

(2000) 08 BOM CK 0066
In the Bombay High Court
Case No : Criminal Appeal No. 431 of 1996

Laxman Keraba Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 165
Evidence Act, 1872 — Section 27, 45, 8, 9
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) 5 BomCR 45

Hon'ble Judges : P.V. Kakade, J; J.A. Patil, J

Bench : Division Bench

Advocate : B.G. Tangsali, for the Appellant; D.R. More, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.V. Kakade, J.—The appellant, found guilty of patricide, has preferred this appeal against the judgment and order dated 4-4-1996 passed by the learned Addl. Sessions Judge, Kolhapur, in Sessions Case No. 4 of 1996, wherein he was convicted for commission of an offence punishable u/s 302 of the I.P.C. and was sentenced to suffer imprisonment for life and to pay a fine of Rs. 1000/- in default he was directed to suffer R.I. for three months.

2. The facts giving rise to the case, in nutshell, are thus:---

The complainant Tanaji and accused Laxman are real brothers and they used to reside jointly with their parents and families. Their father deceased Keraba Patil was an agriculturist. The accused never worked and was given to bad habits and was spending life as a vagabond which was not liked by father Keraba, who made futile attempts to convince the accused to behave properly. This aspect gave rise to frequent quarrels in the family. The accused used to abuse family members including father Keraba and on occasions he used to give threats of killing Keraba.

About 4 days prior to the incident, Anita wife of the accused, complained that her gold ear-rings were missing from the place where those were kept and every body in the family suspected the accused to be the culprit. Initially, the accused denied that he had anything to do with the ear-rings, however, later on, he admitted that he had taken away the ear-rings. This incident gave rise to another quarrel during which deceased Keraba slapped Laxman. At that time, the accused threatened Keraba saying that he would kill him.

At about 7.30 a.m. on 9-4-1995, the complainant Tanaji went towards their agriculture land locally known as "Chirkat" to bring grass for cattle. He had cut the grass in the land and tied its bundle. At about 9.15 a.m. his father Keraba also went to the land and took up some agricultural activities. The complainant remained in the land till about 9.30 a.m. and thereafter he returned to his home with bundle of grass. On his way to home, the complainant saw the accused Laxman standing with a cloth bag of black colour in his hand. The complainant met his wife Bharati and wife of accused-Anita on his way back to his home. The ladies were proceeding to the land with tiffin for deceased Keraba. The complainant reached home and was visiting his friend at which time he heard commotion and saw that Anita- wife of accused rushed back weeping loudly stating that somebody had killed Keraba in the land and he was lying in blood pool on the ground. Immediately the complainant alongwith his neighbours and Anita rushed to the spot and saw that Keraba Patil was lying in his field in injured condition. He also observed that there were several injuries all over his body.

The complainant came back to the house. He also came to know that while accused had left the home earlier, he was carrying a black colour cloth bag and when his mother enquired about the bag, the accused had threatened her asking not to touch the bag and had gone out. In view of this position, the complainant realized that it was the accused and none-else who must have killed his father and, therefore, approached Police outpost at Ispurli and narrated the incident to the police, and Head Constable Yadav recorded the F.I.R. which was, alongwith occurrence report Exh. 38, sent to the police station at Karvir for registration of the offence where it was registered at C.R. No. 254 of 1996 at 3.15 p.m. and investigation was taken over by the P.S.I. Matkar.

3. The Investigating Officer rushed to the spot and prepared inquest panchnama of the dead body. Thereafter, the corpse was referred for autopsy to the Civil Hospital, Kolhapur. The clothes of the deceased were seized under panchnama alongwith blood stained earth, etc. at the time of spot panchnama.

In the course of post-mortem examination, as many as 16 incised and stab wounds were found to be inflicted on the body as follows:---

(1) Incised wound 3" x 1/2" into skin deep over right cheek horizontal alongwith right angle of mouth.

(2) Incised wound 1 1/4" x 1/2" into skin deep over right cheek perpendicular to 1st 2 cm below 2 1st.

