

(2013) 04 BOM CK 0121
In the Bombay High Court
Case No : Criminal Appeal No. 468 of 2008

Suresh Bhagwan Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2013) 3 ABR 889 : (2013) ALLMR(Cri) 2915 : (2014) 3 BomCR(Cri) 170

Hon'ble Judges : V.K. Tahilramani, J; P.D. Kode, J

Bench : Division Bench

Advocate : D.G. Khamkar, for the Appellant; P.S. Hingorani, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—This appeal is directed by the appellant-original accused No. 1 against the judgment and order dated 10.03.2006 passed by the learned II ad hoc Addl. Sessions Judge, Baramati in Sessions Case No. 19 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 302 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 1000/- in default R.I. for six months. The appellant is also convicted u/s 201 of IPC and sentenced to R.I. for 3 years and fine of Rs. 500/- IDRI for 3 months. The learned Sessions Judge directed that both the sentences shall run concurrently. The prosecution case briefly stated, is as under:

(a) PW 9 Nanda was residing with her husband Chandrakant (deceased) at Village Hol, Taluka Baramati, District Pune. They had 7 milk cows which were kept for doing milk business. Chandrakant used to daily carry milk to Navnath Milk Dairy at Karanje Pool on his red colour motor vehicle M80 of Bajaj make. Chandrakant was addicted to liquor. The appellant and the deceased Chandrakant were known to one another.

(b) On 07.11.2004. Chandrakant had consumed liquor. He was intoxicated. Chandrakant collected money from Navnath Milk Dairy. The appellant and the

deceased, as usual, had been to the liquor shop of PW 3 Sawant to have liquor. They consumed liquor and left the shop. They again came back to the shop at about 04.00 to 04.30 p.m. and again consumed liquor. Chandrakant was fully under the influence of liquor, hence, the appellant asked him to sit as a pillion rider on M80 bike and accordingly, the appellant drove the bike. Then they proceeded towards village Nira on red colour M80 motor bike.

(c) PW 11 Sushila and PW 12 Anil and others had seen the appellant and the deceased together at about 04.00 to 04.30 p.m.. Thereafter, Chandrakant was not seen alive and his body was found on 11.11.2004 in Nira canal with injuries on his person. PW 2 Tukaram had seen the deceased on 07.11.2004 coming to Navnath Dairy for taking bill of milk sold to that dairy riding his Bajaj make M80 red motorbike. Thereafter, he came to know that the family members of Chandrakant were searching for him. On 11.11.2004 at about 10.00 a.m., he came to know that a dead body of somebody was found in Nira canal. On going to the spot. PW 2 Tukaram found the dead body was that of Chandrakant. He then lodged FIR (Exh. 26).

(d) The dead body of Chandrakant was sent for post-mortem. P.W. 1 Dr. Khomne conducted the post-mortem on the dead body of Chandrakant. He found that there was sharp cutting injury over occipital region which was 3" in depth. There was sharp cutting injury over left temporal bone and at middle line of parietal region. There was injury over left eye 2" in size deep. All the injuries were ante-mortem. According to Dr. Khomne, the said injuries were homicidal and might have been caused by sharp edged weapon or by means of pointed stones. The death might have caused about 72 hours before post-mortem examination. According to the doctor, the injuries mentioned in post-mortem notes Exh. 24 cannot be sustained in road accident. The above said injuries can be caused by means of stone muddemal article No. 10. According to the doctor, the cause of death was due to hemorrhagic shock due to intracranial haemorrhage due to multiple head injury. After completion of investigation, charge-sheet came to be filed.

2. Charge came to be framed against the appellant under Sections 302 of IPC. Charge also came to be framed against the appellant and original accused No. 2 u/s 201 read with 34 of IPC. The appellant and original accused No. 2 pleaded, not guilty to the said charge and claimed to be tried. The defence of the appellant and original accused No. 2 is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted the original accused No. 2 of the offence u/s 201 read with 34 of IPC, however, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above, hence, this appeal.

3. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record,

for the reasons stated below, we are of the opinion that the appellant assaulted Chandrakant with a stone and caused his death.

4. There is no eye-witness in the present case and the case is based only on the circumstantial evidence. The circumstances against the appellants are as under:--

I. The deceased was last seen with the appellant on 07.11.2004 at about 04.00 to 04.30 p.m. Thereafter, the deceased was not seen alive and his body was found in Nira canal on 11.11.2004.

