
(2013) 09 BOM CK 0248
In the Bombay High Court
Case No : Criminal Appeal No. 1247 of 2008

Vasant Vishwanath Gurav and Another	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 1 BomCR(Cri) 757

Hon'ble Judges : V.R. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival arguments on this criminal appeal challenging the judgment and order of conviction dated 26th September, 2008 passed by the Additional Sessions Judge at Solapur in Sessions Case No. 142 of 2007. By the impugned judgment and order all the four appellants/accused were convicted for the offence punishable u/s 302 read with section 34 of Indian Penal Code and were sentenced to suffer imprisonment for life and to pay fine of Rs. 500/- each, in default to suffer RI for six months each. All the four appellants/accused were acquitted of the offence punishable u/s 201 of IPC, Apparently since the date of arrest i.e. since 13.2.2007 all the appellants/accused are in custody till date. The case of the prosecution in nutshell is as under:

Victim Dhanaji Mali along with his wife Sunita and one son and one daughter was residing at kasegaon, Taluka South Solapur. He was a agriculture labour. The house of the present appellants/accused situate at a short distance from the house of victim Dhanaji. Accused No. 4 one Chayabai is the wife of accused No. 1 Vasant Gurav. Accused Nos. 2 and 3 are Sanjay Gurav and Nitin Gurav--sons of accused Nos. 1 and 4. According to the case of prosecution, there were illicit relations of appellant/accused No. 4 Chayabai with victim Dhanaji and apparently this fact was known to the family members of Dhanaji and also to the family members of accused No. 1 Vasant Gurav. Victim Dhanaji was reprimanded on various occasions on this count of having illicit relations with accused No. 4

Chayabai, however, there was no improvement and admittedly the illicit relations continued till the date of offence. At this juncture, it must be mentioned that even according to the defence of accused No. 4 Chayabai, she had admitted the illicit relations with victim Dhanaji.

2. According to the case of prosecution the actual incident of finding the dead body of Dhanaji, admittedly at the house of all the accused persons, occurred on the night between 11th March, 2007 and 12th March, 2007. In fact, the dead body was found in the house of the appellants/accused at the early hours of 12th March, 2007. On the earlier night, Dhanaji had left the house for some work as to delivery of tiffin-box to the truck driver. One Lakhan, the younger son of Dhanaji was sent along with him by Sunita, wife of Dhanaji. This was in order to ascertain whether Dhanaji was really doing the work or going somewhere else. After some time, Dhanaji and Lakhan returned back to their home. Dhanaji removed his shirt and kept at the house and again left the house saying that he will return back after sometime. That time, Lakhan informed his mother Sunita that he had noticed Chayabai (appellant No. 4) proceeding to answer the nature's call and she had a talk with Dhanaji on the way when Dhanaji and Lakhan were proceeding to deliver tiffin box. Knowing this information from Lakhan, Sunita reacted that it was the usual behaviour of her husband Dhanaji and there was nothing more to do and to keep quiet. Thereafter ignoring the same incident of her husband leaving the home on that late night going away without any specific intimation, Sunita slept at her house along with her children.

3. It is also case of the prosecution that on the next day morning at the early hours at 4:00 a.m. one Rohidas Hazare (PW 3) was stationed at the Police Outpost. He was sweeper on duty and according to him Vasant Gurav (appellant/accused No. 1) had been to the Outpost and informed regarding the victim Dhanaji Mali found dead in hanging condition in the house of accused persons and also requested PW 3 Rohidas to come and verify. On this, Rohidas went to Gurav Galli where the house of the accused persons situate. In the meantime, on the way he met with Kalappa Gurav who by gestures indicated to Rohidas that Dhanaji Mali was not alive. Again according to the case of prosecution, PW 3 Rohidas met Sunita (wife of Dhanaji). He enquired with her regarding whereabouts of Dhanaji. On this, she revealed that after taking meals on the earlier night Dhanaji had left the house and had not returned back. In the meantime, again according to case of the prosecution Sunita has asked her nephew Govind Mali (PW 4) to ascertain and verify regarding the whereabouts of Dhanaji and as such according to case of the prosecution PW 4 Govind Mali had reached the house of accused No. 1 in the said Gurav Galli and found that the house was latched from outside. After opening the latch, he entered the house and found that the inner room was also latched. However, from the narrow space in between the shutters of the door, he could see that the body of Dhanaji was hanging from the ceiling. Apparently noticing some foul play and death of Dhanaji at the house of appellants/accused persons, he informed his father Bhagwat Mali (PW 5). Accordingly, Bhagwat Mali reached the spot and found out

