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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 450 OF 2012

Arjun Puna Soni,
Age: 32 Years, R/o Gram Dindari,
Post: Pithi, Dist. Chatra, low
State Jharkhnd at present at
present at Kolhapur Jain.

..Appellant.
(Original Accused)

Versus

The State of Maharashtra
Through Nirmal Nagar Police Stateion.

..Respondent.

Dr. Yug Mohit Chaudhary for Appellant.
Smt. V.R. Bhonsale, APP for the State.

**CORAM: P. V. HARDAS &
A.S. GADKARI, JJ.**

Date: 10th June 2015.

JUDGMENT (Per A.S. Gadkari, J.):

1 The appellant, original accused, has questioned the correctness of the judgment and order dated 3rd March 2012 passed by the learned additional Sessions Judge, Sewree, Mumbai in Sessions Case No.264 of 2011, thereby convicting him for an offence punishable under Section 302

of the Indian Penal Code and is sentenced to suffer life imprisonment and to pay fine of Rs.6000/-, in default of the payment of fine, to suffer further rigorous imprisonment for 6 months.

2 The facts which are necessary for the decision of the present Appeal can briefly be stated thus:

(i) Mr. Dhulappa Dhanurkar (PW-2) was working as Supervisor with Sanjay Dattatray Bhalerao a builder at Bandra (E). The said contract was given by one Kalyanji Patel. He used to be there upto 6 p.m. That one Santosh was the supervisor with Shantilal Patel. He had brought certain carpenters by name Nagendra Singh with four others at the site for work. The carpenters worked for one day and due to rain on next day, they did not work. As the carpenters did not work, the son of the Contractor asked the carpenters to leave his site. Accordingly, three workers left and two remained at the site. Nagendra Singh and other worker worked at site. They were residing on the fifth floor of the site.

(ii) On 28.8.2010, one worker by name Amar informed Dhulappa Dhanurkar (PW-2) that Nagendra Singh, carpenter was lying unconscious. The contractor and the other persons went to the fifth floor and noticed that Nagendra Singh was alone and his companion or colleague was not there.

Santosh and Ashok then took Nagendra Singh to the hospital. The said Nagendra Singh expired in hospital while taking treatment. Dhulappa Dhanurkar informed the said fact to the Nirmal Nagar Police station and subsequently he identified the accused at Nirmal Nagar Police station as the person who was residing with Nagendra Singh on 5th floor by name Arjun (the appellant herein).

(iii) PW-1 Popat Gaitonde, was Police Station Officer on 28.8.2010 at Nirmal Nagar Police Station and was on day duty. He received a message from Sion Hospital that a person by name Nagendra Singh after consumption of liquor under intoxication fell down and sustained injury and was lying on the work site. That the said Nagendra Singh was brought by one Santosh to the hospital. He, thereafter, went to the hospital and noticed that the person was in unconscious condition and there were no relatives of the said person. About two to three days, he visited the hospital, but of no use. On 8.9.2010, the brother of injured had been to the police station and informed that injured has expired in the hospital. PW-1 Popat Gaitonde therefore registered ADR. After drawing the inquest panchanama of the dead body, the same was referred for postmortem. The Medical Officer informed that the injured was assaulted and due to which the death has caused. On an enquiry with the Doctor, it was informed to the PW-1

Popat Gaitonde that the deceased was assaulted with blunt weapon and therefore, PW-1 Popat Gaitonde lodged a complaint on behalf of the State against the unknown person for the commission of offence of murder.

(iv) After registration of ADR, Santosh Gupta who had admitted Nagendra in the hospital came to the police station and took the police to the spot of incident. The police drew spot panchanama. At the spot, PW-1 Popat Gaitonde found one carpet with the pillow and three clothes. He also found three empty bottles of liquor. Those were seized under panchanama which is at Exhibit 11. In due course of time, the appellant was arrested and at the instance of the appellant the wrist watch of the deceased was discovered by effecting panchanama, at Exhibit 12. At the instance of the appellant, an iron rod which was kept on the parapet wall of the bathroom window of the said building which was under construction was also discovered and panchanama to that effect has been recorded which is at Exhibit 14.

