

(2015) 07 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 70 of 1994

State of Maharashtra

APPELLANT

Vs

Sadashiv Dhondiram Patil

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 294
Evidence Act, 1872 — Section 106, 25
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2015) ALLMR(Cri) 3786 : (2015) 3 BomCR(Cri) 305

Hon'ble Judges : V.K. Tahilramani, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : F.R. Shaikh, A.P.P., for the Appellant; S.A. Ingawale, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Shalini Phansalkar Joshi, J.—By this Appeal, the State is challenging the Judgment of the Additional Sessions Judge, Kolhapur, dated 13th July, 1993 in Sessions Case No. 48 of 1991, thereby acquitting the Respondent/Accused for the offences punishable under Sections 302 and 201 of the IPC.

2. Facts, as are necessary, for deciding this Appeal may be stated as follows :--

"PW-2 Vasant Bhosale was the Police Patil of Village Takali. On 28th October, 1990, at about 9:30 pm, PW-5 Yashwant Patil came to his house and informed him that his niece Lata, the wife of the Accused, is missing and he suspects some foul play. Hence, PW-2 Bhosale visited the house of the Accused at about 10 pm, along with PW-5 Yashwant, maternal uncle of deceased Lata. At that time, the Accused, his brother Madhukar, Madhukar's wife PW-4 Lakshmi and her niece PW-3 Mangal were present in the house. PW-2 Bhosale made enquiry with him about Lata and it was informed that she has left the house since four days back. Accused further informed that his wife Lata had kept her son at her parents' house and went away after quarreling with him and he has informed about the

same to her maternal uncle PW-5 Yashwant. PW-2 Bhosale was, however, not satisfied with the answers given by the Accused. Hence, he and PW-6 Yamnappa, the Sweeper in Grampanchayat, kept watch on the house of the Accused for the whole night. However, nothing suspicious happened on that night."

3. On the next day, at about 8 am, PW-2 Bhosale and PW-6 Yamnappa again visited the house of the Accused and confronted the Accused about the missing of Lata. They also smelled some foul odour emitting from the house of Accused. Hence, PW-2 Bhosale made intense inquiry with the Accused. Thereupon, initially, Madhukar, brother of the Accused, informed that Accused has told him that he has committed the murder of Lata and buried her dead body in the house. PW-2 Bhosale then confronted the Accused about it and Accused confessed of having committed the murder of Lata on the night of 25th October, 1990 at about 01:00 Hrs. It was further confessed by the Accused that during that night, while he was beating Lata, taking suspicion of her character, Lata shouted and hence in order to close her mouth, he pressed cloth ball in her mouth, tied her mouth with towel, fell her down on the ground, pressed her neck with iron rod and killed her. Thereafter, he tied her hands with the rope, put her dead body in the gunny bag, sewed the mouth of the gunny bag and dropped the gunny bag in the pit used for storing the grains. PW-2 Bhosale verified the confession given by the Accused by removing the water tank kept on the mouth of the pit. He saw gunny bag therein containing the corpse. Therefore, he took the Accused and his brother Madhukar to the Kurundwad Police Station and lodged complaint (Exhibit-17) against the Accused.

4. On this complaint, C.R. No. 67 of 1990 came to be registered against the Accused by PW-7 PSI Mane. Then, along with the Accused, PW-7 PSI Mane visited the house of Accused and with the help of two villagers and Panch, he took out the gunny bag containing the corpse from the pit. The said corpse was identified as of Lata. PW-7 PSI Mane then made Inquest Panchanama (Exhibit-8). As the corpse was in a highly decomposed condition, PW-8 Dr. Shashikant Powar, the Medical Officer from Rural Hospital at Dattawad, was called there. He conducted the autopsy on the spot and found the cause of the death as "asphyxia due to strangulation". Accordingly, he issued Postmortem Report (Exhibit-33). The Accused was then arrested under Panchanama (Exhibit-11).

