
(2013) 02 BOM CK 0177
In the Bombay High Court
Case No : Criminal Appeal No. 315 of 2009

Sitaram Himmatrao Jadhav	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Citation : (2013) 6 ABR 1140 : (2013) ALLMR(Cri) 3586

Hon'ble Judges : A.P. Lavande, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.R. Shrivastava, for the Appellant; M.H. Deshmukh, Assistant Public Prosecutor, for the Respondent

Judgement

A.B. Chaudhari, J.—Being aggrieved by the Judgment and Order dated 14th March, 2007 passed by the Additional Sessions Judge, Washim in Sessions Trial No. 45 of 2006 convicting the appellant for the offences punishable under Sections 302, 363, 379 and 201 of the Indian Penal Code and sentencing him as under, the present appeal was filed by him in this Court.

I) The appellant/accused was sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/- in default to undergo further rigorous imprisonment for two months for the offence punishable u/s 302 of the Indian Penal Code.

II) He was sentenced to suffer rigorous imprisonment for three year and to pay a fine of Rs. 500/- in default to undergo further rigorous imprisonment for one month for the offence punishable u/s 363 of the Indian Penal Code.

III) He was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- in default to suffer further rigorous imprisonment for one month for the offence punishable u/s 379 of the Indian Penal Code.

IV) He was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- in default to undergo rigorous imprisonment for two months for the offence punishable u/s 201 of the Indian Penal Code.

All the substantive sentences were directed to run concurrently.

The prosecution case, in brief, is that:

On 8.2.2006, Complainant Sheshrao Gema Rathod (PW-1), who resides in village Aasola, had gone to Manora. At 6.30 p.m. he returned back. On reaching home, he found that his daughter Sonu, aged about 9 years was not in the house. He, therefore inquired with his wife Sheela, who told him that Sonu was playing outside the house. Sheshrao Rathod (PW-1), therefore, started searching her along with the persons in the Tanda locality in the fields as well as in the wells upto 3.00 a.m. in the intervening night of 8.2.2006 and 9.2.2006, but did not find her. In the morning of 9.2.2006, Sheshrao was told by one Bhika Ganesh Rathod that dead body of Sonu was lying under the water tank without ornaments. Sheshrao (PW-1), therefore, proceeded to the Police Station and lodged report about murder of his daughter for commission of theft of silver ornaments on her person weighing 60 tolas. Upon registration of report, investigation started with the help of Dog squad. The appellant/accused came to be arrested on 14.2.2006, at about 7.00 p.m. and the silver ornaments from the custody of Jewellers at Digras & Akola were seized pursuant to the information given by the appellant/accused. After completion of investigation, charge sheet was filed. The trial was held. Prosecution examined sixteen witnesses in support of its case. The learned Sessions Judge convicted the appellant for the aforesaid offences.

2. In support of the appeal, Mr. R.R. Shrivastava, learned Counsel (appointed) for the appellant made the following submissions:

a) There is no direct evidence with the prosecution to prove its case and therefore, it relied upon the evidence in the nature of last seen and discovery/recovery of ornaments at the instance of the accused/appellant. The evidence about last seen is of Narayan Udhebhan Rathod (PW-2), who has admitted that the police has taken search of his house on 16.2.2006 in connection with his son Ulhas and the search of the houses of Raju Fulsing Rathod and Anodh Nemichand Jadhav was also taken because the police were suspecting them. The learned Counsel argued that the son of witness Narayan namely Ulhas was prosecuted by one Duryodhan for an attempt to kill him by hanging and the said matter was subsequently compromised. Narayan Rathod (PW-2) has admitted that prosecution is initiated against his sons for attempting rape on one Jyoti and they were in jail. The Counsel then argued that Narayan (PW-2) has deposed against the appellant to save his son Ulhas, who is actual culprit in the offence in question. However, the testimony of this single witness has wrongly been believed by the trial Court and that being the only evidence regarding last seen, it was risky to convict the appellant.

b) The evidence of Narayan (PW-2) is liable to be rejected and will have to be looked with suspicion because he is the only witness on the last seen theory who also stated that he had accompanied the police party for searching the house of

