
(2005) 12 BOM CK 0095
In the Bombay High Court
Case No : Criminal Appeal No. 218 of 2001

Salim Kudrat Telli @ Iqbal	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 12 BOM CK 0095

Hon'ble Judges : V.M. Kanade, J;D.G. Deshpande, J

Bench : Division Bench

Advocate : Niranjana Shimpi, for the Appellant; A.S. Shitole, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—This appeal is filed through jail by the accused/appellant who is convicted u/s 302 of the Indian Penal Code and sentenced to undergo life imprisonment. We had appointed Advocate Mr. Niranjana Shimpi to defend the accused in this case. Accordingly, we heard advocate Mr. Shimpi for the accused and learned APP Mr. Shitole for the State.

2. The accused was working as a mason in the house of P.W.1 - the complainant on the fateful day along with others. All the five workers including the accused were working at the complainant's flat No. A-4, Ganga-Jamuna Co-operative Society, Main Avenue Road, Santacruz (W), Bombay - 54 in 1992. Complainant Maniklal Harprasanna Dasgupta and his wife Kabita were staying there. On 7th September 1992, which was Monday, the complainant left his house in the morning for his factory. He reached back at his residence at about 7.00 p.m.. He rang the door bell. There was no response. He opened the door with duplicate key. The flat was under painting for more than a month at that time. He did not find his wife there. Third room was bolted from outside with lock. He could not open the same. It was almost dark. He switched on the lights. There was bathroom in front of the passage near main door where the complainant noticed

some red stains. He opened the bath room and found blood stains at the basin. He also found red water and red clothes inside the camod. He suspected some foul play. He came down and called the watchman and again went back to his flat.

3. The complainant showed blood stains and clothes lying in the camod to the watchman. The watchman confirmed that they were there. Thereafter the complainant called his friend Mr. & Mrs. Sen. The complainant phoned to his sister-in-law who was residing at Dadar and enquired from her whether his wife Kabita had come to her place. She replied in the negative. In the mean time the watchman came. The complainant made enquiry from him where his wife has gone. The watchman told that the wife left out at about 5.30 p.m. and he also informed that 4-5 workers who were doing painting work had left at about 5 p.m.. But he also stated that one person left at 6.30 p.m. He was a masonry worker who was working in the living room. The watchman also informed that this boy was wearing the clothes of the complainant and, when questioned, the boy [who subsequently turned out to be the accused] told the watchman that memsab gave those clothes to him as gift. By that time Mr. & Mrs. Sen came. Thereafter the lock on door of the bedroom was opened by force, where the complainant found his wife dead. There after the police came. His complaint was recorded as Exhibit 5. 2-3 days thereafter, he was called in police station to identify the clothes. They were blue shirt and brown pant. He identified his clothes. Then he was called in police station for identification parade along with other labourers. He identified the accused in the parade and also identified him in Court.

4. After the FIR was lodged, a detailed panchnama of scene of offence and inquest body was made. Incriminating articles were seized. It was, however, revealed that there was no theft in the house and nothing was stolen or removed from the house by the culprit. Finger print expert was also called. He scanned the house and took about 8 finger prints for examination. One of the finger prints or print of palm was found inside part of the door of the bed room.

5. During the course of investigation, statements of all the workers, who were working at that time and on that day, were recorded. They stated that the accused was working with them till 5.00 p.m. or 5.15 p.m. when they left. Statement of one electrician, who visited that flat on that day at 5.15 or 5.30 p.m. and had seen the accused working there alone, was also recorded. The contractor, who employed all these workers, was also examined. The workers, electrician and the contractor told as to the type of the clothes accused was wearing at that time while he was working. They were the same clothes found with blood stains in the bath room of the complainant. They were wet. Thereafter the accused was arrested within a short time i.e. within 2-3 days. The clothes which he was wearing were also taken charge of. They were the clothes of the complainant which the accused had put on and left the premises and which were marked and noted by the watchman. Deceased Kabita was strangled and stabbed. Her body was sent for post mortem and the Doctor opined that she died

as a result of Asphyxia due to strangulation and head injuries.

