
(2015) 05 BOM CK 0084
In the Bombay High Court
Case No : Criminal Appeal No. 55 of 2011

Santosh Balu Bansode and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 05 BOM CK 0084

Hon'ble Judges : P.V. Hardas, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Daulat G. Khamkar, for the Appellant; Sangeeta D. Shinde, APP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.

1. The Appellants/Original Accused, who stand convicted for the offence punishable under Section 302 r/w. 34 of the IPC and sentenced to suffer imprisonment for life and each Accused to pay fine of Rs.2,000/-, in default of which to undergo R.I. for 3 months each, by the IInd Ad-Hoc Additional Sessions Judge, Solapur, by Judgment dated 28th October, 2010, in Sessions Case No. 44 of 2009, by this Appeal question the correctness of their conviction and sentence.

2. Facts, as are necessary, for the decision of this Appeal may be stated thus :-

PW-18 API Dinkar Mohite, who was attached to Tembhurni Police Station and was on duty on 10th November, 2008, recorded the report of PW-11 Rajendra Bansode at Exhibit-46. On the basis of the report of PW- 11 Rajendra Bansode, he registered an offence vide Crime No. 193 of 2008 under Section 302 r/w. 34 of the IPC. Initially the investigation was carried out by PW-18 API Dinkar Mohite. On registration of the offence, he rushed to the scene of the incident and drew the Scene of Incident Panchanama in the presence of Panchas at

Exhibit-23. From the scene of the incident, he seized two stones, one knife and a rope. From the scene of incident, he also seized sample of ordinary mud and blood mixed mud. The dead body of deceased Dattatraya was noticed lying at the scene of the incident and accordingly an Inquest Panchanama was drawn in the presence of Panchas at Exhibit-24. The dead body was thereafter referred for postmortem examination. Statements of witnesses were recorded and clothes of the deceased were seized under Seizure Memo at Exhibit-26 in the presence of Panchas. Supplementary statement of PW-11 Rajendra Bansode was recorded. Accused No. 1-Santosh was arrested under Arrest Panchanama at Exhibit-67 on 12th November, 2008. On 14th November, 2008, statements of witnesses were recorded and Accused No. 1-Santosh, during custodial interrogation, expressed his willingness to point out the place where a sickle had been concealed near his house. A Memorandum was accordingly drawn in the presence of Panchas at Exhibit-30. Accused No. 1-Santosh took the Police and the Panchas near his house and from a bush, produced a sickle, which was found stained with blood. The said sickle was accordingly seized in the presence of Panchas at Exhibit-31. On 16th November, 2008, Accused No. 2-Nagesh and Accused No. 3- Anil were arrested under Arrest Panchanama at Exhibit-68. On 17th November, 2008, Accused No. 1-Santosh, during custodial interrogation, expressed his willingness to produce his clothes from his house. Accordingly a Memorandum was recorded in the presence of Panchas at Exhibit-32. Accused No. 1-Santosh led the Police and the Pancha to his house and produced his clothes, i.e. shirt and trouser, which were seized under Seizure Memo at Exhibit-33.

On 19th November, 2008, Accused No. 3-Anil, during custodial interrogation, expressed his willingness to point out the place where his clothes had been concealed. A Memorandum was accordingly recorded in the presence of Panchas at Exhibit-37. Accused No. 3-Anil led the Police and the Panch to his house and produced clothes, which were seized under Seizure Memo at Exhibit- 38. Further investigation was then handed over to PW-17 API Dhananjay Jadhav.

3. PW-17 API Dhananjay Jadhav, who was also attached to the Tembhurni Police Station, was entrusted with the investigation of Crime No. 193 of 2008. He, accordingly, recorded the statements of the witnesses and under requisition at Exhibit-60, referred the seized property to the Chemical Analyzer. Vide Exhibits "61" and "62", details of the call record of the mobile phones of the Accused were sought for. Further to completion of investigation, a Charge-Sheet against the Accused was filed.

4. Postmortem on the dead body of deceased Dattatraya was conducted by PW-1 Dr. Sanjay Pawar. PW-1 Dr. Sanjay Pawar noticed the following external injuries :-

(i) Laceration 5 cm x 2.5 cm x 3 cm over left frontal bone 2 cm over left eye brow.

(ii) Laceration of 3 cm x 5 cm x 05 cm over right eye brow over 2.5 cm.

(iii) Abrasion of 2 cm x 2 cm x over left cheek.

