

(1998) 07 BOM CK 0070
In the Bombay High Court
Case No : Criminal Appeal No. 358 of 1985

State of Maharashtra

APPELLANT

Vs

Vilas Pandurang Patil

RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Evidence Act, 1872 — Section 25
Penal Code, 1860 (IPC) — Section 302, 404

Citation : (1999) CriLJ 1062

Hon'ble Judges : Vishnu Sahai, J;T.K. Chandra Sekhara Das, J

Bench : Division Bench

Advocate : S.R. Borulkar, app, for the Appellant; V.R. Bhonsale and Revati Mohite-Dere, for the Respondent

Judgement

Vishnu Sahai, J.—Through this appeal, the State of Maharashtra (appellant) impugns the Judgment and order dated 15-12-1984 passed by the Additional Sessions Judge, Sangli in Sessions Case No. 26 of 1984 acquitting the respondent for offences punishable under Sections 302, IPC and 404 IPC. Since this appeal was beyond time by 76 days, Criminal Application No. 847 of 1985 was moved by the State of Maharashtra for condonation of delay. On the said application, a Division Bench of this Court issued Rule. After hearing learned counsel for the parties, we are satisfied that sufficient cause for explaining the delay in preferring an appeal has been shown and consequently we make the Rule absolute.

2. In short, the prosecution case runs as under :-

The deceased Suman was the first wife of the respondent. Since the relations between her and the respondent were strained and she did not have good relations with her in-laws she started living separately from the respondent, along with her 3 daughters Suvarna PW 3, Vanita PW4 and Vaishali and son Vijay, in her house in village Khujgaon in District Sangli. In the said village in another

house, the respondent along with his second wife Sushila, his parents and three brothers lived.

On 17-9-1983, the respondent came to Suman's house. At about 11 a.m. a quarrel between him and Suman took place. The same was seen by Vanita PW 4. Thereafter at about 3 p.m. the same day, Suman went along with the respondent, who was having a sickle and a rope, to bring fodder, In the evening. The respondent returned along with the house and told Vanita that she had gone to Nagaon-Kavathe. The same evening at about 8 p.m. the respondent went to the house of one Yeshwant Pandurang Jadhav PW 6 and confessed to him that he had murdered his wife. About 5 1/2 hours later i.e. sometimes between 1 to 1.30 a.m. he went to the house of the police Patil, Bhagwan Vithoba Patil PW 5 and also confessed before him that he murdered his wife and thrown her corpse in well Both Yeshwant Jadhav and Bhagwan Patil said to have asked the respondent to report the matter to the police. In the morning Bhagwan Patil along with village Kotwal and some others went to the well situated in the field of Bhimrao Kadam and found the corpse of Suman floating on the water, inside it. He asked the village Kotwal to guard it and himself proceeded to police station Tasgaon with the respondent.

3. It is said that on 18-9-1983 at about 10.30 a.m. the respondent went to Tasgaon police station and gave information that his wife Suman accidentally died and her corpse was floating in the well situated in the land of one Bhimrao Kadam. On the said report (Exhibit 29) a case of accidental death was registered.

4. Pursuant to the report of accidental death, lodged by the respondent, the police of police station Tasgaon along with public panchas, same day, went to the well of Bhimrao Kadam and recovered therefrom the corpse of Suman in the presence of the respondent. The said corpse-was sent for autopsy which was conducted by Dr. Bhalchandra Honap PW 7 the next day. Dr. Honap found on it, contused lacerated wounds, all situated on the head region. He also found dislocation of left and right knees. On internal examination, he found fractures of the parietal and frontal bones. He opined that these injuries were ante-mortem and were sufficient in the ordinary course of nature to cause death.

