courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 07/09/2026

(2014) 08 BOM CK 0221

In the Bombay High Court

Case No : Criminal Appeal No. 875 of 2009

Pravin Tukaram Kumbhar APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:
Penal Code, 1860 (IPC) — Section 302, 34, 364, 397

Citation : (2015) ALLMR(Cri) 1758

Hon'ble Judges : P.V. Hardas, J;Anuja Prabhudesai, J.

Bench : Division Bench

Advocate : Swapnil Ovalekar, Advocate, for the Appellant; S.D. Shinde, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.?The Appellant, who stands convicted for an offence punishable under Section 302 r/w. 34 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs. 200/- in default of which to undergo further imprisonment for 8 days, by the Additional Sessions Judge, Khed, by Judgment dated 16.10.2008, in Sessions Case No. 14 of 2006, by this Appeal questions the correctness of his conviction and sentence. Original Accused No. 2 has not preferred any appeal. Facts, as are necessary for the decision of this appeal, may briefly be stated thus:-

P.W. 12 - PSI Deepak Madhale, who, on 20/1/2006, was attached to the Ratnagiri City Police Station, was informed about the missing of an auto-rickshaw in Case No. 3 of 2006 which was registered at the Ratnagiri Rurual Police Station. He was also informed that the auto-rickshaw was located near Marul Tarphe Patan. He, therefore, summoned two panchas and along with police staff, took search of the vehicle. While they were proceeding towards Patan, they noticed an auto-rickshaw bearing Registration No. MH-08-E/4700 parked by the side of one house which was adjacent to the road. They, therefore, called the house owner before whose house the auto-rickshaw was stationary. The owner of the house, namely,

P.W. 5 - Madhukar Salunke informed them that on 12/1/2006 two persons, aged about 25 years, had parked the auto-rickshaw by informing P.W. 5 - Madhukar that the petrol in the auto-rickshaw was exhausted. The police accordingly concealed themselves near the place, where the auto-rickshaw was parked. At about 2 p.m. they noticed one person while going towards the auto-rickshaw. The said person attempted to start the auto-rickshaw and, therefore, the police apprehended him. The said person was asked to disclose his name and he disclosed his name as Pravin Kumbhar i.e. appellant/accused No. 1. Accused No. 1 was then questioned about the ownership of the auto-rickshaw, but since he could not give any satisfactory answer, the autorickshaw was seized in the presence of panchas under panchanama at Exh. 41. P.W. 12 - PSI Madhale, accordingly, informed the Ratnagiri City Police Station as well as the Koyana Nagar Police Station. During custodial interrogation, accused No. 1 expressed his willingness to point out the place where the dead body of the owner of the auto-rickshaw was concealed. Accordingly, accused No. 1 took the police near Abaloli village and from there by a path-way near the bridge and towards the bank of river Kapashi. While going towards the place, which was indicated by accused No. 1, P.W. 12 - PSI Madhale noticed a chain of yellow metal. The accused No. 1 took them at some distance from the chain, near the bushes and pointed out towards the bushes and discovered the dead body. It was the dead body of a male person. The clothes of the dead body were inspected and a driving license was noticed on the hip pocket of the pant. The entire panchanama was drawn at Exh. 41. P.W. 12 - PSI Madhale then informed the Guhagar Police Station and also the Ratnagiri City Police Station. On receipt of the message, PSI Deshmukh of Guhagar Police Station arrived at the spot. The information conveyed by P.W. 12 - PSI Madhale is at Exh. 87 The Guhagar Police Station thereafter prepared the inquest panchanama of the dead body and P.W. 12 - PSI Madhale had gone to Ratnagiri City Police Station along with accused No. 1.

