

(2013) 07 BOM CK 0091
In the Bombay High Court
Case No : Criminal Appeal No. 447 of 2012

Nilesh Baburao Gitte

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

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

Citation : (2013) 5 ABR 404 : (2014) ALLMR(Cri) 2541 : (2014) 1 BomCR(Cri) 203

Hon'ble Judges : Naresh H. Patil, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : B.R. Waramaa in Criminal Appeal No. 447 of 2012 and Shri. N.S. Ghanekar in Criminal Appeal No. 502 of 2012, for the Appellant; S.G. Nandedkar, Additional Public Prosecutor, for the Respondent

Judgement

Naresh H. Patil, J.—The appellants have challenged the judgment and order of conviction for an offence punishable u/s 302 of Indian Penal Code dated 22nd June 2012 passed by learned Additional Sessions Judge-2, Ambajogai, in Sessions Case No. 42 of 2011. The appellants were sentenced to suffer imprisonment for life and to pay a fine of Rs. 2000/- each, in default, to suffer simple imprisonment for three months. The prosecution case, in brief, is as under:--

On 22-7-2010 at 11.00 a.m. the Deputy Superintendent of Police Smt. Swati Bhole received an anonymous phone call informing that funeral of deceased Sunanda Baburao Gitte was to be carried out. The officer intimated Police Inspector Shri. Kale of Parali Rural Police Station to visit the spot at Talani village. The police rushed to the spot. They found that preparations for cremation of deceased Sunanda had begun. They enquired and saw the dead body. After inspection they found ligature marks and injury on back side of skull on the dead body of Sunanda. The police carried inquest and post mortem on the dead body on the spot. PW-9 Sunil Shrinivas Birla, Police Inspector, was on duty as Station

Diary Officer of Bardapur Police Station. He received message from Police Inspector Kale of Parali Rural Police Station that one Sunanda died at Talani village in Poose vicinity and her death was doubtful. He was informed by Police Inspector Kale that the spot was within the jurisdiction of Bardapur Police Station, therefore, he was called. He reached the spot and at that time P.S.I. Bankar, A.P.I. Kale and their staff members were present there. He saw that near wooden plank prepared for cremation, dead body of Sunanda was lying besides it. The officer noticed ligature mark on neck, injury to back side of head and rope mark on hands and leg of the deceased. The police officer had already started making inquest panchanama (Exhibit 18). Post mortem on the dead body was carried at the same place. After return to Parali Rural Police station PW-9 registered the offence himself on behalf of the State and carried the investigation. The complaint is at Exhibit 58. The officer thereafter prepared the spot panchanama (Exhibit-17) and during investigation recorded statements of witnesses. In the memorandum of accused Nilesh and Balasaheb the prosecution case suggests that Nilesh had taken out an iron rod and his clothes which were used at the time of commission of offence. These article were seized under panchanamas at Exhibits 20, 21 & 22. Memorandum of accused Balasaheb is at Exhibit 23. The articles from Nilesh and Balasaheb were seized. A nylon rope was seized from Balasaheb. Muddemal property was sent for chemical analysis by letter Exhibit 59. A letter was sent to the Executive Magistrate for preparing map of spot of offence on 9-8-2010. The police seized copy of 7/12 extract during interrogation of Sudhakar Nagargoje. Further investigation was handed over to Police Sub Inspector Rathod. PSI Rathod thereafter investigated the matter and filed charge-sheet against the accused persons in Crime No. 39 of 2010. The accused pleaded not guilty and claimed to be tried.

2. The prosecution examined 11 witnesses.

3. The appellant-Nilesh Baburao Gitte is real son of deceased Sunanda. PW1-Dinkar Manikrao Nagargoje is paternal cousin of deceased Sunanda. He had seen dead body of Sunanda near her house in the field. According to the witness, brothers of Sunanda, Prabhakar and Sudhakar were not present to attend the last rites of Sunanda.

4. PW-2-Sattar Pashasab Patwekar, who was examined as panch of recovery of articles, tuned hostile. In the cross-examination of the witness by the State he deposed that Nilesh had taken out iron pipe and his clothes from wooden Diwan. The police seized those clothes by drawing memorandum in his presence. In the cross-examination by the defence the witness deposed that he was looking after political work of Sudhakar, brother of the deceased. He had attended last rites of Sunanda.

