

(2017) 09 BOM CK 0228
In the Bombay High Court
Case No : 478 of 2003

Vilas s/o Hari Kulmethe, & Anr.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-09-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 201](#),
[Section 304](#), [Section 34](#), [Section 337](#) - Causing disappearance of evidence of offence or giving false information

Citation : (2017) 09 BOM CK 0228

Hon'ble Judges : Swapna Joshi

Bench : SINGLE BENCH

Advocate : Shamsi Haider

Judgement

1. This Appeal has been directed against the judgment and order dated 8th July, 2003 in Sessions Case No.98/2001 delivered by the learned Additional Sessions Judge, Chandrapur, by which the learned Judge has convicted the appellants (original accused nos.2 and 3) for the offence punishable under section 304 read with section 34 of the IPC and sentenced them to suffer R.I. for two years and to pay a fine of Rs.500/each, in default, to suffer R.I. for a period of three months. The appellants were convicted for the offence punishable u/s. 201 r/w. 34 of the IPC and sentenced to suffer R.I. for a period of six months each, and to pay a fine of Rs. 500/, in default, to suffer RI for one month. The appellants were further convicted for the offence punishable u/s 39 r/w 44 of Indian Electricity Act,1910 and sentenced to suffer RI for two years each, and to pay a fine of Rs. 1000/each, in default, to suffer R.I. for a period of three months.

2. The prosecution case in nutshell, can be stated thus: Complainant Santosh Sakharam Kodape (PW1) and deceased Prakash Shyamrao Ade, were the resident of village Janala. There is a thick forest adjoining the said village. In the said forest there were saltlick places where wild animals visit for supplementing their biological requirement of salt. These places were well known to the

poachers who used to visit there for hunting wild animals. Complainant Santosh (PW1) and deceased Prakash Ade cut some bamboo stems and stored it at some place in Jalana forest. On 24.6.2001 at about 6.00 pm, PW1 and deceased Prakash went to Janala forest to see the bamboo stems stored by them in the forest. Accordingly, they entered in the said forest. When they proceeded for about 1 km, they came across one iron wire which was fixed around wooden pegs embedded in the ground and through the said iron wire electric current was passed by connecting the said iron wire to an electric pole supporting an electric supply line of the MSEB. The said electric wire was laid on the earth near a salt lick in the forest, allegedly by the accused persons. It is the case of the prosecution that while PW1 and deceased Prakash were passing through that road they did not notice said wire and PW1 set his foot on the said wire through which the electric current was passed, due to which PW1 Santosh received electric shock and he fell unconscious on the ground. Deceased Prakash, who was following PW1 Santosh also got stuck in the said wire which was live with electric current and received electric shock. Prakash fell unconscious on the ground. In the meantime, PW1 Santosh regained consciousness he noticed that Prakash was dead due to the said electric shock. PW1 returned back to Janala. On reaching to Mul Police Station at about 22.50 hours, he lodged the complaint. As per the prosecution case, the appellants along with accused no.1 Vishveshwar Ganpat Madavi had extended an earthing wire on the ground which was joined to the electric pole wire for hunting of the wild animals. The complaint was lodged by PW1 Santosh (Exh. 19). On the basis of said complaint, PW5 Vijay Patkar registered the offence punishable under sections 304, 337 r/ws. 34 of the IPC and Section 39 of the Indian Electricity Act. PW 5 Vijay Patkar PSI admitted the complainant in the hospital, immediately he along with staff proceeded to the place of the incident. PW5 Vijay searched for the deceased Prakash in the forest area around the saltlick, however could not find the dead body of Prakash. He however saw the marks of cycle tyre and footwear lying on the ground at the spot. PW5 Vijay returned back to Rural Hospital, Mul. On the next day, at about 7.00 a.m. the police found the dead body of Prakash was lying about one and a half furlong east of Janala on Mul Chandrapur road. Spot Panchnama along with inquest Panchnama of the dead body of Prakash was prepared. PW 5 Vijay then proceeded to the place of the incident in the forest. He found some bamboo stem and one 19 feet wire at the place of the incident. It was taken charge under separate seizure memo (Exh.25). The dead body of Prakash was sent for postmortem. Statements of witnesses were recorded by PW5. On 6.7.2001 all the three accused were arrested. Accused No.1 Vishveshwar showed his willingness to show the place where he had concealed the incriminating articles. Accordingly memorandum panchnama (Exh.27) was drawn and one electric service cable wire and one bundle of thick iron wire used for centering purposes and also a bundle of thin wire were taken charge under Panchnama (Exh.35). A report from Electrical Inspector, Wardha, in respect of 11 KV electric supply line of MSEB was called for (Exh.30). After completion of investigation, chargesheet was filed in the competent court. The case was committed to the Court of