P.W. 16 - PSI Vilas Deshmukh, who, on 21/1/2006, was attached to Guhagar Police Station, was conveyed by P.W. 12 - PSI Madhale about the dead body which was noticed near Kapashi river. P.W. 16 - PSI Deshmukh, therefore, visited the scene of the incident along with the staff. He then drew the inquest panchanama of the dead body at Exh. 11. He checked the clothes on the dead body and noticed a driving license in the hip pocket of the clothes. The dead body was decomposed. Therefore, a letter was issued to the Medical Officer, requesting him to perform the postmortem on the spot itself. The said letter is at Exh. 115. The Medical Officer, accordingly, performed postmortem on 22/1/2006. On the same day, the scene of the incident panchanama where the dead body was lying drawn. From the scene of the incident, two stones, which were stained with blood, were seized. Similarly, blood stained hair of the deceased, blood stained mud and ordinary mud and pieces of the shirt of deceased were also seized from the spot. The scene of the incident panchanama is at Exh. 115. The photographer was called and photographs of the scene of the incident were taken. P.W. 2 - Dattaram Chavan, younger brother of the deceased thereafter

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

lodged his report at Exh. 38. On the same day, Police Head Constable produced the trouser of deceased Yashwant, which was seized under seizure memo at Exh. 16.

On 23/1/2006, a letter was issued to the RTO requesting for providing the duplicate documents of the said auto-rickshaw. The said letter is at Exh. 80. A letter was then issued to the Special Prison, Ratnagiri requesting for information pertaining to the cases in which the accused were convicted and the dates when they were released. Statements of witnesses were recorded and thereafter P.W. 16 - PSI Deshmukh visited the Ratnagiri City Police Station and obtained the documents showing the action taken by the Ratnagiri City Police Station against the accused.

On 29/1/2006, the viscera was referred to the Forensic Science Laboratory, Pune under requisition at Exh. 116. On 27/1/2006 the clothes of accused No. 1 - Pravin were seized under seizure memo at Exh. 45. During custodial interrogation, on 30/1/2006, accused No. 1 - Pravin expressed his willingness to point out the place where two number plates of the auto-rickshaw had been concealed in the Parshuram Ghat. Accordingly, the said information was reduced into writing at Exh. 46. The accused thereafter led the police and the panchas to Parshuram Ghat and pointed out a place near the Visava Hotel and from the bushes produced two number plates of the auto-rickshaw which were seized under panchanama at Exh. 47. The Executive Magistrate was thereafter requested to conduct the Test Identification Parade at Exh. 89. Accordingly, the Executive Magistrate conducted the Test Identification Parade on 13/2/2006.

About 10 to 11 months thereafter, Crime Branch, Kurla, informed P.W. 16 - PSI Deshmukh that accused No. 2 - Rupesh was arrested. Accordingly, P.W. 16 - PSI Deshmukh went to Kurla and brought accused No. 2 - Rupesh to Guhagar and accordingly arrested accused No. 2 - Rupesh in the said crime. During custodial interrogation, on 7/11/2006, accused-Rupesh expressed his willingness to point out the place where a wrist watch of deceased had been thrown near the Kapashi river. The said information was accordingly reduced into writing at Exh. 104. Accused - Rupesh led the police and the panchas near the Kapashi river and from one place removed a wrist watch of Titan Company which wrist watch was seized under seizure memo at Exh. 105. The Executive Magistrate was then requested to conduct the Test Identification Parade of accused No. 2 - Rupesh.

P.W. 12 - PSI Madhale thereafter issued a letter at Exh. 118, handing over the custody of the auto-rickshaw, gold chain, key of the auto-rickshaw and custody of accused No. 1. On 6/2/2006 the seizure property was referred to the Chemical Analyzer under requisition at Exh. 119. Information was sought from the Superintendent Special Prison, Ratnagiri, about the release of the accused from jail. Further to the completion of investigation, a charge against the accused was submitted.

Postmortem on the dead body of deceased Yashwant was performed by P.W. 8 -

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

Dr. Vinod Sangvikar. P.W. - 8 - Dr. Sangvikar noticed the following external injuries:-

(1) Split laceration over right side of back extending from right side of thoracic vertebra to right maxilla, right scapula is visible inferior angle of scapula was fractured. Ribs were visible. Intercostal spaces were brown in colour. Margins were irregular.

