
(2014) 04 BOM CK 0182
In the Bombay High Court
Case No : Criminal Appeal No. 141 of 2005

Shravan Limbaji Lokhande	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 147, 148, 149, 201

Citation : (2014) ALLMR(Cri) 2031

Hon'ble Judges : P.V. Hardas, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Yug Mohit Chaudhary, Advocate for the Appellant; Arfan Sait, Ranjeet Bhosale, Appointed Advocates and F.R. Shaikh, APP, Advocate for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—The Appellants/Original Accused Nos. 1 to 7 and 10, who stand convicted for offence punishable under Sections 302 read with Section 149, 302 read with Section 149 for the murder of Hanmant, u/s 201 r/w. 149, 148, 341 read with Section 149 of the Indian Penal Code and sentenced to imprisonment for life and each accused to pay a fine of Rs. 1000/-, in default of which to undergo further RI for one month, RI for two years and each accused to pay a fine of Rs. 500/- in default of which to undergo further RI for 15 days, RI for one month and each accused to pay a fine of Rs. 100/- in default of which to undergo further RI for seven days and RI for one month and each accused to pay a fine of Rs. 100/-, in default of which to undergo further RI for seven days, with a direction that the substantive sentences shall run concurrently, by the Sessions Judge, Sangli by judgment dated 16/11/2004, in Sessions Case No. 121 of 2003, by this appeal question the correctness of their conviction and sentence. Facts, as are necessary for the decision of this appeal, may briefly be stated thus:-

PW-16 PI Vishwanath Palasdeokar, who, on 30.12.2002 was attached to the Umadi Police Station, recorded the report of PW-12 Daulat at Exhibit 60. On the

basis of the said report, he registered an offence vide Crime No. 58 of 2002. PW-12 Daulat pointed out the place where the dead bodies were lying. Accordingly, inquest panchnama of the dead bodies of deceased Gulab and Hanmant was drawn in the presence of panchas at Exhibits 67 and 68. The dead bodies were thereafter referred for postmortem examination to the Government Hospital. The scene of the incident was also pointed out by PW-12 Daulat and accordingly, a scene of the incident panchnama, in the presence of the panchas was drawn at Exhibit 64. From the scene of the incident several articles were seized. A jeep was found there which contained boxes of country liquor and a sword stained with blood. On 30.12.2002, inquiries were made with three persons and their statements were recorded. PW-16 PI Palasdeokar suspected that the driver also may have been killed. He, however, received information at about 11.00 p.m. on 30.12.2002 that the jeep driver was available in his house. The jeep driver was accordingly brought to the check-post by constable at about 12.00 midnight and statement of PW-13 Suresh, the jeep driver, was recorded on 31.12.2002. On the same day, supplementary statement of PW-12 Daulat was also recorded. The statement disclosed the names of 10 accused. Names of about 4 eye witnesses, who had arrived at the scene of the incident on 2 motor-cycles were also disclosed. A search was made for the 4 eye-witnesses. On 1.1.2003, the clothes of the deceased were seized. On 16.1.2003, Accused No. 8 Arjun was arrested in village Jakhadi in Sindhudurga and was accordingly, arrested on 17.1.2003. On 25.1.2003, Accused No. 6 was taken into custody and was accordingly arrested. On the basis of the disclosure memorandum of Accused No. 8, a chopper and his clothes came to be seized. Since Accused No. 10 was in hospital, on a transfer warrant, he was brought to the police station on 3.2.2003 and was accordingly arrested on 4.2.2003. Accused No. 1 had been arrested by the Bijapur Police on 4.2.2003 and was accordingly brought to the Police Station and arrested on 5.2.2003. The 4 eye witnesses, who had come to the scene of the incident on 2 motor-cycles were traced and their statements were recorded. Supplementary statements of PW-12 Daulat and PW-13 Suresh were also recorded. During custodial interrogation an axe came to be seized at the behest of Accused No. 10 Shivaji. On 12.2.2003, Accused No. 13 Vasant was arrested. On 13.2.2003, at the behest of Accused No. 9, a motor-cycle and a stick came to be seized. On 13.2.2003, at the behest of Accused No. 12 Babu, a motor-cycle, his clothes and an axe came to be seized. On 14.2.2003, at the behest of Accused No. 3 Gorakh, an axe came to be seized. On the same day, at the behest of Accused No. 4 Appasaheb, an axe came to be seized. On the same day, at the behest of Accused No. 7 Sanjay, a sword and clothes came to be seized. On the next day, i.e. on 15.2.2003, at the behest of Accused No. 11 Tamma, his clothes came to be seized. On 16.2.2003, at the behest of Accused No. 13 Vasant, an axe and his clothes came to be seized. On 19.2.2003, Accused No. 14 Sudhakar was arrested. On 21.2.2003, at the behest of Accused No. 2 Ravan, his clothes and a stick came to be seized. On 22.2.2003, at the behest of Accused No. 15 Baban, an iron bar and his clothes came to be seized. On 22.2.2003, at the behest of Accused No. 14 Sudhakar, a stick and his clothes

