
(2014) 02 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 1090 of 2008

Pintu @ Arjun Suraji Suryavanshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2015) ALLMR(Cri) 1007 : (2014) 2 BomCR(Cri) 239

Hon'ble Judges : P.V. Hardas, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : M.K. Kocharekar, for the Appellant; S.D. Shinde, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.—Appellant who stands convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs. 10,000/-, in default of which to undergo further RI for 6 months, by Ad-Hoc Additional Sessions Judge-2, Sangli, by judgment dated 26.8.2008 in Sessions Case No. 33 of 2008, by this appeal questions the correctness of his conviction and sentence. The facts in brief, as are necessary for the decision of this appeal, may briefly be stated thus:

(i) PW-7 API Rajendra Rajmane who on 6.11.2007 attached to Chinchani-Wangi Police Station was informed by PSO Jadhav at about 8.35 pm about the receipt of an anonymous telephone call about a murder which was committed near Vithal Rakhumai temple. An entry was accordingly taken in the station diary and PW-7 API Rajmane proceeded with the staff to the scene of incident. On reaching the scene of incident, he noticed that a murder of Suresh had been committed and the dead body of Suresh was lying there. The report of PW-6 Shivaji Baburao Gavandi was accordingly scribed at Exhibit 24. The police station officer was accordingly asked to register an offence and accordingly an offence vide crime no. 44 of 2007 was registered. Upon registration of the said offence,

investigation was entrusted to API Rajmane. He drew the inquest panchnama of dead body of the deceased Suresh, in the presence of panchas at Exhibit 11. The dead body of the deceased Suresh was thereafter sent for postmortem examination. In the presence of panchas, the scene of incident panchnama was drawn at Exhibit 26. From the scene of the incident certain articles came to be seized. Thereafter on the next day i.e. on 7.11.2007, he went to the house of deceased and the statement of PW-5 Nirmala Gavandi, wife of deceased Suresh was recorded. The appellant came to be arrested on the same day and thereafter statement of PW-3 Satyam Gavandi was recorded. The clothes on the person of the deceased were seized vide seizure memo at Exhibit 12. One motorcycle belonging to Sunil Suryavanshi was seized under seizure memo at Exhibit 13.

(ii) During custodial interrogation, the appellant expressed his willingness to point out the place where an axe and his clothes had been concealed. Accordingly, a memorandum was recorded in the presence of panchas at Exhibit 27. The accused led the police and panch to Tadsar village and from a heap of fodder in the field of one Suryavanshi produced a blood stained shirt and pant. Accused then led them to a distance of about 85 to 90 ft. and from the sugarcane crop produced an axe which was found to be blood stained and the same was seized under seizure memo at Exhibit 28. The Circle Inspector was requested to draw the sketch of the scene of the incident and accordingly a sketch map is prepared at Exhibit 14. The seized property was thereafter referred to the chemical analyzer under a requisition at Exhibit 29. The report of the chemical analyzer is at Exhibits 30 and 31. As per the report of the chemical analyzer, the axe and the clothes of the accused were found stained with blood of "A" group which was determined to be the blood group of deceased. Further to the completion of the investigation, a chargesheet against the appellant was submitted.

(iii) Postmortem on the dead body of the deceased Suresh was performed by PW-4 Dr. Uttam Shamrao Chandanshive who noticed following external injuries

1. Incised wound at right side of the neck extends from mid neck posteriorly upto right angle of mouth anteriorly transverse 8 x 4 x 3 inches deep. Fracture right side mandible irregularly, fracture right maxilla. Fracture 2nd and 3rd right cervical vertebra, particularly on right side. Cervical cord also cut i.e. spinal cord part cut right side of carotid artery. Muscles of neck of right side cut completely.
2. Incised wound at right ear pinna and parotid area perpendicular to injury no. 1 measuring 2x1/2 x 1/2 inch deep cut ear pinna and bone below it.
3. Incised wound at right shoulder joint on dorsal aspect 2x1/2x1/2 inch deep.
4. Incised wound at right mid arm on lateral aspect 1/2 x1/4 x 1/4 inch deep.
5. Incised wound at left side of neck, oblique below left ear pinna 2 x 1/2 x 1/2 inch deep. Palpable fracture on right mandible fracture 2nd and 3rd cervical vertebra, fracture right maxilla.