Sitaram the appellant herein.

c) The trial Court has disbelieved the charge of rape punishable u/s 376 of the Indian Penal Code and has acquitted the appellant and hence, there remains no motive with the appellant to commit murder.

d) The theory of theft of 60 tolas of silver ornaments allegedly made by the appellant and recovery/discovery thereof is wholly liable to be rejected since the prosecution did not prove that the ornaments were purchased by Sheshrao (PW-1) and the purchases were not proved by the satisfactory evidence. Even the receipts for the purchasing of said ornaments were said to have been given by Sheshrao (PW-1) to the police, but they have not been proved according to law. The evidence about recovery/discovery of the ornaments at the alleged instance of the appellant is also infirm and is liable to be rejected. There is hardly any corroboration to the evidence of Narayan (PW-2) and therefore, it was wholly risky on the part of the trial Court to convict the appellant for the serious offences of murder, kidnapping and theft. The evidence of Sheshrao (PW-1) about the ornaments is wholly inconsistent and cannot be given any credence.

e) The parents of the appellant, admittedly, were working in Amravati and therefore, the appellant was in Amravati when he was arrested on 14.2.2006 i.e. six days after the alleged incident and therefore, it cannot be said that there is abnormal conduct on the part of the appellant.

f) The evidence of alleged purchasers of the ornaments also deserves to be rejected since they are got up witnesses and have not satisfactorily proved that it was the appellant who had sold them any silver articles.

g) The trial Court did not give benefit of doubt to the appellant/accused. The accused deserves to be acquitted atleast by giving benefit of doubt to him. The learned Counsel, therefore, prayed for acquittal of the appellant.

3. Per contra, Mrs. M.H. Deshmukh, learned A.P.P. has vehemently opposed the appeal. She has argued that the evidence regarding last seen is consistent and it satisfies the requirement of law laid down by the Apex Court from time to time. The evidence about discovery/recovery of the silver ornaments has also been satisfactorily tendered before the trial Court and the ornaments have been duly identified and there is no infirmity therein. In the absence of direct evidence, the circumstantial evidence, as brought by the prosecution before the Court is such that, the offences for which the appellant has been convicted has been proved beyond reasonable doubt. The appeal, therefore, deserves dismissal outright.

4. We have gone through the Judgment and Order so also the entire evidence brought on record by the prosecution before the trial Court. We have heard the learned Counsel for the rival parties at length. We have also given our conscious thought to the prosecution and defence case. We now proceed to discuss the evidence and record reasons as under.

5. Sheshrao (PW-1) is the father of deceased Sonu, aged about nine years. He

deposed that he returned back from the market at Manora at 6.30 p.m. in the evening. He did not find Sonu at the house and therefore, asked his wife Sheela about it. He thereupon started searching his daughter Sonu along with villagers till 3.00 a.m. in the night in the fields as well as in the wells in the village, but could not find her. Next day, early in the morning, at about 6.00 a.m., Bhika Rathod told him that he saw his daughter's dead body near water tank beside the Bus Stand. He went there to find the dead body of his daughter without silver ornaments owned by her. The anklets of arms, Dand kade weighing 8 tolas, 6 tolas silver patli par, 6 tolas silver kade, 20 tolas anklets of leg pair total ornaments of 60 tolas, which were on the body of Sonu, were all missing. He then went to the Police Station and lodged report (Exh. 16). Police visited the spot immediately and made the inquest panchanama on the dead body. There were rings of gold on the dead body and one leg anklet. Sheshrao (PW-1) identified the ornaments worn by his daughter namely Articles 3 to 9, which is described in para 4 of his deposition. He deposed that the place of residential house of the accused is at the distance of 30 feet from his house. In the cross-examination, he stated that the distance between the Bus Station and his locality is 20 feet. He holds 2? acres of land. He performed marriage of his daughter Purnabai in the year 2002 and in her marriage, did not offer any ornaments. He had given receipt of purchase of ornaments. He purchased the ornaments six months before the incident. There are 500 houses in village Aasola including the houses in Tanda locality. There are two grocery shops near the Bus Station and one hotel and a pan stall. In his report, he stated that some persons committed theft of the ornaments on the person of his daughter weighing 60 tolas and killed her.