came to be seized. On 13.2.2003, the liquor boxes and the cover of the jeep, which bore blood stains, came to be seized under panchnama at Exhibits 76 and 77. The seized property was then forwarded to the Chemical Analyzer under requisition at Article "A". On 21.3.2003, Accused No. 5 Baban was arrested. At his behest a stick came to be seized. Further to the completion of investigation on 10.4.2003, a charge-sheet against the accused was submitted.

2. Postmortem on the dead bodies of deceased Hanmant and Gulab was conducted by PW-15 Dr. Shinge. PW-15 Dr. Shinge noticed the following injuries on the dead body of deceased Hanmant:-

(1) Incised wound over right part of forehead measuring 7.5 cm. x 1 cm. x 1.5 cm. There was the evidence of underlying frontal bone fracture.

(2) Incised wound over occipital part of skull measuring 12.5 cm. x 1 cm x 2 cm. There was evidence of fracture of underlying bone.

(3) Incised wound over left cheek and left part of external ear measuring 10 cm. x 1.5 cm x 5 cm.

(4) Incised wound obliquely upwards over the lower part of neck and sternum chest region measuring 6.5 cm. x 1.5 cm. x 5 cm.

(5) Incised wound over left forearm longitudinal measuring 17.5 cm. x 1 cm. x 1.5 cm. There was evidence of fracture of radius ulna bone. It was compound and open.

(6) Incised wound over left hand dorsal aspect measuring 4 cm. x 1 cm. x 1.5 cm.

(7) Left hand little finger and ring finger were cut through and through at their middle and apical phallex respectively.

(8) Incised wound over right lower third forearm on dorsal aspect measuring 10 cm. x 1 cm. x 5 cm. There was evidence of fracture of radius and ulna bone at their lower 3rd part.

(9) Incised wound over left wrist region on dorsal aspect measuring 10 cm. x 1 cm. x 1.5 cm.

(10) Incised wound over the right lower part of the chest measuring 12.5 cm. x 11 cm. x 10 cm. There was evidence of fracture of underlying 9, 10 and 11 ribs.

(11) Incised wound and stab over the left lumbar region measuring 15 cm. x 5 cm. x deep abdominal cavity. There was evidence of protruding of small and large intestines through the same wound.

(12) Incised wound above right knee region measuring 7.5 cm. x 1 cm. x 1.5 cm.

(13) Incised wound over left knee region measuring 5 cm. x 1 cm. x 1.5 cm.

PW 15-Dr. Shinge opined that the injuries were caused by hard and sharp object

within 72 hours and were ante mortem in nature. The blood had accumulated in the abdominal cavity. He, therefore, opined that cause of death was due to acute cardio-respiratory failure due to hemorrhagic shock due to multiple cut injuries with fracture of frontal and occipital bones. The postmortem report is at Exh. 71.