On internal examination, he noticed the following injuries:

1. Fracture 2nd and 3rd cervical vertebra partially on right spinal cord at cervical area cut.
2. Right carotid artery cut completely.
3. Fracture 2nd and 3rd cervical vertebra partially on right side, spinal cord also cut.

(iv) He therefore opined that the injuries were sufficient in ordinary course of nature to cause death. He therefore opined that the cause of death was due to hemorrhagic shock due to cut to right carotid artery with fracture cervical spine due to injury at right side of neck. Postmortem report is at Exhibit 20.

(v) On committal of the case to the Court of Sessions, Trial Court vide Exhibit 6 framed charge against the appellant for offence punishable u/s 302 of the Indian Penal Code.

(vi) The appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined 7 witnesses. The defence of the appellant is of denial. The Trial Court upon appreciation of the evidence of the prosecution convicted and sentenced the appellant as aforestated.

2. In order to effectively deal with the submissions advanced before us by Shri Kocharekar, the learned Counsel for the appellant and the learned APP, it would be useful to refer to the evidence of the prosecution witnesses.

3. The evidence of PW-3 Satyam is that on the day of incident he was returning home and had noticed the appellant fleeing from the scene of the incident carrying an axe. He had seen the appellant in the illumination of the head-light of the motorcycle. According to him he went near the person who was lying on the ground and noticed that it was his uncle. Thereafter, he raised cries and his other brothers came to the scene of the incident. The police arrived at the scene of the incident and thereafter PW-6 Shivaji lodged a report. In cross-examination certain admissions have been elicited that he had not disclosed the incident to anyone till his statement was recorded next day. He had admitted that he had informed his brothers, but then it was elicited that he had not informed them that he had seen the appellant fleeing from the scene of the incident. According to him, he had rushed home and had not returned to the scene of the incident though the police were there till about 2 am.

The conduct of this witness extremely unnatural, and according to us no reliance can be placed on the testimony of this witness that he had seen the appellant fleeing from the scene of the incident carrying an axe. Though the deceased was his uncle, he had chosen not to remain at the scene of the incident or inform the police that he had seen the appellant fleeing from the scene of the incident. In fact, when PW-6 Shivaji arrived at the scene of the incident, this witness was not found present. The evidence of the other witnesses further indicate that he had

not communicated to his brothers that he had seen the appellant fleeing from the scene of the incident. According to us therefore no reliance whatsoever can be placed on the testimony of this witness.

4. Prosecution has examined PW-5 Nirmala, wife of the deceased Suresh. According to her on the day of incident as there was failure of electricity, she, deceased Suresh and her children were sitting outside the house in the courtyard. She deposes that someone gave a call to her husband. Since it was dark, the deceased switched on the torch and in the torch light she noticed the appellant who was calling deceased Suresh. Deceased Suresh therefore went along with the appellant. PW-5 Nirmala thereafter was attending to her other work and after sometime noticed the appellant running towards his house, which was near her house. PW-5 Nirmala further deposes that she had seen the appellant carrying an axe.

5. In cross-examination certain admissions have been elicited that till her statement was recorded on the next day, Nirmala had not disclosed the incident to anyone. However, it is also elicited in the cross-examination that on account of the ghastly incident of murder of her husband, Nirmala was disturbed and therefore she could not narrate in the Court as to who were the persons present at the scene of the incident. It is also elicited in the cross-examination that on seeing the dead body of her husband, Nirmala had fainted and had remained unconscious and regained her consciousness at about 10 pm. According to her, she does not remember as to who had taken her from the scene of the incident to the house.