(v) On 25.9.2010, the investigation with respect to the murder of Nagendra Singh bearing Crime No.245 of 2010 was transferred to Mr. Prakash Salunkhe, P.I. (PW-8) then attached to Nirmal Nagar Police Station. He received P.M. Notes, inquest and spot panchanama and other documents and certain statements recorded by Mr. Gaitonde (PW-1). That

Mr. Gaitonde had lodged the complaint on behalf of the State on 25.9.2010 to the effect that for some unknown reason with the unknown weapon, unknown person had committed murder of Nagendra Singh. It was transpired during the course of investigation that injured deceased was admitted in hospital on 28.8.2010 and he expired on 8.9.2010 and during the said period, he was unconscious. That as the cause of death of the deceased was given by Doctor on 25.9.2010, the offence was registered on that day. During the course of investigation, said Mr. Prakash Salunkhe, P.I. (PW-8) recorded statements of relevant witnesses. It was revealed during the investigation that there was dispute on account of certain amount between the appellant and the deceased and the same was motive behind the crime. He arrested the appellant/accused and after completion of investigation, submitted chargesheet in the Court of competent jurisdiction.

(vi) The learned Magistrate committed the case to the Court of Sessions as the charge for the offence under Section 302 of the Indian Penal Code was exclusively triable by the said Court. After committal of the case, the learned Additional Sessions Judge, Sewree, Mumbai framed charge below Exhibit-3 against the appellant for the offence under Section 302 of the Indian Penal Code. The charge was explained to the accused. The accused denied the said charge and claimed to be tried. The defence of

the appellant was of total denial. During the course of trial, the prosecution examined in all eight witnesses in support of its case. The learned Trial Court after recording the evidence and after hearing the parties, convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code by its judgment and order dated 3rd March 2012 in Sessions Case No.264 of 2011. The appellant has impugned the said judgment and order dated 3rd March 2012 herein as stated hereinabove.

3 Heard Dr. Yug Mohit Chaudhary the learned Counsel appearing for the Appellant and Smt. V.R. Bhonsale, the learned APP for the State at length and also perused the entire record.

4 The learned Counsel for the appellant submitted that that there is no legal evidence at all against the appellant which would result into the conviction. He submitted that the evidence available on record is circumstantial evidence. That discovery of a wrist-watch of the deceased from the house of the appellant itself cannot be treated as strong circumstance attracting conviction under Section 302 of the Indian Penal Code. He further submitted that the discovery of the weapon i.e. iron rod was effected by the police at the instance of the appellant from an open

space i.e. from the parapet wall of the bathroom window of the said building which was under construction and the said spot was accessible to the people at large. The said discovery of iron pipe from the open space was made after a period of one month from the date of incidence. He further submitted that there is no Chemical Analyser's Report on record with regard to the said pipe which would connect the appellant in the crime in question as in his submission no blood stains were found on the said iron rod. He, therefore, urged before us that as there is no legal evidence at all against the appellant, the appeal may be allowed and the appellant may be acquitted.

Per contra, the learned APP supported the impugned judgment and order and submitted that the evidence available on record is sufficient to hold the appellant guilty for the offence punishable under Section 302 of the Indian Penal Code and therefore prayed before this Court that the appeal may be dismissed.

5 With a view to effectively deal with the submissions advanced before us by the learned Counsel appearing for the appellant and the learned APP, it is necessary to refer to the evidence of prosecution witnesses in brief. The evidence which was led by PW-1 PSI Mr. Gaitonde

and PW-2 Dhulappa Dhanurkar and PW-8 P.I. Mr. Prakash Salunkhe, has been reproduced in detailed in para-2 (i) to (v) in the forgoing paragraphs. The said witnesses are cross-examined at length by the defence.

6 PW-1 PSI Popat Gaitonde in his cross-examination has admitted that the wrist-watches like muddemal article which was seized from the appellant are easily available in market. He further admitted that he did not mention the watch number in the panchanama. It is to be noted here that the discovery of the alleged weapon of the crime i.e. an iron rod has been effected at the instance of the appellant from an open space i.e. from the parapet wall of the building which was under construction and the said place was accessible to the people at large. PW-8 Mr. Prakash Salunkhe in his cross-examination admitted that PW-6 Manish Singh had stated before him that the deceased was addicted to liquor and when Manish Singh had been to the hospital to see said Nagendra Singh, his uncle (i.e. deceased), on enquiry, told him that nobody had assaulted him (i.e. deceased).