5. During the course of investigation, on 20-9-1983, the respondent expressed willingness before PS I Vilas Jadhav PW 10 to point out the place of the occurrence. Accordingly, two panchas, one of them being Manohar Kamble PW 1, were called. This willingness of the respondent was recorded in the panchanama Exhibit 15. Thereafter, the respondent along with PSI Vilas Jadhav, police personnel and public panchas went to the field of Bhimrao Kadam in village Khujgaon; pointed out the place where blood was sprinkled and leaves, stone, and earth which were found having blood stains. Their samples were taken into custody and sealed. Near the said place, broken pieces of bangles, dried leaves of jowar and another stone having blood stains were found. All these articles were seized under a panchanama. Therefore, the respondent took PSI Vilas Jadhav and others to his house opened the locked door of his house with a key

and took out a mangalsutra from the wooden plank. This recovery of mangalsutra was also made under a panchanama.

6. During the course of the investigation, on 20-9-1983, clippings of the nails of the respondent were taken into possession under a panchanama. They were stained with blood. On 23-9-1983, the sample of the blood of the respondent was taken by the Medical Officer, Tasgaon. On 3-10-1983 the recovered property, including the clippings of the nails of the respondents and the sample of the blood of the respondent, were sent to the Chemical Analyst. A perusal of the report of the Chemical Analyst shows that on the clippings of nail, blood of a A group was found by the Chemical Analyst, who also found blood of the said group on all the clothes of the deceased and the articles recovered from the place of the incident. The Chemical Analyst found that the blood group of the respondent was "B".

After completing the investigation, PSI Vilas Jadhav P W 10, on 20-4-1984, submitted the charge sheet against the respondent.

7. The case was committed to the Court of Sessions in the usual manner, where charges u/s 302 and 404 IPC were framed against the respondent to which he pleaded not guilty and claimed to be tried. His defence was that of denial. During trial, in all the prosecution examined 10 witnesses. We may straightway mention that there is no eye-witness of the incident and the case rests on circumstantial evidence. The prosecution through its witnesses pressed into service five circumstances against the respondent namely :-

1. Motive
2. Conduct of the respondent immediately before and after the incident;
3. Extra judicial confessions;
4. Discovery of blood stained articles and mangalsutra on the pointing out of the respondent and
5. Finding of the blood in the nail cuttings of the respondent.

The learned trial Judge after analysing each of the said circumstances held that the evidence against the respondent was insufficient and acquitted the respondent.

Hence, this appeal accompanied by Criminal Application No. 847 of 1985 preferred by the State of Maharashtra seeking condonation of 76 days delay in the filing of the appeal.

8. We have heard learned counsel for the parties. We have also perused the depositions of the prosecution witnesses; the material Exhibits tendered and proved by the prosecution; the statement of the respondent recorded u/s 313 Cr. P.C., and the impugned Judgment. We are constrained to observe that the impugned Judgment of acquittal is perverse and warrants to be reversed.

In reaching our conclusion, we have borne in mind that interference by the Appellate Court in an appeal against acquittal is only called for if the appreciation of evidence is either grossly unreasonable or perverse or the impugned order of acquittal is vitiated by any illegality which has resulted in failure of justice.

We have also kept in mind the caution given by the Supreme Court in para 9 of the referred case of Sanwat Singh and Others Vs. State of Rajasthan, where the Supreme Court has observed that an Appellate Court in an appeal against acquittal has the power:

to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the Court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its Judgment, which lead it to hold that the acquittal was not justified.

9. We make no bones in observing that the impugned order of acquittal is vitiated by a perverse appreciation of evidence as also an approach contrary to law of the evaluation of the circumstantial evidence.

The illegality committed by the learned trial Judge is that he has examined the circumstances adduced by the prosecution from the perspective whether independently they lead to the inference of the guilt of the respondent and are sufficient to sustain his conviction. We wish to emphasise that this is not what the law of circumstantial evidence requires. It requires:-

- (a) the circumstances should be firmly established;
- (b) Cumulatively they should unerringly point out to the guilt of the accused;
- (c) they should wholly be inconsistent with the inference of the innocence of the accused;
- (d) they should be incapable of being explained on any other reasonable hypothesis excepting the guilt of the accused.