- (3) Incised wound 1.5" x 1/4" x skin deep over right cheek parallel to the first.
- (4) Incised wound 1/2" x 1/4" x skin deep over right cheek parallel to 2nd.
- (5) Incised wound 1/2" x 1/4"x skin deep over anterior aspect of middle 3rd of neck.
- (6) Incised wound 1" x 1/2" x skin deep horizontal over middle 3rd of right clavicle (just above).
- (7) Incised wound 1" x 1/2" x skin deep parallel to 6th 3 cm above from clavicle.
- (8) Incised wound 1" x skin deep above right shoulder joint.
- (9) Incised wound 1" x skin deep above right Sterna clavicular joint.
- (10) Incised wound 1" x stab wound on right side of anterior chest just above 6th rib middle 3rd, horizontal.
- (11) Incised wound 1" stab wound on right side of anterior chest vertical on 7th, 8th, 9th, ribs lateral 3rd.
- (12) Stab wound on right side of arterials chest horizontal on 11th inter costal space middle 3rd.
- (13) Horizontal stab wound 1" in length on anterior aspect of chest left side on lateral 3rd, 6th I.C. space.
- (14) Vertical stab wound, 1" in length on left side of arterial aspect of chest on 7th, 8th ribs fracture of 7th and 8th noted.
- (15) 3" x 1/2" x deep on right web, First I.C.
- (16) Incised wound 1/2" x 1/2" on left wrist.

The corresponding internal injuries were thus-

- (a) Left 7th and 8th ribs fractured (B) pleura both ruptured.
- (b) Right lung two tear noted about 3/4" each blood collected outside about 150 cc.
- (c) Left lung. One tear noted about 3/4". Blood collected outside above 175 cc.
- (d) Pericardium and heart. Single tear about 2 cm in length on anterior wall.
- (e) Liver and gall bladder. Two tear about 2-3 cm. in length.

According to the Medical Officer, the external injury Nos. 10 to 14 were stab wounds and rest of the injuries were incised wounds. The external injury Nos. 10 to 14 as well as injury No. 5 stab injury, were grievous in nature. According to him, these injuries were sufficient to cause death in the ordinary course of nature. He further opined that, all the said injuries were possible by pointed sharp weapon like dagger. The cause of death, according to the Medical Officer

was, due to massive haemorrhage due to tear of both lungs, liver and heart.

4. The search for the accused was going on but he was not traced on 9th and 10th September, 1995. Later on, the accused was traced on 11-9-1995 and was put under arrest with panchnama thereof. His blood stained clothes were seized at that time. In the course of his interrogation the accused volunteered to show the places where he had hidden the clothes as well as the dagger with which he allegedly killed his father and accordingly a memorandum of panchnama thereof was made. Thereafter he led the police and panchas to the places wherefrom clothes as well as dagger and other articles were seized at his instance under panchnama.

The record shows that, after arrest of the accused, it was found that he had some minor injuries on his person and, therefore, he was referred to the Medical Officer for examination at which time his blood sample was also taken. His injury certificate was duly brought on record vide Exh. 48.

The incriminating articles seized in the course of the investigation were sent to the C.A. for examination whose report is received in due course which is part of the record. On completion of the investigation, the charge-sheet was sent to the Court of law against the accused. The case was committed to the Court of Sessions in usual manner.

5. The accused pleaded not guilty to the charge framed against him. The defence of the accused was that of total denial of any criminal liability. The prosecution relied upon the evidence of as many as 20 witnesses besides certain documents. The learned trial Judge came to the conclusion that the evidence on record was sufficient to bring home the guilt and accordingly convicted and sentenced the appellant in the aforesaid manner.

Hence the appeal.

6. We have heard the learned Counsel Shri Tangsali for the appellant accused as well as Shri More, the learned A.P.P. for the respondent State. We have also scrutinized the entire evidence on record and have perused the judgment of the lower Court.

7. At the outset, we may note that, there is no eye-witness to the ghastly incident in this case and the entire prosecution case is balanced on circumstantial evidence. Therefore, in order to appreciate the evidence in proper perspective, it would be just and proper on our part to categorize the circumstances relied upon by the prosecution. Broadly speaking, the prosecution evidence can be summarized in following circumstantial aspects :---

(i) Motive and previous conduct of the accused.

(ii) Accused was seen passing by their fields by two witnesses who also saw blood stains on his clothes after the incident.

(iii) The evidence regarding purchase of dagger by the accused.

(iv) Recovery of weapon of offence and other articles at the instance of the accused.

(v) Medical evidence.

(vi) C.A. reports.

8. Initially, we must note that the medical evidence on record, as seen earlier, is explicit enough to show that Keraba Patil suffered homicidal death and the stab injuries and incised wounds upon the body were caused by sharp pointed weapon like dagger, as opined by the Medical Officer.