(2) Maxilla was fracture and separated out from base of skull.

(3) Mandible was fractured at the level of neck right ramus and separated out.

(4) Dislocation of right shoulder was also noticed.

(5) Humerus right (with fragments of muscle of anterior and posterior compartments were exposed, muscles were torn irregularly. Both foot and palms were absent. Lower end of upper limb and lower limb showed irregular brown muscle fragments. Skin pulled down wards with irregular ends.

(6) Fracture of right 3rd, 4th 5th and 6th ribs anteriorly.

He opined that injuries mentioned at Sr. Nos. 1, 2, 3 and 4 were ante-mortem, while injury Nos. 5 and 6 were postmortem. He further opined that the said injuries were possible by hard and blunt object like stone. He has further opined that the injuries were homicidal and death could be caused due to the said injuries.

On internal examination, he noticed following internal injuries:-

(1) Right side of scalp from Saggital sutured was absent while left side of scalp was present.

(2) Maxilla was separated out from bas of skull.

(3) Anterior cranial fossa was fractured. Saggitally. Fracture extending up to middle cranial fossa.

(4) Mandible was fractured at level of neck of right ramus.

(5) Dura meter (upper covering of brain) -was intact. Anterior part of dura meter was noticed brownish - black in colour. Remain dura meter was noticed grayish in colour. Brain was liquified and brain tissue were containing maggots.

(6) Right side of chest wall was dark brownish coloured and material was present coupled with infiltration into muscle layer. Upper layer could not be differentiated on right side. Left side muscle layer was differentiated well.

(7) Right side anteriorly 3rd, 4th, 5th and 6th ribs were fractured.

He, therefore, opined that deceased had died due to shock due to hemorrhage. The Postmortem report is at Exhibit 14. Upon receipt of the report of the C.A., he gave the final cause of death certificate at Exh. 67.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

2. On the case being committed to the Court of Sessions, Trial Court vide Exhibit 5 framed charge against the accused for offence punishable under Sections 364 r/w. 34, 397 r/w. 34 and under Section 302 r/w. 34 of the Indian Penal Code. The accused denied their guilt and claimed to be tried. Prosecution, in support of its case, examined 16 witnesses. The Trial Court, upon appreciation of the evidence of the prosecution, convicted and sentenced the appellant along with other accused as afore-stated, while acquitting them of the offence punishable under Sections 364 and 397 read with Section 34 of the IPC.

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

4. Prosecution has examined P.W. 1 - Vishal, son of deceased Yashwant, who deposes that his father, deceased Yashwant, was a auto-rickshaw driver, who was driving autorickshaw No. MH-08-E/4700, which was owned by him. On 10/1/2006 deceased Yashwant left the house at about 2.30 p.m. in the auto-rickshaw. He was wearing a gold chain and was also wearing a wrist watch on his wrist. The said wrist watch was of Titan Company, having a black dial. According to Vishal, deceased Yashwant used to usually return at about 8.30 p.m. On that night, however, he did not return home. During those days P.W. 1 - Vishal was residing at Ratnagiri and therefore, on 11/1/2006 his mother came to Ratnagiri and informed him that Yashwant had not returned home on the previous night. Vishal, therefore, came to the Nivali Cross Road where his father used to generally park his autorickshaw. He inquired from the other rickshaw drivers, who were present there and who informed him that deceased Yashwant had taken passengers in his auto-rickshaw at 4.30 p.m. and had gone to Ganpatipule. Vishal, therefore, went to Ganpatipule and inquired from the rickshaw drivers at Ganpatipule. The rickshaw drivers informed him that they had not noticed deceased Yashwant at Ganpatipule.

