
(2015) 04 BOM CK 0089
In the Bombay High Court
Case No : Criminal Appeal No. 718 of 2008

Jagannath R. Beloshe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2015) 4 BomCR(Cri) 197 : (2015) 2 Crimes 736

Hon'ble Judges : V.K. Tahilramani, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Rupali Manik Shinde, Advocate appointed by Legal Aid, for the Appellant; A.S. Pai, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The Appellant original Accused No. 1 has preferred this Appeal against the judgment and order dated 27th June 2008 passed by the learned Sessions Judge, Satara in Sessions Case No. 107 of 1993. By the said judgment and order, the learned Sessions Judge convicted the Appellant under section 302 of IPC and sentenced him to life imprisonment and fine of Rs.100/-, in default, SI for four months.

2. The prosecution case briefly stated is as under.

The Appellant was the husband of deceased Sunanda. The marriage of the Appellant and Sunanda took place in the year 1988. Sunanda was earlier residing at Bamnewadi with her parents. After the marriage, Sunanda started residing at Shindewadi with the Appellant and his mother. The distance between Shindewadi and Bamnewadi was 7 to 8 kms. Some time after the marriage, the Appellant went to Mumbai in relation to his job. He used to come to Shindewadi once in a month. Thereafter, Sunanda developed relations with Hanumant Khandagale. The Appellant came to know about this fact and he questioned his wife Sunanda about illicit relations with Hanumant Khandagale. Sunanda confessed that she

had illicit relations with Hanumant Khandagale. Thereafter, a meeting was called which was attended by the Appellant, his wife Sunanda, PW 1 Sampat, PW 5 Raghu and others. This meeting was called in the house of the mother of Sunanda at Bamnewadi. The Appellant stated in the meeting that his wife Sunanda was talking with third person and he was suspecting her character. However, even thereafter Sunanda continued illicit relations with Hanumant Khandagale. The Appellant then told his wife Sunanda to accompany him as they were going to Bamnewadi. Sunanda accompanied the Appellant. Then the Appellant took Sunanda to Table Land at Panchgani. There the Appellant strangled Sunanda and threw her body in the forest below the Table Land. The Appellant then went to the Panchgani Police Station and informed them about the said fact. The report given by the Appellant was reduced into writing which is at Exh.50. In the information which the Appellant gave to the Police, the Appellant also stated that he would show the spot where he had thrown the dead body of his wife Sunanda. The Appellant then led the Police and panchas to the spot where he had thrown the dead body of his wife. The dead body was sent for post mortem. The post mortem report shows that Sunanda had died due to strangulation. The Appellant expressed that he wanted to make a confession, hence the Appellant was sent to PW 9 JMFC Shri Warriar. After following all necessary procedure, Shri Warriar recorded the confession of the Appellant. In the confession, the Appellant stated that on 3rd January 1993 he came from Mumbai to his village on leave. On 5th January 1993, his wife confessed to him that she had illicit relations with Hanumant Khandagale. The Appellant then called Hanumant Khandagale from Mumbai. After few days, Hanumant came to Shindewadi. Hanumant also confessed that he had illicit relations with Sunanda. Hence on 17th January 1993, the Appellant told his wife Sunanda that they will go to Bamnewadi. Sunanda then accompanied him. On the way, the Appellant told his wife Sunanda that they will go to Table Land at Panchgani. Sunanda agreed to go to the Table Land. At the Table Land, the Appellant strangled his wife Sunanda and thereafter threw her body below the Table Land. After completion of investigation, the charge-sheet was filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the Appellant original Accused No. 1 as well as original Accused No. 2 Hanumant Khandagale under section 302 r/w 34 of IPC and under section 120B of IPC. The Accused pleaded not guilty to the said charge and claimed to be tried. Their defence was that of total denial and false implication. During the pendency of the trial, original Accused No. 2 Hanumant Khandagale expired, hence the case against him abated and the trial went on only against the Appellant. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the Appellant as stated in paragraph 1 above, hence this Appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After

carefully considering the matter, for the below mentioned reasons, we are of the opinion that the Appellant committed the murder of his wife Sunanda.

5. The entire case is based only on circumstantial evidence. The circumstances against the Appellant are as under:-

"(a) judicial confession to PW 9 JMFC Shri Warriar;

(b) the dead body of Sunanda was discovered at the instance of the Appellant;

(c) motive."

6. PW 9 JMFC Shri Warriar recorded the judicial confession of the Appellant. Shri Warriar has stated that he observed all the necessary procedure and thereafter recorded the confession of the Appellant. Shri Warriar has stated that the Police produced the Appellant before him on 30th January 1993. On that day, he took the Appellant into magisterial custody. Though the Appellant informed him that he had committed the offence and wanted to confess, still he told the Appellant to think over his decision and the Appellant was given twenty four hours" time for reflection. Thereafter the confession of the Appellant was recorded on 1st February 1993. In the confession, the Appellant stated that he was married to deceased Sunanda on 10th March 1988. After the marriage, he left his wife Sunanda at Shindewadi with his mother and he went to Mumbai in relation to his job. Hanumant Khandagale was residing next to the house of the Appellant. On 3rd January 1993 he came on leave from Mumbai to his village. Deceased Sunanda who was then at her mother's house came to Shindewadi on 5th January 1993. Sunanda confessed before the Appellant that she had illicit relations with Hanumant Khandagale. The Appellant then called Hanumant Khandagale from Mumbai. Hanumant Khandagale came and met him on 16th January 1993. Hanumant Khandagale also confessed before the Appellant that he had illicit relations with Sunanda. On 17th January 1993, the Appellant told his wife Sunanda that they will go to Bamnewadi, hence his wife Sunanda accompanied him. After traveling for some distance, the Appellant told his wife Sunanda that they will go to the Table Land. His wife agreed to accompany him, they then went to the Table Land at Panchgani. At the Table Land, the Appellant strangled his wife Sunanda with the help of Accused No. 2. Thereafter, the body was thrown down from the Table Land.