5. During custodial interrogation of the Accused, he expressed his willingness to produce the iron rod used in the commission of the offence, which he has concealed in his house. The said statement was reduced to Memorandum Panchanama (Exhibit-15) in the presence of the Panch PW-1 Yashwant Chavan. Thereafter, Accused guided the Police and Panchas to his house and produced the iron rod, which came to be seized under Panchanama (Exhibit-14). After recording the statements of relevant witnesses and on completion of investigation, PW-7 PSI Mane filed Charge-Sheet in the Court against the Accused.

6. On committal of the case to the Sessions Court, the Trial Court framed charge

against the Accused vide Exhibit-2. The Accused pleaded not guilty and claimed trial, raising the plea of false implication and that of alibi.

7. In support of its case, Prosecution examined eight witnesses and on appreciation of their evidence, the Trial Court was pleased to acquit the Accused, finding that though the evidence on record proves the homicidal death of the deceased and also the motive on the part of the Accused to commit her murder, other circumstantial evidence is not of a clinching and unerring tendency, leading to no other hypothesis except that of the guilt of the Accused. In this respect, the Trial Court mainly disbelieved the extra-judicial confession of the Accused made before the Police Patil PW-2 Bhosle and PW-4 Lakshmi on the ground that it is hit by Section 25 of the Evidence Act. The Trial Court also, to some extent, accepted the plea of alibi put up by the Accused, in the absence of any evidence brought by the Prosecution to prove that the deceased was last seen in the company of the Accused. In the light of these findings, the Trial Court gave the benefit of doubt to the Accused.

8. This Judgment of the Trial Court is being challenged in this Appeal by learned A.P.P. for the Appellant-State, whereas, supported by learned Counsel for the Respondent/Accused.

9. Admittedly, this case is based on circumstantial evidence alone. The circumstances on which the Prosecution is placing reliance are as follows :--

"(i). The homicidal death of Lata, wife of Accused.

(ii). Motive.

(iii). The extra-judicial confession made by the Accused before PW-2 Bhosale and PW-4 Lakshmi.

(iv). Recovery of Lata's dead body from the pit in the house of the Accused."

10. In Trial Court and in this Appeal also, the factum of homicidal death of Lata is not disputed and otherwise also, it is established by the Prosecution beyond reasonable doubt by producing the Inquest Panchanama (Exhibit-8) and leading the evidence of PW-8 Dr. Shashikant Powar, who has conducted the postmortem on the spot, after dead body was removed from the pit. He has found following external injuries:--

"(i) Bruises mark from anteriorly centre to the laterally just below temporal process on both side.

(ii) Inferior fracture of thyroid cartilage, fracture of hyoid bone on right side."

11. According to him, these injuries were ante-mortem in nature and the cause of the death was, "asphyxia due to strangulation". The Postmortem Report issued by him vide Exhibit-33 is admitted in evidence by the Defence under Section 294 of the Cr.P.C. and his cross-examination is declined by the Defence. Even

otherwise also, the very fact that the dead body was found in hung style in the gunny bag kept in the pit, is more than sufficient to prove the nature of the death as homicidal.

Motive

12. As regards the motive, the Trial Court has held it to be proved in view of the evidence on record, which consists of the testimony of her maternal uncle PW-5 Yashwant. It is deposed by PW-5 Yashwant that Lata was having one son from the Accused and thereafter she was pregnant of six months at the time of her death. Accused was not doing any work and used to quarrel with Lata. He was not even providing grains or meals to her and Lata has to borrow it from him. As per his evidence, just few days before the incident, he was called to intervene in the quarrel between Lata and Accused. Accused was making allegations against Lata that she had illicit relations with other persons. In his cross-examination, it is also brought on record that Lata has told him that Accused was saying that she was a woman of bad character and on that count, the Accused has picked up quarrel with her.

13. In view of this unchallenged evidence on record, the Trial Court, in our considered opinion, has rightly held that the Prosecution has succeeded in proving this circumstance.

14. The main plank of the Prosecution case to implicate the Accused is that of the extra-judicial confession made by Accused before PW-2 Bhosale and PW-4 Lakshmi.

