

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPEAL NO. 302 OF 2014

1] Pravin s/o Ramesh Deore,
age 24 years, occ. Education,
R/o Kasabkheda, Tq.Khultabad,
District Aurangabad,

2] Mayur s/o Ramesh Deore,
age 22 years, occ. Education,
R/o as above,

3] Akash s/o Laxman Deore,
age 22 years, occ. Education,
r/o as above

...Appellants

[Orig. Accused Nos. 1, 3 and 4]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri N.S.Ghanekar, advocate for appellants
Shri K.S.Patil, A.P.P. for respondent/State

.....

AND

CRIMINAL APPEAL NO. 318 OF 2014

Sonu @ Laxmikant s/o Ratnakar Dahiwal,
age 25 years, occ. Labour,
R/o Kasabkheda, Tq. Khultabad,
District : Aurangabad

...Appellant

[Orig.Accused no.2]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri A.K.Bhosale, advocate for appellant
Shri K.S.Patil, A.P.P. for respondent/State

.....

CORAM : A.B.CHAUDHARI & INDIRA K.JAIN, JJ.

DATED : 19th OCTOBER, 2015

ORAL JUDGMENT [Per A.B.Chaudhari, J.]

1] Being aggrieved by the judgment and order, dated 15.5.2014, passed by the Additional Sessions Judge, Aurangabad, by which appellants in these appeals were convicted for the offences punishable under Sections 302 r/w 34, 120-B and 460 of the Indian Penal Code and they each were sentenced, for offence punishable under Section 302 r/w 34 of the Indian Penal Code to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for six months; for offence punishable under Sections 120-B of the Indian Penal Code to undergo imprisonment for life and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for six months; and for offence punishable under Section 460 of the Indian Penal Code to suffer imprisonment for life and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for six months, the present two appeals have been preferred by the appellants.

ARGUMENTS

2] In support of the appeals, the learned counsel for the appellants Mr. N.S.Ghanekar and Shri A.K.Bhosale submitted

that the impugned judgment is based on circumstantial evidence, as there is no direct evidence in the instant case. They submitted that the circumstantial evidence in the form of evidence of PW 19 Pratibha and PW 11 Sachin of seeing accused no.1 Pravin and accused no.2 Sonu on the terrace at night, particularly because the house of Pravin is adjacent to the house of the deceased and of Pratibha, could not be the circumstance as such, since nothing abnormal could be said about their presence on the terrace.

3] The counsel for the appellants pointed out our attention to the fact that PW 11 Sachin and PW 19 Pratibha, who were the witnesses on the said point did not at all disclose the said fact to the police from 15.8.2010 till 2.9.2010 and 3.11.2010. That means, PW 19 Pratibha did not disclose about her observation till 2.9.2010, while PW 11 Sachin did not disclose till 3.11.2010 in respect of the incident dated 15.8.2010. The prosecution did not give any explanation for the delay in recording the statements of these witnesses, when PW 19 Pratibha was the immediate neighbour and she stated that she wanted to disclose the said fact to police, but the fact remains that she did not disclose the same. The investigating officer did not explain the delay in recording the statements of these important witnesses when immediately on the next day investigation was started, but the statements of these witnesses

were not recorded. In absence of any explanation, the evidence of these two witnesses must be rejected.

4] The counsel for the appellants then submitted that the trial Judge relied upon the evidence of PW 1 Anilkumar that a mobile hand set was found at the spot and same belonged to appellant Pravin, for which there is absolutely no evidence and the said finding is based on surmises and conjectures.

5] The counsel then submitted that the said witness PW 1 Anilkumar was having mobile phone which showed that same was used by somebody in the morning of 16th August, 2010 and is said to have been handed over by him to the police after almost 14 hours.