5. PW-3 is Sudhakar Bhagwanrao Nagargoje, one of the most important witnesses in this case. He happens to be real brother of deceased Sunanda. In his deposition the witness stated that the appellant Nilesh contacted him on phone and informed that his sister Sunanda had died. He could not attend the

last rites. According to the witness, his sister was murdered. Accused Nilesh was the beneficiary of the property which was inherited by Sunanda or which was to be allotted to her share in family partition. The witness came on the next day for immersion of Asthi of Sunanda and thereafter visited Parali Police Station. He stated that at Parali Police Station the police had shown him a copy of 7/12 extract which had blood stains. The said copy was recovered from accused Nilesh. In the 7/12 extract the land was shown to have been owned by Sunanda. According to the witness, Sunanda was murdered for her property.

The defence cross-examined him. He deposed that in family partition his sister Sunanda got 15 guntha land situated at Ahmedpur. He admitted that there was no mutation entry made in the record in respect of family partition. He referred to filing of Regular Civil Suit No. 205 of 2003 against his brother Prabhakar in Civil Court at Ahmedpur. The distance between Ahmedpur and Talani is about 40 to 50 kms. He denied the suggestion that appellant Nilesh was not demanding property from him and his mother. He even claimed ignorance that father of Nilesh had gone for "Chaar Dhaam Yatra".

6. PW-4 is Dadarao Kondiram Bankar, Police Sub Inspector, who was, at the relevant time, working as Police Sub Inspector, Police Station Parali Rural. When he was on duty on 22-7-2010 information was received from Vidyanand Kale. He visited village Talani. Behind the house of Baburao Gitte, father of appellant Nilesh, he noticed that preparations for cremation of Sunanda were being made. He inspected the dead body and found injuries on the person of the deceased. Black colour mark was noticed on her neck and injury on her head. He made inquest panchanama of the dead body and made arrangement for post mortem on the dead body. Articles 1 to 12 are the photographs which the witness had identified. The doctor had given provisional certificate about cause of death of Sunanda. As the offence had taken place in the jurisdiction of Bardapur Police Station, he handed over the investigation accordingly.

In his cross-examination certain details in respect of investigation were asked which are not of material nature.

7. PW-6 is Dr. Solunke Radhakishan Sarjerao, who conducted post mortem on the dead body on 22-7-2010 at village Talani between 3.10 p.m. and 4.35 p.m. According to the witness the deceased was 50 year old female. According to the doctor, condition of body of Sunanda was well nourished and cold. Rigor mortise was present in the whole body. Post mortem lividity was fully developed. There was no sign of decomposition. Face was swollen and congested. There was ligature mark encircled the neck 22 cm in length and half cm in breadth. It was absent from back side of neck. It was at the level of thyroid cartilage. The doctor has noticed following injuries on the person of the deceased:--

(i) No evidence of injury to external genitals.

(ii) Upper extremity flexed at the elbow joint.

(iii) Fingers were flexed.

(iv) Lower extremity were extended. There was ligature mark encircled the neck 22 cm in length and half cm in breadth. It was absent on back side of neck. It was at the level of thyroid cartilage. The ligature mark was horizontal dry, hard, brown in colour and depressed groove. On the dissection of ligature mark the subcutaneous tissue is echymossed. There was hemorrhage to the thyroid cartilage.

(v) There were abrasion on the chin 5 cm in length and half cm in width. Extending body of mandible towards right side 6 cm length and half cm in width.

(vi) There was abrasion on left side of neck 8 to 9 cm in length and half cm in width. There is encircle left side of neck. Abrasion marks absent on elbow in front of neck below the thyroid cartilage.

(vii) Abrasion on right side of neck. 4 to 5 cm in length and half cm in width. Below the level of thyroid cartilage, encircled right side of the neck, It absent in front of the neck.

(viii) There is imprint abrasion on the right wrist joint 7 to 8 cm in length and half cm in width and it absent on back side of the wrist.

(ix) Imprint abrasion on right scalp muscles below the knee joint on the outer side 22 to 24 cm in length and half cm in width.

