

(2017) 06 BOM CK 0027
In the Bombay High Court
Case No : 441 of 2000

The State of Maharashtra

APPELLANT

Vs

Ratan s/o. Babu Kasabe

RESPONDENT

Date of Decision : 27-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#), [Section 363](#)

Citation : (2017) 06 BOM CK 0027

Hon'ble Judges : S.S.Shinde, S.M.Gavhane

Bench : DIVISON BENCH

Advocate : S.D. Ghayal, Govind A. Kulkarni, R.S. Deshmukh

Final Decision : Dismissed

Judgement

1. This appeal is filed by the State only against accused No.1/respondent, taking exception to the judgment and order passed by the Additional Sessions Judge, Latur, in Sessions Case No. 99 of 1999 on 08.08.2000.

2. The prosecution case is that victim - Sachin Hazare was the son of P.W.1Laxmibai Hazare. Relations between the respondent and Laxmibai were strained. On 23.05.1999, P.W.5Koli, A.S.I., Police Station, M.I.D.C. Area, Latur came to know that a dead body of a boy was floating in the well in the premises of Dayanand College, Latur. Hence, P.W.5Koli registered A.D.No.21 of 1999 on the strength of report lodged by Peon of Dayanand College, Latur. This witness went to the spot and recorded inquest panchanama of the dead body vide Exh.14. He recorded spot panchanama (Exh.13) and sent dead body to Civil Hospital, Latur for postmortem. He recorded statements of the witnesses. The dead body was identified by P.W.1Laxmibai in the Civil Hospital. Then P.W.1Laxmibai lodged report against the respondent in Police Station, M.I.D.C. Area, Latur, that respondent Ratan and original accused No.2 and Uttam had

taken her son, namely, Sachin towards Dayanand College, Latur and they committed his murder by throwing him in the well. Deceased Sachin died because of drowning. The respondent and original accused No.2 are sons of original accused No.3 Babu Kasabe. On the strength of said report, P.W.7 Budhwant, P.S.I., registered Offence vide Crime No.63 of 1999 against the original accused under sections 363, 302 read with 34 of the Indian Penal Code (for short "I.P.C."). He recorded the statements of the witnesses. During the course of investigation, he came to know that the original accused No.2 Uttam Kasabe used to give threats to P.W.1 Laxmibai and her husband. The accused were threatening P.W.1 Laxmibai that they would commit murder of any member of her family. Thus, P.W.7 P. S.I. Budhwant came to the conclusion that P.W.1 Laxmibai suspected in the report that the accused must have committed murder of her son - Sachin. After completion of investigation, the P.S.O., Police Station, M.I.D.C. Area, Latur submitted chargesheet against the accused for the offences punishable under sections 363, 302 read with section 34 of the I.P.C. in the Court of learned Chief Judicial Magistrate, Latur. The learned Chief Judicial Magistrate, Latur committed the said case to the Court of Sessions, because the offence punishable under section 302 of I.P.C. is exclusively triable by the Court of Sessions.

3. The charge vide Exh.3 has been framed against the accused for the offences punishable under sections 363, 302 read with section 34 of the I.P.C. They pleaded not guilty to the charge. Their plea was of total denial. In their statement recorded under section 313 of Cr.P.C., the original accused stated that false case has been filed against them.

4. Heard learned A.P.P. appearing for the appellant/State and learned Counsel appearing for the respondent/original accused No.1. Learned A.P.P. appearing for the State invited our attention to the evidence of prosecution witnesses and in particular the evidence of P.W.1 Laxmibai, P.W.2 Pravin and P.W.4 Kaka and submits that their evidence is not properly appreciated by the Trial Court. It is submitted that P.W.2 Pravin saw deceased Sachin going with the respondent on 22.05.1999 at 07.30 p.m. He stated that said fact to his mother P.W.1 Laxmibai. P.W.4 Kaka, who is resident of same vicinity, where the informant is residing, has also stated that he saw deceased Sachin going with the respondent at about 07=30 p.m. towards Dayanand College at Latur. It is submitted that the prosecution has brought on record the motive for commission of offence by the respondent. There was previous enmity and on that count deceased Sachin was kidnapped by the respondent and after assaulting him, he was thrown in the well situated in the Dayanand College area. It is submitted that the dead body was recovered at 01.05 p.m. on 23.05.1999. Thereafter, immediately one Peon from the said college, namely, Goraba registered the A.D. Pursuant to it, the concerned Police Officer caused enquiry. P.W.1 Laxmibai lodged F.I.R. on 27.05.1999. It is submitted that if medical evidence is perused in its entirety, it unequivocally indicates that first deceased Sachin was assaulted by the accused and thereafter he was thrown in the well situated in Dayanand College area. Therefore,

