

(2015) 04 BOM CK 0296
In the Bombay High Court
Case No : Criminal Appeal No. 299 of 2008

Santosh Gopinath Waghmare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

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

Citation : (2015) 04 BOM CK 0296

Hon'ble Judges : V.K. Tahilramani, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Rohini M. Dandekar, for the Appellant; G.P. Mulekar, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—This appeal is preferred by the appellant-original accused against the judgment and order dated 10.12.2007 passed by the learned Ad-hoc Additional Sessions Judge-3, Raigad-Alibag in Sessions Case No. 109 of 2007. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and fine of Rs. 5000/- i/d R.I. for one year.

2. The prosecution case, briefly stated, is as under:

"Deceased Ramesh Waghmare was the husband of P.W. 1 Sangeeta. Sangeeta was married to deceased Ramesh about 6 years prior to the incident. They had two sons. Sons of Sangeeta were residing with P.W. 2 Shimagi who is the mother of Sangeeta. Sangeeta and her husband Ramesh were residing in village Mahalunge in Murud Taluka. Sangeeta's mother P.W. 2 Shimagi was also residing in the same village. The house of deceased Ramesh and Sangeeta was situated close to the house of Shimagi. About 6 months prior to the incident, Ramesh Waghmare started moving around with another lady, due to this, Sangeeta came back to the house of her mother. Thereafter, Sangeeta started residing at Roha

Wandeli. Sangeeta used to frequently visit the house of her mother Shimagi in order to see her sons. Whenever Sangeeta visited her mother's house, her husband Ramesh on seeing her, used to come and tell her that he is ready to maintain Sangeeta and her sons. One day prior to the incident, Sangeeta had come to her mother's house. Sangeeta's husband saw her, hence, he came to Sangeeta's mother's house. He told Sangeeta that he will come to take her back on the day of Holi i.e. the next day. While Sangeeta and Ramesh's talk was going on, appellant Santosh came there. Santosh was the cousin brother of Ramesh Waghmare. The appellant told Sangeeta that he was ready to keep her as his wife. Sangeeta told the appellant that her husband Ramesh is coming to take her then why she should reside with the appellant. Sangeeta's husband Ramesh also asked the appellant why he talked with his wife Sangeeta in such a manner. The appellant then caught hold of neck of Ramesh and dragged him out of the house. At that time, it was 8.30 p.m. Thereafter Sangeeta had dinner and slept with her children in the house of her mother. On the next day in the morning at about 9.00 a.m. Sangeeta and her mother heard commotion that somebody is lying in the culvert situated at Mandala-Mahalunge road. Hence, Sangeeta, her mother and sister went to the spot. Sangeeta saw the dead body of her husband lying in culvert. She saw injuries on the face of her husband. Thereafter, Sangeeta lodged F.I.R. in which she stated that the appellant committed the murder of her husband Ramesh. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed."

3. Charge came to be framed against the appellant under section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant committed the murder of Ramesh.

5. There is no eye witness in the present case and the case is based totally on circumstantial evidence. The circumstances against the appellant are as under:

"(i) last seen;

(ii) motive;

(iii) injuries on the tip of the nose of the appellant;

(iv) at the time of arrest, pant on the person of the appellant was found stained with blood;

(v) hair was found in the fist of the deceased which was similar to the hair of the

appellant;"

6. As far as the first two circumstances i.e. "last seen" and "motive" are concerned, three witnesses have deposed about it. They are P.W. 1 Sangeeta, P.W. 2 Shimagi and P.W. 6 Chandra. Sangeeta was the wife of deceased Ramesh. Sangeeta has stated that she was married to Ramesh about 6 to 7 years prior to the incident. She had two sons from Ramesh. Her sons were residing with her mother P.W. 2 Shimagi since childhood. She knew the appellant as he was the cousin of her husband. Prior to 6 months of the incident, her husband started moving around with another lady, hence, Sangeeta started residing at Roha-Wandeli. Sangeeta used to occasionally visit house of her mother in order to see her sons. Whenever Sangeeta visited her mother's house her husband Ramesh on seeing her, used to come and tell her that he is ready to maintain Sangeeta and her sons. One day prior to the incident, Sangeeta had come to her mother's house. Sangeeta's husband saw her, hence, he came to Sangeeta's mother's house. He told Sangeeta that he will come to take her back on the day of Holi i.e. the next day. While Sangeeta and Ramesh's talk was going on, appellant Santosh came there. Santosh was the cousin brother of Ramesh Waghmare. The appellant told Sangeeta that he is ready to keep her as his wife. Sangeeta told the appellant that her husband Ramesh is coming to take her then why she should reside with the appellant. Sangeeta's husband Ramesh also asked the appellant why he talked with his wife Sangeeta in such a manner. The appellant then caught hold of neck of Ramesh and dragged him out of the house. At that time, it was 8.30 p.m. Thereafter Sangeeta had dinner and slept with her children in the house of her mother. On the next day in the morning at about 9.00 a.m. Sangeeta and her mother heard commotion that somebody is lying in the culvert situated at Mandala-Mahalunge road. Hence, Sangeeta, her mother and sister went to the spot. Sangeeta saw the dead body of her husband lying in culvert. She saw injuries on the face of her husband. Thereafter, Sangeeta lodged F.I.R. in which she stated that the appellant committed the murder of her husband Ramesh. Thus, the evidence of P.W. 1 Sangeeta shows that the appellant was last seen in the company of the deceased on the night of 1.3.2007 at about 8.30 p.m. and the next morning, Ramesh was found dead in a culvert.