6. Shri Kocharekar, the learned Counsel for the appellant has urged before us that PW-5 Nirmala had not made any disclosure to the persons who were present at the scene of the incident about her deceased husband going in the company of the appellant and also about seeing the appellant fleeing from the scene of the incident. The learned Counsel for the appellant has therefore urged before us that no reliance at all can be placed on the testimony of PW-5 Nirmala. The learned APP has urged before us that implicit reliance can be placed on the testimony of PW-5 Nirmala though she may not have disclosed the incident to anyone. According to the learned APP, Nirmala must have been distraught on seeing mutilated body of her husband. Deceased Suresh had sustained several injuries which had practically severed his neck and there must have been profuse bleeding as the carotid artery had been cut. In such circumstances therefore according to the learned APP failure of Nirmala to react in a particular manner and not disclosing the incident to others would not affect the credibility of Nirmala. The learned APP has placed reliance on the judgment of the Supreme Court in *Narayan Singh and Others Vs. State of M.P.*, .

7. The Supreme Court in case of *Narayan Singh (supra)* held that it is not uncommon for a persons when they see a ghastly and disturbing murder committed in their presence that they almost lose their sense of balance and remain dumb founded until they are able to compose themselves. In that

background, the Supreme Court therefore held that merely because the sole eye-witness did not immediately disclose the names of the accused to the inmates of the family of the deceased, a fatal defect was not existing in the prosecution case.

8. In the present case, Nirmala has admitted in cross-examination that she was disturbed on seeing the dead body of her husband. In fact, PW-Nirmala fainted at the scene of the incident and was required to be carried at home. She regained her consciousness after practically one and half hour. In such circumstances, it would be harsh to expect that Nirmala would compose herself immediately on regaining the consciousness and would inform all the other inmates in the house of having seen the deceased in the company of the appellant and also of seeing the appellant fleeing from the scene of the incident carrying an axe. The cross-examination of PW-5 Nirmala does not in any manner affect her credibility of having seen the appellant. No dent is made in the cross-examination which would impel us not to place any reliance on the testimony of PW-5 Nirmala.

9. Prosecution has also examined PW-6 Shivaji, brother of deceased Suresh and the first informant. PW-6 Shivaji deposes that on the day of incident he had gone to the square at about 7.45 pm and had returned home. Thereafter he along with his wife sitting in the courtyard and after about 15 to 20 minutes one Vaibhav came there and informed him that deceased Suresh alias Bapu had been murdered in the square. Shivaji therefore went to the scene of the incident and noticed the deceased lying in a front of pan-shop in pool of blood having sustained injuries to his neck. Shivaji waited at the scene of the incident for about 5 to 10 minutes. Meanwhile, the other family members also came there. He took all the family members to his house and thereafter returned to the scene of the incident. After the arrival of the police his report at Exhibit 24 was scribed.

10. In cross-examination, he has admitted that when he had reached the scene of the incident, none from his family was present there. He admitted that the house of PW-3 Satyam is adjacent to his house. He has admitted not to have met Shri Satyam after the incident when he had returned home. He has admitted that he does not know as to who had informed the police. He has further admitted as correct that when he lodged his report, he was not aware as to how the incident had occurred. He has also admitted that he had suspected the involvement of the appellant. He therefore states that he had lodged a report against the appellant.

11. The prosecution witnesses have further deposed that the father of the appellant had been killed, and in the murder of father of the appellant deceased Suresh was one of the accused. Deceased Suresh had been acquitted in the trial. Be that as it may, the prosecution has therefore proved that the appellant had motive to commit the crime. The deceased and the appellant were together as the appellant had taken the deceased along with him. Within a short time thereafter, the appellant was seen fleeing from the scene of the incident carrying an axe. The Axe and the clothes of the appellant were discovered at the behest of the appellant and the report of the chemical analyzer indicates that the axe as

well as the clothes of the appellant were stained with blood which matched the blood group of deceased.

12. In cases resting on circumstantial evidence, it is incumbent to the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of a conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and should unquestionably point to the accused. In other words the circumstances should be capable of only one inference i.e. the accused and accused alone has committed the crime.

13. The circumstances, adverted to by us, certainly completes the chain of the circumstance and the circumstances exclude every hypothesis of the innocence of the accused and unquestionably points towards the guilt of the accused. In such circumstances therefore according to us the Trial Court cannot be faulted for having arrived at the conclusion of guilt of the accused. The appeal filed by the appellant is sans merits and deserves to be dismissed. Accordingly, the Criminal Appeal No. 1090 of 2008 is dismissed confirming the conviction and sentence of the appellant.