Vishal thereafter had gone to Dhamanase and met one person by name Shitap, who informed him that he had seen deceased Yashwant on 10/1/2006 at about 5 to 5.30 p.m. near Chambarewadi Cross Road. The said Shitap further disclosed him that he had stopped the auto-rickshaw of deceased Yashwant and had noticed two persons in the age group of 25 to 30 years travelling in the rickshaw. Shitap further disclosed that he had asked Yashwant, whether Yashwant would take him upto the Nivali Cross Road, but Yashwant had informed Shitap that he would go upto Jakadevi and would halt there. Thereafter Vishal had gone to Jakadevi and inquired from the rickshaw drivers, who were present there. Those rickshaw drivers informed him that they had seen deceased Yashwant carrying passengers upto Jakadevi. On the next day, therefore. Vishal lodged his missing report at Exh. 36. He states that they had attempted to trace deceased Yashwant and then had learnt that the dead body of deceased Yashwant had been found. He has identified the gold chain which was used by deceased Yashwant and has also identified the wrist watch which was being used by deceased Yashwant.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

5. In cross-examination, he has admitted as true that in the missing report as well as in his statement during investigation, he had not disclosed that deceased Yashwant was using a wrist watch of Titan Company. Omission has been elicited that he had not stated in his missing report the colour of the shirt, which was worn by deceased Yashwant.

6. Prosecution has also examined P.W. 7 - Sankarshan Ambre, a guard at the Abloli Guard Chowky, whose duty was to check the vehicles passing on the road. P.W. 7 - Sankarshan deposes that he was attached to the Guhagar Police Station and was on duty at the Abloli Coastal Guard Chowky (Check Post) and his duty was to check the vehicles which were passing on the road. According to him on 10/1/2006 at about 6.30 to 6.45 p.m. one auto-rickshaw came from the Ratnagiri side which was bearing Registration No. MH-08-E/4700. He deposes that deceased Yashwant was driving the autorickshaw. He has admitted that he was knowing deceased Yashwant and, therefore, asked Yashwant to stop the autorickshaw. He requested deceased Yashwant to reduce the speed of the auto-rickshaw and Yashwant accordingly informed him that he would leave the passengers and would return again. Two passengers, who were sitting in the autorickshaw on the rear side have been identified by this witness to be accused Nos. 1 and 2. He further deposes that thereafter Yashwant went towards Savarde side. He also deposes that on 11/1/2006, one Head Constable Chavan of Ratnagiri Rural Police Station had telephoned him and had asked him whether auto-rickshaw of deceased Yashwant had passed from the check-post and P.W. 7 - Sankarshan had informed him that the auto-rickshaw had gone towards Savarde side. He further deposes that on 12/1/2006 one Mahesh Kokje and Sandeep Kumbhar had come to the Checkpost to inquire about the auto-rickshaw and he had also informed them that the auto-rickshaw had gone towards Savarde side. Those two persons had disclosed to him that a report was lodged at the Ratnagiri Rural Police Station that the auto-rickshaw and the driver were missing. He claims that on 13/2/2006 in the Test Identification Parade he had identified accused No. 1 - Pravin and thereafter on 16/1/2007 he had identified accused No. 2 - Rupesh in the Test Identification Parade.

7. In cross-examination, he has denied the suggestion that the rickshaw was not being driven by deceased Yashwant, whom he was knowing. He has admitted that his statement was recorded by the police on 28/1/2006. He has admitted that no wireless message was received in the Abloli Chowky.

