
(2008) 08 BOM CK 0127

In the Bombay High Court

Case No : Criminal Appeal No. 921 of 2005

Raju Brijmohan Maurya

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 34, 394, 452

Citation : (2008) 08 BOM CK 0127

Hon'ble Judges : Ranjana Desai, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Sarojini Upadhyay, for the Appellant; M.M. Deshmukh, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—Nirmala Uttamchandani was sixty years of age. She resided in a flat situated in a building by the name of Western Court on Marine Drive at Mumbai. Her daughter Shonali worked at the Jaslok Hospital between ten each morning until six in the evening. The needs of their household were attended to by a cook and a helper who used to clean the house. The help was part-time. The incident which led to the death of Nirmala Uttamchandani and the prosecution of the two Appellants took place on 16th November, 1999. The case of the prosecution is that Shonali (P.W. 1) left for work as usual at or about 10.00 a.m. leaving her mother alone. After completing her work for the day, she attempted to contact her mother on the telephone but found that the telephone was continuously engaged. She entered her flat using her own set of keys and noticed that the receiver of the telephone had been taken out of the stand. She found that three cupboards were ajar and had been ransacked. The dead body of Nirmala was found close to the bed with a wound on the neck. The neighbours and the police were informed. Among the articles that were missing in the flat were currency in the sum of Rs. 24,800/-, a Minolta camera, six watches including one that had been gifted to P.W. 1 by the Jaslok Hospital and several

items of jewellery including five gold chains, six pendants, rings and bangles. The Appellants were plumbers who had carried out work in the co3 operative society where the flat of the deceased was situated. The FIR (Exhibit 9) was lodged on 16th November, 1999 by P.W. 1 - Shonali Uttamchandani, the daughter of the deceased. The case of the prosecution is that based on the statement of the first accused, (Raju Brijmohan Mourya), a recovery of ornaments was made from the residential flat of P.W. 9, Abhishek Joshi where accused No. 1 had been engaged for carrying out work for about seven days until 16th or 17th November, 1999. Ornaments were recovered under a tile in the bathroom. The case of the prosecution is that the second accused was identified by the secretary of the co-operative society, P.W. 5 Mahendra Panachand Dholakia; P.W. 5 having deposed that he had seen the accused at or about 1.00 p.m. while he was using the lift. The case of the prosecution is that based on the statement of the second accused, recovery was effected of the stolen camera, watches and currency. Seizure Panchanamas were drawn up in respect of each of the seizures. Accused No. 1 was according to the prosecution identified by P.W. 9 while accused No. 2 was identified by P.W. 5.

2. The accused were charged of offences under Sections 452, 302 and 394 read with Section 34 of the Penal Code. The prosecution examined 13 witnesses. Both the accused were convicted of the offence u/s 302 of the Penal Code and sentenced to suffer rigorous imprisonment for life; to a fine of Rs. 10,000/- and in default to rigorous imprisonment for one year. Both the accused have been convicted of offences under Sections 452 and 394 read with Section 34 of the Penal Code.

3. Appeal No. 921 of 2005 has been instituted by the first accused while Appeal 922 of 2005 has been instituted by the second accused. We have heard Smt. Sarojini Upadhyay, counsel appearing on behalf of the accused - Appellants and the Learned APP for the State.

4. On behalf of the Appellants it has been urged that (i) the recovery of stolen articles alone is not sufficient to establish the charge u/s 302 of the Penal Code beyond reasonable doubt and (ii) The Panchanamas relating to recoveries effected can at best only constitute corroborative evidence. Learned Counsel submitted that the case rested on circumstantial evidence and it would be necessary for the prosecution to establish all the links that would connect the accused with the offence beyond reasonable doubt. Learned Counsel submitted that the case of the prosecution to the effect that the accused had hidden the articles of jewellery stolen from the premises of the deceased in a residential flat belonging to P.W. 9 in another building cannot be believed as a trustworthy story since it is unlikely that any accused would spirit away stolen articles into premises which are not in his custody.

5. On the other hand, it was urged on behalf of the State that (1) The motive and intention have been established beyond reasonable doubt through P.W. 1, the daughter of the deceased whose evidence shows that the offence was

motivated by an intent to commit robbery; (ii) The evidence showed that the accused were plumbers who had been engaged by the co-operative society where the deceased resided and one of the accused had in fact been provided a space in the garage; (iii) Both the accused had been duly identified; accused No. 1 by P.W. 9 and accused No. 2 by P.W. 5; (iv) The presence of the accused was duly established and (v) A recovery of the articles which had been robbed from the flat of the deceased was made in pursuance of the statement of the accused.

6. P.W. 1 Shonali Uttamchandani was the daughter of the deceased and was employed at Jaslok Hospital. Her evidence shows that she resided together with her mother, Nirmala, in Flat No. 22 in a building known as Western Court at Marine Drive. On the date of the incident - 16th November 1999- she had left for her duties as usual at 10.00 a.m. It was on her return in the evening after work was over at 6.00 p.m. that she discovered the dead body of her mother. P.W. 1 furnished a list of movables which were missing from the flat; currency of Rs.24,800/-, a Minolta camera, six watches including one which was gifted to her by the Jaslok Hospital, five gold chains, six pendants, rings and bangles. P.W. 1 had the certificate which was issued to her by her employers, the Jaslok Hospital, when one of the watches was presented.

