

(2017) 09 BOM CK 0086
In the Bombay High Court
Case No : 1324 of OF 2013

Ramesh Durgappa Hirekerur, & Ors.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 345](#) - Procedure in certain cases of contempt
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [1](#)

Citation : (2017) 09 BOM CK 0086

Hon'ble Judges : V. K. Tahilramani, Shalini Phansalkar-Joshi

Bench : DIVISON BENCH

Advocate : S.R. Phanse, M.S. Mohite, Nasreen S.K. Ayubi, Abhaykumar Apte, G. P. Mulekar

Judgement

1. These three appeals are preferred by original accused Nos 1 to 3, against the judgment and order dated 29th November, 2013, of Additional Sessions Judge, Pune, in Sessions Case No.231 of 2012, thereby convicting them, for the offences punishable under Sections 120(B), 302 and 201 read with 34 of the Indian Penal Code. They have been sentenced to suffer R.I. for life and to pay fine of Rs.1,000/- each in default to suffer R.I. for one month, on the first count, to suffer R.I. for life and to pay fine of Rs.1,000/- each in default to suffer R.I. for one month, on the second count and to suffer R.I. for 7 years and to pay fine of Rs.1,000/-each in default to suffer R.I. for three months, on the third count, with further direction that all the substantive sentences shall run concurrently.

2. For the sake of convenience, in these appeals also, the appellants are referred as accused Nos. 1, 2 and 3, respectively.

3. Brief facts of prosecution case can be stated as follows :- On 25.1.2012, in the morning at about 6.45 a.m., P.W.1 Dattatray Kolte, who was serving as watchman at Amarnagari Cooperative Housing Society, Hadapsar, Pune, noticed

one dead body without head floating in the well situated outside the compound wall of their society. He also noticed blood stains near the well. He informed about it to the Chairman of the Society and then Chairman, informed about the same to police. P.W.12 ACP Vishwambar Golde, then went to the spot, removed the dead body from the well, conducted inquest panchnama and sent the body for postmortem. At the same time, scene of offence panchnama was made by P.W.12 ACP Golde.

On the complaint (Exh.30) lodged by P.W.1 watchman Kolte, C.R.No.20 of 2012 came to be registered at Hadapsar Police Station. The said dead body was identified by P.W.11 Parvati Alappa Pujari as belonging to her son Arjun. Accused No.1 was arrested and at his instance decapitated head was recovered from Nagzari Nullah. It was also identified by P.W.11 Parvati, the mother of the deceased. During the course of investigation, the role of accused Nos. 2 & 3 was transpired. At the instance of accused No.2, the blood stained T-shirt of the deceased was seized, whereas at the instance of accused No.3 the blood stained clothes of accused Nos 1 to 3 were seized. All the seized articles were sent to the Chemical Analyzer. In the course of further investigation, the role of juvenile-in-conflict with law, was transpired and at his instance on knife came to be recovered. It was also sent to the Chemical Analyzer. On completion of investigation, P.W.12 ACP Golde, filed chargesheet in the Court of Judicial Magistrate First Class, (Cantonment), Pune against these accused.

4. On committal of the case to the Sessions Court, the trial Court framed charge against the accused vide Exh.20. The accused pleaded not guilty and claimed trial raising the defence of denial and false implication.

5. In support of its case, the prosecution examined in all 12 witnesses and on appreciation of their evidence, the trial Court was pleased to convict and sentence the accused as aforesaid.

6. In these appeals, we have heard learned counsels for the appellants/accused, who have challenged the impugned judgment of the trial Court and learned APP, who has supported the same.

7. This case is admittedly based on circumstantial evidence. As per evidence of P.W.11 Parvati, her son Arjun went missing since 24.1.2012 and his dead body was subsequently shown to her on the next day, after it was recovered from the well. She has also identified his head which was subsequently recovered during the course of investigation. Thus, there is no eye witness to the incident.

8. It is true and there cannot be any doubt that the conviction can be based on circumstantial evidence alone, but for that the prosecution must establish the chain of circumstances, which is consistently pointing to the accused and accused alone and is inconsistent with their innocence. It is further essential for the prosecution to cogently and firmly establish the circumstances from which inference of guilt of accused is to be drawn. These circumstances then have to be taken into consideration cumulatively. They must be complete to conclude that

within all human probability, the accused and none else have committed the offence.

