8) is not on the point of last seen. The testimony of Dadabhau only shows that on 10.4.1999 at about 10.30 p.m., he has seen the Appellant while he was on his way home. The evidence of this witness is completely silent about the presence of the deceased at the time when he saw the Appellant on 10.4.1999 at 10.30 p.m. On the other hand, the testimony of P.W.8 reveals and demonstrates that when this witness saw the Appellant at 10.30 p.m. on 10.4.1999 deceased Kaluram was not with him which makes it evident that the Appellant and the deceased though seen together at 6.00 p.m. in the shop of Regnant Gophane and they consumed liquor, the deceased parted the company of the Appellant after they left the liquor shop and, therefore, when P.W.8 Dadabhau met the Appellant at about 10.30 p.m. on 10.4.1999, the deceased was not with him. It is, in these circumstances, that the evidence of last seen together loses its efficacy and is also not clinching. So far as the medical evidence is concerned, it is a corroborative piece of evidence which only demonstrates the nature of the injury sustained by the deceased and the cause of death, but does not establish who is the author of those injuries and it is for the prosecution to adduce independent evidence to establish who is the author of the injury sustained by the deceased. In the instant case, it is not in dispute that the conviction is based only on the evidence of P.W.8, P.W.9 and

P.W.10 which, in our view, is wholly inadequate to bring home the guilt of the Appellant and, therefore, the finding of conviction recorded by the trial Court are unsustainable in law.

12. Before we part with the Judgment, we want to express that if the case is based on circumstantial evidence, the prosecution has to prove the following circumstances:

(i) The circumstances from which inference of guilt is sought to be drawn must be cogently and firmly established.

(ii) The circumstances should unerringly point towards the guilt of the accused.

(iii) The circumstances taken cumulatively should form a chain so complete which must demonstrate in all probability that the crime was committed by the accused.

In the instant case, the evidence of the prosecution considered and discussed hereinabove does not establish any of these factors. Similarly, the prosecution has also not adduced any convincing evidence to prove the motive behind the crime. Therefore, in our view, the impugned judgment of conviction cannot be sustained in law.

13. In the result, the Criminal Appeal is allowed. The impugned judgment and order of conviction and sentence dated 3.4.2003 is hereby quashed and set aside. The Appellant (original accused No. 1) Hindu Babuji Londhe be set free forthwith, if not required in any other criminal case.