The prosecution has further relied upon the evidence regarding motive and previous conduct of the accused in order to show that accused is the killer of his father. To substantiate its case, the prosecution has relied upon the evidence of P.W. No. 1- Tanaji, brother of accused and P.W. No. 2 Anita wife of the accused. Both the witnesses have stated that behaviour of the accused was a cause of concern for all the family members and he was not doing any work and used to constantly quarrel with all of them, especially deceased Keraba when he (Keraba) insisted that accused should work and earn some money.

Both the witnesses have further stated an incident which took place about 4 days prior to the fateful day, when Anita's gold ear-rings were missing and finally it was found that the accused person had taken away that gold ear-rings and pledged them with a goldsmith for consideration. When the accused was exposed in his act, Keraba had slapped him, at which time, accused had allegedly threatened to kill him. It has also come on record that the accused was demanding separate share of family property which was denied by deceased Keraba.

These are the facts, according to the prosecution, which formulate the motive and previous conduct of the accused behind the crime allegedly committed by him. In our considered view, it may be true that the accused was vagabond as well as short-tempered person who was constantly in need of money to satisfy his vices, it may also be true that the accused threatened to kill his father in fit of anger when Keraba slapped him after it was found that the accused had stolen the ear-rings of his wife, still it is not likely that the accused would really kill his father apparently due to the said incident of slapping. At the most he would have insisted again for partition of his share in the property which was seen to be his ultimate aim, therefore, this piece of circumstantial evidence appears to be weak.

9. It is the prosecution case that the incident took place between 9.30 and 10.30 a.m. when the complainant left the land and deceased Keraba went into the land, and while complainant's wife Bharati and wife of the accused- Anita were on their way to the field. The evidence of the complainant shows that he saw the accused standing on the way when the complainant was returning to his home with bundle of grass and accused was carrying a black colour bag in his hand. It is pertinent to note that there is no evidence on record to show that the accused

was seen on the close vicinity of family land where Keraba was working. It has come in the evidence that the land in question where the incident took place is on considerable distance from the residence of Keraba but nobody has seen the accused near the land. What the prosecution has brought forward is the evidence of P.W. No. 3- Vikram Chougule and P.W. No. 11- Maruti Killedar.

P.W. 3 Chougule has stated that he was in his own land at about 12 noon when he saw the accused proceeding by the road and he was not wearing any shirt. He has further stated that the accused demanded his shirt but he did not oblige to him. He further stated that the accused was wearing a banian and pant of white colour and there were blood stains on the said clothes. As against this, P.W. No. 11-Killedar has stated that, when he was proceeding to his land at 11.00 a.m to 11.30 a.m., he saw the accused Laxman passing by the road. According to him, the accused was wearing a banian and full pant white colour and the clothes had blood stains. He also saw that there was an injury on accused person on left side below his shoulder.

With the help of evidence of these two witnesses, the prosecution wants to establish that the accused committed the crime and thereafter had hidden his blood stained shirt and was passing by the road while he was watched by these two witnesses immediately after the incident. Now, the evidence of these two witnesses shows that, admittedly, the land where the incident took place is at the distance of about 2 to 2 1/2 Kms. from the land named "Khadi" where these two witnesses observed the accused. It has not come in their evidence that they had any close encounter with the accused. Witness Killedar further says that he saw the accused while passing by the road, while Chougule has stated that the accused demanded his shirt but he did not oblige. Both of them have stated that there were blood stains on the clothes of the accused, however, it is pertinent to note that there were minor injuries on the person of accused himself and, therefore, possibility cannot be ruled out that the blood stains were of his own injuries. Be as it may, the fact remains that, seeing of the accused about two hours after the incident at the distance of about 2 and 2 1/2 kms. from the place of the incident, would lead us nowhere conclusively to saddle him with the criminal liability of any count. This is especially so when other pieces of circumstantial evidence are equally weak in nature.

10. The prosecution has examined P.W. No. 13 Makhija, a general store-keeper at Kolhapur who has stated that, two months prior to the incident, the accused had purchased a dagger from his shop for Rs. 70/-. He has also identified the dagger (Article 21) before the Court to be the same as purchased by the accused. According to him, he has remembered the accused because there was some dispute on the question of price between them. Evidently, (Article 21) dagger is a dagger of common type which can be purchased at any place and there is no distinguishing mark which would be identifiable by the shop-keeper to be the same dagger which was allegedly purchased by the accused. Moreover, it is significant to note that the prosecution has come with the case that the dagger

was purchased two months prior to the incident and at the same time, the prosecution has led the evidence also to establish that it was the incident which took place four days prior to the murder which led the accused to cause impugned offence. In other words, there is not a whisper of any suggestion to show that the accused harboured any intention to kill his father when he allegedly purchased the dagger two months prior to the incident. The entire evidence of P.W. No. 13-Makhija also shows that his evidence cannot form a strong link in the chain of circumstances and, therefore, cannot be used against the accused.