II. The appellant pointed out the place where he had murdered Chandrakant. The slipper of the deceased and the blood stained stone were found at the spot.

III. At the instance of the appellant, clothes of the appellant which were burnt came to be seized.

IV. When the appellant was arrested, the clothes on his person were found blood stained. They were sent to CA. As per CA report (Exh. 66), blood of "A" group was found on his clothes. The clothes of the deceased were also found stained with blood of "A" group.

V. At the instance of the appellant, parts of motor vehicle of the deceased came to be recovered.

VI. Motive. The deceased had told the appellant that he had lot of money. This was the motive for the appellant to commit the crime.

5. On the aspect of last seen, 5 witnesses have deposed that they last saw the appellant and the deceased together on 07.11.2004 between 3.30 p.m. to 04.30 p.m. PW 3 Sawant is the manager of liquor shop. He has stated that he knew the appellant as well as the deceased as they often used to come to his shop for consuming liquor. This witness has stated that on 07.11.2004, as usual, the appellant and the deceased had come to his liquor shop at about 04.00 to 04.30 p.m. to consume liquor. Thereafter, they proceeded on M80 bike towards village Nira.

6. PW 4 Dattatray was working as the Secretary in Navnath Milk Dairy at Karanje Pool. He has stated that on 07.11.2004, he has seen the appellant and the deceased on M80 motor bike of Bajaj make. This witness has stated that the deceased had come to the milk dairy for collecting money. Thereafter, the deceased and the appellant had been to liquor shop which was by the side of the dairy for consuming liquor. After consuming liquor, both the appellant and the deceased were talking irrelevantly, hence, this witness instructed them not to pick up quarrels. Chandrakant was fully under the influence of liquor, hence, the appellant told him to sit as a pillion rider on M80 bike and the bike was driven by the appellant. The appellant then proceeded towards village Nira.

7. PW 11 Sushila has stated that on 07.11.2004 at about 04.00 p.m., she saw the appellant riding one red colour M80 motorbike. One person wearing white shirt, pyjama and white cap was sitting behind. The appellant told her that the

pillion rider was having huge amount. She reported that the appellant has no concern with the said money. At that time, one Anil (PW 12) came there. Then, she left the spot. She has identified from the photo shown to her that the person accompanying the appellant was the deceased Chandrakant.

8. PW 12 Anil is another witness who has seen the appellant and the deceased together at about 04.00 p.m. He had seen them near Nira canal.

9. On the aspect of last seen, it may be noted that the witnesses have stated that the appellant and the deceased were proceeding towards village Nira. PW 12 Anil has stated in his cross-examination that he had seen the appellant and the missing person near Nira canal on M80 bike of red colour. It is pertinent to note that the body of the deceased was found in Nira canal.

10 Next circumstance against the appellant is that the appellant in the presence of panchas voluntarily made a statement that he would point out the spot where Chandrakant was killed by him. This memorandum was reduced into writing (Exh. 31). Thereafter, the appellant led the Police and panchas to the spot. At the spot, one pair of slipper was found and one blood stained stone with human hair attached to it was found. The same came to be seized under Panchanama Exh. 32. PW 9 Nanda who is the wife of the deceased Chandrakant has identified the slipper as that of her husband. The stone was sent to CA and it was found to have human blood stains of "A" group. PW 6 Dnyaneshwar has deposed on this aspect.

11 PW 8 Nandkumar who is the panch witness has deposed that the appellant voluntarily made a statement that he will point out the spot where his clothes were burnt by him. Accordingly, the appellant led the Police and panchas to the spot. One semi burnt button and ash was found there. The same came to be seized under memorandum and panchnama Exh. 37 and Exh. 38. There was no reason for the appellant to burn his clothes. This act of the appellant shows mens rea.

12 When the appellant was arrested, the clothes on his person were found blood stained. They were sent to CA. As per CA report (Exh. 66), blood of "A" group was found on his clothes. The clothes of the deceased were also found stained with blood of "A" group. This shows that blood stains of the group of the deceased were found on the clothes of the appellant. The arrest panchnama is at Exh. 41. The panch witness PW 10 Dilip has deposed on this aspect.