6. When the accused was arrested it was found that there were injuries on his person. He was referred to Dr. Smt. Sharvari S. Naik (PW.12). She examined the accused and gave a certificate. When the inquest panchnama was made a locket i.e. Taviz worn by Muslim was found in the hand of the deceased so also some hair were also found in her hand. All these articles were sent to the Chemical Analyser. Thereafter a charge sheet was filed against the accused.

7. The prosecution has examined in all 17 witnesses. P.W.1 - the complainant - Maniklal H. Dasgupta. P.W.2 - the electrician - Suresh L. Waghela, who visited the flat of the complainant on that day at 5.15 p.m. P.W.3 - the Watchman Jaichand G. Zha. P.W.4 - Gopal S. Meena and P.W.5 - Suresh H. Matala who were the co-owners. P.W.7 -the Contractor Shabbir M. Doctor, who employed all these workers including the accused. P.W.6 - Mrs. Usha J. Goyal, who was a panch for scene of offence. P.W.8 Chinmay P. Sen -the friend of the complainant, who was called by the complainant. P.W. 9 Vasant S. Sarfare -the panch for the panchnama of finger prints. P.W.10 -The finger Print Expert -Ashok B. Joshi. P.W.11 -Dr. Baban S. Shinde who conducted the post mortem. P.W.12 Dr. Smt. Sharvari S. Naik who examined the accused. P.W.13 -Ramavatar N. Yadav -the panch for recovery of the clothes from the person of the accused. P.W.14 PSI Sayaji K. Dubal who has done the panchnama about the body search of the accused. P.W.15 - Mohd. A. Panwala -the panch regarding photographs of finger prints. P.W.16 Sanjay S. Jumledar -the police photographer. And P.W.17 -the Investigating Officer - PI Ramrao N. Deore.

8. The trial Court found that though there was no direct evidence against the accused about the murder, the accused came to be convicted u/s 302 of the Indian Penal Code and, therefore, this appeal.

9. The advocate for the accused Mr. Shimpi contended that if nothing was stolen from the house of the complainant, then it was not the case of robbery or theft and therefore, there was no motive for the accused to kill the lady. He contended that in the absence of any motive and in the absence of any evidence about any quarrel between him and the deceased and, the accused and the complainant over the payment or non-payment, the accused had no reason to kill innocent woman. Advocate for the accused also contended that this is a case based on circumstantial evidence and, the circumstances firstly were not sufficient to conclusively hold that it was the accused and accused alone who committed the murder. According to him, there were discrepancies in the evidence of the witnesses on material points, improvements, contradictions and the evidence of witnesses was liable to be rejected.

10. On the other hand, the learned APP contended that it was proved by the prosecution from the evidence of the complainant (PW1) and the painting contractor (PW7) that this accused was working in the said flat on the day of incident and was doing the work of repairing tiles. The learned APP pointed out

that P.W. Nos. 4 and 5, who were the co-workers, had proved that the accused had come for work on that day; he had worked along with them and he was putting on particular type of clothes on that day. From the evidence of this witness, the learned APP pointed out that these witnesses also proved that all of them left the flat at 5.15 p.m. but the accused was continued to do his work in the flat alone. Then the learned APP pointed out that the electrician (PW.2) has stated that when he had come to do remaining work in the evening on the flat, who had also done the work in the flat in Morning, at that time the lady was alive and this accused with those very clothes was found working. He, therefore, contended that there is strong unrebutted evidence on record to show that the accused was a person who was last seen in the flat where everybody had left and the murder being detected after 7.00 p.m. were strong circumstances to show that it was the accused and accused alone who murdered the deceased Kabita.

11. The learned APP also pointed out that the evidence of watchman (PW.3) clearly shows that other workers left the building at 5.15 or 5.30 on that day and when the accused came out of the flat he was wearing totally different clothes. The watchman questioned him, who gave those posh clothes ?. The accused replied that memsab i.e. the deceased has given those clothes as gift. There are other witnesses who have stated to the type of clothes which the accused was wearing in the morning. From this evidence the learned APP contended that after committing the murder of Kabita, the accused changed his clothes. They were fully stained with blood, the water of camod had become red. Those clothes were recovered from the camod and, using the clothes of the complainant while going away from the flat clearly shows direct involvement of the accused in the offence of Murder.