(x) Imprint abrasion on left calf muscles below the knee joint on outer side i.e. 23 to 24 cm in length and half cm in width and it absent from inner side.

(xi) Abrasion on right side of upper and outer gluteal region extending 12 cm in length and 3 cm in width. Above and over side right side back.

(xii) Abrasion mark on both thigh reddish brown in colour.

The doctor noticed following injuries under the scalp:-

(i) Contused lacerated wound on right side of the occipital region over the scalp.

(ii) It parallel to above injury over the scalp at right occipital region 2 x half cm.

The injuries were anti mortem and caused within 24 hours. The contents of the post mortem (Exhibit 36) were proved. It was stated that, the ligature mark and injuries may be possible by using rope (article 9) shown to the doctor. The witness was shown iron rod/pipe. He opined that injuries to the scalp may be possible by iron pipe (article 4).

8. PW-7 is Vidyadhar Murlidhar Kale, API of Parali Rural Police Station. He was on duty on 22-7-2010 at Parali Rural Police Station. He proceeded to the spot and saw the dead body of deceased Sunanda. There was strangulation mark on neck and injury on backside of skull and blood was oozing from the injuries. He carried inquest panchanama. He was present at the time of post mortem of the dead

body. In his cross-examination the witness deposed that he did not make any entry in the station diary about accidental death of the deceased. Dy. S.P. Smt. Bhore, API Birla reached the spot after the witness reached there within one and half hour. His statement was recorded by the investigating officer PSI Rathod on 15th January 2011. He denied the suggestion that during investigation there was pressure of political leaders like Mr. Gopinath Mundhe, Dhananjay Mundhe, Pankaja Mundhe and Sudhakar Nagargoje.

9. PW-8 is Swati Rambhau Bhore, who was Deputy Superintendent of Police at the relevant time. She reached the spot on receiving an anonymous call. She had seen the dead body. She denied the suggestion that she received phone call of Sudhakar Nagargoje. She denied suggestion that at the instance of Sudhakar Nagargoje the appellant Nilesh was falsely implicated.

10. PW-9 is Sunil Shrinivas Birla, who was Police Inspector at the relevant time. He was on duty at Bardapur Police Station. He registered the crime on behalf of the State and carried out the investigation. He has seized incriminating articles under panchanama and sent the muddemal to the Chemical Analyser. In his cross-examination the witness deposed that accidental death report was not recorded in this case. He deposed that from the date of registration of crime till completion of investigation he did not have any doubt on anybody. He recorded statement of Sudhakar on 10-9-2010. During investigation the witness recovered iron rod under seizure panchanama from the house of Motiram Gitte. The witness volunteered that accused Nilesh was residing in the house of Motiram Gitte on rental basis. To the question put up by the court the witness answered as under:

Question: From which document from case file you came to know that accused Nilesh was tenant in house of Motiram Gitte ?

Answer: According to documents accused Nilesh was residing in Motiram Gitte, but it was not revealed that he was his tenant.

The witness deposed that, he made efforts to record statement of husband of deceased Sunanda, Dr. Baburao Gitte, but he was reluctant to give statement. The witness met Dr. Baburao Gitte 3 to 4 days after the incident of offence at his house. He further deposed that the house where the incident of offence took place is owned by accused Nilesh. The witness did not collect any further documentary evidence in respect of ownership of the house. The witness denied that there was pressure of political leaders like Mr. Gopinath Mundhe and Dhananjay Mundhe. The witness denied that at the instance of Sudhakar Nagargoje and Dy. S.P. Bhore he was making false statement.

11. PW-10 is Narsing Patloba Gitte who was working as Circle Officer at Ghatnandur Circle. He prepared map of spot of offence in Crime No. 39/2010 which is at Exhibit 65.

12. PW-11 is Shesharao Megha Rathod, Police Sub Inspector, who filed charge sheet. He denied suggestion that Prabhakar and Sudhakar wanted to grab the

property of the deceased and they have falsely involved the son of the deceased.