the same situation as to body of Dhanaji hanging from the ceiling in inner room in the house of appellants/accused which was locked. In the meantime, information was given over telephone to the Police Station, South Solapur by PW 4 Govind Mali and police party arrived. It is also case of the prosecution that initially when Rohidas Hazare (PW 3) had been to the house of appellant/accused No. 1 on being asked by appellant/accused No. 1 to come and see what has happened, he also found the body of Dhanaji hanging from the ceiling in the inner room which was locked.

4. Initially accidental death report was registered and the matter was taken over by the police officials during which dead body was taken out from the room of the house belonging to the accused persons. Inquest panchnama was drawn. Dead body was sent for post-mortem and after obtaining postmortem report etc. the body was given in the custody of complainant (PW 6). On the night of 13.3.2007 PW 6 Sunita Mali lodged First Information Report (Exh. 34) specifically alleging that the appellants/accused persons had killed her husband Dhanaji and kept his body in their house in hanging condition. On the basis of said First Information Report, the matter was investigated by PW 10 Gajendra and during investigation statements of various witnesses were recorded including those of PW 3 Rohidas, PW 4 Govind Mali and PW 5 Bhagwat Mali. Earlier when the dead body was found from the house of the appellants/accused persons, a photographer PW 7 Laxman Jadhav was also called and about six photographs were taken of the dead body.

5. On completion of investigation, the matter was taken before the J.M.F.C., Solapur who in turn committed the case to the Sessions Court as the offence charged against the accused persons was punishable u/s 302 of IPC read with section 34 of IPC. During the trial, total ten prosecution witnesses were examined. A brief reference can be made to the role of each of the prosecution witnesses in order to ascertain the case of the prosecution and also to ascertain whether the defence has put forth any case even to accept on preponderance of probabilities, in the light of admitted position, which is hereinafter detailed, as to firstly finding of the dead body at the house of the appellants/accused, secondly finding of injuries contused abrasions almost 16 in number on the dead body of the victim Dhanaji, and thirdly the admitted position of illicit relations between appellant/accused No. 4 Chayabai and victim Dhanaji.

6. Out of total ten witnesses, PW 1 is the panch regarding arrest of all the four appellants/accused and recovery of the clothes of the accused. Though he had mentioned that he signed the panchnama at the instance of the police and in his presence the clothes of the accused persons were not taken charge of, this may not lead to the conclusion as to any deficiency in the case of prosecution, mainly, for the reason that it is not disputed that on the night of 13.3.2007 all the four appellants/accused were arrested by the police in the present matter. PW 2 is one Gorakh Jadhav, a panch regarding spot panchnama and also inquest panchnama. His substantive evidence is of much importance in order to ascertain

the factual position as to what was found at the scene of offence--which is admittedly the house of appellants/accused persons. In fact a rope, two pieces of leather belt and a stick were found on the spot where the dead body was found in the inner room and that the dead body was found hanging from the ceiling. Another importance of this witness is regarding the injuries contused abrasions found on the dead body of the victim. For the sake of ready reference the said injuries which were on the dead body are reproduced hereunder as these are mentioned by PW 8 Dr. Ujjwala Kshatriya. Said injuries are as under:

