
(1995) 06 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 214 of 1992

Khandu Pandu Jadhav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-06-1995

Acts Referred:

Evidence Act, 1872 — Section 114, 3, 59, 61
Penal Code, 1860 (IPC) — Section 302

Citation : (1996) 1 BomCR 28

Hon'ble Judges : Vishnu Sahai, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Rajiv Mane, for the Appellant; Y.V. Patil, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—The appellant aggrieved by the judgment and order dated 18-7-1990 passed by the Additional Sessions Judge, Nashik in Sessions Case No. 77 of 1990, convicting and sentencing him to undergo imprisonment for life and to a pay fine of Rs. 100/- and in default of payment of fine, to further undergo one month R.I. u/s 302 I.P.C., for murdering his wife Sakhubai, has come up in appeal before us.

2. The prosecution case in brief is that, on 31-1-1990, one Hiranman Pandu Waghmare P.W. 1 and Suresh Tukaram had taken their goats for grazing at about 4.00 p.m. and while they were grazing them, they found a corpse of a women in Chormal nalla situate to the north of village Dhondmal. They narrated this to the Police Patil Gadhave, who has not been examined in the instant case. Police Patil went to the police station Peth and lodged a F.I.R. which was taken down by Head Constable Netawate. On this F.I.R. which was taken down by the Head Constable a case of accidental death No. 2 of 1990 was registered.

3. The investigation of the case was taken over by Head Constable Thakare. He went to the place of incident. On 1-2-1990, he sent P.S.I. Rohidas Wamanrao

Naik P.W. 6, information to the effect that he suspected something foul about the manner of death. Consequently, P.S.I. Naik went to village Dhondmal and prepared a spot panchanama. He also prepared the inquest panchanama Exh. 6. P.S.I. Naik sent a requisition to the doctor to come on the spot and conduct the autopsy on the dead body as the same was decomposed and was not in a condition to be sent to him. The dead body of the deceased was identified by one Shiubai Jamkar P.W. 3, who was a distant relation of the deceased.

P.W. 6 Rohidas Wamanrao Naik on 1-2-1990 recorded statements of some witnesses and thereafter, became convinced that it was a case of murder. Consequently, he himself became complainant and lodged a report in the diary. That report is Exh. 18. He registered a case u/s 302 I.P.C. on receipt of the post mortem report. On 2nd and 3rd February, 1990, he again recorded statement of some witnesses. The aforesaid statements are contained in the case diary. He took into possession clothes of the deceased and sent them along with the viscera to the Chemical Analyst. The reports of the Chemical Analysts are Exhs. 19 and 20. On 2-2-1990, he arrested the appellant.

Subsequently, he submitted the charge sheet against the appellant.

4. The autopsy of the dead body was conducted by Dr. Madhav Ramchander Rele P.W. 5 on 1-2-1990. On the person of the deceased, the doctor found following (external) ante-mortem injuries :

1. CLW on right parietal scalp anterior region, It was running vertically downwards to hair line. Dry clotted blood was present. The wound was scalp deep. It was 2" x 1 1/2".

2. Grazed abrasion over left elbow.

3. CLW over right thorax lower, skin deep 1/2" x 1/2". Dry clotted blood was present. The blood was found collected in the lower abdomen from the injury over right thorax.

4. Grazed abrasion left axilla, clotted oozed blood present.

5. Grazed abrasions over both anterior, superior iliac spines.

6. Grazed abrasions right and left knee, clotted oozed blood present.

On internal examination, Dr. Lele found fracture of both the skull as well as of the base of skull. He also found a contused lacerated wound over the right parietal region and clotted blood. He further found clotted blood in the occipital region.

In the opinion of Dr. Lele, the deceased died on account of cerebral haemorrhage due to ante-mortem injury No. 1. In his opinion, the aforesaid injury could be caused by a big stone and was sufficient in the ordinary course of nature to cause death.

5. In the trial Court, a charge u/s 302 I.P.C. was framed against the appellant to which he pleaded not guilty and claimed to be tried. The defence of the appellant

was that of denial and false implication.

In the trial Court, as many as 6 witnesses were examined by the prosecution, which also tendered and proved a large volume of documentary evidence. In defence, no witness was examined from the side of appellant. We may straight away mention that there is no eye witness of the incident and the case rests on circumstantial evidence. The learned trial Judge believed the circumstantial evidence which had been adduced by the prosecution before him and passed the impugned order. Hence, this appeal.

6. We have heard Mr. Mane for appellant and Mr. Patil for the State of Maharashtra. The learned Counsel for both the sides, have argued the matter with great thoroughness. We have also perused the statements of the witnesses recorded in the trial Court and the documents adduced by the prosecution in support of its case. After carefully considering everything, we are of the opinion that this appeal must succeed.