13. The learned counsel for the appellant Shri. B.R. Warma submitted that there is no motive for Nilesh to commit the crime. There is no eye witness to the incident. PW Sudhakar, brother of deceased Sunanda is deliberately deposing against Nilesh as he has interest in the property which may be inherited by Nilesh as his mother's property. The police machinery was under pressure of political heavyweights. The investigation is not carried out fairly. The investigation officers have hurriedly conducted the investigation which has caused serious prejudice to the appellant Nilesh. The articles seized like iron rod, rope are not incriminating in nature. The appellant Nilesh was not residing with his mother. The panch witnesses are tutored and except PW-3 Sudhakar, who is highly interested in prosecution, there is no independent witness whose evidence is recorded by the prosecution. The chain of circumstance is not complete. Therefore, it be held that the prosecution has failed to establish the case against Nilesh beyond reasonable doubt. The learned counsel in support of his submissions, has placed reliance on the following judgments.

- (1) State of Punjab Vs. Karnail Singh, .
- (2) Vithal Tukaram More and Others Vs. The State of Maharashtra, .
- (3) Vipul Chandrakant Jain v. The State of Maharashtra, Criminal Appeal No. 628 of 2002 decided on 19th January 2005.
- (4) Mulak Raj and others Vs. State of Haryana, .
- (5) Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan, .
- (6) Datta Chandode and Shivram Bhise Vs. State of Maharashtra, .

14. The learned counsel appearing for appellant - Balasaheb in support of his submissions, has placed reliance on the reported judgment in Ashraf Hussain Shah Vs. State of Maharashtra, .

We have perused the judgments cited supra by the learned counsel.

15. The learned Additional Public Prosecutor for the State submitted that there is strong motive emerging from the evidence and the same is in respect of immovable property allotted to the share of deceased Sunanda which was of considerable value. A civil suit was contested between the brothers of the deceased Sunanda. The defence version is not reliable and believable that the appellant Nilesh was not residing with his mother. In stead, it was suggested that as father of the appellant Nilesh, being Government Medical Officer, was engaged in transferable job, so he had made arrangement wherein his wife would stay at the village along with his son. Recovery of articles made by the police is incriminating in nature. The medical evidence supports the prosecution case. It was submitted that conduct of the appellant Nilesh has to be minutely and seriously viewed. Here is a son who had committed murder of his mother by severely beating and strangulating. If the police had not arrived at the spot at

the relevant time the appellant-Nilesh would have cremated his mother and the evidence would have disappeared.

16. We have perused the entire evidence. We find that the conduct of the appellant Nilesh is blameworthy. No explanation is coming forward as to why in spite of receiving serious injuries by the deceased the appellant Nilesh, son of the deceased, made arrangements for cremating his mother. Soon before the dead body was to be taken for cremation the police reached the spot and could witness the injuries on the person of deceased Sunanda. The appellant Nilesh did not bother to lodge any formal report to the police. No intimation was given to anybody in respect of injuries suffered by his mother. His keeping silence goes against his plea of innocence. In normal circumstance, son would certainly raise hue and cry after seeing his mother in injured condition. She had died unnatural death. The medical evidence has supported the prosecution version. In the statement u/s 313 of the Criminal Procedure Code the appellant Nilesh had stated thus:

Q. No. 46. Why witnesses are deposing against you ?

Ans.: I say that land in name of my mother situated at Ahmedpur which having plotings. My maternal uncle (Mama) Sudhakar Nagargoje wants to grab that land standing in name of mother. Witnesses are telling false story at instance of my maternal uncle Sudhakar Nagargoje.

17. Even if for the sake of argument it is believed that Sudhakar had involved appellant Nilesh in the commission of murder of his mother but the question remains as to why the appellant maintained silence throughout and instead showed haste in preparation for cremating his mother.

18. From the evidence we can gather that though the appellant had taken a plea that he was not residing with his mother but, instead, residing in the house of one Motiram Gitte as a tenant, the plea is not convincing. The house where mother of the deceased was residing was owned by appellant Nilesh. There is no reason coming forward as to why appellant Nilesh was said to be residing separately from his mother. When the evidence indicates that father of the appellant Nilesh had made this arrangement so that the mother and son could stay together as he was discharging his duties as a Government Medical Officer, there is no convincing reason to accept the plea of the defence in respect of separate residence of Nilesh.