9A. We wish to emphasise that in case of circumstantial evidence, it has to be seen whether the circumstances in totality and not in isolation, lead to the inference of the guilt of the accused. If in totality, they lead to such an inference then, it is of no consequence that independently they do not establish his guilt. In our experience, in cases of circumstantial evidence, it is extremely rare that on a solitary circumstances, the Court finds that the burden of proof required to be discharged by the prosecution, in a case resting on circumstantial evidence has been discharged.

10. As mentioned earlier, the prosecution has adduced five circumstances to bring home the guilt of the respondent, they being :-

1. Motive

2. Conduct of the respondent immediately before and after the incident;
3. Extra judicial confessions;
4. Discovery of blood stained articles and mangalsutra on the pointing out of the respondent, and
5. Finding of the blood in the nail cuttings of the respondent.

In our view, the learned trial Judge erred in rejecting each one of them. We independently take up each of the circumstances, and the reasons assigned by the learned trial Judge for rejecting them.

11. We begin with the motive. The motive alleged by the prosecution was that there were quarrels between the respondent and Suman and this resulted in her staying separately with her children, in a house in village Khujgaon and the respondent in another house in the said village with his second wife Sushila, his parents and three brothers. To prove this circumstance, the prosecution led the evidence of two daughters of the respondent and Suman namely Suvarna Vilas Patil PW 3 aged 14 years and Vanita Vilas Patil PW 4 aged 10 years. The evidence of Suvarna is that there used to be quarrels between the respondent and Suman on the ground that the former was not giving money to the latter for sustenance. The evidence of the latter is that on the date of the incident at about 11 a.m. there was a quarrel between the respondent and Suman. It is true that the latter was a child witness but, her statement unequivocally shows that she was possessed of sufficient understanding, it should be borne in mind that both Suvarna and Vanita were daughters of the respondent and therefore would not have falsely deposed. The learned trial Judge in paras 12 and 13 of the impugned Judgment has not paid heed to the circumstance of motive on the ground that there was no strong immediate motive for the respondent to have committed the murder of Suman. We regret that we do not subscribe to his finding. As seen above, Vanita had in no uncertain terms stated that at 11 a.m. on the date of the incident, a quarrel had taken place between the respondent and Suman. The learned trial Judge took the view that there is nothing to indicate that the enormity of the quarrel was such, which would have prompted the respondent to have murdered Suman. We again regret that we are not able to subscribe to his finding. In our view, the prosecution has brought home the circumstance of motive.

12. We now take up the second circumstance namely the immediate conduct of the respondent before and after the occurrence. The learned trial Judge has dealt with it in para 14 of the impugned Judgment. This circumstance was proved by the prosecution through the evidence of Vanita who stated that on the date of the incident at about 3 p.m. the respondent and Suman left together and the latter told her that she was going to get the fodder. At that time, the respondent had a sickle and a rope. Thereafter, the same evening, the respondent came and informed her that Suman had gone to Nagaon-Kavathe whereas the fact was, as is borne out from the extra judicial confession made by the respondent to

Yeshwant Jadhav PW 6, that he had already murdered Suman. The learned trial Judge rejected the circumstance of the respondent and Suman going together at 3 p.m. on the ground that in her statement recorded u/s 161 Cr. P.C., Vanita did not state this. We find that the question put to Vanita in cross-examination was, whether she had stated in her statement u/s 161, Cr. P.C. that the respondent after taking meals at 3 p.m. had gone to the land for cultivation and to that, she replied No. No question was put to Vanita in cross-examination that she had not stated that the respondent and Suman had left together at about 3 p.m. for getting fodder. In our view, the said circumstance, which is a very clinching circumstance, is established and the reasons given by the learned trial Judge in para 14 of the impugned Judgment are frivolous.