3. In respect of the dead body of deceased Gulab, he had noticed that Gulab had sustained fracture of parietal bone and frontal bone. The injuries were found all over the body and there was a stab injury on the abdomen at Umbilical region. He therefore opined that Gulab had died due to acute cardio respiratory failure due to hemorrhagic shock due to multiple cut injuries with fracture of frontal and parietal bone. The postmortem report is at Exhibit 72. The advance death certificates in respect of Hanmant and Gulab are at Exhibits 73 and 74.

4. On committal of the case to Court of Sessions, trial court vide Exh. 121 framed charge against the Appellants and others for offence punishable under Sections 120-B, 147, 148, 302 read with 149 and 201 read with 149 of the Indian Penal Code. The accused denied their guilt and claimed to be tried. The Trial Judge rejected the evidence in respect of the recoveries of the weapons and clothes at the behest of the accused. The Trial Judge also rejected the evidence of motive. The Trial Judge ultimately convicted and sentenced the Appellants on the basis of the testimony of PW-12 Daulat and PW-13 Suresh, an eye witnesses. Prosecution, in support of its case, examined 16 witnesses.

5. In order to effectively deal with the submissions advanced before us by Dr. Yug Mohit Chaudhary, the learned Counsel for Appellant Nos. 1, 3, 4 and 6, Mr. Arfan Sait, learned Counsel appointed for Appellant No. 5 and Mr. Ranjeet Bhosale, learned Counsel appointed for Appellant No. 2 and the learned APP, it would be useful to refer to the evidence of the prosecution witnesses. None had appeared on behalf of Appellant Nos. 7 and 8 i.e. Original Accused Nos. 7 and 10.

6. As pointed out by us above, though the prosecution has examined 16 witnesses, the Trial Court has rejected the evidence in respect of the discovery and the seizure of the weapons and clothes at the behest of the accused. The only evidence therefore is that of PW-12 Daulat and PW-13 Suresh. PW-12 Daulat deposes that his daughter Sujata was married to deceased Gulab. Deceased Gulab was his nephew also. He has further deposed that deceased Gulab had illicit relations with one Dwarkabai, who was residing at a distance of about 300 to 350 ft. from the house of Daulat. Deceased Gulab had illicit relations with Dwarkabai about 2 to 3 years prior to the incident. Accused No. 1 Shravan, who was a resident of village Karewadi also had illicit relations with Dwarkabai about 1 or 2 years prior to the incident. According to Daulat, Accused No. 1 Shravan was aggrieved as deceased Gulab had illicit relations with Dwarkabai. Daulat further deposes that Accused Nos. 1 to 8 and Accused No. 14 used to pick up quarrel with Gulab due to his illicit relations with Dwarkabai.

7. In respect of the incident, Daulat deposes that on 29.12.2002, deceased Gulab and deceased Hanmant, who were working as labour contractors, left for

going to Jath Sugar Factory in the jeep of PW-13 Suresh at about 6.00 p.m. PW-12 Daulat had also accompanied deceased Gulab and deceased Hanmant in the jeep upto his field. The deceased were supposed to return back on the same night but they did not return back. On the next day, at about 9.00 a.m., PW-12 Daulat was waiting in the square for the arrival of Gulab. One Annaso Mahadeo Jagtap and Devendra Shivaji Jagtap met him there, who informed him that they had seen the dead bodies of Gulab and Hanmant lying in a ditch situated by the side of the bandh of a field. PW-12 Daulat alongwith Namdeo Pawar then went to the scene of the incident on the motor-cycle and noticed the dead bodies lying in the ditch. He also noticed the jeep which was parked at a distance of about 20 to 25 ft. from the dead bodies. Daulat therefore returned home. He learnt in the village that spectacles, chappals and broken glasses of the jeep were lying on the Jath road. Daulat therefore went to the said spot on a motor-cycle alongwith one Ramesh Eknath Jagtap. He noticed spectacles of Gulab, Chappal of Gulab and pen of Gulab were lying there. There were blood stains and broken pieces of glass. From there he directly went to Umadi Police Station alongwith Ramesh and lodged his report against Accused Nos. 1 to 8 at Exhibit 60. He deposes that deceased Hanmant was a close friend of Gulab.