15. Evidence of PW-2 Bhosale reveals that when PW-5 Yashwant came to him, to make enquiry of Lata, along with PW-6 Yamanna, the Sweeper of Grampanchayat, he went to the house of the Accused and made enquiry about Lata. However, he was informed by the Accused, his brother Madhukar and PW-4 Lakshmi, who were present in the house, that Lata had gone to the house of her parents, after quarrel with the Accused. As PW-2 Bhosale was not convinced about this explanation, he and PW-6 Yamanna kept watch on the house of the Accused on that night. There is evidence to that effect of PW-6 Yamanna also. Nothing suspicious happened on that night. Therefore, on the next day, in the morning itself, both of them again visited the house of the Accused. As per their evidence, Accused and his brother Madhukar were present in the house. PW-2 Bhosale smelled the foul odour emitting from the pit in the third room of the house of the Accused. Hence, further intensive inquiry was made with Madhukar and Accused and then it was informed by Madhukar that Accused has confessed before him of killing Lata. Accused also confessed before this witness that he has killed Lata and kept her dead body in the gunny bag in the pit in the house. PW-2 Bhosale verified the said fact and then took Accused and Madhukar to Police Station and lodged the report (Exhibit-17). In the complaint (Exhibit-17), the entire confession of the Accused, as given by him, is reproduced.

16. There is corroborating evidence of PW-4 Lakshmi, the wife of Madhukar.

According to her, Lata was missing from the house and she has also smelled the bad odor in the house. She thought that it might be of dead rat. However, on the next day, when PW-2 Bhosale came, it was revealed that the said bad odor was of the dead body of Lata, which was kept in the gunny bag in the pit. No doubt, this witness has not completely supported the Prosecution case, as she has denied that Accused was present in the house at the time of incident. According to her, when she had gone out, Accused was not in the house. However, after she was permitted to be cross-examined by A.P.P., she has admitted that on 29th October, 1990, Police has recorded her statement as per her version. She has further admitted that when Police Patil PW-2 Bhosale again visited on the next day morning, at about 8 am, and enquired about Lata, at that time, Accused stated to PW-2 Bhosale in her presence as to how he has committed the murder of Lata and further informed that he dropped the corpse of Lata into the pit used for storing grains. She has further admitted that, thereafter PW-2 Bhosale, her husband Madhukar and Accused went to the Police Station. In her cross-examination by learned Counsel for the Accused also, she has admitted that when PW-2 Bhosale visited in the morning, bad odor was coming from her house. Hence, Police Patil PW-2 Bhosale searched the whole house, including the pit used for storing grain, from where the bad odor was coming. Police Patil PW-2 Bhosale even removed the water tank, which was kept on the pit.

17. Thus, PW-4 Lakshmi fully corroborates the evidence of PW-2 Bhosale, not only about the visit of Police Patil to her house, but also about the confession made by the Accused relating to committing the murder of Lata and dropping her corpse in the pit. She is also corroborating the evidence that the corpse was recovered from the pit in the third room of their house.

18. There is absolutely no reason to disbelieve either the evidence of Police Patil PW-2 Bhosale, who is totally an independent person, and also the evidence of PW-4 Lakshmi, who is the wife of the brother of the Accused. None of them had any reason to depose falsely against the Accused. For that matter, PW-3 Mangal, the niece of PW-4 Lakshmi, who is also, to some extent, declared hostile, has admitted in her cross-examination, that when Police Patil PW-2 Bhosale came to her house on the next day morning, PW-4 Lakshmi, her husband Madhukar and Accused were present and Police Patil PW-2 Bhosale took them to the Police Station. Thus, the fact that the dead body was recovered from the house of the Accused and the extra-judicial confession was made by the Accused before these two witnesses about having committed the murder of Lata, in our considered opinion, stands proved on record.

19. The Trial Court has not placed reliance on his evidence relating to extra-judicial confession, only on the ground that PW-2 Bhosale, being a Police Patil, the confession made to him is hit by the provisions of Section 25 of the Evidence Act. Moreover, as the said confession was made to PW-4 Lakshmi also in the presence of Police Patil PW-2 Bhosale, the Trial Court has applied the same reason to make it inadmissible in evidence.