9. In the instant case, in order to prove the guilt of the accused, prosecution has relied upon four circumstances:-

10. First circumstance is that the accused were "last seen in the company of the deceased". The only witness examined on this point is P.W.7 Maruti Kothavale. He has, however, not supported the prosecution case. Hence he is declared hostile. But nothing worthwhile is elicited in his cross-examination to prove the prosecution case. Therefore, it has to be held that this circumstance is not at all established by the prosecution.

11. The second circumstance on which the prosecution has placed reliance is "extra judicial confession alleged to be made by the accused No.2". However, again the only witness examined on this point is that P.W.4 Shubham Deokar, who has also not supported the prosecution. Hence he is declared hostile. His cross-examination is of no help to the prosecution as nothing worthwhile is elicited in his cross examination. Hence this circumstance is also not established by the prosecution.

12. The third circumstance on which the prosecution has placed reliance is that of the "recovery of T-shirt of the deceased at the instance of accused No.2". This recovery is proved through the evidence of P.W.6 Bandu Pardeshi. However, the Chemical Analyzer's Report shows the results of the analysis of the blood stains on this T-shirt were "inconclusive". Even as regards the recovery of the blood stained clothes of the accused at the instance of accused No.3, proved through the evidence of P.W.8 panch Shankar Pimpalekar, the Chemical Analyzer's Report is not conclusive about the blood grouping. Hence the prosecution has failed to establish the connecting link on this aspect.

13. The fourth circumstance is "discovery of decapitated head of the deceased at the instance of accused No.1" on which the entire reliance of the prosecution is. To prove this discovery, the prosecution has examined P.W.3 panch Sanjay Sinnarkar and also P.W.8 another panch Shankar Pimpalekar. This circumstance, if proved, it would have been of a clinching nature. However, the evidence of both these witnesses go to show that both, accused Nos. 1 & 2, were present at the police station. The statement was made by accused No.1 showing his willingness to point out the place where the decapitated human head was thrown. Thereafter both the accused Nos. 1 & 2 guided the police to the spot which was near one nullah. However, at that place cut off head was not found. Hence it's search was taken and then at some distance the cut off head was found. Thus, in the first place the discovery is not from the spot which the accused No.1 had stated in his memorandum panchnama and secondly discovery is not at the instance of accused No.1 alone. In such circumstances, in our considered opinion, this circumstance also being not cogently and reliably proved by the prosecution, the benefit of doubt, to which accused are entitled, cannot be

withheld from them.

14. It must be stated that when the case is based on circumstantial evidence, motive assumes significance. In the present case, the prosecution has failed to even allege or to prove such motive. P.W.11 Parvati, the mother of the deceased has not deposed anything about accused persons having any reason to eliminate the deceased. Conversely, as per her evidence, the accused were the friends of the deceased. Further, her cross-examination shows that the relations between the deceased and accused No.1 were cordial all the while. According to her evidence, there were quarrels between the deceased and other vegetable vendors. Thus, in this case, there is absolutely no convincing, reliable or cogent evidence brought on record by the prosecution to prove the guilt of the accused beyond reasonable doubt.

15. In view thereof, the judgment of the trial Court, convicting the accused is quashed and set aside. The appeals are allowed and the accused are acquitted of the offences punishable under Sections 120(B), 302, 201 read with 34 of the Indian Penal Code.

16. The accused No.1, who is in jail be released forthwith, if not, required in any other offence.

17. Before concluding, we would like to refer to the fact that at the stage of hearing of accused persons on the question of sentence, accused No.2 Mahesh Mendis, has all of a sudden hurled his sleeper on the person of the Presiding Judge, of the trial Court. Hence the trial Court after filing requisite proceeding, convicted him for the offence under punishable under Section 228 of the Indian Penal Code, as per section 345 of the Code of Criminal Procedure and sentenced him to pay fine of Rs.200/- in default to suffer S.I. for one month. The trial Court has vide its judgment and order dated 29.11.2013, directed this part of the proceeding to be tagged alongwith the Sessions Case No.231 of 2012. Trial Court has also directed that accused No.2 will undergo this sentence separately after suffering imprisonment for life inflicted in the Sessions Case.

18. Considering the evidence on record, we are of the opinion that no interference is warranted as regards the conviction of accused No.2 under Section 228 of the Indian Penal Code, sentencing him to pay fine of Rs.200/- in default to suffer S.I. for one month. The said conviction and sentence will remain as it is and hereby stands confirmed.

19. Hence, if the accused No.2 has not paid fine amount of Rs.200/- as ordered, the trial Court to take necessary steps against him.

20. The bail bonds of accused No. 3 stands cancelled.