

(2021) 11 BOM CK 0099
In the Bombay High Court
Case No : Criminal Appeal No. 124 Of 2016

Pinku @ Premprakash Yadunath Singh	APPELLANT
Vs	
State Of Maharashtra	RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Indian Penal Code, 1860 — Section 201, 302
Code Of Criminal Procedure, 1973 — Section 174, 313, 313(4)
Evidence Act, 1872 — Section 8, 58

Citation : (2021) 11 BOM CK 0099

Hon'ble Judges : Sadhana S. Jadhav, J;Sarang V. Kotwal, J

Bench : Division Bench

Advocate : Megha Bajoria, Arfan Sait

Final Decision : Dismissed

Judgement

Sadhana S. Jadhav, J

1 The appellant herein impugns the Judgment and Order passed by the Additional Sessions Judge, Palghar dated 10/9/2015 thereby convicting the appellant for the offence punishable under section 302 and 201 of Indian Penal Code in Sessions Case No. 26 of 2013. The appellant is sentenced to suffer Imprisonment for life alongwith fine of Rs. 500/- in default to suffer R.I. for one month for offence punishable under section 302 of the Indian Penal Code. The appellant is further sentenced to suffer R.I. for one year alongwith fine of Rs. 500/- I.d. to suffer R.I. for one month for offence punishable under section 201 of the Indian Penal Code.

2 Such of the facts necessary for the decision of this appeal are as under :

(i) The appellant herein was married to Rinky. Both were natives of Baskorkala, Tal. Rudroli, Dist. Basti, Uttar Pradesh. Their marriage was solemnised in the village of the accused. After marriage, the accused returned to Boisar as he was serving in a company, whereas, Rinky was residing at the house of accused in his

village.

(ii) In June, 2012, the accused had brought Rinky alongwith him to Mumbai. The couple was residing in a rented house at Boisar. For the initial period of 4 months, the couple was leading happy married life. However, Rinky called upon her mother Bimla Sinh(P.W.1) and informed her that the accused had started raising quarrels with her and that she has booked tickets on the tenth day and would reach the village on the 12th day. Rinky did not reach her home after 12th day also. Her mother was waiting for her.

(iii) On 22/12/2012 the elder brother of the accused namely, Jayprakash contacted P.W. 1 and informed her that he had to rush to Bombay, as some untoward incident had occurred. P.W. 1 got apprehensive and therefore, reached the house of Jayprakash, where she met the sister of the accused namely, Suman. Suman disclosed to P.W. 1 that upon enquiry of whereabouts of Rinky, the accused had divulged that he had assaulted Rinky with a blow of knife and thereafter, he fled to the village. His sister Suman, being law abiding citizen, took her brother to Rudravli Police Station.

(iv) In the mean while i.e. on 14/12/2012, the In-charge PI Mr. Uttam Sonawane had informed API Acharekar of Boisar Police Station that an unidentified body of a female is abandoned near the creek of village Mauje-Panchali. By the time, API Acharekar reached there, several people had gathered at the spot. On the basis of his report, A.D. No. 78 of 2012 was registered.

(v) There was preliminary investigation. The attire and appearance of the said lady gave an impression to API that the said lady hailed from Uttar Pradesh. The identity of the said lady was not known. Upon performing autopsy on the dead body, the Doctor had opined that the cause of death is due to stab injury associated with internal bleeding. There was no doubt that it was a case of homicidal death. Hence, API Acharekar lodged a report at the police station on 15/12/2012 against unknown person.

(vi) On 24/12/2012 PI Sonawane received a telephonic message from Police Station Rudravli, District Basti, Uttar Pradesh. Mr. Acharekar then accompanied by other police officer went to Rudravli and took custody of the accused on 26/12/2012. The investigation was set in motion and charge-sheet was filed against the accused.

3 The prosecution examined in all 7 witnesses to bring home the guilt of the accused.

4 Upon perusal of the evidence of P.W. 1 Bimla Sinh, it appears that she was informed by her daughter that she would reach the village on 12th day. However, till 22/12/2012 her daughter did not reach the village, hence, she had rightly enquired with the family of the accused. In the meanwhile, extra Judicial confession was made by the accused to his sister and the same was transmitted to P.W. 1. He had divulged that he had eliminated his wife. That from Rudravli,

accused was brought to Boisar Police Station. Thereafter, P.W. 1 reached Boisar Police Station and lodged a report. On the basis of which Crime No. 163 of 2012 was registered by Boisar Police Station for offence punishable under section 302 and 201 of the Indian Penal Code.

5 In fact, the inquest panchanama, post mortem and the scene of offence panchanama were conducted in A.D. Enquiry itself. The testimony of P.W. 1 is restricted to the fact that she was informed by her daughter that the accused was raising quarrels with her. It is restricted to the incident in question and the fact that she was informed by the sister of the accused that her daughter has met with a homicidal death.