12. The learned APP also pointed out that all these witnesses have identified the accused in identification parade and apart from that everybody identified him in court and the identification was hundred per cent sure because the accused was identified because of defect in his eye.

13. The learned APP also pointed out that the Taviz or Tait and a bunch of some hair were found in the hands of deceased Kabita. Taviz is generally worn by Muslim. The accused is a Muslim. And, therefore, it can be concluded, looking to other facts of the case, that this Taviz was of the accused. Further the bunch of hair found in the hands of the deceased is also of the accused as per the report of the C.A. Therefore, according to him, this is a strong clinching piece of evidence against the accused and there is no scope for acquittal of the accused and for reversing the judgment of conviction.

14. So far as death of Kabita is concerned, the learned APP contended that there were multiple injuries on her body and she was strangulated with the help of rope. Therefore, it was a homicidal death and the injuries on the person of the accused noted by Dr. Sharvari Naik (PW.12) was the last clinching piece of evidence, that directly connects the accused to the offence of murder. The learned APP also contended that those injuries on the person of the accused and

the injuries on the person of the deceased show that there was scuffle between them. The deceased tried to resist the attack upon her and she was made to death. Therefore, according to the learned APP, there are absolutely no circumstances to create any doubt about the prosecution case. Not a single link was missing and, therefore, the judgment of conviction was liable to be maintained.

15. So far as submission of Mr. Shimpi, the learned counsel for the accused, is concerned, he contended that in the absence of any robbery or stealing of articles from the house of victim or complainant, it cannot be said that the murder was committed for robbery. This contention of the learned counsel for the accused has to be accepted and, the learned APP conceded that nothing was stolen or removed from the flat after killing the deceased Kabita. However, this absence of motive alone cannot come in the way of the prosecution in this particular case, because of the strong clinching pieces of evidence put forth and brought on record by the prosecution.

16. P.W.7 Shabbir Doctor is the contractor who had engaged the accused. He has stated that he had undertaken work of painting of residential flat of the complainant. He had appointed one mukadam to supervise the job. For doing tiling work one mason and one beggar were appointed by mukadam Gopal. On 4/9/92 he visited the flat and noticed that the tiling work was in progress and painting work was stopped. Painters were not present on that day but one mason and one beggar were present. Their names were Manish and Iqbal [Iqbal is the accused). He has further stated that Mrs. Dasgupta was present. She offered him a cup of tea. On 6th and 7th he also visited the flat again and he found that on that day also one mason Manish and accused Iqbal were present. Accused Iqbal was filling the gaps of tiles. This witness also stated that he met watchman when he left and at that time Gopal came there. P.W.7 took him back to the flat and instructed him to complete the work by evening.

17. The evidence of this witness P.W.7 proves that the accused was there in the flat when P.W.7 was visited and was doing the work of repairing tiles. P.W.7 identified the accused Iqbal as the person who was present there. He also identified the clothes of Iqbal which the accused Iqbal had put on his person. They were Article 3 - a blue shirt and Article 4 - a white pant. A suggestion that was put to this witness in the cross examination is that Iqbal was not working in the flat on 6th and 7th September and that he had no talks with him on both these days. He also denied that on complaint of Mrs. Dasgupta, Iqbal was removed from the work by Manish on 6th of September 1992. Therefore, minor omissions were brought on record in the cross examination like, the witness, when questioned, stated that he did not remember whether he disclosed to the police that he had given instruction to Iqbal to complete the work before 5.30 p.m. Similarly the witness did not remember whether he has stated to the police that he visited the flat on 6th or 7th September. These omissions are not at all on material point and, therefore, even after cross examination, the evidence of

this witness that he saw the accused Iqbal working in the flat on that particular day has to be accepted and was rightly accepted by the trial Court.