6. Narayan (PW-2) is the star witness of the prosecution and lot of criticism has been levelled against this witness by the Counsel for the appellant, which we have also considered carefully. Narayan (PW-2) has stated in his evidence that, on 8.2.2006, his son Ulhas had gone to the weekly bazaar at village Manora. He was sitting in a hotel at about 3.00 p.m. Appellant/accused Sitaram came to his hotel along with Sonu at about 5.00 p.m. Sitaram purchased a sugar tablet of Rs. 1/- from him and also gave the same to Sonu. Both of them then left his hotel and Narayan remained in his hotel upto 7.00 p.m. and thereafter, he went to his house. On the next day, he came to know about finding of the dead body of Sonu. The police party came in the village and made an inquiry and he disclosed them that he had seen the deceased with the appellant/accused. Upon this disclosure, he accompanied the police towards the house of appellant Sitaram, which was found closed with unlocked latch. Police removed chain of the door and entered the house of appellant Sitaram and found a silver kade from his house. Narayan (PW-2) also deposed that when Sonu was accompanying Sitaram, she was wearing silver ornaments on her person. But when he saw the dead body, the ornaments were not there on her dead body.

7. We have carefully seen the cross-examination of this witness Narayan (PW-2). In the cross-examination, Narayan (PW-2) has stated that the his son Ulhas had

returned from the weekly bazaar of Manora at 7.00 p.m. on 8.2.2006. It was the only visit of Sitaram and Sonu to his hotel. Sonu never used to come to his hotel for purchasing Biscuits, Sugar tablets etc. Sitaram gave Rs. 1/- for purchasing sugar tablet. He was wearing blue coloured shirt and whitish pant. His house was searched by police on 16.2.2006 to find out whether Ulhas was involved in the matter. Police also searched the houses of Raju Fulsing Rathod and Anodh Nemichand Jadhav. He admitted about the fact that Ulhas was facing criminal prosecution on the allegations of rape of Jyoti. He denied the suggestion that he was deposing in order to save his sons. The statement of this witness Narayan (PW-2) was recorded immediately on the next date of arrival of police in the village in the morning and he disclosed his version to the police and even accompanied them towards the spot where the dead body was lying and for search of the house of the accused. His evidence that he saw the accused and Sonu together at his hotel and that he gave sugar tablet after receipt of Rs. 1/- from accused Sitaram, who handed over the same to Sonu and thereafter, both of them went together has not at all been shaken in the cross-examination. His further evidence that in the next morning, he heard about the dead body of Sonu, saw her dead body and upon arrival of police party, disclosed them what he had seen and also accompanied the police party for search of the house of the appellant has also not at all been shaken in the cross-examination. On the contrary, the said entire evidence of Narayan (PW-2) is wholly trustworthy. There is absolutely nothing in the cross-examination, much less tangible on this material aspect narrated by us above to look to his testimony with any suspicion. Then the time gap between departure of appellant with Sonu and finding of her dead body immediately on the next day morning and immediate disclosure by Narayan (PW-2) to the police party, to our mind, is most natural conduct on his part. To sum up, we have no hesitation in believing the testimony of Narayan (PW-2). We have no doubt in our mind about the testimony of this witness that appellant Sitaram and Sonu were found together at his hotel and left the hotel thereafter. The fact that the dead body was found immediately on the next day morning is not in dispute and at any rate, it has been proved by the circumstantial evidence brought on the record.

8. The criticism made by the learned Counsel for the appellant on the evidence of Narayan (PW-2) is not acceptable to us since the defence theory that his son/sons must have committed the offence in question has not been at all probablized except giving suggestion to him; that too in a vague manner namely that his sons committed the offence. Merely because his sons were being prosecuted in the case of Jyoti, it does not lead us to believe that Narayan (PW 2) can be said to be a liar. No enmity with Narayan (PW-2) has been brought on record in order to show that Narayan was interested in involving the appellant and none else. The time gap between the last seen incident and the finding of dead body in this case is such that the chain of circumstantial evidence has been completely proved by the prosecution.