6 The case against accused appellant rests upon circumstantial evidence. The prosecution has adduced the evidence of the witness who had last seen the accused in the company of the deceased. One of such witness Reena Sharma (P.W. 2) claims that in December, 2012 on one day at about 6 p.m., she had seen the deceased in the company of her husband. The deceased had disclosed to her that she is going to her village. She had even requested P.W. 2 to accompany her upto naka and P.W. 2 had obliged. She had seen the deceased carrying with her a purple colour purse. It would be apt to note that the said purple colour purse was recovered at the instance of the accused, pursuant to the memorandum. There was 2 gm. golden ring wrapped in handkerchief and bloodstained knife in the said purse. The memorandum was drawn on 31/12/2012 which is at Exh. 22 and the purse was recovered on the same day. Recovery panchanama is at Exh. 23. One of the chappal of the deceased was also recovered at the instance of the accused. P.W. 2 has not been shattered in her cross-examination.

7 P.W. 6 Dr. Manoj Shinde had performed autopsy on the dead body of Rinky. He has stated before the Court that he had received the dead body on 14/12/2012 at about 8.15 p.m. and had performed autopsy on 15/12/2012 between 7.30 a.m. to 8.45 a.m. That rigor mortis had developed and then subsided. He had observed following injuries on the person of the deceased :-

(i) Pear shape incised wound about 1.5 cm. x 1 cm. 2 inches above umbilicus deep piercing abdominal thickness.

(ii) Pear shape incised wound about 1 cm. to 1 cm. Rt. Lateral aspect of abdomen below rib cage, deep piercing abdominal thickness.

(iii) Blackish discoloration of skin posterior aspect of both legs, both arms with peeling of skin.

He has proved the contents of the post mortem notes, which is marked at Exh. 30. He has specifically opined that the injuries sustained by the said lady were sufficient in ordinary course of nature to cause death. The homicidal death of Rinky is an admitted position.

8 P.W. 7 Mahadev Acharekar happens to be the Investigating Officer. Upon perusal of evidence of P.W. 7, it is established that the Police Patil of village

Panchali had informed Boisar Police Station about the dead body of a female lying abandoned near cremation ground at seashore. On the basis of which A.D. No. 78 of 2012 was registered. P.W. 7 had conducted enquiry under section 174 of the Code of Criminal Procedure, 1973, which is marked at Exh. 15. From the scene of offence where the dead body was found, the footwear of left leg of lady and yellow colour bangles were seized. From the very appearance of the deceased, P.W. 7 had gathered an impression that she was a North Indian lady. Upon perusal of the injuries on the abandoned dead body, he was convinced that it is a case of homicidal death. In order to ascertain the cause of death, the dead body was referred for post mortem. The doctor had opined that the cause of death is stab injury and internal hemorrhage.

9 On 24/12/2012 he was informed by the police of Rudravli Police Station that the accused was apprehended at the instance of his sister. It was alleged that the accused had disclosed to his sister that he had killed his wife and had fled from Bombay. On the basis of the said information, P.W. 7 had been to Rudravli Police Station and had brought the accused to Bombay and arrested him in Crime No. 163 of 2012. It is elicited in the cross examination that the handkerchief in which golden ring was wrapped was not seized. That no ring was found when he had first visited the scene of offence. He has proved the omissions in the testimony of the witnesses. Needless to state that the said omissions are not material omissions which go to the root of the matter.

10 In the present case, it is pertinent to note that the accused in answer to question No. 6 in his examination under section 313 of the Code of Criminal Procedure, 1973 has stated as follows :

"No quarrels were taken place between me & Rinky. I booked railway ticket to go to our native place before 10 days. Rinky did not reach to native place as she was missing from Boisar Railway Station."

In answer to Question No. 39, the accused has stated as follows:

"When I went to go to my native place at Boisar railway station Rinky was with me. She disappeared. False case is filed against me."

11 Learned Counsel for the appellant has vehemently argued that the case of the prosecution rests upon hearsay evidence. That P.W. 2 is got-up witness. The purse was shown to her and therefore, she identified the same as the belongings of the deceased. Moreover, the recovery of the purse of the deceased at the instance of the accused cannot be relied upon for the reasons that P.W. 7 has categorically stated that upon seeing the dead body, he had searched into the bushes and at that time, he had not found the purse. That the recovery is foisted upon the accused. It is further argued that the prosecution has not examined Suman, the sister of the accused to whom the alleged extra judicial confession was made. That Boisar police had not produced him before the local police station at Rudravli. That the arrest of the accused at the threshold is shrouded with mystery. That even if it is considered that extra judicial confession was

made, it is a weak piece of evidence and hence, cannot be implicitly relied upon it. It is also submitted that the case rests upon substantial evidence and the prosecution has miserably failed to establish the chain of circumstances.