- (iv) Abrasion over lateral side of eye, 4 in number.
- (v) Abrasion of 2 cm x 1 cm over left cheek at central region.
- (vi) Contusion over upper and lower portion of right eye, same injury found at left eye.
- (vii) Abrasion of 1 cm x 1 cm over left side below eye.
- (viii) Contusion of 2 cm x 1.5 cm near lateral contusion of right eye.
- (ix) Abrasion over right lateral side of neck, six in number.
- (x) Abrasion of 12 cm x 5 cm over middle part chest at upper region obliquely downwards from left to right side.
- (xi) Abrasion of 3 cm x 2.5 cm anterior aspect of neck below the symphysis menti.
- (xii) I.W. of 4 cm over left ear lower portion.
- (xiii) Abrasion over left shoulder near acromian process of size 1.5 cm x 2 cm.
- (xiv) Abrasion of 3 cm x 1 cm below left axilla.
- (xv) Abrasion of 5 cm x 5 cm over left lateral side of thigh mid portion.
- (xvi) Abrasion of 2.5 cm x 1 cm above left lateral malleolus, 3 cm.
- (xvii) Abrasion of 3 cm x 2.5 cm in the right popliteal fossa.
- (xviii) Abrasion of 6 cm x 2 cm over right tendo achilles, 6 cm above the calcaneum.
- (xix) Abrasion of 5 cm x 2 cm below left infra scapular region.

On internal examination, he found large comminuted fracture of skull extending from left frontal posteriorly over left parietal bone obliquely towards right parietal bone anteriorly towards supra orbital region, anteromedially towards route of nose; covering of the brain was torn with injury to the left cerebral hemisphere and haemorrhage was seen within torn brain tissue. Haemorrhage was also seen over the dura matter of right side.

5. PW-1 Dr. Sanjay Pawar, therefore, opined that the cause of the death was "shock due to intra cerebral haemorrhage, extra dural haemorrhage and external haemorrhage due to injuries mentioned in Column No. 17". The Postmortem Report is at Exhibit-21. According to PW-1 Dr. Sanjay Pawar, the injuries were possible due to the stone.

6. After the case was committed to the Court of Sessions, Trial Court vide Exhibit-3 framed charge against the Accused for the offence punishable under Section 302 r/w. 34 of the IPC. The Accused denied their guilt and claimed to be tried.

7. Prosecution in support of its case, examined 18 witnesses. The case against the Appellants is, principally, based on the circumstantial evidence. Prosecution has alleged that (i) the Accused had made extrajudicial confession to PW-16 Narayan Gaikwad; (ii) clothes of Accused No. 1-Santosh were found stained with blood; (iii) the sickle, which was discovered at the behest of Accused No. 1-Santosh, was also found stained with human blood; (iv) on account of extra-marital relations of mother of Accused No. 2-Nagesh and Accused No. 3-Anil with deceased Dattatraya, the Accused had committed the crime.

8. PW-9 Pooja Bansode and PW-10 Sundarabai Bansode had seen the Accused fleeing from near the scene of the incident with blood stained clothes.

9. We have heard Mr. Daulat Khamkar, learned Counsel for the Appellants and Mrs. Sangeeta Shinde, learned A.P.P. for the Respondent- State and in order to effectively deal with the submissions advanced before us, it would be useful to refer to the evidence of the Prosecution Witnesses.

10. In respect of the first circumstance i.e. about the extra-judicial confession, Prosecution has examined PW-16 Narayan Gaikwad, who deposes that he knows all the three Accused. According to PW-16 Narayan, on 10th November, 2008, at about 10:30 a.m., he was proceeding to Bhima Nagar in order to purchase grocery articles. On reaching Bhima Nagar Chowk, Accused No. 3-Anil and Accused No. 2- Nagesh were seen coming towards him on a motor cycle. Both the Accused appeared frightened and, therefore, PW-16 Narayan enquired with them. Accused Nagesh informed PW-16 Narayan that his mother had illicit relations with deceased Dattatraya and on that count he and the other Accused had committed murder of Dattatraya by stones and sickle. The Accused also confessed that they had thrown the dead body of deceased Dattatraya in the agricultural field of one Patil. The Accused, therefore, solicited the advise of PW-16 Narayan as to what they should do. PW-16 Narayan informed them to go to the Police Station. The Accused thereafter left the place on their motor cycle.

11. In cross-examination, he has admitted that he did not inform the incident to Police. He has also admitted not to have disclosed the incident to anyone till his statement was recorded. PW-17 API Dhananjay Jadhav has admitted in the cross-examination that he had recorded the statement of PW-16 Narayan on 16th January, 2009.