7. The next witness on whom the prosecution has placed reliance is P.W. 2 Shimagi. P.W. 2 Shimagi is the mother of Sangeeta and mother-in-law of deceased Ramesh. She has stated that her daughter Sangeeta was married to Ramesh about six years prior to the incident. Sangeeta had two sons from Ramesh. Both the sons were residing with her since childhood. She knew the appellant because he was the cousin of her son-in-law Ramesh. Shimagi has stated that her son-in-law Ramesh started moving around with another lady, due to this, Sangeeta came to her house. Thereafter, Sangeeta started residing at Roha-Wandeli. Sangeeta used to occasionally come to her house to meet her sons. When Sangeeta used to come to Shimagi's house, her son-in-law Ramesh used to come to meet Sangeeta and he used to tell Sangeeta that he will take her back along with children. Shimagi has further stated that on the day prior to

the incident, Sangeeta came to her house at about 5.00 p.m. Her son-in-law Ramesh saw Sangeeta coming to her house, hence, Ramesh came to Shimagi's house. Ramesh told Sangeeta that he will take her and children back next day as it was a big day of Holi. In the meanwhile, the appellant came to the house of Shimagi. The appellant told Ramesh that he is going to keep Sangeeta with him, at that time, Sangeeta told the appellant that her husband is alive and she had two sons from Ramesh, hence, she is not going to perform marriage with the appellant. Ramesh also asked the appellant why he was telling that he would keep Sangeeta with him when he (Ramesh) was still alive. Thereafter altercation took place between the appellant and deceased Ramesh. Thereafter the appellant dragged Ramesh out of the house of Shimagi. Thereafter, Shimagi, Sangeeta and others had dinner and went to sleep. On the next day, there was commotion in the village that a dead body of male person was found in the culvert situated at Mahalunge Road. When she along with her daughter went to the spot, she saw that it was the dead body of her son-in-law. There was injury on the head and face of the dead body. Her daughter Sangeeta lodged report against the appellant alleging that the appellant committed the murder of her husband Ramesh.

8. The last witness on the point of "last seen as well as motive" is P.W. 6 Chandra. Chandra was residing in front of the house of Shimagi. Chandra has stated that she knew the appellant as he was the cousin brother of Ramesh Waghmare who was the husband of Sangeeta. Sangeeta had two sons from Ramesh and the sons were residing with P.W. 2 Shimagi i.e. mother of Sangeeta. Chandra has further stated that sometime prior to the incident, Ramesh started moving around with another lady, therefore, Sangeeta got angry and returned back to her mother's house. Thereafter, Sangeeta went to reside at Roha. On the day prior to Holi, Sangeeta came to her mother's house. Sangeeta's husband Ramesh on seeing that Sangeeta had come to her mother's house, came to Sangeeta's mother's house. After sometime, the appellant came to the house of Shimagi i.e. mother of Sangeeta. The appellant told Ramesh that he is going to perform marriage with his wife Sangeeta. At that time, Ramesh replied that when he (Ramesh) is still alive, why the appellant is talking in such a manner. Then altercation took place between the appellant and Ramesh. Thereafter Santosh caught hold of Ramesh by the neck and took him away. On the next day, she came to know that Ramesh had been murdered and his dead body was found lying in culvert situated at Mahalunge road. She saw injuries on the face and head of Ramesh. Thus, the evidence of P.W. 1 Sangeeta, P.W. 2 Shimagi and P.W. 6 Chandra shows that the appellant was last seen with the deceased at about 8.30 p.m. on 1.3.2007 and on the next day morning, Ramesh was found dead in a culvert with injuries on his person. The evidence of P.W. 1 Sangeeta, P.W. 2 Shimagi and P.W. 6 Chandra further shows that the appellant had motive to commit the murder of Ramesh. The motive was that the appellant wanted to marry Sangeeta which was objected by Ramesh due to which quarrel took place between the appellant and Ramesh on the night of 1.3.2007. Thereafter the

appellant caught hold of Ramesh and dragged him out of the house of Shimagi and in the morning Ramesh was found dead.