18. Thereafter evidence of P.W.3 Jaichand Zha; P.W. 4 - Gopal Meena and P.W.5 - Suresh Matale is important. All of them have stated that the accused was working in the flat on that day. According to P.W.3, who was the watchman, the painting work was going on in the flat of the complainant and the tiling work was in progress. 5 to 6 persons used to come at about 9.30 a.m. and used to go at about 5.30 p.m. On that day four labourers were left the flat and building between 5 p.m. and 5.15 p.m.. At about 6.00 p.m. one person came down. He was looking fresh. He was wearing good clothes. This witness (P.W.3) asked him from where he got those posh clothes and, that person, who identified as accused and the person doing repairing work of tiles, replied that memsab gifted the clothes to him because she was pleased with him. This witness further stated that at about 7 p.m. complainant Dasgupta came. Thereafter he narrated everything how the body was discovered and all that. Articles 3 and 4 - the clothes put on by the accused while working in the flat on that day were identified by this witness. He identified Articles 1 and 2 - new clothes which this witness saw while the accused was leaving the flat. He also identified the accused in the identification parade. It has to be mentioned at this juncture that the evidence of identification parade is totally disregarded because the parade was held in the police station contrary to the judgment of the Supreme Court. Therefore, we are discarding the entire evidence so far as identification parade is concerned.

19. So far as P.W.3 is concerned, he has stated in the cross examination that he was not able to tell the colour and description of the clothes put on by other four workers. There is no further cross examination worthy of consideration. This witness, therefore, proved that the accused had come to the flat; he worked for the day; other four workers left the flat and building between 5 p.m. and 5.15 p.m. and this accused came down thereafter with new clothes which were not of his own clothes and, when he was questioned, he answered that the clothes were given to him by the memsab i.e. the deceased Kabita.

20. Then P.W.4 - Gopal Meena was the mukadam. He has stated that the accused was working in the flat as casual labour for doing the work of tiles. On 7th September 1992 he visited the flat. Some labours were doing the painting work and this accused was filling cement in the tiles. This was at about 2.00 p.m. He has stated that he instructed the accused to complete the work and left the flat at about 3.30 p.m. Then in the evening accused Iqbal went to him and demanded Rs. 50/-. P.W.4 gave him Rs. 50/-. He stated that at that time clothes of accused Iqbal were wet and he was wearing white coloured bush shirt and dirty white pant. When he was seen while doing the work, he was wearing blue coloured shirt and white coloured pant. Thereafter this witness stated, how the police contacted him, how the search of accused was made at different places. Then he identified the accused in the parade. He identified the accused in the

court also. He also identified the clothes - Articles 3 and 4. This witness was also cross examined. It was suggested to him that the accused was not at all working in the flat on 7th September. He denied the suggestion flatly. He was asked, whether he remember which clothes were put on by the accused on earlier occasion. He answered in the negative. He admitted that when the accused came to him in the evening his clothes were wet as it was raining. There is no other cross examination worthy of consideration.

21. Then P.W.5 Suresh Matale -is the painter. He has stated that he was doing the work as casual labour in the flat. This accused was doing tiling work. He was not knowing the accused earlier. He completed his work by 5.15 p.m. and left the flat. By that time, this casual worker and lady were present in the flat. He has identified the said person as accused. He also identified the clothes Articles 3 and 4 as put on by the accused at the time of doing work. In the cross examination he was questioned as to whether there is any specific mark on the clothes which could give him occasion to remember. He replied that there were no specific marks on those clothes Articles 3 and 4. He denied the suggestion that these clothes were not put on by the accused. He has stated that the accused was working in the passage and also in the hall. Nothing further is brought out in the cross examination.

22. From the evidence of all these witnesses the learned advocate for the accused tried to contend that the omissions and contradictions brought out in the evidence of these witnesses and referred to above are sufficient to discard their evidence. We are not at all convinced by this submission. The cross examination has not resulted in creating any doubt about the veracity of the witness. There are no motives attributed to them as to why they should depose against the accused. Their evidence is most natural and, therefore, the facts, that the accused was working in the flat, he had put on articles 3 and 4 when he came for work; that he left the work late and at that time he had some other clothes on his person, stand proved by these witnesses.