12 As against this, learned APP has vehemently argued that this is a case of custodial death. The same is not denied by the accused. The conduct of the accused needs to be taken into consideration. It is submitted that there is evidence of last seen together by P.W. 2 who had dropped the couple upto the naka. That the accused was arrested from Rudravli, which would show that disappearance of the deceased was within the special knowledge of the accused and it was incumbent upon him to offer a plausible explanation for the disappearance of his wife. Moreso, it is admitted by the accused in his statement under section 313 of the Code of Criminal Procedure, 1973 that he was in the company of the deceased till she went missing. It is true that there are lapses in the investigation. In fact, the prosecution ought to have examined the sister of the accused to whom the statement was made. It is also true that there was no enquiry with Rudravli Police Station. The arrest panchanama of the accused is at Exh. 36.

13 We have perused the original document at Exh. 36, which is an arrest panchanama, recorded in Hindi at behest of some officer from Rudravli Police Station. Upon perusal of the original document at Exh. 36, it appears that the name of Rajkishor Yadav, the officer of Rudravli Police Station has been erased with whitener and the name of M.P. Aacharekar of Boisar Police Station has been stated. We have no doubt that the statement which is a part of Exh. 36 is in Hindi and is scribed by a police officer of Rudravli Police Station. The said statement shows that on 26/12/2012 at about 10.30 a.m. the accused was arrested at Rudravli Police Station. That he was produced before Rudravli Police Station by his brother Jayprakash, father-in-law Ambica Prasad, mother in law Bimla and Ranvijay Sinh. In the course of investigation, the accused had admitted before the police that he has killed his wife and abandoned her dead body near river Panchali at Boisar. He was then produced before the Chief Judicial Magistrate at Basti and was brought to Boisar after seeking transit remand. It is clear that unless the accused had confessed before his relatives, he would not have been taken to Rudravli Police Station, where he admitted to have committed the offence. The proper procedure was followed. Since the accused was subjected to interrogation by Rudravli Police Station, wherein he was first arrested, it was not necessary for P.W. 7 to interrogate the accused. Moreover, in the statement under section 313 of the Code of Criminal Procedure, 1973, the accused has categorically admitted that the deceased was in his company till railway station and thereafter, she had disappeared. The conduct of the accused speaks volumes for itself. In the eventuality that his wife was missing, he has not lodged any missing report at Boisar Police Station. That he had made no attempts to search for her. All these leads us to draw an adverse inference.

14 The Apex Court in the case of Sanatan Naskar and anr. v/s. State of West

Bengal (2010) 8 SCC 249 , has observed as follows:

"21 The answers by an accused under Section 313 Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 Cr.PC.

22 As already noticed, the object of recording the statement of the accused under Section 313 Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23 The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) Cr.PC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution."

15 It is clear that the accused has admitted that his wife had accompanied him. This by itself is sufficient to believe the evidence of P.W. 2. That P.W. 2 had seen the accused and the deceased leaving for the railway station and the same has been admitted by the accused. Therefore, no further enquiry was necessary. It is unfortunate that the accused had eliminated his wife and had proceeded to the village by abandoning her near cremation ground.

16 It is rather a case of custodial death. In the circumstances, we find it necessary to refer to Section 8 of the Indian Evidence Act which contemplates relevancy of the conduct of the accused prior to the incident, during the incident and more particularly after the incident. The fact that after the commission of the alleged crime, the accused attempted to conceal things which were or might have been used in commission of offence and tried to give a false explanation at the threshold are relevant.

17 The circumstance in the case, coupled with the admission of the accused have established the case of the prosecution that Rinky had died a homicidal death at the hands of none other than of the accused. That section 58 of the Indian Evidence Act contemplates that the facts admitted need not be proved. The very fact that the accused has admitted that the deceased was in his company till she disappeared and no attempt made by him to search for her, is sufficient to hold that the prosecution has proved its case beyond reasonable doubt. The conduct which destroys the presumption of innocence can be considered as material evidence against the accused.

18 In view of the above observations, the appeal deserves to be dismissed.

19 Before parting with the Judgment, this Court appreciates the efforts taken by the learned Advocate Ms. Megha Bajoria, appointed by this Court to espouse the cause of the Appellant. She is entitled to the professional fees as per rules.

20 Hence, the following order :

ORDER

(i) The Appeal is dismissed.

(ii) The conviction and sentence passed against the appellant vide Judgment and Order dated 10/9/2015 passed by the Additional Sessions Judge, Palghar in Sessions Case No. 26 of 2013 is hereby confirmed.

(iii) The Appeal is disposed of accordingly.