20. However, the law relating to the status of the Police Patil, "whether he is a Police Officer within the meaning of Section 25 of the Evidence Act or not", is now fairly well crystallized by the Full Bench decision of this Court in Rajeshwar S/o. Hiranman Mohurle v. State of Maharashtra, 2009 ALL MR (Cri) 1926, wherein, after discussing the various decisions of the Supreme Court and our own High Court and after going through the provisions of Bombay Village Panchayat Act as well as Criminal Procedure Code, it was categorically held that,

"It is clear that the Police Patil of the village has no power to file a report under Section 173 of the Criminal Procedure Code and, therefore, is not a Police Officer within the meaning of Section 25 of the Evidence Act. Hence, extra-judicial confession made by Accused before him is relevant and would be admissible."

21. In Para 21 of the Judgment, it was further held that,

"We are unable to contribute to the view that Police Patil is a Police Officer in law for all intent and purpose and confession before him would attract the bar contemplated under Section 25 of the Indian Evidence Act, 1872. We are of the considered view that the Police Patil appointed under the Maharashtra Village Police Act, 1967 is not a "Police Officer" for the purposes of Section 25 of the Indian Evidence Act, 1872."

22. In view of this settled legal position, the extra-judicial confession made by Accused before Police Patil PW-2 Bhosale in the presence of PW-4 Lakshmi becomes very much admissible and relevant in the evidence, as no bar under Section 25 of the Indian Evidence Act is attracted to the same.

23. Whether the conviction can be based on extra-judicial confession, the law relating thereto is also well settled. In 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 , it was held by the Division Bench of Supreme Court that,

"Despite the inherent weakness of an extra-judicial confession as a piece of evidence, the same cannot be ignored, if it is otherwise shown to be voluntary and truthful."

It was further held that, "extra-judicial confession cannot always be termed as tainted evidence and that corroboration of such evidence is required only as a measure of abundant caution. If the Court found the witness to whom the confession was made to be trustworthy and that the confession was found to be true and voluntary, a conviction can be founded on such evidence alone."

More importantly, the Apex Court declared that, "Courts cannot start with the presumption that extra-judicial confession is always suspect or weak type of evidence, but it would depend on the nature of the circumstances, the time when confession is made and the credibility of the witnesses, who speak about such confession and whether the confession is voluntary and truthful. It is eventually the satisfaction of the Court."

24. This legal proposition is confirmed by the Apex Court in the latter decision of *R. Kuppasamy Vs. State Rep. by Inspector of Police, Ambeiligai*, (2013) 3 AD 51 : AIR 2013 SC 3608 : (2013) CriLJ 1513 : (2013) 1 Crimes 286 : (2013) 2 JCC 1040 : (2013) 3 JT 85 : (2013) 2 RCR(Criminal) 326 : (2013) 2 SCALE 639 : (2013) 3 SCC 322 : (2013) AIRSCW 1293 : (2013) 1 Supreme 741 also.

25. Here in the case, as stated above, the circumstances in which the confession is made by the Accused are that Police Patil again confronted him on the next day about missing of Lata, that too after noticing foul odour, which was emitting from his very house and then took search about the same. Hence, Accused was caught in a peculiar situation having no option, but to confess the true facts. The persons before whom the confession is made are the Police Patil PW-2 Bhosale, an independent person, and PW-4 Lakshmi, his family member, who have no reason to implicate him falsely. Most importantly, in pursuance of the confession, the dead body was recovered, tied in gunny bag with strangulation and kept in the pit used for storing grains in the very house of the Accused. Therefore, the contents of the extra-judicial confession are also borne out to be true from the recovery of the dead body. In such situation, in our considered opinion, there is absolutely no reason not to rely upon this confession for conviction of the Accused. It is also not a sole piece of circumstantial evidence, but it is corroborated by other circumstances, like, the recovery of dead body, the homicidal death and the motive on the part of the Accused.