9. Having thus believed the evidence of Narayan (PW-2) about the accused last

seen with Sonu at 5.00 p.m. on 8.2.2006, the next question is about the accused leaving the village for Amravati to reside with his parents by simply putting chain on the door of his house without any intimation or knowledge of anybody or neighbours. The appellant has not explained his conduct as to how and when he reached Amravati to reside with his parents. There is nothing in the cross-examination of Narayan (PW-2) to suggest any satisfactory explanation on this line. We, therefore, find that the said conduct of the appellant/accused to leave the village in utter haste for not returning back until he was arrested by police on 14.2.2006 at Amravati cannot be ignored from consideration and would be relevant.

10. Prosecution has then proved by evidence that, after the police party entered the house of the appellant by opening the chain of the door, they found one silver kade in his house, which was seized. Prosecution has also examined Uttam Chavan (PW-9), who is a relative of the appellant. Uttam Chavan has deposed that, on 10.2.2006, he was at Manora Chowk, Digras since his daughter was admitted to the hospital of Dr. Bang at Digras. The accused came to him and told him that his mother was serious and was in need of money and since he was having some silver ornaments, he wanted to sell them. He, therefore, accompanied accused Sitaram to the shop of Mahavir Jewellers in order to identify him. He, thus, introduced himself and then the proprietor of shop purchased those articles for Rs. 1380/-. Said material aspect in respect of this witness introducing the accused to the Jewellery shop owner has not been shaken. Merely because this witness has not produced bills of the hospital in which his daughter took treatment, it cannot be said that this witness, who is closely related to the accused, would falsely depose against him. We, therefore, believe the testimony of Uttam (PW-9) on this aspect.

11. Sanjay Sisodiya (PW-7) runs the shop in the name and style "Mahavir Jewellers" at Manora. He deposed that, on 10.2.2006, he was in the shop. The accused came to his shop for selling silver ornaments, but since he was not knowing the accused, he refused to purchase the ornaments saying that he wants his identity to be established. At about 12.00 or 1.00 p.m., Uttam Jadhav (PW-9) accompanied the accused and identified him saying that he was knowing him. Thereupon, he purchased the silver articles from the accused weighing 60 grams and paid him Rs. 1380/-. Then both, the accused and Uttam left his house. The evidence of Sanjay Sisodiya (PW-7) and Uttam Chavan (PW-9), to our mind, proves that the accused had come to the said shop with a view to sell the articles 48 hours after the incident of last seen and the same is satisfactory and hence, we do not think that the same can be rejected only because the actual transaction was not recorded by this witness Sanjay Sisodiya (PW 7) in his books. Digras is a taluqa place and looking to the practices in the villages and taluqas where such transactions are carried out and strictly no accounts are maintained, we are not prepared to reject the sworn testimony of this witness who has nothing to do with the accused nor has any enmity with him. This witness Sanjay Sisodiya (PW-7) is a businessman and would not have otherwise

identified the appellant/accused as a person selling the silver articles to him which articles were identified by Sheshrao.

12. Looking to the entire evidence discussed as above, we are of the firm opinion that Narayan (PW-2) has stood the test of cross-examination and as such, his evidence alone for the theory of last seen, even without any other corroboration, is enough to bring home the guilt of the appellant/accused. However, there is additional evidence in the form of recovery of articles/silver ornaments. The submission made by the learned Counsel for the appellant that Sheshrao (PW-1) has no capacity to purchase the silver articles and that a small girl of 9 years would not wear so many silver ornaments weighing about 60 tolas does not appeal to us since there is no cross-examination on that aspect by the defence to the witness. The ornaments were identified by the witness and at any rate, as earlier held by us, the said evidence is in the nature of corroborative piece of evidence to the evidence of Narayan (PW-2). We have no hesitation to accept the evidence of Narayan (PW-2) as the evidence on last seen theory and the evidence of recovery of articles corroborating the evidence of Narayan (PW-2).

13. In the result, we find no merit in the present appeal. Hence, the appeal is dismissed. Fees payable to Mr. R.R. Shrivastava, learned Counsel who is appointed to appear for the appellant are quantified at Rs. 3,500/-.