8. In cross-examination he has admitted that PW-13 Suresh is a resident of the village but he does not know the family members of PW-13 Suresh. He has admitted that he had tried to convince Gulab not to maintain illicit relations with Dwarkabai. He has admitted that he had not attempted to convince Accused No. 1 Shravan not to maintain illicit relations with Dwarkabai. He has admitted that there was a quarrel between the accused and Gulab about 1 or 2 days prior to the incident. An omission has been elicited that he had not stated in his report that Accused Nos. 1 to 8 and 14 used to pick up quarrels with Gulab due to the illicit relations. He has denied the suggestion that Gulab was dealing in illicit liquor and had enmity with the person who were dealing in illicit liquor. He has admitted that he had anticipated that Gulab would return back between 10.00 to 11.00 p.m. He has admitted that he had not made any inquiry as to why Gulab had not returned. He has admitted that he knows the residential house of PW-13 Suresh. He has admitted that he had not gone to the house of Suresh on that night. He has admitted that he was in the company of Namdeo Pawar in the morning for about 30 minutes. He has also admitted that he was present in the village after the incident.

Importantly, PW-12 Daulat who claims to have accompanied both Gulab and Hanmant in the jeep, does not claim that the jeep was being driven by PW-13 Suresh. Even in the First Information Report, there is no mention that the jeep was being driven by P W-13 Suresh. The recitals in the First Information Report are that his nephew Gulab and Hanmant had gone in a jeep belonging to Suresh to the Jath Sugar Factory. In the First Information Report there is a recital that he had learnt in the village that on account of the illicit relationship, the accused armed with sword, axe, sickle, had killed the deceased. Curiously, as the names of the persons, who had disclosed the incident is not revealed in the First

Information Report, PW-12 Daulat also does not claim that the information was given to him by PW-13 Suresh.

9. PW-13 Suresh claims that he owns a jeep bearing registration No. MH-10-C-3420, which he had purchased from one Harishchandra Narayan Jagtap for Rs. 1,40,000/-. He has admitted that he was using the jeep for taking passengers from 6.00 a.m. to 2.00 p.m. and thereafter, if the passengers are available. He has admitted that deceased Gulab and Hanmant used to take his jeep on hire. He has admitted that deceased Gulab and Hanmant were working as labour contractors. He has deposed that Accused No. 1 Shravan had illicit relations with Dwarkabai and on that count there were quarrels between Gulab and Accused No. 1 Shravan. About 2 days prior to the incident, there was a quarrel in front of the house of Gulab. Suresh claims that he had witnessed the quarrel. In respect of the incident he deposes that at about 4.00 p.m. on 29.12.2002, deceased Gulab and Hanmant had come to the place where the jeep was parked and told Suresh that they wanted to take his jeep on hire as they wanted to bring boxes of liquor from Jath. An amount of Rs. 200/- was given to PW-13 for filling diesel in the jeep. At about 6.00 p.m. Suresh and the two deceased and Parmeshwar Jagtap left in the jeep. Parmeshwar Jagtap alighted from the jeep near his field and thereafter, the jeep proceeded further. They reached Jath at about 7.30 p.m. and after taking their dinner, Gulab collected the liquor boxes from the owner of the Dhaba and at about 10.00 p.m. they left Jath for returning home. Suresh claims that he was driving the jeep and Hanmant and Gulab were sitting on the front seat while they were returning and after having crossed a distance of about 4 kms. from Tikondi, they notice one motor-cycle chasing them. After crossing a distance and at the turn of the road, he saw that some stones had been kept on the road. At the same time, about 4 to 5 persons came near the jeep. Suresh attempted to drive his jeep in reverse. 4 to 5 persons, who had come near the jeep then pulled deceased Gulab out of the jeep and assaulted him with sticks and axe. Hanmant told those persons that he was ready to give them anything but they should stop assaulting Gulab. When Suresh was attempting to alight from the jeep, someone hit the front glass of the jeep. Accused No. 1 Shravan caught PW-13 Suresh and Accused No. 10 Shivaji then took him near the boundary of the adjoining field and Suresh was made to sit there. The assailants then pulled out Hanmant from the jeep and assaulted Hanmant with axe, sword, chopper and sticks. Since the head lights of the jeep were on, PW-13 Suresh saw the incident of assault in the illumination. He has identified the accused who were the assailants and has also described the weapons with which the accused were armed. According to Suresh, Accused No. 1 Shravan while assaulting Gulab had said as to why Gulab was not leaving Dwarkabai and as to why Gulab assaulted relative of Accused No. 1 Shravan. At that time 2 motor-cycles came towards the scene of the incident. There were 4 persons on the motorcycles and these persons requested the assailants not to assault Hanmant and Gulab. The assailants, however, threatened those 4 persons and the persons thereafter went away. Accused No. 10 Sanjay then took the jeep towards Jath and returned after