19. The other strong circumstance going against the appellant Nilesh is the post mortem report which indicates that the deceased was mercilessly beaten and thereafter strangulated. The cause of death is asphyxia due to strangulation. It was an unnatural death. The appellant Nilesh has not explained anything regarding the circumstances resulting into death of his mother.

20. The villagers had gathered and the dead body was to be taken for cremation. Till this moment the appellant has not whispered to anybody regarding the

circumstances in which the deceased suffered injuries or whether the appellant had any suspicion or doubt about conduct of any other persons who might have caused these injuries to his mother. The testimony of PW-3 Sudhakar clearly blames the appellant-Nilesh and indicates that he was having interest in the property, which was a valuable property belonging to his mother.

21. Another intriguing feature in the case is silence of the husband of deceased Sunanda. The police officers tried for three to four times to elicit from husband of the deceased Sunanda but he was reluctant to make any statement. This further causes shadow on the plea of innocence raised by the appellant-Nilesh.

22. On behalf of the defence it was submitted that PW-3 - Sudhakar did not attend the funeral of deceased Sunanda. By that conduct of PW-3 Sudhakar we cannot discard the prosecution version for upholding innocence of the appellant Nilesh.

23. We do not find any convincing reasoning to hold that due to political pressure the police falsely involved the appellant. Appellant Nilesh had ample opportunity and time to say something till the end of the trial regarding the incident in question but except blaming PW-3 Sudhakar the appellant Nilesh preferred not to say anything further. From the prosecution evidence we do not notice that any other person residing in the village had grudge against the deceased to mercilessly beat her and strangle her. No other person was shown to be the beneficiary if Sunanda is done to death. If it is presumed that PW-3 Sudhakar was interested in involving the appellant Nilesh in the crime so as to grab the property of Sunanda then just because Nilesh is involved in the crime his legal rights to the property do not get extinguished. Therefore, theory propounded by the defence on that count is also not convincing and sustainable.

24. Considering the facts of the case certain inferences are required to be drawn to the extent of conduct of the appellant Nilesh. The haste shown to cremate his mother speaks for itself and indicates guilty mind of the appellant - Nilesh.

25. As regards the appellant - Balasaheb, we find that he has been involved with allegation that as he had helped appellant Nilesh in commission of the crime. Except recovery at the instance of appellant Balasaheb, the prosecution has failed to bring home guilty of Balasaheb. Recovery is not incriminating in nature. The prosecution evidence is lacking to establish active involvement of appellant-Balasaheb Gangadhar Gitte. There is no motive for Balasaheb to assist appellant-Nilesh in commission of the crime.

26. We have perused the reasoning adopted by the trial Court in convicting both the appellants. We are not convinced with the reasoning of the trial Court in convicting and sentencing the appellant Balasaheb Gitte. At the same time, the trial Court has scanned the evidence properly and reached appropriate conclusions while convicting and sentencing appellant-Nilesh Baburao Gitte.

27. We have perused the case law submitted by the learned counsel Shri. Warma

in respect of the principles that in a case based on circumstantial evidence, the motive plays vital role. The chain of circumstances must be so complete so as to clearly point out that the appellant alone must be the guilty person. These circumstances shall be conclusively established and in case the chain of circumstances is not complete then benefit goes to the accused. Considering the facts, circumstances and the evidence brought on record we are of the opinion that, the conviction and sentence awarded by the trial Court against the appellant Nilesh Baburao Gitte is required to be confirmed whereas, we are not inclined to confirm the finding of guilt recorded by the trial Court against the appellant - Balasaheb Gangadhar Gitte.

ORDER

28. Criminal Appeal No. 447 of 2012 is dismissed. Criminal Appeal No. 502 of 2012 is allowed. The judgment and order dated 22-6-2012 passed by the learned Additional Sessions Judge-2, Ambajogai in Sessions Case No. 42 of 2011 convicting the appellant - Balasaheb Gangadhar Gitte for an offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs. 2,000/-, in default, to suffer simple imprisonment for three months is quashed and set aside. The appellant - Balasaheb Gangadhar Gitte is acquitted of the offence for which he was tried. He be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.