

(2022) 11 BOM CK 0051
In the Bombay High Court
Case No : Criminal Appeal No. 637 Of 2015

Subhash Narayan Nath

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174, 374
Indian Penal Code, 1860 — Section 302
Evidence Act, 1872 — Section 27

Citation : (2022) 11 BOM CK 0051

Hon'ble Judges : R. G. Avachat, J; R. M. Joshi, J

Bench : Division Bench

Advocate : Y. S. Thorat, R. B. Bagul

Final Decision : Dismissed

Judgement

R. M. Joshi, J

1. By this appeal under Section 374 of the Code of Criminal Procedure, appellant-accused is challenging judgment and order dated 10th June, 2015, passed by the Additional Sessions Judge, Amalner in Sessions Case No. 30/2012 whereby he is convicted for the offence punishable under Section 302 of the Indian Penal Code.

2. From the material on record, case of prosecution unfolds as under :-

On 22nd April, 2012, a dead body of unknown person was found in agricultural field by Nitin Patil who in turn, informed about the same to Bapurao More, Police Patil, who went to Marwad police station and intimated to the police fact about finding of dead body of unknown male with underpant and baniyan on his person. A.D. was registered under Section 174 of the Code of Criminal Procedure. On the basis of the said intimation, First Information Report was registered by Police Officer. Later on it was found that the dead body found at the above place was of Ashok Patil. It was further revealed that Vandana Patil, wife of Ashok, had lodged missing report on 21st April, 2012 stating that her husband left home on 20th

April, 2012 at 4.00 pm, stating that he is going to friend and from there, would go to work place. While leaving home he was wearing yellow shirt and black pant. The dead body was identified by Kishor, brother-in-law of the deceased. During investigation, it was revealed that accused agreed to help deceased for purchase of agricultural land. It was further revealed that deceased had taken cash of Rs. 10,000/- from the house as well as had withdrawn a sum of Rs. 75,000/- from the bank. Accused came to be apprehended by the police and he made statement under Section 27 of the Evidence Act which lead to the recovery of blood stained shirt of the deceased as well as axe which was allegedly used in assaulting the deceased. He further made statement which resulted into recovery of pant of the deceased which was thrown from the commode of a running train. In furtherance of disclosure statement, Investigating Officer seized clothes of accused and recovery of chilli powder was done from his house. It is the case of the prosecution that the assailant threw chilli powder into the eyes of deceased and thereafter assaulted and killed him and robbed the amount possessed by him. One of the witnesses, Ratnabai, who is sister-in-law of the accused made statement to police about accused coming to her house with blood stained shirt and failed to explain about the same. Another witness Sangita stated about the axe being borrowed by the accused from her and she identified the seized axe at the instance of the accused. It was also found that accused was indebted and owing money to several persons and that the robbed money was used for the discharge of the debt. On conclusion of investigation, charge-sheet came to be fled against the accused and he was put to trial.

3. Learned advocate for the appellant submitted that there is no consistent evidence on record in order to unerringly hold accused being author of assault caused on the deceased. It is submitted that in absence of establishing any motive for the appellant to kill the deceased, conviction recorded against him cannot sustain. She further submitted that recoveries allegedly done at the instance of the accused are not reliable so also evidence of Sangita about identification of axe. As far as evidence of Ratnabai (PW 10) is concerned, it is submitted that during cross-examination she has admitted about having grudge against the accused as he used to quarrel with his wife who is sister of the witness and hence her testimony is not reliable. She also drew attention of this Court to the discrepancy in colour of shirt of deceased. It is also pointed out that the blood allegedly found on seized articles cannot be connected with incident of death of deceased for want of determination of grouping thereof. It is submitted that evidence on record does not conclusively prove all circumstances pointing to the guilt of the accused. She placed reliance on the judgment of the Hon'ble Apex Court in the matter of Ravi Sharma vs. State (Government of NCT of Delhi) and another reported in (2022)8 SCC 536.

4. Learned APP supported the impugned judgment by pointing out evidence of Vandana (PW 9) who has deposed about appellant trying to help deceased for purchase of agricultural land and that missing report was lodged giving details about the clothes worn by the deceased which came to be recovered at the

instance of the appellant. He drew attention of this Court to the testimony of panch witness in whose presence, statement of accused was recorded and which lead to the recovery of blood stained axe and shirt of the deceased. As far as recovery of pant of the deceased is concerned, it is submitted that though the recovery was from railway track, it could not have been within the knowledge of the accused that such pant lies therein unless he had thrown it. Reference is made to the evidence of witness who claimed that after the incident of assault and robbing the deceased the appellant repaid the loan by using the said cash so robbed. C.A. report is referred in order to show that the seized articles were stained with human blood and in absence of any explanation by the accused said amounts to incriminating circumstance against him. It is also pointed out that there is absolutely no reason brought on record by the defence in order to falsely implicate the appellant in this crime.