according to learned A.P.P., there is clinching evidence of witnesses P.W.1Laxmibai, P.W.2Pravin and P.W.4Kaka, who saw deceased Sachin in the company of the respondent at about 7.30 p.m. on 22.05.1999. It is submitted that since the case rests upon circumstantial evidence, the last seen is the vital circumstance, which is proved beyond doubt by the prosecution. The prosecution has also brought on record the motive for commission of offence by the respondent. The dead body was recovered on second day i.e. on 23.05.1999. Therefore, according to learned A.P.P., the view taken by the Trial Court for acquitting the respondent was not possible and the possible view is conviction of the respondent.

5. On the other hand, learned Counsel appearing for the respondent, relying upon the crossexamination of P.W.2Pravin would contend that the respondent asked P.W.2Pravin to go to his house and he took deceased Sachin with him is by way of omission. When the Investigating Officer was confronted whether P.W.2Pravin told him that the respondent told him to go to his house and then took deceased Sachin with him, the Investigating Officer stated that said fact was not stated by P.W.2Pravin to him. It is submitted that evidence of P.W.2Pravin on last seen together is hearsay in as much as P.W.2Pravin told P.W.1Laxmibai that the respondent took deceased Sachin with him and he was asked to go to his house. It is submitted that the injuries suffered by deceased Sachin can be, if a body comes in contact with stones in the well as stated by P.W.6Dr. Chandrakant, in his crossexamination. It is submitted that in the first place, the evidence of P.W.1Laxmibai, P.W.2Pravin and P.W.4Kaka to the effect that the deceased Sachin was last seen in the company of the respondent and thereafter he was never seen, is by way of omission. Without admitting but assuming that deceased Sachin was seen in the company of the respondent at 07.30 p.m. on 22.05.1999, however, dead body was recovered from the well situated in the Dayanand College area on 23.05.1999 at 01.05 p.m. and therefore the time gap from last seen together till the dead body was recovered is not that so small that in absence of any explanation in the evidence by the prosecution regarding what happened during interval between 07.30 p.m. of 22.05.1999 till 01.05 p.m., when the dead body was recovered, the theory propounded and stated by the prosecution of last seen together cannot be taken into consideration and the same is rightly disbelieved by the Trial Court.

6. It is submitted that evidence of P.W.4Kaka needs to be disbelieved in view of the fact that his statement was recorded by police after four days of recovery of dead body of deceased Sachin. According to learned Counsel appearing for the respondent, the statement made by P.W.4Kaka before the Court is by way of improvement. Therefore, the learned Counsel for the respondent submits that the view taken by the Trial Court acquitting the respondent was possible and therefore there is no necessity to cause interference in the impugned judgment and order of acquittal.

7. We have given careful consideration to the submissions advanced by learned

A.P.P. appearing for the appellant/State and learned Counsel appearing for the respondent. With their assistance, we have perused the record of the Trial Court and entire evidence, so as to find out whether the finding recorded by the Trial Court and the view taken was possible or otherwise. At this stage it would be relevant to mention that though the dead body of deceased Sachin was recovered on 23.05.1999 in the afternoon and to that effect A.D. was registered, the parents of deceased Sachin i.e. P.W.3Waman and P.W.1Laxmibai did not bother to register F.I.R. till 27.05.1999. Upon careful perusal of evidence of P.W.1Laxmibai and P.W.3Waman, at the highest their evidence can be considered for the purpose of proving motive for commission of alleged offence by the respondent. Insofar as deceased Sachin was last seen in the company of the respondent on 22.05.1999 at 07.30 p.m. is concerned, P.W.1Laxmibai stated in her evidence that on 22.05.1999 at about 07.30 p.m., she asked P.W.2Pravin as to how deceased Sachin had not come and in reply P.W.2Pravin told her that the respondent called deceased Sachin and deceased Sachin went along with him. She further stated that she waited for arrival of deceased Sachin till 10.00 p.m. However, since he did not come, she tried to search deceased Sachin. She went towards Khadgaon road. However, she was not successful in her search, even till 01.30 a.m. on 23.05.1999. She further stated that when she went to Dharmपुरी at her husband's house at 05.00 a.m., she told about the fact of missing of deceased Sachin. When she came with her husband and her brother at Latur at about 11.00 a.m., they learnt that a dead body of a boy is floating in the well of Dayanand College and she should go there. Then they went to Dayanand College and found the dead body of deceased Sachin. They identified the dead body of Sachin and thereafter said dead body was cremated. . If the evidence of P.W.1Laxmibai is considered carefully, by any stretch of imagination, it cannot be believed that when P.W.2Pravin told her that respondent Ratan took deceased Sachin with him and when he did not return to house during said night; she did not do anything. The natural conduct of P.W.1Laxmibai would have been to lodge F.I.R. or atleast to inform police about missing of deceased Sachin or that the respondent kidnapped deceased Sachin and taken with him, and more particularly on the backdrop of motive stated by P.W.1Laxmibai of previous enmity between accused and her family. There are no reasons forthcoming or placed on record for five days' delay in lodging F.I.R. by P.W.1Laxmibai.