26. As regards the plea of alibi raised by the Accused, the burden to prove it on the test of preponderance of probabilities lies on the Accused. However, the Accused, except for raising that defence, has not lead any evidence to probablize the said plea. When the dead body of the deceased was found very much in the house of the Accused, then, under Section 106 of the Indian Evidence Act, the burden shifts on the Accused to explain the circumstances under which such dead body was found. When an offence takes place inside the privacy of the house, where the assailants have all the opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the Prosecution to lead evidence to establish the guilt of the Accused, if the strict principle of circumstantial evidence is insisted by the Court.

27. As held by the Apex Court 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 ,

"Where an offence like murder is committed in secrecy, inside a house, the initial burden to establish the case would undoubtedly be upon the Prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree, as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The

inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely on the Prosecution and there is no duty at all on an Accused to offer any explanation."

28. When Accused, as in the present case, was the husband of the deceased and has failed to produce any evidence to probablize his plea of alibi, then he is under an obligation to give plausible explanation about Lata's death. Accused has, however, not offered any explanation for the same. It constitutes one more connecting link in the chain of circumstances proved by the Prosecution.

29. In our considered opinion, the Trial Court has committed an error in holding that, as his brother Madhukar was also in the house, the circumstances cannot lead to only one hypothesis proving the guilt of the Accused alone, because, in the first place, there was absolutely no motive alleged against Madhukar to commit murder of Lata. Secondly, as admitted by the prosecution witnesses, both, Madhukar and Accused were residing separately and there is nothing on record to show that Lata was sleeping in the house of Madhukar on that night. In our considered opinion, therefore, the evidence on record unerringly point to the guilt of the Accused and Accused alone for the murder of his wife Lata.

30. In this respect, we are aware that this being an Appeal against acquittal, the interference by the Appellate Court in finding arrived at by the Trial Court should be slow. However, at the same time, it is open to this Court to reappraise the evidence and interfere in the conclusions drawn by the Trial Court, if the approach adopted by the Trial Court in appreciation of the evidence is vitiated by some manifest illegality and the conclusion recorded by the Trial Court is such which could not have been possibly arrived at, on the basis of the law, as prevailing, and in that sense, can be characterized as perverse.

31. Here in the case, while arriving at the finding of the acquittal, the Trial Court has ignored the material piece of evidence, i.e. extra-judicial confession of the Accused, only on the ground that it is hit by the provisions of Section 25 of the Evidence Act, as Trial Court held that Police Patil PW-2 Bhosale is a Police Person, which is not the legal position. Therefore, if the legal position was appreciated properly, then the Trial Court would not have arrived at the conclusion of acquittal of the Accused.

32. The Trial Court has also not considered the vital admissions given by PW-4 Lakshmi in respect of the entire incident as such. The Trial Court has excluded her evidence from consideration, as she was declared hostile. However, as per the settled position of law, the evidence of hostile witness does not get wiped out from record, but the Court has to consider and rely upon that portion of his testimony, which is in consonance and consistent with the Prosecution case. The maxim "falsus in uno, falsus in omnibus" is not applicable in our Jurisprudence. In our considered opinion, therefore, as the finding of acquittal arrived at by the Trial Court is perverse in the sense, as understood in law, to mean "against the

weight of evidence", the said finding is liable to be quashed and set aside.

33. Consequently, the Appeal is allowed. The acquittal of the Respondent/Accused for the offences punishable under Sections 302 and 201 of the IPC, is set aside.

34. The Respondent/Accused is convicted for the offence punishable under Section 302 of the IPC and sentenced to suffer R.I. for life and to pay fine of Rs. 5,000/-, in default to suffer R.I. for one year.

35. Respondent/Accused is further convicted for the offence punishable under Section 201 of the IPC and sentenced to suffer R.I. for three years and to pay fine of Rs. 1,000/-, in default to suffer R.I. for six months.

36. Both the substantive sentences of imprisonment to run concurrently.

37. The Respondent/Accused is entitled to set off for the period already undergone in Jail.

38. The Bail Bonds of the Respondent/Accused stand cancelled and he is to surrender to his bail within four weeks.