13. We take up the third circumstance namely the extra judicial confessions made by the respondent to the police Patil Bhagwan Vithoba Patil PW 5 and Yeshwant Pandurang Jadhav PW 6. In para 15 of the impugned Judgment, the learned trial Judge has given his reasons for rejecting the said evidence. He has rejected the extra-judicial confession made by the respondent to Bhagwan Vithoba Patil on the ground that being a Police Patil, he was a Police Officer and such confession would be hit by Section 25 of the Indian Evidence Act which makes a confession to a Police Officer inadmissible in evidence. In this connection the learned trial Judge has placed reliance on ILR (1893) Bom 425 wherein it has been held that a Police Patil is a Police Officer within the terms of Section 25 of the Evidence Act.

The learned Judge has rejected the confession made to Yeshwant Pandurang Jadhav PW 6 on the ground that there was nothing to indicate that he was a confidant of the respondent and hence it was improbable that the respondent would candidly admit his guilt to him. In our view, the learned trial Judge was in an error in rejecting the extra-judicial confession made by the respondent to Yeshwant Pandurang Jadhav PW 6. A perusal of his statement shows that although he was not a friend of the respondent and was not on visiting terms with him, but he and the respondent had been classmates in childhood and his house was situated near that of the respondent. It was probable that on account of the said circumstance, the respondent made the extra judicial confession to him. Often, when a person is placed in a grim situation, like the one in which the respondent must have been having committed the murder of his wife Suman, his action is not always in conformity with logic. He becomes desperate to seek help. In our view, the respondent must have been in such a mental state and therefore we find nothing improbable in his making a extra-judicial confession to Yeshwant.

It is apparent from a perusal of para 15 of the impugned Judgment that the learned trial Judge laboured, under a fallacy that the extra-judicial confession by itself, is not considered sufficient to base a conviction. We regret that his conclusion is untenable-in-law. The Supreme Court in the case reported in Vinayak Shivajirao Pol Vs. The State of Maharashtra, , made a reference to and relied upon its earlier decision in the case of Piara Singh and Others Vs. State of

Punjab, wherein it was laid down that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated and where such confession was proved by an independent witness who was a responsible officer and who bore no animus against the accused, there was hardly any justification to disbelieve the same. The said ratio squarely applies to the facts of this case. It should be borne in mind that Yeshwant Pandurang Jadhav PW 6 is a wholly independent witness who bore no animus or grudge against the respondent. We have been able to find no infirmity in his evidence. In our view, the extra-judicial confession made by the respondent to Yeshwant Pandurang Jadhav PW 6 is a very strong piece of evidence against him and the learned trial Judge erred in not placing reliance upon it.

14. We now take up the circumstance that in the presence of public panch Manohar Shravana Kamble PW 1 the blood-stained articles and mangalsutra were recovered on the pointing out of the respondent. The evidence of this witness and that of PSI Vilas Sakharam Jadhav PW 10 shows that the respondent took them to the field of Kadam and pointed out to a place where blood was found sprinkled on leaves, stones and earth and also to places nearby where there was some blood on jowar leaves and broken pieces of glass bangles were lying. These articles were taken into possession under a panchanama. Thereafter, the respondent took them to his house which was locked, opened the lock with a key he was possessing and from the wooden plank took out the mangalsutra. The mangalsutra was also recovered under a panchanama. The learned trial Judge in para 16 of the impugned Judgment has considered these pieces of circumstantial evidence. He did not give any heed to the circumstance of the respondent pointing out to the place of the incident etc on the ground that it did not show that he must have killed his wife on that spot. We regret that we cannot agree with him. In isolation, this circumstance may not be sufficient to return such a conclusion but coupled with other circumstances, it would certainly be an incriminating circumstance against the respondent.