6] The counsel for the appellants then submitted that the trial Judge has relied upon the discovery and finding of blood stains on the articles seized as the only piece of evidence remaining with the prosecution to convict the appellants. At any rate, according to the counsel for the appellants, there is absolutely no evidence against accused nos. 3 and 4, but they were still convicted. Counsel then submitted that even against accused nos. 1 and 2 the evidence in the form of circumstantial evidence is totally infirm and highly doubtful. Therefore, the trial court should have extended benefit of doubt in favour of the

appellants.

7] Per contra, learned A.P.P. opposed the appeal and supported the impugned judgment and order of conviction on the ground that accused no.1-Pravin and accused no.2-Sonu being seen on the terrace and moving towards their house from the common wall is enough to show that they were the persons who had killed the deceased Puja. The prosecution has brought sufficient evidence on record to prove the offences alleged against them. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION :-

8] We have heard learned counsel for the rival parties at length. We have seen the entire evidence adduced by the prosecution. We have seen the reasons recorded by the trial court for convicting the appellants. At the out set, we find that the trial court convicted the appellants for the offences 302 r/w 34, 120-B and 460 of the Indian Penal Code based on the evidence of PW 11 Sachin and PW 19 Pratibha, that accused no.1-Pravin and accused no.2-Sonu were seen on their own terrace and they were going towards their house by crossing the boundary wall. We then find that the prosecution has not produced any evidence about criminal conspiracy contemplated under Section 120-B of the Indian Penal Code. We then find

that the house of Pravin is abutting the house of the deceased and the house of PW 19 Pratibha and there is nothing unnatural if Pravin was found on his terrace with his friend accused no.2-Sonu but that by itself does not contemplate criminal conspiracy or lurking trespass. We, therefore, reverse the finding of conviction recorded by the learned trial court for the offence punishable under Section 120-B and 460 of the Indian Penal Code.

9] Continuing our discussion on the evidence pertaining to the offence for which they were charged under Sections 120-B, 302, 460 of the Indian Penal Code, at the outset, we find that there is evidence of PW 11 Sachin. PW 11 Sachin stated in his evidence that about 9.30 p.m. he had gone to Bazar and when he was proceeding from the lane behind the house of Pradeep Kala, he noticed accused-Pravin and accused-Sonu going towards the terrace of the house of the accused from the wall of the house of Pradeep Kala. This is the only evidence of this witness who saw them as stated. In his cross-examination he stated that he had gone to the house of Pradeep Kala when police party was present. He had gone to Khultabad police station along with people. He did not disclose even his suspicion about the appellants to police party or anybody. He then stated that he had discussed the said fact with his friends

by name Santram Untade and Santosh Gaikwad on the next day. He also stated that he met Pradeep Kala immediately after the incident was over, but did not feel it necessary to disclose the police that he had seen the appellants going from terrace from the wall or house of Pradeep Kala. It is not in dispute that his statement was recorded by the police for the first time on 3.11.2010. We quote para 12 of his cross-examination.

“12) After near about one month, I first time felt to give intimation to Police about the said incident. I was knowing the Police station. It was not difficult for me to get the telephone number of Police Station. During that period I was doing my all work in a routine course. On 3.11.2010 police party came to my house and hence I gave my statement. I was not having any pre intimation about the arrival of police to my house. On 3.11.2010, police had not come to my house, I myself on my own did not have given the information which I was knowing, to the police party. I was not feeling that the information with me was not useful to police. I was feeling boredom to give an intimation to police which was with me. ”

This witness has clearly stated that, in respect of the incident which he had seen on 15.8.2010 he gave his statement to police only on 3.11.2010. Though he had met the police party, gone to Khultabad police station and also met Pradeep Kala, neither the investigating officer nor this witness has given any explanation as to why the statement under Section 161 of the Code of Criminal Procedure was recorded late by almost 2½ months. We think, it was the prosecution who was obliged to explain the delay in recording statement of this witness when

he was residing in the nearby area.