12. The incident had occurred on 10th November, 2008. PW-16 Narayan, to whom the alleged extra-judicial confession was made, maintained a stoic silence from the date of the incident till 16th January, 2009, when his statement was recorded. PW-16 Narayan did not disclose about the extra-judicial confession for a period of more than two months. Moreover, PW-16 Narayan also does not claim that he was closely acquainted with the Accused and on account of the close relations, the Accused would confess the incident to him. He only claims that he knew the Accused and beyond that PW-16 Narayan does not claim to be a person of confidence of the Accused. We find the evidence of PW-16 Narayan to be

artificial and, in our opinion, no reliance whatsoever can be placed on the testimony of PW-16 Narayan in respect of the extra-judicial confession of the Accused. Further, we find that the extra-judicial confession is a weak piece of evidence and normally the Courts would be hesitant in placing implicit reliance on the extra-judicial confession as a circumstance, unless it was corroborated in material particulars. In the present case, we find that no reliance whatsoever can be placed on the testimony of PW-16 Narayan and, therefore, this circumstance will have to be left out of consideration.

13. In respect of the second circumstance i.e. finding of blood stains on the trouser of Accused No. 1-Santosh, we find that in the statement recorded under Section 313 of the Cr.P.C., the Trial Court had not specifically questioned the Accused about the findings of the reports of the Chemical Analyzer in respect of noticing of human blood on the trouser of Accused No. 1. Apart from that, there is no evidence whatsoever that the trouser, at the time of its seizure, was duly sealed and remained in that condition till it was examined by the Chemical Analyzer. In respect of human blood being found on the sickle, we find that there is no evidence of sealing of the sickle at the time of its seizure. Moreover, the C.A. Report only referred to finding of human blood and does not refer to the blood stains being of the same blood group as that of deceased. In the absence of reliable evidence in respect of sealing of the articles at the time of its seizure, no reliance whatsoever can be placed on the findings of the Chemical Analyzer.

14. In respect of the evidence of motive, we find that there is no reliable evidence in respect of the alleged motive i.e. the mother of the Accused having illicit relations with deceased Dattatraya. The parents of Accused have been examined, who have not supported the Prosecution. Resultantly, we find that there is no evidence whatsoever in respect of the motive alleged by the Prosecution.

15. Prosecution has examined PW-9 Pooja, a child witness, who deposes that on the day of the incident, i.e. on 10th November, 2008, at about 10 a.m., she was standing in front of her house along with her grand-mother PW-10 Sunderabai. According to PW-9 Pooja, she noticed all the Accused running from the boundary of the agricultural field. She also noticed that the clothes of the Accused were stained with blood. Accused No. 1-Santosh requested his wife to go to the house of her parents. Wife of Santosh replied that she had recently returned from the house of the parents. Accused No. 1-Santosh thereafter left the house after changing his clothes. In cross-examination, she was confronted with the portion marked "A" from her statement that she was studying in the school at Ujani.

16. Prosecution has examined PW-10 Sunderabai, who deposes that on the day of the incident, at about 11 a.m., she was standing in front of the house along with PW-9 Pooja and noticed three Accused coming from the field of one Pandurang Patil. The Accused appeared to be in a hurry and their clothes were found stained with blood. Accused No. 1-Santosh requested his wife to go to the house of her parents, but wife of Accused- Santosh informed him that she had

recently returned from the house of her parents. Accused-Santosh thereafter left the house.

17. As per the evidence of this witness, the clothes of the Accused were found stained with blood. The report of the C.A. Indicates that the clothes of Accused Nos. 2 and 3 were not found to be stained with blood. The trouser of Accused No. 1 alone was found to be stained with human blood. Moreover, merely seeing the Accused coming from the agricultural field without there being any link evidence in respect of the time of death of deceased, by itself cannot be a circumstance for basing the conviction of the Accused. As pointed out by us above, the clothes of Accused Nos. 2 and 3 were not stained with blood. In our opinion, therefore, this circumstance by itself is incapable of sustaining the conviction.

18. Thus, upon appreciation of the evidence of the Prosecution, in our opinion, Prosecution has utterly failed to prove the offence against the Accused beyond reasonable doubt. Accused are, thus, entitled to be given the benefit of doubt.

19. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the Appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by the Appellants, be refunded to them. Since the Appellants are in Jail, they be released forthwith, if not required in any other case.