5. In the instant case, crime is committed in secrecy with no witness to the incident in which deceased was killed. It is settled position of law that in case where evidence is of circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn, should be in first instance fully established and all the facts so established should be consistent only with hypothesis of guilt of the accused and so conclusive in nature that they should exclude every hypothesis but the one to be proved. That there must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with innocence of accused. Keeping in mind these principles the evidence on record is assessed.

6. Prosecution has relied upon following circumstances to bring home guilt of the accused :-

(i) Accused having agreed to help deceased in purchase of feld.

(ii) Deceased having cash of Rs.80,000/- with him and he was robbed of said amount.

(iii) Recovery of clothes of deceased, weapon of assault, clothes of accused stained with human blood at his instance.

(iv) Recovery of amounts from creditors of accused.

7. The prosecution has sought to prove these circumstances by examining in all 18 witnesses. In nut shell, the account of testimonies of these witnesses is as under :-

In order to establish homicidal death as well as the manner in which the dead body was found, reliance is placed on the testimonies of Bapurao (PW 1), Sahebrao (PW 2) and Dr. Tade (PW 12). Initially, the dead body was un-identified and evidence of identification thereof was brought through Kishor (PW 6) and Chetan (PW 7). Vandana (PW 9) testified about accused having told the deceased to help him in purchase of feld and deceased taking cost of Rs. 10,000/- from house, while leaving. She stated about giving missing report (Exhibit 48) and

identifying clothes of the deceased. Ratnabai (PW 10) who is sister-in-law of the accused deposed on oath about accused coming to her house on the date of the incident at midnight with blood stained shirt. Sangita (PW 14) claims about accused borrowing axe from her and not returning the same and the same being shown to her by police after its recovery at the instance of the accused. In order to prove that the deceased was possessing substantial cash, evidence of Yuvraj (PW 11) indicates that on that day there was withdrawal of Rs. 75,000/- by deceased.

Witnesses were examined (PW 13, 15 & 16) to whom accused paid money in discharge of debt and recovery of the said amounts, recovery of clothes of deceased, axe, clothes of accused is sought to be proved through Sahebrao (PW 2) and Dilip (PW 4).

8. Homicidal death of the deceased can be ascertained from the circumstances in which dead body is found and the opinion expressed by Medical Officer after autopsy of corpse. Evidence of Bapurao (PW 1) and Sahebrao (PW 2) coupled with Inquest Panchanama (Exhibit 16) and spot of incident (Exhibit 27) demonstrates that dead body with injuries caused by heavy and sharp object was found. Dr. Tade (PW 12), who conducted post mortem on dead body, found 3 contused lacerated wounds (CLW) and two fractures on frontal bone and those injuries were ante mortem. He further opined that cause of death of deceased is haemorrhagic shock due to head injury and other injuries. According to him, those injuries can be caused by axe (Article E). Nothing is elicited from his cross-examination to discard opinion about cause of death. There is absolutely no material on record to hold that deceased met with accidental death. All these circumstances leads to inevitable conclusion that deceased Ashok died homicidal death.

9. From the testimony of Vandana it reveals that on 20 th April, 2012, Ashok Patil (deceased) left home for his work and did not return. Hence his wife Vandana lodged missing report on

21 st April, 2012 (Exhibit 48) mentioning the said fact and referring to the clothes i.e. yellow shirt and black pant worn by him while leaving house. She specifcally deposed about accused telling her husband to help him in purchase of agricultural land. She denied the suggestion in the cross-examination that she had never seen accused before. It has further come in her evidence that while leaving house deceased took cash of Rs. 10,000/- and had withdrawn Rs.75,000/- from Bank. No doubt, in the cross-examination, it was suggested to her that her statement that her husband took Rs. 10,000/- does not appear in the statement recorded by the Investigating Officer. She however, maintained to have made such statement to police and hence it was incumbent on the part of the defence to prove the said omission through the Investigating Officer, but it failed to get it proved. In the result, there is no impediment in considering her statement about deceased carrying Rs.10,000/- from house.

10. The factum of withdrawal of Rs.75,000/- from Bank is established through evidence of Yuvraj (PW 11), Manger, Jalgaon Peoples Co-operative Bank. According to him, on 20th April, 2012, deceased had withdrawn Rs.75,000/- and withdrawal slip (Exhibit

59) is duly proved. Thus, prosecution has proved that the deceased had cash of Rs.85,000/- at the relevant time.

11. As regards evidence of Vandana that accused was helping deceased to purchase field is concerned, there seems no reason for this witness to depose falsely about the same against accused as there was no dispute between them, for his implication in this crime. Her testimony appears natural and inspires confidence.

12. Prosecution, thus by leading cogent evidence, has proved that the deceased had substantial amount of cash with him and accused was to help him in purchase of the field. Prosecution, however, cannot be called upon to prove the actual happening of incident with positive evidence in which deceased died, as it has occurred not in public view.

