
(2018) 03 BOM CK 0134
In the Bombay High Court
Case No : CRIMINAL APPEAL NO.268 OF 2007

THE STATE OF MAH. THRU P.S.O.

APPELLANT

Vs

HAMID SHEIKH S/O JABBAR SHEIKH

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Citation : (2018) 03 BOM CK 0134

Hon'ble Judges : B.R. GAVAI,J, M.G. GIRATKAR, J

Advocate : S.M. Ghodeswar,

Judgement

M.G. GIRATKAR, J

1.Criminal Appeal No.193/2007:The appellant challenged the judgment of conviction awarded by Ad-hoc Additional Sessions Judge-4, Chandrapur in

Sessions Case No.98/2005, by which the appellant is convicted for an offence punishable under Section 302 of the IPC and sentenced to suffer

rigorous imprisonment for life. He is also convicted for the offence punishable under Section 201 of the IPC, no separate sentenced is passed.

2. State has filed Criminal Appeal No.268/2007 challenging the acquittal of accused for the offence punishable under Section 397 of IPC.

3. The case of the prosecution against the appellant- accused can be summarized as under:

Deceased Anwar was truck driver. Chandubhai Bhat was having transport business. His trucks were plying in Maharashtra, Chhattisgarh, Karnataka

etc. In the night of incident four trucks were passing from Lakkadkot. All four truck drivers and cleaners had dinner at Dhaba. Deceased Anwar told

other driver to proceed ahead. Other drivers proceeded towards Andhra Pradesh. Deceased Anwar was having about Rs.35,000/-. Accused robbed

the said amount and killed the deceased. Accused thrown dead body in the well.

4. The other driver after crossing border of Maharashtra State waited for deceased. Deceased not reached to the Andhra Pradesh border. Therefore, other drivers returned to Lakkadkot and search the deceased, they did not found deceased. They informed the owner of trucks. With the help of cleaner they had taken the truck of deceased to their destination.

5. Police Patil of the village namely Devidas Kapkar (P.W.1) came to know that one dead body was lying in the well situated in the field of Ratnakar.

He went to the spot and found the dead body. Thereafter, he went to the Police Station and lodged the report at (Exh.12). A.D. was registered by PSI

Ramteke and made enquiry. During enquiry it was revealed that accused robbed the deceased and killed him by knife.

6. On the basis of enquiry report PSI Ramtake registered crime against the accused vide F.I.R. at Exh.69.

7. During the investigation accused was arrested and memorandum of accused was recorded accused shown the knife, money etc. Further

investigation was carried out by S.D.P.O. Tushar Doshi (P.W.15). After complete investigation, charge-sheet was filed before the Judicial Magistrate

First Class, Rajura. The said case was committed to the Court of Sessions for trial.

8 The Trial Court framed the charge against the accused at Exh.6 for the offence punishable under Sections 302, 201 and 397 of the IPC. The

prosecution has examined in all total 18 witnesses. At the conclusion of the trial, the Trial Court convicted the accused for the offence punishable

under Section 302 and 201 of the IPC and acquitted him for the offence punishable under Section 397 of IPC. Hence, the accused and prosecution

filed both the appeals.

9. Heard the learned A.P.P. Shri Ghodeswar.

None appeared for the accused/appellant.

10. The case of prosecution is based only on circumstantial evidence. The learned Trial Court relied on the following circumstances i.e. [i] Spot panchnama.

[ii] Recovery of dead body.

[iii] Recovery of weapon at the instance of accused. [v] Recovery of money at the instance of accused.

[vi]C.A. report etc.

11.As per the guidelines of Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra reported in (1984) 4 SCC 116,

the court has to keep in mind the following (Panchsheel) five principles:

[i] The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ""must or should

and not ""may be"" established.

[ii]The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty.

[iii]The circumstances should be of a conclusive nature and tendency.

[iv]They should exclude every possible hypothesis except the one to be proved, and

[v]There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

12. There was no eye witness of the incident to show that accused has committed crime. As per the evidence adduced by prosecution, Police Patil

(P.W.1) lodged the report in the Police Station stating that one dead body was lying in the well situated in the field of Ratnakar. P.W.18 PSI D.P.

Ramteke registered accidental death (AD) and made enquiry. During the enquiry, he prepared spot panchnama, inquest panchnama etc. PSI Ramteke

arrested the accused. On 09.05.2005 confessional statement of accused was recorded in presence of panch witnesses. Accused taken them to his

house and taken out currency notes of the denomination of Rs.100 x 100, Rs.500 x 3, Rs.50 x 14, Rs.1000 x 3. One of the note was stained with

blood. As per the seizure panchnama at Exh.36 on 11.05.2005 accused shown readiness to show the weapon/knife concealed in the shrub.