We also feel that the learned trial Judge committed an error in not placing reliance on the circumstance of recovery of mangalsutra on the pointing out of the respondent for the reasons stated by him in para 16 of the impugned Judgment namely that the prosecution had failed to establish that Suman was putting on mangalsutra when she died and the identity of the mangal sutra has not been established. In this connection, it would be pertinent to refer to the statement of the respondent recorded u/s 313 Cr. P.C. and the answer given by him to Question No. 21 wherein he admitted that the recovered mangalsutra belonged to his wife. In his said statement, the respondent has not stated how he came in possession of it. In our view, the said recovery also incriminates him of course it would have been better had the prosecution led the evidence to show that Suman was putting on mangalsutra at about 3 p.m. on the date of the incident when she went along with the respondent for collecting fodder.

15. We now come to the last circumstance namely presence of "A" group of

blood on the nail clipping of the respondent. This circumstance becomes important because, the blood of the respondent was of "B" group and the recoveries made from the place of the incident like bloodstained earth, pieces of stones etc, as also the clothes of the deceased bore "A" group. This obviously means that while trying to assault the deceased blood of "A" -group fell on the nail clippings of the respondent. The learned trial Judge in para 17 of the impugned Judgment has not placed any reliance on this circumstance. In his view, the blood of "A" group may have fallen on the nails of the respondent while he was taking out the corpse of the deceased from the well, as stated by him in his statement u/s 313, Cr. P.C. We feel that the learned trial Judge was in an error in rejecting this circumstance because, apart from the statement of the respondent recorded u/s 313, Cr. P.C. made by him at the fag end of the trial, there is no other evidence on record to show that he had taken out the corpse of the deceased from the well.

16. In our view, the five circumstances referred to above have been squarely proved by the prosecution. They unerringly lead to the inference that the respondent committed the murder of the deceased Suman and dishonestly took into his possession the mangalsutra which she was putting on when she was murdered. We feel that the said circumstances are wholly incompatible with the inference of the innocence of the respondent and are incapable of being explained on any other reasonable hypothesis excepting that of his guilt. In our Judgment, on their basis, it can safely be concluded that the respondent is guilty of having committed offences punishable under Sections 302, IPC and 404, IPC.

For the reasons mentioned above, we find no merit in Ms. Bhonsale's emphatic contention that the reasons given by the learned trial Judge for rejecting the said circumstances cannot be faulted as either perverse or grossly unreasonable and the view of acquittal was a possible view.

17. This only leaves us with the question of sentence. In our view, considering the over all circumstances and bearing in mind that the incident took place nearly 15 years ago, and there is nothing to indicate that the respondent has any adverse criminal antecedents, a sentence of R.I. for life for the offence u/s 302, IPC and of two years R.I. for that u/s 404, IPC would meet the ends of justice.

18. Before proceeding to the operative part of the Judgment, we would like to point out that circumstance (2), on page 11 of this Judgment, should have been broken in two separate circumstances by the learned trial Judge, namely :-

(i) the deceased and the respondent were last seen together on the date of the incident at 3 p.m. by Vanita; and

(ii) conduct of the respondent after murdering the deceased.

19. In the result:-

(A) Criminal Application No. 847 of 1985 is allowed. Rule is made absolute.

(B) Criminal Appeal No. 358 of 1985 is allowed. The impugned Judgment acquitting the respondent Vilas Pandurang Patil for offences under Sections 302, IPC and 404 IPC is set aside. He is found guilty for the said offences and is sentenced to undergo R.I. for life for the former offence and to two years R.I. for the latter. The two sentences shall run concurrently.

The respondent Vilas Pandurang Patil is on bail. He shall be taken into custody forthwith to serve out his sentences.

Before parting with the Judgment, we would like to place on record our appreciation for the assistance rendered to us by the learned counsel for the parties in the disposal of this appeal. In spite of the fact that the impugned Judgment was impossible to defend, Ms. V. R. Bhonsale left no stone unturned to convince us that it did not warrant any interference.

In case an application is made by the learned counsel for the parties for a certified copy of this Judgment, the same shall be issued within a period of four weeks from today on payment of necessary charges.