8. Prosecution has examined P.W. 5 - Madhukar Salunkhe, who deposes that he was residing by the side of Karad - Chiplun Road. On 12/1/2006 at about 11 p.m. one auto-rickshaw came near his house and was parked there. He, therefore, switched on the electric light which was outside his house and noticed two persons in the age group of 24 to 25 years approximately. Those two persons came near the compound gate and, therefore, Madhukar asked them as to what the matter was. Those persons informed him that they had taken one patient at the Krishna Charitable Trust Hospital, Karad and while returning, the petrol of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

auto-rickshaw was exhausted and therefore, they told him that they were parking the rickshaw near his house. Those persons further disclosed to Madhukar that they would purchase the petrol and then return again. Madhukar, therefore, asked those persons to disclose their names and they disclosed from which village they were and accordingly they informed him that they were from Chiplun-Kamathe. Madhukar had also served them water at their request. He has identified the said two persons as accused Nos. 1 and 2. He had also identified the auto-rickshaw. According to Madhukar, the accused did not come for faking the auto-rickshaw till 19/1/2006 and therefore, Madhukar requested one person, who was employed with Balasaheb Mate of Kamathe as to whom the said rickshaw belong. According to Madhukar, he had also informed the same to the Koyana Nagar Police Station on telephone. On 19/1/2006, one accused came carrying a bottle containing petrol. The said accused said that he would take the autorickshaw. He has identified the said person as accused No. 2. Madhukar, therefore, asked accused No. 2 to disclose his name which he disclosed as Rupesh Tukaram Kumbhar. Madhukar did not permit him to take the auto-rickshaw and asked accused No. 2 to go to the KoyanaNagar Police Station. Accused No. 2 informed Madhukar that he would go to the Koyana Nagar Police Station and then left the place.

On 21/1/2006 Police Inspector and other staff had come to the house of P.W. 5 - Madhukar and had inquired about the autorickshaw. Madhukar, accordingly, disclosed to them as to how and in what manner the autorickshaw was parked. The police concealed themselves and at about 2 p.m. accused No. 1 came there who was apprehended by the police. He claims that he was called to identify the accused in the Test Identification Parade and had accordingly identified both the accused.

9. In cross-examination, he has admitted as true that the auto-rickshaw was not parked inside the compound of his house, but was parked outside the compound wall. He has denied the suggestion that the accused had not come either to park the auto-rickshaw or to collect the auto-rickshaw. He has admitted that Koyana Nagar Police Station is at a distance of 11 km. from his house. He has admitted that on 16/1/2006 he had given information to the Koyana Nagar Police Station on telephone. He has admitted that he had not personally gone to the Koyana Nagar Police Station. He has denied the suggestion that the accused had not come carrying a bottle of petrol for taking the auto-rickshaw. He has also denied the suggestion that the police had not come to his house and had not concealed themselves.

10. Prosecution has examined P.W. 2 - Dattaram Chavan, brother of deceased Yashwant, who deposes about lodging of his report at Exh. 38. In cross-examination, he has admitted as true that the dead body was in a decomposed condition and, therefore, it was difficult to identify the dead body to be that of Yashwant.

11. Learned counsel for the appellant has, therefore, urged before us that no

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

reliance at all can be placed on the disclosure memorandum of accused No. 1 leading to the discovery of the dead body as the panch witnesses have not supported the said discovery. The learned APP has urged before us for dismissal of the appeal stating that the evidence of P.W. 12 - PSI Madhale clearly establishes the discovery of the dead body.

12. Accused No. 1 was apprehended when he was attempting to remove the auto-rickshaw which was parked in front of the house of P.W. 5 - Madhukar. Undisputedly, the said auto-rickshaw belonged to deceased Yashwant. During custodial interrogation, accused No. 1 had expressed his willingness to point out the place where the dead body had been concealed and accordingly took the police to a remote place and discovered the dead body. Near the dead body of deceased Yashwant, a gold chain, which was found to be belonging to Yashwant, was also noticed. In the hip pocket of the clothes on the dead body, the driving license of deceased Yashwant was found. The police officer has been cross-examined at length, but nothing of substance has been elicited in his cross-examination which would in any manner affect the credibility of the discovery of the dead body. The aforesaid circumstance i.e. the discovery of the dead body is a very strong piece of circumstantial evidence. The accused led the police to a remote place and pointed out the dead body. The police were earlier not aware about the place where the dead body was lying and consequently the discovery of the dead body was solely on account of the exclusive information of accused No. 1. Merely because the panch witnesses have not supported the prosecution, is no ground to discard the evidence of the police officer. Consequently, according to us the prosecution has established the discovery of the dead body. Apart from this, the evidence P.W. 5 - Madhukar as well as the evidence of the police officers establishes that the accused had parked the auto-rickshaw and had twice come for removing the auto-rickshaw and ultimately accused No. 1 was apprehended. The auto-rickshaw belonged to deceased Yashwant and consequently no one else was aware about the place, where the auto-rickshaw was parked. P.W. 5 - Madhukar had an opportunity of seeing both the accused on the night when they parked the auto-rickshaw as well as on the subsequent occasion when each of the accused had attempted to remove the auto-rickshaw.