1. Contused abrasion on left cheek 5 cms X 2 cms, reddish brown;
2. Contused abrasion on Rt. cheek 1 cm X 1/2 cm, reddish brown;
3. 2 contused abrasion on right ear 1/2 cm X 1/2 cm each, reddish brown;
4. 2 contused abrasion on symphysis menti 1/2 cm X 1/4 cm, oblique, reddish brown;
5. 2 mucosal contusions on upper lip of size 1/4 cm X 1/4 cm, reddish brown;
6. 2 mucosal contused laceration on lower lips 1/4 cm X 1/4 cm;
7. Contused abrasion on front of neck 4 cm from symphysis menti 1/2 cm X 1/2 cm, reddish brown;
8. Contused abrasion on left mandibular fossa 2 cm X 1 cm, oblique, reddish brown;
9. Ligature mark--at and above the level of thyroid cartilage 29 cms X 2 cm grooved oblique 5 cm away from Rt mastoid process 9 cm away from symphysis menti and 1 cm away from left mastoid process, reddish brown;
10. Contused abrasion on front of chest over sternum 3 cms X 2 cms, reddish brown;
11. Contusion on left arm upper 1/3rd 6 cm X 2 cm irregular reddish brown;
12. Abrasion on left forearm laterally 3 cm X 1/2 cm reddish brown;
13. Abrasion on left arm, lower 1/3rd, laterally 1/2 cm X 1/2 cm reddish brown;
14. Multiple contused abrasion on left scapular region of size varying from 3 cm X 1 cm to 1 cm X 1/2 cm, reddish brown;
15. Contused abrasion on spine in interscapular region 1/2 cm X 1/2 cm reddish brown;
16. Contused abrasion in lumber region on back 1 cm X 1/2 cm reddish brown;
17. Contused abrasion in sacral region 6 cm X 4 cm, reddish brown

7. Another important witness is PW 3 Rohidas, a sweeper on duty at the Police Outpost and to whom admittedly appellant/accused No. 1 at early hours of

12.3.2007 informed regarding the dead body of Dhanaji in his house. According to this witness Rohidas and also according to the case of the appellants/accused, this Rohidas was asked to come to the house of the accused persons and to see as to what had happened.

8. The next important witnesses are PW 4 Govind Mali and PW 5 Bhagwat Mali. PW 4 Govind Mali is the nephew of the deceased Dhanaji whereas PW 5 Bhagwat Mali is the brother of deceased Dhanaji. Both these witnesses mentioned that the dead body of Dhanaji was found in the inner room in the house of the appellants/accused persons and in fact initially PW 4 Govind Mali was informed by PW 6 Sunita (wife of the victim). According to PW 4 Govind Mali and also according to PW 5 Bhagwat Mali, Govind Mali informed his father (PW 5) and accordingly PW 5 Bhagwat also ascertained finding of the dead body at the house of the appellants/accused.

9. PW 6 Sunita Mali is the first informant, wife of the victim. She lodged the First Information report as mentioned above, vide Exh. 34 on the night of 13.3.2007 specifically alleging illicit relations between the appellant/accused No. 4 with the victim Dhanaji (her husband) and also specifically alleging that the appellants/accused persons had done away with her husband and created a scene that the victim has committed apparently a suicide at the house of the appellants/accused.

10. PW 7 is Laxman Jadhav, a photographer who took six photographs of the dead body, as mentioned earlier. PW 8 is Dr. Ujjwala Kshitriya. She conducted post-mortem on the dead body of the victim. Said postmortem report is at Exhibit 42. Her evidence is of much importance so far as the injuries sustained by the victim prior to his death and as to the cause of death which is compression on neck associated with blunt injury to the chest and abdomen. The injuries sustained by the victim are already detailed above while discussing the evidence of PW 2 Gorakh Jadhav, a panch witness, who took part in the spot panchnama and also in the inquest panchnama. Though it is tried to extract from the said PW 8 Dr. Ujjwala as to death of the victim due to his committing suicide, it must be said that the substantive evidence of said PW 8 Dr. Ujjwala do not in any way suggest or fortify the theory of suicide mainly considering the ligature mark which is injury No. 9 found on the dead body. According to the said witness, in the case of hanging ligature mark is oblique. This is appearing in the cross-examination of this witness PW 8 Dr. Ujjwala. The detailed description of that injury No. 9 is already mentioned earlier and according to PW 8 the cause of death was due to asphyxia.

11. The last two prosecution witnesses are PW 9 Dilipkumar Sawane and PW 10 Gajendra Mansawale. According to PW 9 he knew regarding the incident from PW 4 Govind Mali regarding finding of the dead body of the victim at the house of the appellants/accused. He visited the spot and conducted the initial investigation after registration of the accidental death report. PW 10 is the Investigating Officer who had conducted the investigation after the First Information Report was lodged by PW 6 Sunita alleging commission of offence of

murder at the hands of the appellants/accused.