9. In relation to "last seen theory" the Supreme Court in the case of Rohtash Kumar Vs. State of Haryana, (2013) 6 AD 580 : (2013) CriLJ 3183 : (2013) 8 JT 181 : (2013) 3 RCR(Criminal) 355 : (2013) 7 SCALE 472 : (2013) 14 SCC 434 has observed as under:

"In cases where the accused was last seen with the deceased victim (last seen together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred."

Similar view was taken by the Supreme Court in Nika Ram Vs. State of Himachal Pradesh, AIR 1972 SC 2077 : (1972) CriLJ 1317 : (1972) 2 SCC 80 : (1972) SCC(Cri) 635 : (1973) 1 SCR 428 : (1972) 4 UJ 932 and Ganeshlal Vs. State of Maharashtra, (1992) CriLJ 1545 : (1992) 2 Crimes 161 : (1993) 1 DMC 326 : (1992) 2 JT 592 : (1992) 1 SCALE 811 : (1992) 3 SCC 106 : (1992) 2 SCR 502 .

10. In Trimukh Maroti Kirkan Vs. State of Maharashtra, (2007) CLT 471 Supp : (2007) CriLJ 20 : (2006) 2 DMC 757 : (2006) 9 JT 50 : (2006) 10 SCALE 190 : (2006) 10 SCC 681 : (2006) 8 SCR 156 Supp : (2006) 148 STC 638 the Supreme Court held as under:

"22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

Similar view was taken in Prithipal Singh etc. Vs. State of Punjab and Another etc., (2012) 1 JCC 254 : (2011) 4 RCR(Criminal) 791 : (2011) 12 SCALE 411(1) : (2012) 1 SCC 10 : (2012) 1 UJ 245 . The Supreme Court in the case of Ravirala Laxmaiah Vs. State of A.P., (2013) 6 AD 410 : (2013) CriLJ 3147 : (2013) 8 JT 557 : (2013) 3 RCR(Criminal) 341 : (2013) 7 SCALE 450 : (2013) 9 SCC 283 has observed as under:

"In case where the accused has been seen with the deceased victim (last seen theory), it becomes duty of the accused to explain the circumstances under which the death of the victim has occurred. If the accused does not offer any explanation about receiving injuries or offers any explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

11. In Neel Kumar @ Anil Kumar Vs. The State of Haryana, (2012) 2 RCR(Criminal) 941 : (2012) 5 SCALE 185 : (2012) 5 SCC 766 : (2012) AIRSCW 3766 the Supreme Court has observed as under:

"30. It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him."

Similar view was also taken in Aftab Ahmad Anasari Vs. State of Uttaranchal, AIR 2010 SC 773 : (2010) CLT 499 : (2010) 1 Crimes 97 : (2010) 1 JT 424 : (2010) 1 SCALE 408 : (2010) 2 SCC 583 : (2010) 1 SCR 1027 .

12. Thus, in view of the aforesaid decisions and the evidence of P.W. 1 Sangeeta, P.W. 2 Shimagi and P.W. 6 Chandra, the prosecution has proved these two circumstances i.e. last seen and motive against the appellant.

13. The next circumstance against the appellant is that at the time of arrest, the appellant was found to have sustained abrasions on tip of his nose. After his arrest, the appellant was sent to P.W. 5 Dr. Kshirsagar for examination. Dr. Kshirsagar noticed abrasions over left side of tip of nose 1 cm. x 1 cm. irregular in shape. The appellant has not given any plausible explanation for the injuries on his person. It appears that during the scuffle with Ramesh while dragging him out of the house of Shimagi or due to Ramesh putting up resistance when the appellant was murdering Ramesh, the appellant sustained this injury. The defence was raised by the appellant that the abrasion on the tip of his nose was caused on account of bee-bite. However, Dr. Kshirsagar has stated that the injury seen on the tip of the nose of the appellant was not on account of bee-bite. Dr. Kshirsagar has further stated that the injury found on the nose of the appellant could not be caused due to appellant scratching his nose with his own hand. The explanation furnished by the appellant for the presence of injury on his nose is found to be palpably false in view of the evidence of P.W. 5 Dr. Kshirsagar. Thus, this injury in a small measure points out to the involvement of the appellant in the murder of Ramesh.