some time. The jeep was then driven to the place where the 2 dead bodies were lying. The accused then placed the dead bodies in the jeep and Accused No. 1 Shravan asked Suresh to drive the jeep. Since Suresh had sustained an injury to his right hand, he expressed his inability to drive the jeep. The jeep was then driven by Accused Sanjay while Suresh sat on the front seat. The accused then removed the stones which had been kept on the road and while the jeep was being driven, the engine faltered and the jeep stopped. Suresh noticed that there was no fuel in the jeep. The Accused Shravan then brought diesel and the diesel was then filled in the jeep and the jeep was driven towards Karnataka side. After driving a distance at about 8 to 10 kms. Sanjay stopped the jeep. The Accused then removed the dead bodies and had thrown the dead bodies in the ditch. Suresh pleaded with the assailants to permit him to leave alongwith the jeep. The assailants however threatened Suresh and told him to leave the jeep there. However, Accused Sanjay handed over the ignition key of the jeep to PW-13 Suresh. Accused Sanjay then took motor-cycle and the other accused also then fled on the motor-cycle leaving PW-13 Suresh sitting in the field. Before the accused had fled at 11.00 a.m., Sanjay had brought food for PW-13 Suresh and told Suresh that he would be allowed to return only in the evening. Suresh was threatened that he should not disclose the incident to anyone. Suresh then claimed that he returned home walking at about 6.00 p.m. He admits that he did not disclose the incident to any of his family members and stayed inside the house. The police arrived at his house at about 11.00 p.m. and thereafter, his statement was recorded. He has identified the accused but expressed his inability to identify the weapons which were used by the Appellants.

10. In cross-examination he has admitted that he was frightened and almost ran towards his house after he was allowed to leave. He claims that he had not met any person on the way who was acquainted with him. He claims that he did not meet any person of acquaintance even after entering the village. Certain omissions have been elicited in respect of the incident particularly about Suresh attempting to take jeep in reverse and about Suresh driving the jeep towards Jath after the incident. Omission is also elicited about the engine of the jeep staling and the jeep stopping on the kaccha road.

11. PW-16 PI Palasdeokar has admitted that the 4 persons had been traced who had gone to the scene of the incident and who were the eye-witnesses to the incident and that their statements were recorded. In cross-examination he has admitted to have recorded the statement of Namdeo Pawar on 30.12.2003. He has also admitted as true that Namdeo Pawar was one of the 4 persons, who had gone to the scene of the incident on the motor-cycle alongwith the others. He has then admitted that on 30.12.2002, it was not revealed to him that Namedo Pawar had gone to the scene of the incident at the time of the incident on his motorcycle. The prosecution has made no attempts at examining Namdeo Pawar or the other 3 witnesses who are said to be eye-witnesses to the incident. Their evidence would have not only corroborated the evidence of PW-13 Suresh but also would have establish his presence at the scene of the incident.