8. Coming to the evidence of P.W.2Pravin, his evidence is mainly on deceased Sachin was last seen in the company of respondent Ratan on 22.05.1999 at 07.30 p.m. Thereafter, deceased Sachin was not seen by anybody. Upon careful perusal of the cross-examination of P.W.2Pravin, it is seen that he stated before the police in his statement that respondent Ratan told him to go home and accused Ratan took Sachin with him. However, he stated that he is not aware why such statement is not recorded by the concerned Investigating Officer.

9. P.W.7Budhwant who conducted investigation as Investigating Officer in his cross-examination stated that P.W.2Pravin has not stated him that respondent Ratan told him to go to house and taken away Sachin (deceased) with

him. It is further stated by him in his cross-examination that he recorded statement of witness P.W.3 Waman Hazare and he did not state in his statement that accused No.3 Baburao threatened him to kill any member of his family. Insofar as evidence of P.W.4 Kaka on last seen together is concerned, we find considerable force in the arguments of learned Counsel appearing for the respondent that, the conduct of P.W.4 Kaka not to disclose for four days that he had seen deceased Sachin on 22.05.1999 in the company of the accused and they went to Dayanand College, appears to be unnatural. We have noticed that statement of P.W.4 Kaka was recorded by police, after the gap of four days from 22.05.1999, when deceased Sachin was last seen in the company of the respondent.

10. Upon careful perusal of evidence of P.W.6 Dr. Chandakant, he stated that time of death was within six hours from last meal. Even if we believe the evidence of P.W.2 Pravin, that deceased Sachin was last seen in the company of respondent Ratan at about 07.30 p.m. on 22.05.1999, it has come on record that dead body of deceased Sachin was recovered from the well situated in Dayanand College area on 23.05.1999 at 01.05 p.m. Upon careful perusal of evidence brought on record by the prosecution, the prosecution has not explained/brought on record the circumstances/evidence which would explain the time gap from 07.30 p.m. on 22.05.1999 till the dead body was recovered from the well situated in the area of Dayanand College. The time gap between deceased Sachin last seen in the company of the respondent as stated by the prosecution witnesses and the dead body was recovered is not so small that in absence of any explanation offered by the prosecution, said can be ignored. The Supreme Court in the case of *Shyamal Ghosh vs. State of W.B.*, (2012) 7 S.C.C. 646, on the basis of the evidence in that case, in Para 74 of the Judgment, observed that reasonableness of the time gap is of some significance. If the time gap is very large, then it is not only difficult but may not even be proper for the Court to infer that the accused had been last seen alive with the deceased and the former, thus, was responsible for commission of the offence. . The Supreme Court in the case *Rambraksh alias Jalim vs. State of Chhatisgarh*, A.I.R. 2016 S.C. 2381 held that, it is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

11. While considering the case based upon circumstantial evidence, the Supreme Court in the case of *Hanuman Govind Nargundkar and another Vs. State of M.P.* , AIR 1952 SC 343 observed as under :

" It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

12. Upon considering the evidence in its entirety, we are of the view that in the first place there are no incriminating circumstances brought on record by the prosecution which would form complete chain, and would unequivocally lead to the only hypothesis of guilt of the accused. In that view of the matter, the view taken by the Trial Court is possible, and therefore we are not able to persuade ourselves to cause any interference in the impugned judgment and order of acquittal of the respondent.

13. For the reasons aforesaid, the Criminal Appeal stands dismissed. The bail bond of the respondent shall stand cancelled.