14. It is the prosecution case that the appellant assaulted Ramesh on the head and face and caused his death. This is corroborated by the medical evidence. P.W. 5 Dr. Kshirsagar conducted the post-mortem on the dead body of Ramesh. On external examination, he found the following injuries:

"(a) Incised wound below left eye 5 x 2 x 2 cm. probably caused by sharp and hard weapon.

(b) C.L.W. over left side forehead 1 x 1/2 x 1/2 cm. probably caused by hard and blunt object;

(c) Blunt trauma to right temporal bone with depressed fracture of right temporal bone, probably caused by stony hard and sharp object."

In the opinion of Dr. Kshirsagar, the probable cause of the death of Ramesh was due to depressed fracture of right temporal bone and injury to brain matter. Dr. Kshirsagar opined that the injuries noticed over the dead body could be caused by stony substance like the stones Muddemal Property No. 1.

15. On internal examination, Dr. Kshirsagar found laceration of brain in right temporal region. Dr. Kshirsagar has categorically stated that he did not agree with the suggestion that injuries noticed over the dead body of Ramesh could be caused due to fall on rough surface on stones. The defence raised by the appellant was that Ramesh fell down on rough stones due to which he sustained injuries and died. However, Dr. Kshirsagar has categorically stated that the injury sustained by Ramesh could not be caused due to fall on rough surface or stones.

16. The next circumstance against the appellant is that the clothes on his person at the time of his arrest i.e. pant and shirt were seized under panchnama Exh. 20. P.W. 7 Mhatre has deposed about this aspect. The pant and shirt of the appellant were sent to the C.A. As per the C.A. report Exh. 34/C the pant was found to be stained with human blood. In this connection, we may usefully refer to the decision of the Supreme Court in the case Gura Singh Vs. The State of Rajasthan, AIR 2001 SC 330 : (2001) CriLJ 487 : (2000) 3 JT 528 Supp : (2000) 8 SCALE 147 : (2001) 2 SCC 205 : (2000) 5 SCR 408 Supp : (2001) 1 UJ 299 : (2000) AIRSCW 4439 wherein it has been observed as under:

"In view of the authoritative pronouncement of this Court in State of Rajasthan Vs. Teja Ram and Others, AIR 1999 SC 1776 : (1999) CriLJ 2588 : (1999) 2 Crimes 45 : (1999) 2 JT 279 : (1999) 2 SCALE 169 : (1999) 3 SCC 507 : (1999) 2 SCR 29 : (1999) AIRSCW 1514 : (1999) 3 Supreme 391 we do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the "origin of the blood, the trial Court could not have convicted the accused. The Serologist and Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant."

Similar view has been taken by the Supreme Court in the cases of R. Shaji Vs. State of Kerala, AIR 2013 SC 651 : (2013) 1 Crimes 217 : (2013) 2 JT 447 : (2013) 1 RCR(Criminal) 964 : (2013) 2 SCALE 186 : (2013) 14 SCC 266 : (2013) AIRSCW 1095 : (2013) 1 Supreme 545 and Molai and Another Vs. State of Madhya Pradesh, AIR 2000 SC 177 : (2000) CriLJ 392 : (1999) 4 Crimes 266 : (1999) 8 JT 361 : (1999) 6 SCALE 606 : (1999) 9 SCC 581 : (1999) 4 SCR 104 Supp : (1999) AIRSCW 4266 : (1999) 8 Supreme 669 . It is pertinent to note that the appellant has not given any explanation for the finding of human blood on his pant.

17. After the dead body of Ramesh was found lying in the culvert, inquest panchnama was carried out. The inquest panchnama Exh. 17 shows that hair was found in the left fist of deceased Ramesh. The evidence of P.W. 7 Dattatray Mhatre also shows that hair was found in the hand of the dead body. This hair was sent to the C.A. along with sample of hair taken from the appellant. The C.A.

report Exh. 34/C shows that from morphological and microscopic examination of the hair found in the hand of the deceased and the sample of hair taken from the appellant, both were found similar.

18. On going through the record, we find that there is sufficient evidence on record to prove beyond reasonable doubt that the appellant committed murder of Ramesh, hence, appeal is dismissed.

19. Office to communicate this order to the appellant who is in jail.

20. We quantify legal fees to be paid to Advocate Ms. Rohini M. Dandekar by the High Court Legal Services Committee at Rs. 5000/-.