10] Then there is evidence of PW 19 Pratibha, whose statement was recorded on 2.9.2010 i.e. after almost 18 days. She stated in her evidence that she saw Pravin and Sonu while walking on the terrace of her house and she asked them as to what they were doing, but they did not speak with her and ran away. This is all her evidence. In the cross-examination she stated that she had been to the spot of the incident on the next day also and appellants were present on the spot, but she did not state the incident either to them or to the police. She stated that she was feeling to state the incident to police immediately but she had no explanation as to why she did not tell to police about what she knew. In our opinion, her evidence again is infirm, since she is immediate neighbour of the deceased as well as accused Pravin and Sonu and she claimed to have seen both of them going on her terrace. It cannot be said to be unusual that Pravin and Sonu were seen on the terrace of her house, when as a matter of fact Pravin has a house abutting her house. Even if it is taken to be true, that by itself would not be sufficient to draw an inference that the appellants had entered the house of deceased and committed her murder. At any rate, there is no explanation from PW 19 Pratibha or from the police as to why her statement was recorded on 2.9.2010 by the police when she was immediately

available and Pravin was her immediate neighbour. We think, we cannot believe such evidence in the absence of any explanation from the investigating officer or this witness.

11] The next is the evidence of PW 1 Anilkumar about mobile hand set allegedly belonging to Pravin. Admittedly, there is no evidence whatsoever on record to show that mobile phone allegedly found on the spot was of Pravin only. The only explanation given by this witness is that, since he used to see Pravin talking on mobile phone he inferred that it was a mobile belonging to Pravin. As a matter of fact, it was the duty of the prosecution to make investigation as to the ownership of said mobile phone, but nothing was done in that behalf and only on the basis of sim card in the mobile phone it was held that the sim cards were used by his family and therefore the mobile must have been of Pravin. We find that the mobile was collected by PW 1 Anilkumar on his own without calling the police on the spot and he was moving with the mobile phone 14 hours till he handed over the said mobile to the police. We do not understand such type of conduct, to collect the mobile from the spot of incident and move with it for 14 hours and then claim that mobile phone belonged to Pravin. Such a tampered evidence cannot be relied upon.

12] The trial court relied upon the human bites on the

person of accused no.1-Pravin and accused no.2-Sonu through the evidence of PW 7 Dr. Yeotikar and PW 17 Dr. Barpande. In our opinion, the evidence of human bites is too far fetched to be believed, and no order of conviction could be made based thereon in the absence of any direct evidence.

13] Then there is evidence of discovery of blood stained clothes and the blood group of the deceased found on the clothes. It is well settled legal position, particularly after having rejected the above evidence, that it would be risky to base conviction only on evidence of discovery of clothes in the absence of satisfactory evidence. In the present case, we find that the whole prosecution case has become doubtful and it would be risky to convict the appellants.

14] In that view of the matter, we are of the opinion that this is a case where benefit of doubt must be extended to the accused persons. All the three accused, excluding accused no.3 Mayur are in jail from the date of incident i.e. 15.8.2010. Consequently, both the appeals must succeed for want of legal evidence. In the result, we pass following order.

ORDER

1] Criminal Appeal Nos. 302 of 2014 and 318 of 2014 are allowed.

2] The judgment and order, dated

15.5.2014, passed by Additional Sessions Judge, Aurangabad, convicting the appellants, in Sessions Case No. 393 of 2010, for the offences punishable under Sections 302 r/w 34, 120-B and 460 of the Indian Penal Code is set aside.

3] All the appellants are held not guilty of the offences punishable under Sections 302 r/w 34, 120-B and 460 of the Indian Penal Code for which they were charged. Accused Nos. 1-Pravin, 2-Mayur, 3-Akash and 4-Sonu @ Laxmikant are acquitted of the charges framed against them.

4] Appellants/accused nos. 1 to 4 be set at liberty, if not required in any other crime.

5] Fine, if paid by the appellants, be refunded to them.

[INDIRA K. JAIN, J.]

[A.B.CHAUDHARI, J.]