13. Testimony of Sahebrao (PW 2) shows that accused made disclosure statement and pursuant thereto he took police and panch witness to a place and after digging the earth, he removed shirt and axe stained with blood and earth. Said articles were seized and sealed at the spot as deposed by witnesses as well as recorded in panchanama. His cross-examination does not indicate any interestedness on his part to rope accused in the crime nor any material is brought to disbelieve his evidence.

14. According to Dilip (PW 4), clothes of accused and chilli powder were seized pursuant to statement of accused. Panchanama (Exhibit 34) shows that blood stained shirt and pant were seized and sealed. There is also evidence of recovery of pant of deceased from railway track. That recovery even if accepted to be from the railway track, the knowledge of the accused of throwing it on track from toilet of railway compartment, is exclusive. As far as argument regarding colour of shirt of the deceased is concerned, Vandana (PW 9) has given explanation about the same and in the recovery panchanama the shirt is mentioned as yellowish. Thus, there is no reason for discarding the evidence of recovery of shirt of the deceased at the instance of the accused.

15. Ratnabai (PW 10) who is sister-in-law of appellant stated on oath that in the midnight of 19th April, 2012, appellant came to her husband with blood stained shirt and he did not explain the reason for the same. In the cross examination, she admitted about having grudge against him for his quarrel with her sister. However, such grudge being common in day to day family life, can could not be termed as enmity between the parties sufficient to testify falsely against the accused. In the cross examination of this witness, except for such grievance on account of quarrel, nothing is brought to disbelieve her testimony. Considering the usual nature of grievance a relative may have with another, her testimony

does not deserve to be kept out of consideration.

16. As far as recovered axe with human blood thereon, at the instance of the accused is concerned, prosecution witnesses Sangita (PW 14) makes candid statement about said axe being taken by the accused from her, which was not returned to her. She identified the axe to be the same axe which was borrowed by the accused. Medical Officer also has opined possibility of use of the same axe in causing assault. As such there is sufficient evidence to connect the axe recovered at instance of accused, to be weapon of assault on deceased.

17. Investigating Officer deposed about sending entire muddamal to C.A. for examination and C.A. report (Exhibit 87) indicates that the axe, shirt of the deceased and shirt of accused being stained with human blood. There is no suggestion made to him about any tampering of evidence collected. Though the grouping of the blood was inconclusive, however, there is specific evidence to show that the blood found on these articles was of human origin. A fruitful reference can be made to judgment of Hon'ble Apex Court in case of Balwant Singh vs. State of Chattisgarh and another (2019) 7 Supreme Court Cases 781, wherein it is held thus :-

"---- At times it may be very difficult for serologist to detect the origin of the blood and/or its group due to disintegration of the serum, or insufficiency of bloodstains, or haematological changes, etc.--- In such situations, the court, using its judicious mind, may deny the benefit of doubt to accused depending on the facts and circumstances of each case, if other evidence of prosecution is credible and if reasonable doubt does not arise in the mind of the court about investigation ---- But non- confirmation of blood group or origin of the blood may assume importance in cases where the accused pleads a defence or alleges mala fides on the part of prosecution, or accuses the prosecution of fabricating the evidence to wrongly implicate him in the commission of crime.

In the case in hand, there is ample evidence in the form of recovery of weapon of accused, clothes of deceased and blood stained clothes of accused himself, coupled with motive to rob deceased for repayment of debts. Hence, accused cannot be extended benefit of doubt of inconclusiveness of grouping of blood. In the circumstances it was incumbent on his part to explain the same, to which no explanation is forthcoming from him.

18. Lastly, though not conclusive for want of identification of currency notes to be the same as withdrawn from Bank by deceased, but testimonies of Rahul (PW 13), Bebibai (PW 15) and Kishore (PW 16) who are persons who had lend money to the appellant and the amounts were repaid to them after the incident in question provides additional link to the case of the prosecution. There is recovery of an amount of Rs. 77,000/- from those persons. Accused does not provide any explanation in that regard and has maintained his stand of total denial.

19. It is tried to be impressed upon this Court that the son of the deceased is a police personnel and therefore, he had got the investigation done to seek

conviction of accused. In the absence of any enmity between the parties providing cause for him to falsely implicate the accused in this crime, the said argument does not hold any water. A question would always arise as to what would be the reason for the son of the deceased to implicate someone else, against whom otherwise there is no grudge, in the crime thereby letting the real culprit to go scot free.

20. All the aforesaid circumstances unless explained by accused must be considered incriminating against him. In the facts and circumstances of the case, no perversity appears in the findings recorded by learned Trial Court in the impugned judgment. Hence, appeal must fail. Hence order :

ORDER

Appeal stands dismissed.

R & P be sent back to Trial Court.