11. The next piece of circumstantial evidence is, the alleged recovery of blood stained clothes, other articles and dagger having blood stains at the instance of the accused. P.W. No. 8 Giri, the panch witness has stated that, on 11-9-1995, the accused made statement in his presence at the police station that he had hidden the knife and clothes in a land and he would show the place to the police. Accordingly, memorandum panchnama Exh. 20 was made. Thereafter the accused led the police and panchas to the place where sugarcane crop was grown and accused produced one pant on which blood stains were found. Thereafter he further led them to another field and produced one bag, a dagger and a sandal alongwith a banian, a shirt and a pant. There was a sheath of dagger also. All these articles were seized by the police under panchnama Exh. 21. Said articles were at Nos. 19 to 26. In the course of his cross-examination, the panch witness has admitted that, during the entire process, the accused was handcuffed and was taken handcuffed in the jeep with the police.

Now, apart from the merits of this particular piece of circumstantial evidence i.e. recovery contemplated u/s 27 of the Evidence Act, it is to be noted that, factum of handcuffing of the accused shows that it cannot be said beyond doubt that the recovery was voluntary and not the result of duress, threat or pressure by the police authorities.

This Court, in the case of Shankar Raju Banglorkar Vs. State Of Goa, , has held that the disclosure by the accused while he was handcuffed, amounted to disclosure under duress, pressure or threats given by police and hence is not admissible in view of Article 20 of the Constitution. This view was again relied upon by the Division Bench of our High Court in the case of Deoraj Deju Suvarna and etc. Vs. State of Maharashtra, , wherein similar view was taken. We may observe that, no doubt that, while disclosure of the fact is made by the accused as contemplated u/s 27 of the Evidence Act, he is in police custody, however, the voluntariness of his statement is guaranteed by the testimony of independent panch witnesses. However, when the accused is handcuffed during the process, it is nothing but physical manifestation of possibility of duress, threat or pressure by the police authority and, therefore, voluntary nature of the disclosure becomes doubtful.

Apart from this aspect, the evidence on record is conspicuously silent if the said articles were sealed or not after its seizure because it is not testified to by the

panch witness nor by the Investigating Officer in the course of their evidence. Therefore, in our considered view, the entire evidence regarding recovery of incriminating articles at the instance of the accused is rendered doubtful and thus cannot be accepted at all.

12. The evidence of the C.A. reports is also of no help to the prosecution especially when the blood group of the deceased as well as accused is found to be the same i.e. of "O" group. This aspect assumes importance when evidently the accused had some injuries on his person. It is true that injuries on the accused person were quite minor and it was unlikely that blood stains thereof would fall on his pant or trouser, however, the prosecution evidence in that regard is quite confusing. The record shows that, as many as three trousers were seized at the instance of the accused. Now, there is no plausible explanation as to how the use of three blood stained trousers come into place in this incident. Moreover, there is also confusion in prosecution evidence regarding which type of clothes were used by the accused at the relevant time. The complainant states that the accused was seen in white shirt and black pant prior to the incident, however, he himself has stated in his F.I.R. that the accused was wearing blue colour pant and white shirt. As against this, P.W. No. 3-Chougule has stated that he saw the accused in pink banian and white pant, whereas P.W. No. 11- Killedar states that the accused was in banian and white pant. All these versions are again rendered doubtful because the colour of seized trousers, which are before the Court, are quite different. In view of this aspect, the evidence of C.A. reports and related circumstances also cannot be held to be reliable.

13. It is fundamental principle of criminal jurisprudence relating to circumstantial evidence that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and such circumstances should be conclusive in nature and tendency. Finally, there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human possibility the act must have been done by the accused.

In the present case before us, the circumstances brought forward on record, in isolation, as well as with its cumulative effect, are not at all sufficient to form a strong chain to arraign the accused person to saddle him with criminal liability with which he is charged.

14. For the reasons recorded above, we are unable to agree with the reasoning adopted and findings recorded by the learned trial Judge.

15. In the result, the appeal is hereby allowed. The order of conviction and sentence dated 4-4-1996 passed by the Addl. Sessions Judge, Kolhapur in Sessions Case No. 4 of 1996 against the appellant is hereby set aside. The appellant is hereby acquitted and shall be released forthwith, if not required in any other case. The fine amount, if paid, shall be refunded.