13. Learned counsel for the appellant has urged before us that the accused had parked the auto-rickshaw on the ground that the petrol was exhausted, but without filling the petrol, the accused had attempted to start the auto-rickshaw.

P.W. 5 - Madhukar was informed by the accused that the petrol was exhausted and, therefore, the accused were keeping the auto-rickshaw. It is clear that the accused were trying to evade detection of the auto-rickshaw and, therefore, had parked the auto-rickshaw. It is further clear that it need not necessarily mean that the petrol in the auto-rickshaw was exhausted and the auto-rickshaw could not be started without filling of the petrol. We thus do not see any improbability in the evidence of P.W. 5 - Madhukar. Learned counsel for the appellant has urged before us that P.W. 5 - Madhukar did not inform the police about the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…

parking of the auto-rickshaw. According to P.W. 5 - Madhukar he had informed the Koyana Nagar Police Station, but since the parking of the autorickshaw by itself on the ground that the petrol was exhausted, was not a suspicious circumstance. P.W. 5 - Madhukar may not have informed the police, however, P.W. 5 - Madhukar was vigilant and did not allow the accused to remove the auto-rickshaw though the accused had disclosed their names.

14. Learned counsel for the appellant has further urged before us that the evidence of P.W. 7- Sankarshan is unbelievable as P.W. 7 - Sankarshan has not produced the register, in which the number of auto-rickshaw of deceased Yashwant was noted. According to us, P.W. 7 - Sankashan has clearly stated that he was acquainted with deceased Yashwant. Even assuming that there was no entry in the register regarding the auto-rickshaw passing the Check-post, the evidence of P.W. 7 - Sankarshan cannot be faulted on that score. The evidence of P.W. 7 - Sankarshan, therefore, cannot be disbelieved merely because the register which was maintained at the Check-post had not been produced.

15. Learned counsel for the appellant has further urged before us that the discovery of the wrist watch at the behest of accused No. 2 is extremely belated and, therefore, no reliance at all can be placed.

Accused No. 2 was absconding and came to be arrested after nearly 10 to 11 months of the arrest of accused No. 1. The wrist watch has been identified by P.W. 1 - Vishal as the wrist watch belonging to his father. Omission to state in the missing report at Exh. 36 that deceased Yashwant was wearing a wrist watch would not affect the identification of the wrist watch.

16. Thus, on the basis of the evidence of the witnesses discussed above, according to us, even if the Test Identification Parade is left out of consideration, P.W. 5 - Madhukar had an amply opportunity of observing the accused and, in fact, accused No. 1 came to be arrested by the police while admitting to remove the auto-rickshaw. The evidence against the accused, therefore, is conclusive and proves the offence beyond reasonable doubt. Failure of the prosecution to prove motive would not be fatal in each and every case, particularly when there is overwhelming evidence which establishes the culpability of the accused.

17. We thus find that prosecution has proved the offence against the appellant beyond reasonable doubt and, therefore, the appeal does not require any interference.

18. We, accordingly, dismiss this appeal, confirming the conviction and sentence of the appellant. Fees payable to the learned counsel appointed for the appellant quantified at Rs. 5000/-.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/pravin-tukaram-kumbhar-appellant-…