13 Learned Advocate for the appellant submitted that the seizure of blood stained clothes from the person of the appellant cannot be believed because the appellant had destroyed his clothes which is seen from the evidence of panch witness P.W. 8 Nandkumar who has stated that the appellant had pointed out the spot where his clothes were burnt by him. He submitted that once the clothes were burnt by the appellant, it cannot be believed that at the time of his arrest, his clothes were blood stained. As far as this aspect is concerned, it is seen that the appellant first assaulted Chandrakant with a stone and caused his death. At

that time, his clothes were blood stained which he tried to destroy by burning them, however, the parts of these clothes along with partially burnt button came to be seized at the instance of the appellant. Thereafter, the appellant went to the spot where he murdered Chandrakant with a sack. He put the body of Chandrakant in the sack and then threw the body in Nira canal. Chandrakant had sustained many injuries which can be seen from the postmortem notes, hence, when the body of Chandrakant was being put in a gunny sack, at that time again, blood stains would have come on the clothes of the appellant which were found at the time of his arrest. Thus, just because one set of clothes was burnt by the appellant, in the facts and circumstances of this case, seizure of blood stained clothes at the time of arrest of the appellant does not become unbelievable.

14 PW 8 Nandkumar has also deposed that the appellant made a statement voluntarily that he would point out the spot where the parts of M80 motorbike of the deceased were kept. Accordingly, the appellant led the Police and Panchas and from the bushes, he took out chain cover, gear box, carrier, mudguard, seat, side cover, brake pedal, and foot rest etc. All the said parts of M80 bike were seized under memorandum and panchnama Exh. 37 and Exh. 38.

15. Learned Advocate for the appellant tried to submit that the motorbike belonged to the appellant. If the motor bike belonged to the appellant, there was no reason to dismantle the motor bike into numerous parts and hide the same under bushes. All the witnesses who had last seen the appellant and the deceased have stated that they went away on red colour M80 motor bike. The evidence of PW 2 Tukaram shows that on 07.11.2004, the deceased Chandrakant had come to Navnath Milk Dairy by riding on "his" M80 motor bike of red colour. The evidence of PW 3 Sawant shows that the deceased Chandrakant was fully under the influence of liquor, hence, the appellant told him to sit as a pillion rider on M80 bike and accordingly, the bike was driven by the appellant. The evidence of PW 2 Tukaram and PW 4 Dattatray shows that when the appellant and the deceased were last seen, the deceased had come on his M80 motor bike and thereafter as the deceased was intoxicated the appellant drove the motor bike. It is to be noted that thereafter, the motor bike was not seen and parts of the motor cycle were recovered at the instance of the appellant.

16. According to the prosecution, the motive for the appellant to commit the crime was that he wanted to take away the money of the deceased. The evidence of PW 11 Sushila shows that the appellant told her that the deceased was having lot of money. When the dead body of the deceased was found, it was found clothed but no money was found on the person of the deceased. This clearly shows the motive for the appellant to commit the crime.

17. Learned Advocate for the appellant submitted that the conviction cannot be upheld only on the basis of the last seen. In support of his contention, he placed reliance of the decision of the Supreme Court in the case of Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, . He further

relied on this authority to submit that when the time gap between the point of time when the accused and the deceased were last seen alive and the deceased was found dead is large, then the possibility of another person than the accused being the author of the crime is possible. As far as this aspect is concerned, it is seen that the prosecution is not relying only of the circumstance of last seen in this case to support the conviction but it has relied on five other circumstances to connect the appellant with the crime. Moreover, in the present case, it is seen that the witnesses saw the deceased and the appellant at about 04.30 p.m. on 07.11.2004. Thereafter, the deceased was not seen alive. This shows that the deceased was done to death on 07.11.2004 itself which is further borne out by the evidence of PW 9 Nanda who is the wife of the deceased. She has stated that on 07.11.2004, her husband left home to go to take payment of milk. He left on his red colour motorbike of M80 Bajaj make, however, thereafter, her husband did not return back. All these factual aspects show that soon after 04.30 p.m. on 07.11.2004, the appellant committed the murder of the deceased, hence, in such case, it cannot be said that the time gap between "last seen" and the time of death is so large as to explore possibility of another person committing the crime. Looking to the evidence on record, we are of the opinion that the prosecution has proved the chain of circumstances in such a manner that it leads to the inescapable conclusion that the appellant committed the murder of Chandrakant and thereafter, threw his body in Nira canal. Thus, we find no merit in the appeal, hence, the appeal is dismissed.