7. At the very outset, we may mention that the instant case hinges on circumstantial evidence. The Apex Court, times out of number, has held that conviction in cases of circumstantial evidence should only be recorded/sustained if :- the circumstances stand firmly established; they unerringly only point out to the inference of the guilt of the accused; they are wholly incompatible with the innocence of the accused; and are incapable of being explained on any other hypothesis, excepting that of the guilt of the accused.

8. It is in the backdrop of this legal position, that we have to examine, as to whether the circumstantial evidence adduced by the prosecution in the instant case, inspires confidence or not?

9. The circumstantial evidence on the basis of which, the prosecution presses for the conviction of the appellants is :

a) Four days prior to 1-2- 1990 i.e. 25-1-1990 or 26-1-1990, the appellant and his wife, deceased Sakhubai, had come to the house of P.W. 2 Sitabai and P.W. 3 Shiubai in connection with Pachvi pooja and after the pooja when the feast was over, sometimes after midday, a quarrel between the appellant and deceased took place on the ground that appellant wanted that they should go back to Mohpada and deceased wanted to go to Dhondmal.

b) P.W. 2 Sitabai and P.W. 3 Shiubai deposed that after quarrel, both appellant and his wife left the house and went by the road leading to Dhondmal. In another words, at that point of time, the two of them were last seen by the aforesaid two witnesses; and

c) the false information by the appellant to his daughter Laxmibai P.W. 4 when she questioned him about her mother (deceased) he replied that she had gone to Dhondmal.

10. We have carefully examined the aforesaid circumstantial evidence and in our

judgment, even if it is to be believed, it would not unerringly point out to the inference of the guilt of the appellant. The aforesaid circumstantial evidence in our judgment, is also compatible with the inference of innocence of the appellant.

11. We would first like to take up the circumstance (c) : that when the appellant's daughter Laxmibai P.W. 4 questioned him about his mother, he falsely told her that she had gone to Dhondmal.

It is well settled that false information or false defence cannot be pressed into service by the prosecution for completing various links in the chain of circumstantial evidence. It can only be taken into account after links and chain are in themselves complete. The time honoured principle in criminal cases which the Courts of law in our country follow is that prosecution must swim or sink on its own blise. We are fortified in our aforesaid view, by the observations of the Apex Court made in para 150 of its judgment reported in Sharad Birdhichand Sarda Vs. State of Maharashtra, . In the aforesaid paras, Their Lordships of the Apex Court observed as follows :

Para 150

"It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this : Where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court".

The logical fall out from the aforesaid discussion would be that the aforesaid circumstance would have to be excluded by us in determining the question as to whether the guilt of the appellant has been correctly, adjudicated upon by the Court below.

We may also mention that the solitary witness of this circumstances namely Laxmibai P.W. 4 did not support the prosecution case in the trial Court and was declared hostile. After going through her statement, we do not feel that it would be safe to place any reliance on it.

12. This leaves us with the circumstances (a) and (b) namely motive and last seen. As we have mentioned in the earlier part of our judgment, that between these two circumstances, and the recovery of dead body of the deceased, there was a long gap of four days. On account of this inordinately long time lag of four days, it cannot be said that merely because there was motive for the appellant to commit murder of the deceased and as the appellant and the deceased had been last seen together by P.W. 2 Sitabai and P.W. 3 Shiubai the irresistible inference

would be that the appellant had committed her murder.

13. In our judgment, at the highest circumstances (a) and (b) may raise a strong suspicion against the appellant. It may also be that prosecution case may be true. In our judgment, a strong suspicion and may be true can never constitute a valid legal foundation, either for recording conviction or for sustaining it. The same is only done when the courts are convinced beyond any shadow of doubt that prosecution has established the guilt of the accused beyond all reasonable doubt. This regrettably is not the case here.

14. We are fortified in our view by the decision of the Apex Court reported in Sarwan Singh Vs. The State of Punjab, . In para 9 of the aforesaid decision, Their Lordships of the Apex Court have observed :

"Suspicion however, strong, cannot take the place of proof".

In para 12 of the same decision, Their Lordships have observed this :

"between" may be true" and "must be true" there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence".

We regret that in the instant case, this long distance has not been travelled; much less travelled by legal, reliable and unimpeachable evidence.

15. In the result, we are left with no other option but to allow this appeal and acquit the appellant. Consequently, we set aside the impugned judgment and acquit the appellant of the offence u/s 302 I.P.C. We also set aside his sentence of life imprisonment and a fine of Rs. 100/- and in default of payment of fine, to further suffer one month's R.I. awarded thereunder. In case the appellant has paid the fine, the same shall stand refunded to him. We are informed that the appellant is in jail. He shall be released forthwith unless wanted in some other case.

Office shall immediately communicate the operative part of this judgment to the Superintendent of the Jail in which the appellant is confined.