12. Admittedly, PW-13 Suresh is the solitary eye-witness on whose testimony the prosecution seeks conviction of the accused. A conviction on the evidence of a solitary witness can certainly be maintained if the testimony of the solitary witness is of impeccable character and inspires the confidence of the Court for its implicit acceptance. In other words, the testimony should be of sterling quality on whose testimony the Court can unhesitatingly rely. To us it appears to be extremely doubtful if PW-13 Suresh was indeed driving the jeep, PW-12 Daulat makes no reference to the presence of PW-13 Suresh as a driver of the jeep. Even in the First Information Report there is no reference to the jeep being driven by PW-13 Suresh. In the First Information Report, the recitals are that deceased Gulab and Hanmant had gone to the Jath Sugar Factory in the jeep belonging to PW-13 Suresh. The possibility that PW-13 Suresh had given his jeep on hire to the deceased for going to Jath can not certainly be excluded in the light of this evidence. This is fortified by the fact that when the deceased did not return, PW-12 Daulat made no attempts at going to the house of PW-13 Suresh to ascertain if PW-13 Suresh had returned home or to ascertain from PW-13 Suresh the cause of delay. In fact, even after the dead bodies were found, PW-12 Daulat made no attempt at going to the house of PW-13 Suresh. If PW-13 Suresh was indeed driver of the jeep and had not returned home, the family members would certainly have contacted PW-12 Daulat to ascertain as to why Suresh had not returned home. All these leads to an inference that the jeep was not being driven by PW-13 Suresh. Suresh claims to have sustained an injury to his hand and thus could not drive the jeep home after the incident. There is no evidence on record regarding PW-13 Suresh sustaining any injury. The ignition key of the jeep had been handed over to PW-13 Suresh and we find no justifiable reason as to why the accused would not permit Suresh to take the jeep but asked him to go on foot and yet had offered the ignition key of the jeep. If PW-13 Suresh had indeed witnessed the incident and was an eyewitness to the incident, we find it inexplicable that the accused would permit Suresh to return home and also to offer him food. It is obvious that since PW-13 Suresh was not the driver of the jeep and was present in the house throughout, he had made no efforts at contacting Daulat and Daulat had also made no efforts at contacting Suresh.

13. The entire testimony of PW-13 Suresh is surrounded by a web of suspicion. Implicit reliance, therefore, according to us, cannot be placed on the solitary testimony of PW-13 Suresh. As pointed out by us above, the prosecution has not examined the other eyewitnesses to the incident. If Namdeo Pawar was really an eye-witness to the incident, we find it inexplicable as to why he had not disclosed this fact to PW-12 Daulat when he had accompanied Daulat at the scene of the incident. All this leads to only one inference and i.e. that PW-13 Suresh is a got up witness on whose testimony implicit reliance cannot be placed. Out of suspicion the First Information Report came to be lodged. Even at the time of lodging of the First Information Report, Daulat does not claim that Namdeo pawar was an eyewitness to the incident. The examination of the other eye-

witness would have certainly corroborated the testimony of PW-13 Suresh and would have also corroborated if Suresh was indeed present at the scene of the incident. Failure of the prosecution to examine the other eye-witnesses, according to us, is a fatal lapse on the part of the prosecution.

14. We, therefore, agree with the submissions advanced before us by the learned Counsels for the Appellants that implicit reliance cannot be placed on the testimony of PW-13 Suresh. If the testimony of PW-13 Suresh is left out of consideration, there is no evidence for sustaining the conviction of the Appellants.

As pointed out by us above, the Trial Court has rejected the evidence of discovery and has also rejected the evidence of motive. Thus, we find that there is no evidence for sustaining the conviction of the Appellants. According to us therefore, the Appellants are entitled to be given the benefit of doubt. Accordingly, Criminal Appeal is allowed and the conviction and sentence of appellants is hereby quashed and set aside and the appellants 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.

Fees payable to Mr. Arfan Sait, learned Counsel appointed for appellant no. 5 and fees payable to Mr. Ranjeet Bhosale, learned Counsel appointed for appellant no. 2 is quantified at Rs. 5000/- each.