23. Panchnama of scene of offence was made. Articles 3 and 4 were found lying in camod of the bath room of the flat and having blood stains; they were recovered by the police and sent to the C.A.; human blood was detected on them. Therefore, from this evidence it is clear that the accused was the person last seen in the flat. Since the death of Kabita is homicidal death, then this circumstance clearly shows that it was the accused who has committed the murder.

24. The presence of blood stains on his clothes strongly proves his participation in the murder. Leaving clothes in the bath room and put them in the camod is an attempt to wash the stains on clothes. It tightens the noose around the accused. He can not escape from these circumstances.

25. The most important piece of evidence, that is collected by the prosecution to connect the accused with the murder, is, finding of taviz and bunch of hair in the

hands of deceased. This fact has been proved by the panch PW 6 - Mrs. Uma Goyal. She has stated that one electric wire was found around the neck of the dead body. Blood was found on the dead body and in the surrounding area. Two earrings, bangles and one taviz were found in the hands of the lady i.e. deceased. The witness identified the taviz as Article 5. One rope was shown to her. She identified the same as Article 6. She also identified the clothes of the deceased as Articles 8, 9, 10 and 11. A knife was found with blood stains near the dead body. She identified the knife as Article 12. She proved the panchnama - Exhibit-12. Article 6 nylon rope was around the neck. Taviz described in the panchnama was in the hands of deceased and figure "786", which is considered auspicious in Muslim community, was written on one side and on the back side a picture of mosque was engraved. It was found in the right palm of the deceased. Two hair were found in the palm of hand and a bunch of hair was found on the left leg. All this property was taken charge of. The hair were sent to the C.A. with the scalp hair taken from the accused along with blood of the accused. The blood group of the accused is "B". C.A. report is there on record at Exhibit 37 colly. The C.A. Report from the same Exhibit vide Reference No. 3939 of 1993 dated 3.3.93 shows that sample hair taken from the accused were found similar to the hair recovered from the hand of the deceased. Regarding the clothes about which the C.A. has stated that all the clothes of accused and deceased were smeared with blood group "A". The blood group of deceased was "A". Because on all of her clothes blouse, saree, brassier "A" group blood was found.

26. Apart from this, there is still one more strong piece of evidence and that is finding of finger prints or palm prints of the accused on the reverse side of bed room i.e. interior side of the door. Taking of finger prints or palm prints was proved by P.W.9 Vasant Sarfare who was a panch present at the time of taking the finger prints by the finger print expert (PW 10) Ashok Joshi. Presence of these finger prints or palm prints inside the bed room door, that is the place where the presence of the accused was not at all required, clearly shows that the accused had entered the bed room where the victim was taking rest or relaxing and for the motive known to him, he murdered her.

27. There is still one more strong circumstance and, that is, injuries found on the person of the accused. Those injuries are very peculiar. They were proved by P.W.12 Dr. Sharvari Naik. She has stated that on 8/9/92 at about 7.05 p.m. this accused was produced before her. She examined him. She found bite marks on the left thumb at 3rd and 4th fingers, a minor abrasion on the throat and right thigh and also behind the left ear. The accused had no explanation about these injuries. Bite marks clearly show that the accused had gone in the closed proximity of the deceased.

28. All these vital pieces of evidence, i.e. finding of finger prints or palm prints inside the door of bed room; presence of bite marks on the person of accused, as stated above, finding of taviz and hair of the accused in the hands of deceased, coupled with the evidence of witnesses who have spoken about the presence of

the accused in the flat even after they left on that particular day, could not at all successfully challenge by the defence. Therefore, this is a case where the prosecution has succeeded in proving beyond reasonable doubts all the circumstances unequivocally leading to irresistible conclusion about the guilt of the accused and of no one else. It may be, there is no apparent motive for murder. But absence of motive does not weaken the prosecution case when so many strong clinching circumstances are brought and proved on record. The case does not require any interference.

29. For all these reasons we pass the following order:

ORDER:

Appeal is dismissed.