sessions. The learned trial Judge after framing the charge and conducting the trial and after analysis of evidence and hearing both the sides, convicted the appellants, as aforesaid. Hence, this Appeal.

3. I have heard Ms. Shamsi Haider, learned Additional Public Prosecutor for the respondent State. The counsel for the appellants remained absent. I have also gone through the entire record of the case.

4. The prosecution has heavily relied upon the testimony of PW1 complainant Santosh Kodape, PW 5 Vijay Patkar, Police Inspector and PW 6 Dr. Dhanaji Mane.

5. The PM report indicates that the probable cause of death of Prakash was cardio respiratory arrest due to spino medullary injury secondary to electric shock. Clause no.17 of the PM report (Exh.45) depicts deep burn injuries over both the big toes and superficial burn marks over back, buttocks and shoulders. In the opinion of Medical Officer PW6 Dr. Dhanaji Mane burn injuries mentioned by him in Exh.46 could be sustained by a person due to an electric shock received, after coming in contact with a live electric wire.

6. PSI Vijay Patkar (PW5) has found about 20 bamboo pegs having been embedded in the ground at the place of the incident. There was also one 19 ft. long bamboo lying at the spot. Those articles were taken charge by the police. The testimony of PW5 indicates that at the instance of accused no.1 Vishveshwar, the electric cables and wire were taken charge. Similarly the testimony of PW1 Santosh shows that iron wire was laid on the ground at Janala forest and electric current was passed through the said wire, in order to make it a live wire so that if any wild animal comes in contact, it would die then and there due to electric shock. It appears that the wire was installed on the ground to operate as a snare for catching or hunting the wild animals. Wire was installed at chopan (a place where the saltlick stones are there). It appears that the said wiring was intentionally laid at the said spot in Janala forest, so that the animals should come in contact with the said wire and they should stuck there so that the hunting can be done. In any case, said electric wiring was done with the knowledge that any animal who comes in contact with said wire would receive the shock and would die on the spot. In that case, the culprit was having knowledge that if any animal or any person who comes in contact with the said wiring that wire would cause his death and in that case it can be said it was not an accidental death but was an homicidal death. It has come in the evidence of PW1 that they visited the forest to collect the dried bamboo sticks.

7. Now coming to the involvement of the accused persons, according to PW1 Santosh, on 24.6.2001 at about 5.45 p.m. deceased Prakash visited his house and told him that he had cut bamboo stems in the forest and asked PW1 should accompany him to see those bamboo stems. Thereafter PW1 along with deceased Prakash proceeded to the forest. As PW1 walked for some distance suddenly he received an electric shock to his leg. He fell down on the ground. He however did not loose consciousness. Prakash gave a call to PW1 Santosh. PW1

went near him to lift him; however at that time PW1Santosh became unconscious. When he regained consciousness he saw that Prakash was lying beside him and one wire was seen entangled to his leg through which electric current was passing. PW1 shouted for help. He noticed all the three accused coming towards him. He lifted Prakash and placed him on his shoulders. However, Prakash breathed his last on his shoulder. Therefore PW1 kept him on the ground. PW 1 states that all three accused persons came near him and said, "VERNACULAR MATTER OMITTED" By saying this, accused no.3 took PW1Santosh to some distance and made him to sit there. Thereafter accused no.3 started going towards the spot where the body of Prakash was kept. Somehow PW1Santosh managed to escape from that place. He returned to his house. Thereafter he went to Mul along with one Purushottam and he proceeded to Police Station, Mul and lodged his complaint (Exh.19).