7. The next circumstance the prosecution is relying on is discovery of dead body of Sunanda at the instance of the Appellant. To show that the dead body of Sunanda was discovered at the instance of the Appellant, the prosecution has examined panch witness PW 6 Ravindra and PW 7 Somchand. Both these witnesses have turned hostile and have not supported the prosecution. However, in the decision of the Supreme Court in the case of Mohd. Aslam Vs. State of Maharashtra, (2000) 8 JT 104 : (2004) 2 SCALE 242 : (2001) 9 SCC 362 , it is contended that as the panch witness has turned hostile, the evidence of the Investigating Officer was unsupported and hence, it cannot be relied upon. The Supreme Court observed thus :-

"We cannot agree with the said contention. If panch witnesses turned hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated. Nor do we agree with the contention that his testimony is unsupported or uncorroborated. The very fact that PW 34 produced in the Court lethal weapons recovered is a very formidable circumstance to support his evidence."

Thus, it was held in the case of Mohd. Aslam that evidence of Police Officer effecting recovery would not stand vitiated by reason of panch witnesses turning hostile. Similar view as above was taken in Modan Singh Vs. State of Rajasthan, AIR 1978 SC 1511 : (1978) 4 SCC 435 : (1979) SCC(Cri) 56 .

8. In relation to panch witness turned hostile, the Supreme Court in the case of Anter Singh Vs. State of Rajasthan, (2004) CriLJ 1380 : (2004) 1 CTC 612 : (2004) 2 JT 332 : (2004) 2 SCALE 271 : (2004) 10 SCC 657 : (2004) 2 SCR 123 : (2004) 2 UJ 769 : (2004) AIRSCW 743 : (2004) AIRSCW 3104 : (2004) 1 Supreme 1005 : (2004) 3 Supreme 131 has observed that even if panch witness turned hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated. The supreme Court in the case of Rameshbhai Mohanbhai Koli and Others Vs. State of Gujarat, (2010) 11 JT 605 : (2010) 11 SCALE 120 : (2011) 11 SCC 111 : (2011) 3 SCC(Cri) 102 : (2010) 9 UJ 4764 : (2011) AIRSCW 378 : (2010) 7 Supreme 859 observed that merely because panch witnesses turned hostile, is no ground to reject evidence, if the same is based on testimony of investigating officer alone.

9. In the present case, PW 8 PSI Vishnu Jagtap has deposed about discovery of dead body of Sunanda at the instance of the Appellant. He has stated that the Appellant in the presence of panchas said that he will show the spot where he had thrown the dead body of Sunanda. Thereafter, the Appellant pointed out the dead body. There is nothing in the cross-examination of PW 8 PSI Vishnu Jagtap to disbelieve his testimony. Thus, the evidence of PW 8 Jagtap who deposed that the dead body of Sunanda was discovered at the instance of the Appellant can be safely relied upon. If the Appellant had not pointed out where he had thrown the dead body of his wife Sunanda, probably the Police may not have been able to trace her dead body. This is an important circumstance against the Appellant.

10. The last circumstance against the Appellant is motive. The motive was that the appellant was suspecting the character of his wife Sunanda i.e. he was suspecting that she was having illicit relations with some other person. The evidence shows that due to this, a meeting was called in the house of the mother of Sunanda at Bamnewadi. In the meeting, the Appellant stated that Sunanda was talking with some other person and that he was suspecting her character. PW 1 Sampat and PW 5 Raghu were present in the meeting. PW 5 Raghu was Sarpanch of the village. PW 1 had stated that a meeting was called in the house of the mother of Sunanda, he was called in the meeting, the Appellant was present with four to five persons. The Appellant told in the meeting that he had observed that Sunanda was talking with some other person. Though PW 5 Raghu

was declared hostile, his cross-examination shows that there was a compromise between Sunanda and Jagannath and Sunanda had agreed that she would behave properly. This admission in the cross-examination of PW 5 Raghu shows that all was not well between Sunanda and the Appellant and Sunanda was not behaving properly. This shows that the relations between the Appellant and his wife Sunanda were strained on account of the behaviour of Sunanda. This shows the motive for the Appellant to commit the offence.

11. When a case is based upon circumstantial evidence, such evidence must satisfy the following tests :-

"(A) the circumstance from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(B) those circumstances, should be of a definite tendency unerringly pointing towards guilt of the accused;

(C) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(D) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

12. The tests enumerated above were laid down by the Supreme Court in the case of Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 . Keeping these tests in mind, we have evaluated the evidence in this case and we find that these tests are satisfied in the prosecution case.

13. On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the Appellant committed the murder of his wife Sunanda by strangulating her. Thus, we find no merit in the Appeal. Appeal is dismissed. Set off be given to the Appellant as per rules.

14. Office to communicate this order to the appellant who is in Kalamba Central Prison, Kolhapur.

15. We quantify legal fees to be paid to Advocate Mrs. Rupali Manik Shinde by the High Court Legal Services Committee at Rs. 5,000/-.