

(2014) 04 BOM CK 0267
In the Bombay High Court
Case No : Criminal Appeal No. 52 of 2012

Pandurang Narayan Dhangar and Others	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2015) ALLMR(Cri) 259

Hon'ble Judges : V.M. Deshpande, J;K.U. Chandiwal, J

Bench : Division Bench

Advocate : Satyajit Bora, Advocates for the Appellant; B.B. Gunjal, A.P.P,
Advocates for the Respondent

Judgement

K.U. Chandiwal, J.—Appellants are convicted and sentenced by learned Additional Sessions Judge, Hingoli, in Sessions Trial No. 54/2010, for offenses punishable under Sections 302, 364, 201 read with Section 34 of IPC and by order dated 7.12.2011, were directed to undergo rigorous imprisonment for life, for offense under Section 302 read with Section 34 of IPC, to pay fine of Rs. 500/-, each, with default stipulation; for offense under Section 364 read with Section 34 of IPC, sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 500/- each with default stipulation; for offense under Section 201 read with Section 34 of IPC, sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/- each with default stipulation. All sentences were directed to run concurrently. The appeal is admitted on 21st Feb., 2012. Mr. Satyajit Bora, learned Counsel, was appointed to represent the appellant by order dated 10th Feb., 2012.

2. On 6th Feb., 2010, deceased Abhiman was working in his agricultural field, he remained in agricultural field even after agricultural operations. Since next day, deceased did not return home, his wife, P.W. No. 2 Sushila, went to see him in the field but, she could not locate. She saw shirt of the husband, beads of broken

rosary (TULASHI MAL), shoes of the deceased lying near cot. Her search did not yield any positive result. She made enquiry with P.W. No. 21 Shankar about whereabouts of her husband who conveyed having heard Abhiman singing in the night. P.W. No. 2 informed her in laws and, consequently, relentless search was made for Abhiman but he could not be located. Hence, P.W. No. 6 Arjun, father of the deceased, lodged missing report (Exh. 32) with Sengaon Police Station on 7th Feb., 2010, recorded by P.W. No. 17 ASI Bhagwan Thoke. Abhiman could not be located for long duration. Hence, on 12.2.2010, P.W. No. 2 Sushila lodged report with Police about murder of her husband and suspected the appellants, having kidnapped her husband somewhere and she expected the Police to investigate. On 20th Feb., 2010, a human dead body was found in Yeldari Dam, tied with a stone, weighing around 60 to 70 kgs. It was identified to be of Abhiman. After the F.I.R., statements of few witnesses were recorded. One of the witness, P.W. No. 15 Gajanan Kundlik Dhangar stated that he was in the field in the night, saw the appellant Balu and Digambar at about 7 p.m. Accused Balu asked him as to whether he is going to village to which P.W. No. 15 answered in the affirmative. However, he waited in the field. At 11 p.m., he heard barking and saw five persons were moving towards the field of deceased Abhiman. He heard yelling of Abhiman. He then noticed five persons lifting one man (human dead body), returned to their field and the dead body was put on a he-buffalo but he-buffalo jumped; dead body fell down. Thereafter, the dead body was taken towards Yeldari dam. P.W. No. 15 felt threatening owing to the appellants cautioning on their way that nobody should come forward and hence, he asserts, he did not inform the events to anybody.

3. The appellants were arrested. Investigation was carried, including spot panchnama, inquest and post mortem. Apparels of the appellants were also taken charge.

4. After investigation, chargesheet was filed by the investigator before learned Judicial Magistrate, First Class, Sengaon, and he committed the same to the Sessions Court for trial.

5. Charge was explained to the accused/appellants below Exh. 5. The accused appellants pleaded not guilty for the charge and claimed to be tried. Their defense was of total denial and was of false involvement. The appellants asserted that deceased Abhiman was involved in committing thefts, he had illicit relation with one lady of the village; at some occasion in past, he was assaulted by the villagers. Hence, someone else might have eliminated Abhiman. Appellants denied authorship to eliminating Abhiman.