7. The secretary of the co-operative society, Mahendra Dholakia (P.W. 5) deposed that the work of the society was being carried out by Raju plumber at the time of the incident. The witness identified accused No. 2 as being that person. P.W. 5 deposed that on 16th November, 1999 he had met accused No. 2 at 1.00 p.m. on the fifth floor where he resided and being the secretary of the society enquired of the accused of what he was doing there. P.W. 5 deposed that he and the second accused got into the same lift when the accused admitted that he was occupied in carrying out some work for his next door neighbour. P.W. 5 said that the second accused got off on the ground floor and it was subsequently that he was informed of the homicidal death of Nirmala Uttamchandani. P.W. 5 deposed that the second accused had been given a place to stay in the garage.

8. The accused were arrested on 24th November, 1999. In pursuance of the statement of accused No. 1 a recovery was effected of the ornaments which were stolen from the flat of the deceased, from the residential flat of P.W. 9, Abhishek Joshi, at Avanti Building situated on G Road at Marine Drive. The aforesaid premises were in the vicinity. P.W. 9 identified accused No. 1 in Court and stated that he had been engaged for doing plumbing work at his residential flat on 10th November, 1999. P.W. 9 deposed that accused No. 1 had been once engaged before in the past and was helped by another person. On this occasion the work was completed in about seven days on 16th or 17th November, 1999 and payment was cleared on the 16th. P.W. 9 stated that he had gone out between 24th and 26th November, 1999 and on his return was informed by his family that the tile in the bathroom had been removed under which certain jewellery had been recovered. P.W. 9 stated that accused No. 1 had refixed two tiles in the bathroom on 16th November, 1999. P.W. 2 Harishchand Vibhute was the Panch

witness in respect of the Panchanama recording the recovery of the ornaments from the residential flat of P.W.9. P.W. 2 deposed that accused No. 1 had led the party to the residential flat of P.W. 9 and that a plastic bag containing chains, rings and a necklace were recovered from underneath a tile in the bathroom.

9. Insofar as accused No. 2 is concerned, P.W. 7 Ramchandra Deshmukh was a Panch witness relating to the recovery of the Minolta camera, currency of Rs. 24,800/- and six watches from room No. 1 at Sutar Galli, on the second floor of Mehta Building, Near Gol Deol. P.W. 7 deposed that a trunk was taken down from where the recovery was effected.

10. As a matter of principle a mere recovery alone would not be sufficient to convict the accused on a substantive charge of murder u/s 302 of the Penal Code in the absence of substantive evidence. This principle would emerge from the judgment of the Supreme Court in Baboo v. The State of Madhya Pradesh AIR 1979 SC 1042. In a case which is based on circumstantial evidence, the Court would also have to be mindful of the fundamental principle of law that it is for the prosecution to establish all the links in the case which connect the accused to the offence beyond reasonable doubt. Moreover, in a case founded on circumstantial evidence, all the circumstances must be consistent only with the guilt of the accused.

11. In the present case, the evidence on the record shows that both the accused were plumbers and had been entrusted with work of that description - accused No. 1 in the co-operative society wherein P.W. 9 resided and accused No. 2 wherein P.W. 5 resided. P.W. 5 was the secretary in the same building where the deceased together with her daughter, P.W. 1, had a residential flat. P.W. 5 deposed that accused No. 2 was entrusted with carrying out work in the society and was provided with space in the garage. The presence of accused No. 2 on 16th November, 1999 is established beyond reasonable doubt through the deposition of P.W. 5. The testimony of P.W. 5 is credible and trustworthy and as a secretary of the co-operative society, P.W. 5 was in a position to identify accused No. 2. The presence of accused No. 2 as a plumber in the society on the date of the incident is established. Insofar as the first accused is concerned, the testimony of P.W. 9 shows that he had been engaged as a plumber for carrying out work in his residential flat in the same vicinity at Marine Drive between 10th and 16th November, 1999. Payment was made to accused No. 1 on 16th November, 1999. P.W. 9 deposed that on 16th November, 1999 accused No. 1 had refixed two tiles in the bathroom. The articles which were stolen from the residential flat of the deceased were identified by her daughter P.W. 1 and several of those articles were recovered from the residential flat of P.W. 9 on the information furnished by accused No. 1. Recoveries of the other articles were effected from the premises at Sutar Galli at the behest of accused No. 2. The discovery of a fact, distinctly relatable to information furnished by the accused while in the custody of the police has lawfully been proved u/s 27 of the Evidence Act.

12. The prosecution has established its case beyond reasonable doubt. Firstly, in the present case, the motive and intention to commit robbery has been proved beyond reasonable doubt. P.W. 1, the daughter of the deceased, has furnished precise testimony on the articles which were stolen from the residential flat. Among the articles was the wrist watch which was presented to P.W. 1 by her employers at the Jaslok Hospital. Secondly, both the accused have been duly identified by the prosecution witnesses - accused No. 1 by P.W. 9 and accused No. 2 by P.W. 5. The testimony of P.W. 5 and P.W. 9 is cogent, reliable and trustworthy. Thirdly, recoveries were effected in pursuance of the information supplied by both the accused. The submission that the accused would not have hidden the stolen articles in a place which was not under their control is only a conjectural submission which is lacking in substance. The evidence on the record shows that accused No. 1 had been engaged to carry out work in the residential flat of P.W. 9. While carrying out the work of repair, accused No. 1 had in fact visited the flat on 16th November, 1999 which was the date of the incident and had refixed certain broken tiles. The recovery of the stolen ornaments was made from the residential flat of P.W. 9 at the bidding of accused No. 1. In these circumstances, the prosecution has established its case beyond reasonable doubt.

We do not find any merit in the two appeals. The appeals shall accordingly stand dismissed.