12. Prior to discussing the arguments, it must be mentioned that though the entire case of prosecution is based on circumstantial evidence and there is no eye-witness to the actual killing of the victim Dhanaji, the circumstances are of such a clinching nature that in all probabilities there cannot be any other hypothesis than the guilt of the appellants/accused. This is more so in view of no plausible explanation given by any of the accused persons much less appellants/accused Nos. 2 & 3 as to their absence from the house on the day of the incident and even on the aspect as to finding of the dead body from their house. The circumstances on which the case of the prosecution is based are earlier mentioned and at the cost of repetition it must be mentioned that firstly it was finding of the dead body of victim at the house of the appellants/accused, secondly finding of various injuries on the body of deceased as detailed in the post-mortem report, and thirdly the admitted illicit relations between the appellant/accused No. 4 and victim Dhanaji.

13. During the arguments, it is tried to submit on behalf of the appellants admitting finding of the dead body of the victim in their house that the victim himself entered the house of the accused persons at about 2:00 a.m. on 12.3.2007 and that time he was in drunken condition. In order to substantiate this argument, our attention is drawn to the additional written submission filed on behalf of the appellants/accused at the end of their statements u/s 313 of Cr.P.C. We have seen that this additional written submission is in fact signed by the Advocate and it is for and on behalf of the appellants/accused persons. In the said written submission, there is only a history given as to in what manner and how the victim had entered the house of the appellants on that night in drunken condition and subsequently he was locked by the appellants in the inner room and then intimation was given to PW 3 Rohidas to come to the house and to see as to what had happened. This written submission definitely leads to the factual position that finding of the dead body at the house of the accused persons is admitted. There is another mention in the written submission that according to the appellant/accused No. 4, she had accepted the illicit relations with the victim Dhanaji, however, this fact was not known to the rest of the accused i.e. appellants/accused Nos. 1, 2 and 3 and as such there was no cause for them to do away with the victim when apparently the victim had entered their house and the victim was locked in the inner room. On this aspect apart from the admission on behalf of the accused No. 4 regarding illicit relations, there is substantive evidence of PW 4, PW 5 and PW 6 on this aspect and after going through their evidence it can be ascertained that there were illicit relations between victim Dhanaji and appellant/accused No. 4 Chayabai.

14. It appears that there is no apparent explanation given on behalf of the appellants/accused as to the injuries found on the body of the victim. In fact when the factum of finding of the dead body in their own house was accepted it was incumbent on them to come with some explanation much less to be

accepted on preponderance of probabilities as to how the victim has sustained almost 17 injuries as detailed in the post-mortem report. If at all the case of the appellants/accused is considered as to victim entering the house of accused persons at the early hours of 12.3.2007 and hanging himself in the inner room, there is no explanation as to how so many injuries were sustained by him on almost all parts of the body and on the chest and also on the back. Definitely in our considered view this circumstance is clinching against the appellants/accused, and for want of any explanation to be accepted even on preponderance of probabilities, it must be said that this circumstance is definitely incriminating against all the appellants/accused, coupled with the fact that the dead body was found in their house. So far as the alleged motive is concerned, it is tried to argue that the appellants/accused Nos. 1 to 3 were not knowing the illicit relations between accused No. 4 and victim Dhanaji. However, still it is apparent from the record and from the substantive evidence of PW 4, and PW 6 and also from the written submission filed on behalf of the appellants/accused that apparently such illicit relations were going on for about 15 years or so and in a village hardly having 700 or 800 population such a circumstance will remain unknown from very close relatives of accused No. 4. In other words, the defence on behalf of accused Nos. 1 to 3 that they were not knowing the illicit relations and as such had no cause to do away with the victim, cannot be accepted. Considering the substantive evidence of PW 3, PW 4, PW 5 and PW 6 coupled with the medical evidence of Dr. Ujwala (PW 8), in our considered view this is a case in which the prosecution has established the guilt of the accused persons beyond reasonable doubt though the entire case of prosecution is based on circumstantial evidence. In that event, there is nothing to entertain the present appeal and the same is accordingly dismissed with following order:

ORDER::

(i) Criminal Appeal No. 1247 of 2008 stands dismissed.

(ii) Office to communicate this order to the concerned appellants/accused through concerned prison Authorities where the appellants are lodged.