6. Prosecution has examined 23 witnesses as under:-

(a) P.W. No. 1 Shantabai Arjun Dhangar is mother of deceased Abhiman. P.W. No. 2 Sushilabai Abhiman Dhangar is wife of the deceased, she is informant, lodged F.I.R. (Exh. 23) on 12.2.2010. P.W. No. 3 Ganesh Kachgundde acted as a Panch for spot, at the field of Abhiman for panchnama (Exh. 25). P.W. No. 4 Bajirao was

another Panch. P.W. No. 5 Mohan Dattarao Bothikar was Circle Officer, prepared sketch of spot of field of Arjun below Exh. 28 and also sketch of Yeldari dam where dead body was found at Exh. 29. P.W. No. 6 Arjun Meghwaran Dhangar, father of deceased Abhiman, has lodged missing report (Exh. 32) on 7th Feb., 2010, at Sengaon Police Station. P.W. No. 7 Shankar Appa Dhangar is a neighbour, knows the appellants and also knew deceased Abhiman. P.W. No. 7 says, on the date of the incident, the appellants were in their field at about 00.00 hours and then P.W. No. 7 went asleep. He says that, in the past, there used to be bickering between Abhiman and appellants over grazing of cattle. Pandurang, one of the appellant, and his sons were threatening to cause revenge. On the second day, Abhiman did not attend betrothal ceremony of P.W. No. 7's grand daughter and his wife informed that he did not turn up and she has gone to search him.

(b) P.W. No. 8 Tulshiram Thakaji Dalvi is panch for inquest (Exh. 35). P.W. No. 9. Sk. Hakeem Sk. Saleem brought dead body of the deceased to the shore from Yeldari dam water. P.W. No. 10 Syed Saleem Syed Nabi, a Police Head Constable, received papers of missing report and on 8th Feb., 2010, he recorded spot panchnama (Exh. 25). P.W. No. 11 Arjun Ingle, Police Head Constable, recorded F.I.R. of Sushilabai dated 12.2.2010 at Exh. 23. P.W. No. 12 Bhimrao Arjun Dhangar is brother of deceased Abhiman. He refers to acrimonious relations between his family with appellants over grazing nearby agricultural field. He used to convince appellants as well as his family members. He says, during search carried on 20th Feb., 2010, dead body of Abhiman was seen floating at dam water at a distance of 50 to 60 ft. from the bank. He had identified dead body of his brother Abhiman which was tied with a stone of 70 to 80 kgs. He has identified Muddemal; rope, Dhoti and stone found with the dead body; also, rosary beads which were lying at the spot (Art. 5).

(c) P.W. No. 13 Dnyaneshwar Shankar Gavhane is brother-in-law of deceased Abhiman. He also accompanied P.W. 12 in search of Abhiman and noticed dead body at Yeldari dam. He has identified the articles. P.W. No. 14 Sandeep Arjun Fadtare is employer of accused Digambar. Digambar was working in his field since Oct., 2008, till Feb., 2010, and intermittently, he used to visit his native place. P.W. No. 15 Gajanan Kundlik Dhangar is the star witness asserting to be an eye witness. P.W. No. 16 Hari Laxman Thengle is panch for seizure panchnama of he-buffalo (Exh. 55) and seizure panchnama (Exh. 56 to 58) of clothes of accused persons. P.W. No. 17 Bhagwan Gangaram Thoke is Police Station Officer, received missing report while at Police Station. P.W. No. 18 Manoj Manikrao Deshmukh snapped photographs of dead body and he-buffalo (Exhs. 67 to 71).

(d) P.W. No. 20 Mirza Shafiulla Baig recorded statement of P.W. No. 14 Sandeep Arjun Fadtare and visited Pune and also carried muddemal to the office of Chemical Analyzer at Aurangabad vide Exh. 79.

(e) P.W. No. 21 Shankar Sakharam Gavane is labour in neighbouring field.

(f) P.W. No. 22 Dr. Vilas Sonba Lokhande is Medical Officer, carried post mortem (P.M. notes Exh. 83) on the dead body on 20th Feb., 2010. P.W. No. 23 Panditrao Rustumrao Sirnaik, Deputy Superintendent of Police, carried the investigation and on 14th Feb., 2010, arrested one of the accused. He had drawn panchnama at Yeldari dam (Exh. 36), inquest at Exh. 35, seized he-buffalo vide Exh. 55.