8. On careful scrutiny of the testimony of PW1Santosh it is noticed that there is an improvement in his statement with regard to the fact that the accused persons told him that "VERNACULAR MATTER OMITTED". Significantly the FIR (Exh.37) is completely silent on the version of PW1"VERNACULAR MATTER OMITTED". Most importantly, the FIR does not depict the presence of accused at the place of incident and the accused making any statement before PW1. It appears that in the statement before the police, which was recorded two days after the incident, PW1 stated these facts which makes the testimony of PW1 doubtful. The material glaring discrepancy in the version of PW1 with regard to the presence of accused and the conversation of PW1 with them, makes the entire case of prosecution doubtful. Surprisingly, PW1 did not disclose to anyone about accused making such statement for two days, including police. It was suggested to PW1 that he took Prakash to forest and he himself has pushed the deceased upon live electric wire, which PW1 stubbornly denied.

9. An useful reference can be made to the judgment of this Court in the case of Rameshwar Dinaji Dhawde vs. State of Maharashtra, reported in 2016 ALL MR (Cri) 3864), Para Nos. 11 and 12 of which reads thus:

11. Insofar as the judgment of the Apex Court in the case of Sahadevan and another .vs. State of Tamil Nadu (supra), on which Shri Daga, the learned counsel for the appellant, strongly relied is concerned, the said judgment also reiterates the same position of law. The Hon"ble Apex Court has reproduced various judgments in the said case. It will be relevant to refer to paragraph 15 of the said judgment.

"15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1. In Balwinder Singh v. State of Punjab, this Court stated the principle that :

"10. An extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its

credibility becomes doubtful and it loses its importance.

15.2. In *Pakkirisamy v. State of T.N.*, the Court held that :

"8... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extrajudicial confession".

15.3. Again in *Kavita v. State of T.N.*, the Court stated the dictum that :

"4. There is no doubt that convictions can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made."

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extrajudicial confession, this Court in *State of Rajasthan v. Raja Ram*, stated the principle that :

"19. An extrajudicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."

The Court further expressed the view that :

"19. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused."

15.5. In *Aloke Nath Dutta v. State of W.B.*, the Court, while holding the placing of reliance on extrajudicial confession by the lower courts in absence of other corroborating material as unjustified, observed:

"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; and (iii) corroboration.

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof."

15.6. Accepting the admissibility of the extrajudicial confession, the Court in *Sansar Chand v. State of Rajasthan* held that :

" 29. There is no absolute rule that an extrajudicial confession can never be the basis of a conviction, although ordinarily an extrajudicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore*, *Mulk Raj v. State of U.P.*, *Sivakumar v. State* (SCC paras 40 and 41 : AIR paras 41 & 42), *Shiva Karam Payaswami Tewari v. State of Maharashtra* and *Mohd. Azad v. State of W.B.*]

15.7. Dealing with the situation of retraction from the extrajudicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat*, held as under :

53. It appears, therefore, that the appellant has retracted his confession. When an extrajudicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true."

15.8. Extrajudicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extrajudicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. *Sk. Yusuf v. State of W.B.* and *Pancho v. State of Haryana*].

12. It could thus be seen that after surveying the earlier position of law, Their Lordships of the Apex Court came to the conclusion that the extrajudicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. It has further reiterated that the extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extrajudicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it. No doubt, in the said case, Their Lordships rejected the extrajudicial confession on the ground that it was recorded after four days and that the statement which is sought to be made in the extrajudicial confession on the independent scrutiny of the evidence was found to be not established by the Court."