Accordingly memorandum panchnama Exh.35 was prepared in presence of Sunil Pimpalkar (P.W.10). Accused shown the knife, it was seized and as

per Exh.36.

13. Except the recovery there is nothing against the accused for the alleged offence.

14. There is no dispute that the death of deceased Anwar was homicidal. Medical Officer Dr. Rajesh Katware (P.W.14) conducted the postmortem

on the dead body. He found ten stab injuries on the dead body. As per his opinion death was due to multiple stab injuries to vital organ. Postmortem

report is at Exh.54.

15. There is no dispute about the death of deceased was homicidal. The prosecution has to prove the deceased was the culprit and none-else. The

circumstances relied by the Trial Court are not duly proved. P.W.6 Raju Mangrulkar has stated in his evidence that memorandum of accused was

prepared. As per memorandum accused shown the currency notes, he did not support the prosecution, but in the cross-examination by A.P.P. he has

admitted that one currency note was stained with blood. The currency note of Rs.1000/- was stained with blood. He has stated that he signed both the

panchnama Exh.24 and 25 in the police station. Signature of the accused on both the documents were taken in the police station. He has stated that

only for seizure of money they went to Lakkadkot and after taken note they returned to the police station. Therefore, the recovery as per the

provisions of Section 27 of the Indian Evidence Act is not duly proved.

16. P.W.9 Sandip More has stated about the recovery of money, but in his cross-examination he has stated that police asked the accused that money

was to be seized from him and to show his house and accused was ready to show his house. Therefore, it is clear that accused not made voluntary

statement to show the concealed property. Hence, recovery of money as per Section 27 of the Indian Evidence Act not proved.

17. P.W.10 Sunil Pimpalkar not supported the prosecution, but in the cross-examination by A.P.P. he has stated that accused gave discovery

statement pertaining to knife, purse and mobile concealed in the field. The statement of accused was recorded vide Exh.35. Thereafter, accused taken

them in one field, accused taken out one knife concealed in shrub. It was seized as per Exh.36. Purse and mobile were seized as per Exh.37. In the

cross-examination he has stated that panchnamas were read over to him when he entered the witness box. He did work of decoration in the police

station. When he went to Police Station that time seized articles were already on table. They had gone to the field by Gypsy, but he did not remember

its number. Accused had not given any statement in police station in his

presence. This evidence clearly show that memorandum statement and recovery not proved by the prosecution.

18. Learned Trial Court relied on the C.A. report. As per the Chemical Analyzer report Exh.76. Articles No.1, 3, 4 and 6 stained with blood group 'O'.

Learned Trial Court recorded its finding that blood group of the deceased was 'O', but except C.A. Exh.76 there is no other report. There is no report of blood group of deceased. Hence, it cannot be said that blood group 'O' was of deceased.

19. Learned Trial Court wrongly come to the conclusion that circumstances are proved against the accused. On the other hand evidence of panch witnesses shows that recovery of weapon. Cash amount were not duly proved. Blood on the weapon i.e. knife was of group 'O', but nothing on record to show that blood group of deceased was 'O'.

20. As per the observation of the Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda (supra) circumstances must be proved and it should point out the guilt towards the accused and none-else. The circumstances adduced by the prosecution are not duly proved. There is no other evidence.

21. It was the defence of the accused that he had started sale purchase of bullocks. His father-in-law D.W.1 had given amount and therefore, he had kept the said amount in his house. The probable defence established by the accused not taken into consideration by the Trial Court. The evidence of wife of accused was recorded by the Trial Court. Her evidence also not taken into consideration. Her evidence shows that her husband/accused was doing the business of sale purchase of bullocks. It appears that she was pressurized by the police to give the statement. She (P.W.13) has stated in her evidence that Police threatened her. Her husband was doing the business of sale purchase of bullocks. Prior to one and half month of arrest of her husband he used to go with his Uncle for the purpose of the business. Her husband gave money, due to threat by police, she handed over the said money to the police.

22. Not a single circumstance is proved against the accused. Recovery of money was already done by the police. Those notes were recovered from the wife of accused. The evidence of panch witnesses on the point of recovery shows that the memorandum and recovery is doubtful. Recovery of weapon is doubtful. None of the circumstances point out finger towards the

accused. The learned Trial Court wrongly recorded its finding. Hence, we proceed to pass the following order:

O R D E R

[i] Criminal Appeal No.193/2007 is hereby allowed.

[ii]The impugned judgment and order of conviction and sentence dated 12.04.2007 passed by learned Ad-hoc Additional Sessions Judge-4, Chandrapur in Sessions Case No.98/2005 is set aside. The appellant is acquitted of the offences charged with.

The appellant is on bail. His bail bonds stand discharged.

[iii] Criminal Appeal No.268/2007 filed by the State is dismissed.