7. We have heard Mr. Bora, learned appointed Counsel and Smt. Gunjal, learned A.P.P. Mr. Bora has criticized quality of evidence and resultant conviction as, according to him, barring P.W. No. 15, there is no evidence against the appellant to link them with commission of offense. He says, the judgment under challenge is associated with surmises and conjectures. Evidence of P.W. No. 15, according to him, does not inspire confidence. He-buffalo was seized earlier than recording statement of P.W. No. 15, without any clue.

8. Learned A.P.P. says, that the acrimonious relations between appellant and the deceased or his family is proved by P.W. No. 1 Shantabai, P.W. No. 6 Arjun, P.W. No. 7 Shankar and it was root cause to eliminate Abhiman. Rosary bead was found at the spot. On 7th Feb., 2010, missing report is lodged and hence, according to her, link and circumstances against the appellant are established.

9. We have analytically evaluated entire evidence and original record. We find, by virtue of evidence of Medical Officer and inquest (Exh. 35) that inquest panchnama of dead body of deceased Abhiman was carried. The dead body was identified by his near relations brothers, father. P.W. No. 22 Dr. Vilas carried post mortem between 12 noon to 1.30 p.m. Dead body was in a decomposed state. It was tied to a stone weighing 60 to 70 kgs at three places by using Dhoti and nylon rope. The tying of body was firstly, at neck level, secondly, at just below umbilical, and third, at the level of pubic symphysis, tied from all these places to stone. Identification marks were recorded in the post mortem notes. Signs of de-composition were present in the form of swelling of face, abdomen with peeling of skin of scalp, face, neck, abdomen, both upper limbs and lower limbs, palms, and soles, external genital and at back. Strong odour of de-composition was present. Body features were disturbed due to de-composition. On external examination as to injuries, he noticed contused lacerated wound just above lateral to left eyebrow, running horizontally towards left ear of the size 8 x 2 x 1 c.ms. with irregular margins and blood clots. The injury was ante mortem. On external examination, under scalp, hematoma was found present corresponding to injury shown in column No. 17. Report from Chemical Analyzer was received and final opinion below Exh. 82 was drawn. According to him, probable cause of death was cerebral haemorrhage due to head injury and final report is tendered at Exh. 84. According to him, the injuries shown at column No. 17 was possible due to hard and blunt object. Cumulative effect of inquest, post mortem notes and evidence of P.W. Nos. 2, 6, 12, 13 is that, Abhiman met homicidal death amounting to murder. It was not an accidental or suicidal death. The gruesome death is not in controversy, however, the controversy is whether the appellants could be the author of the heinous act.

10. The prosecution case rests on motive of earlier wrangling between appellants and Abhiman. However, that by itself will not be a link and circumstance to feel that appellants en-cashed their wrath to eliminate Abhiman.

11. There is no recovery of any incriminating article against the appellant. Seizure of he-buffalo prior to statement of P.W. No. 15 in itself is a mystery as to what made the investigating officer to bank upon such seizure. Evidence of P.W. No. 15 certainly is associated with various shades and ornaments of disbelief. He asserts to be a field owner adjacent to the land of accused Pandurang and to other side deceased Abhiman. He accepts, at the material time, the agricultural operations of his field were not carried by him as field was given on Batai basis to Gyanba Dhangar. In natural parlance, P.W. No. 15 could not be expected to remain in agricultural field for agricultural operation or for guarding.

He says, on the date of the incident, at about 8 p.m. to 8.30 p.m., he had worked throughout the day in his field, met accused Balu and Digambar at about 7 p.m. to 7.15 in his field. At 8 p.m. accused Balu gave a call to him and asked him whether he wanted to return to home. He answered in affirmative but told, he did not desire to go home as he wanted to irrigate his crop of wheat. He was lying in his field, called Akhada. At 11 p.m., he heard barking of dog and woke up and saw all five accused persons proceeding to the field of Abhiman and Abhiman was present in the field. He then heard shouts of Abhiman. He watched the activities from near the stream for some time and saw that the appellants brought one person by lifting and they passed from bank of Nala towards their field and left that person in their field. The appellants had kept dead body of said person on he-buffalo; when he-buffalo jumped, dead body fell down. They again kept dead body on he-buffalo and proceeded towards Yeldari dam. P.W. No. 15, surprisingly heard the appellant discussing to throw dead body in the well or at Yeldari dam. He returned from his village. P.W. No. 15 did not disclose this fact to anybody as he felt appellants were saying, if anybody saw them, they would kill such person also.