10. In the instant case, PW1 in his FIR (Exh. 37) did not mention the presence of accused at the place of incident. Similarly, he did not utter a word about the accused persons making any statement before him. Nearly after two days, the statement of PW1 was recorded. That time he informed about the presence of the accused at the spot as well as they making the statement. The said conduct of PW1 creates a doubt about the accused persons making the statement. It is

worthy to note that even PW1 made improvement about the accused persons saying "VERNACULAR MATTER OMITTED". That the word used by the PW1 were not clear and unambiguous and it no way conveyed that the accused persons were perpetrators of the crime. Thus the testimony of PW1 is not found to be reliable one and no conviction can be based on such weak type of evidence.

11. The prosecution relied upon the testimony of PW 5Vijay Patkar on the point of recovery, inasmuch as an iron wire was recovered at the instance of accused no.1. However there is no evidence on record to show that the said electric wire was matching with the wire which was laid in the forest at the place of the incident.

12. It may be noted here that apart from making the statement by the accused, there is absolutely no evidence to connect accused nos.2 and 3 with the guilt. So far as accused no.1 is concerned, he is not before the court.

13. It is significant to note that whatever PW1Santosh had stated before the court, there is an improvement made in his complaint which he had lodged before the Court. Significantly, PW1 has not stated about the accused persons making such confessional statement, to any other witnesses, particularly the father of the deceased to whom PW1 met on the same day and informed him about the alleged incident. PW2Shamrao Ade does not make any such reference made by the accused before PW1. Similarly, there is also discrepancy in the testimony of PW1 with regard to the said confessional statement allegedly made by the accused persons before him, with regard to the words used by the appellants. Thus, the said extra judicial confession cannot be treated as a voluntary statement, without there being any corroboration.

14. Admittedly, in the present case, there is no eye witness to the incident, except PW1Santosh and the only piece of evidence on which the prosecution relies is the recovery of the wire from the accused no.1. However as already discussed above, no nexus has been established between the said wire and the wire which was lying at the place of the incident, by the investigating agency by examining the electrical expert.

15. In these circumstances, it is held that the prosecution has not proved beyond reasonable doubt that the appellant/accused nos.2 and 3 shared any common intention with the accused no.1, to come to the conclusion that the accused had committed such an act which led to the death of Prakash and the said act was done with the knowledge that it was likely to cause death of Prakash to cause injury to PW1Santosh.

16. As regards the allegation with regard to causing injury to PW1Santosh no doubt, his injury certificate shows he received superficial burns on his shoulder, throat, right hand, both wrists, chest and right thigh, however, as discussed above there is absolutely no evidence on record to show that those injuries were caused due to the act of the appellants.

17. Similarly, only because the dead body of Prakash was found on the MulJanala road, it cannot be said that it was the appellants who brought the dead body of Prakash to that place. There is no evidence on record to show that the appellants in furtherance of their common intention with accused no. 1, consumed or used the electrical energy by unauthorizedly connecting to the electric supply line.

18. Thus, there is absolutely on evidence on record to connect the appellants with the guilt. No doubt, there is an evidence to show that the PW 1Santosh received the electric shock as well as deceased Prakash died due to the said electric shock, from the place of the incident where the wiring was lying. However it is not established by the prosecution beyond reasonable doubt that the appellants had committed theft of electric energy from the main 11 KV electric line upto the electric wires which were lying at the place of the incident. Admittedly, the said incident had occurred in a forest where PW1 Santosh along with the deceased had gone to collect dried bamboo stems. In view thereof it cannot be said that it was the appellants have committed such an offence. The offence is not proved against the appellants beyond reasonable doubt. Hence the following order :

ORDER

i) Criminal Appeal No. 478/2003 is allowed.

ii) The judgment and order dated 8.7.2003 delivered by learned Additional Sessions Judge, Chandrapur in Sessions Case No.98/2001 is hereby quashed and set aside.

iii) The appellants are acquitted of the offence punishable u/s. 304 r/ws. 34 IPC, Sec. 201 r/ws.34 and of the IPC and Sections 39 read with Section 44 of the Indian Electricity Act.

iv) Their bail bonds shall stand cancelled.

v) Muddemal property, if any, be dealt with as directed by the trial court. after the appeal period is over.