It is illusory that dead body of a human being, may be of Abhiman, will be carried on the back of he-buffalo in midnight on a heavy traffic road, to a far off distance, at Yeldari and it remaining unnoticed. The probability is, somebody nearby the dam invited the deceased and he was eliminated and dead body was tied with stone and thrown by more than two or three persons. Having perused the photograph of he-buffalo, it does not apply to reason to transport a human dead body, without any support.

12. Evidence of P.W. No. 15 is totally shaky as he did not refer the dead body to be of Abhiman. He simply says, "the dead body". He did not notice any assault to a human being or Abhiman. On the contrary, the corpus of Abhiman had injuries of assault by deadly weapon. The long drawn silence of P.W. No. 15 to disclose the events to anybody, speaks volumes against his conduct. This is more so, he is cousin of Abhiman and equally, in relations to the appellants. He has apparently used missing of Abhiman and ultimate death as a tool to encash his

wrath with appellants being adjacent field owners. P.W. No. 15 could, as he asserts, see all the incident from a distance of 100 to 200 ft. that too at night time. There was no electricity or lights in the agricultural field. He desires us to believe having come across threats extended by appellants his statement under Section 161 Cr.P.C. and evidence before Court does not matter. There cannot be reliance to the evidence of P.W. No. 15 to treat him either as a witness or a witness who had established link of appellants kidnapping/abducting Abhiman.

13. From the spot panchnama at the field of deceased, nothing incriminating is found to show that any scuffle had taken place or any lethal weapon was found. No signs of scuffle were noticed though P.W. No. 15 Gajanan says having heard Abhiman crying.

14. Abhiman has disappeared on 6.2.2010 in the night. Missing report is lodged by P.W. No. 6 on 7.2.2010. After six days, F.I.R. is lodged by P.W. No. 2 Sushila while dead body was found on 20th Feb., 2010, at Yeldari dam. The allegations in the F.I.R. of P.W. No. 2 only depict of previous incident of quarrel and she had a suspicion against appellant Pandurang. She did not indicate in the F.I.R. of any incriminating material noticed or found at the spot. She did not state before Police that Digambar had come at the time of collecting mortal remains. She even did not personally see dead body of her husband tied to stone found at Yeldari dam. She accepts, if one sits at the stream/Nullaha, the surface of earth/her field is not visible and at some place it is not visible even by standing. She disputed her husband had committed theft of a pair of bullock of Govinda or he was found with wife of Digambar Jaywanta and he was beaten by villagers. Thus, even the F.I.R. only expresses a suspicion against the appellant of previous altercation.

15. As stated earlier, there is no recovery or discovery at the instance of the accused. Their apparels did not possess incriminating stains. No recovery of incriminating weapon. Thus, the coupling of circumstances and chain of events to establish guilt of the accused/appellants is not completed nor any of the circumstance suggests the appellants to be author in elimination of Abhiman. Learned Additional Sessions Judge, apparently, was swayed away by so called yelling of Abhiman noticed by P.W. No. 15 and believed that appellants only could be responsible to abduct Abhiman. Such finding calls for interference. In the result, appeal is allowed. Conviction and sentence recorded by the learned Additional Sessions Judge, Hingoli, in Sessions Case No. 54 of 2010 dated 07.12.2011 for offense under Section 302 r/w 34 IPC, 364 r/w 34 IPC and 201 r/w 34 IPC is set aside. The appellants are acquitted of the charges. The appellants be set at liberty, if not required in any other case.

Inform the Jail authorities immediately.

Fees of Rs. 10,000/- (Rs. ten thousand) be paid to learned Advocate.