7 PW-3 is Nilesh K. Patel, the contractor of the building. PW-3 in his testimony has stated that he knew Santosh Gupta as his sub-contractor. He was knowing Nagendra Singh (deceased). That Nagendra Singh had

met him on 14.8.2010 at Govandi and he had informed Nilesh Patel that after two days he would attend the Bandra site with other labourers. Accordingly, on 17.8.2010, Nagendra Singh brought four other labourers at Bandra site. Nilesh Patel (PW-3) had given Rs.6000/- to Nagendra Singh as advance payment. In all five persons had worked for one day. On the second day, he received phone call from the site that the labourers are reluctant to work. That after one day from the receipt of information, he went to Bandra site. Nagendra Singh had informed that the other labourers are not working and they have already left. Nagendra Singh (deceased) and the present appellant were residing on the site on 5th floor. PW-3 identified the appellant as the person who was residing with Nagendra Singh at site. This witness was cross-examined at length by the appellant, however, no material which would be helpful to the appellant has been brought on record.

8 PW-4 is Nissar Mohd. Isaq Ahmed the labourer who was working at site with Nagendra Singh and appellant. This witness has stated in his testimony that in all five persons were working with Nagendra Singh. They were working at Bandra site upto 19.8.2010 and left the work on 20.8.2010. He further deposed that Nagendra Singh and appellant were

only working on the site thereafter. In the cross-examination, nothing has been brought on record which would discredit the testimony of this witness.

9 PW-5 is Mohd. Asif Miohd. Yusuf Sayyed, panch witness to the discovery of the iron rod at the instance of the appellant. In his testimony, this witness has stated that he received a phone call from Nirmal Nagar Police station and he was called there and accordingly he had been there at about 10.30 a.m. He was apprised by the police about the panchanama and willingness of the appellant to make a statement. The appellant in his presence disclosed his name as Arjun and expressed his willingness to discover an iron pipe. In pursuance of the memorandum panchanama which is at Exhibit 13, the appellant took the panchwitness and police personnel to the the fourth floor of the construction site and from above toilet he took out a cement bag and an iron pipe therein. In his cross-examination, this witness has admitted that pipes like muddemal article are easily available in the market.

10 PW-6 is Manish Singh, nephew of deceased Nagendra Singh in his testimony has stated that Nagendra Singh was his uncle. He stated that

the article which is marked as Article-A i.e. wrist-watch which was shown to him was belonging to his uncle.

In the cross-examination, this witness has admitted that the wrist-watches like muddemal article are easily available in the market.

11 PW-7 is Dr. Rajesh Chandrakant Dere, Professor, Department of Forensic Medicine, Sion Hospital. PW-7 in his testimony has stated that on 10.9.2010 he was attached to Sion Hospital and did autopsy on the corpus of Nagendra R. Singh during 11.30 a.m. to 1.00 p.m He noticed the following external injuries:

“1 Stitched wound present right temporal area with evidence of infection, size 3.5 cm

2 Stitched wound present over right eyebrow 2 cm with stab.

3 Abrasion with dark brownish scab present over cheek below right eye 2 x 2 cm.

4 Right eye black.”

On internal examination, he noticed, under scalp, hematoma with evidence of infection, 4 x 3 cm Medial cranial fossa fracture present with involvement of sphenoid and orbital plate present. He further noticed thin layer of greenish yellow discharge present. Brain congested with contusion of size 2 x 2 cm on inferior size of frontal lobe present, evidence

of necrosis present. He also noticed lungs were congested, oedematous evidence of consolidation of lungs present. He also noticed on cut section yellowish frothy fluid oozing out. Stomach was empty. The blood was preserved. The injuries were antemortem. Initially the cause was reserved and thereafter the cause of death is disclosed as “shock following cranio Cerebral injuries by hard and blunt object (unnatural)”.

He proved P.M. Notes which are at Exhibit 23. PW-7 has further deposed that the cranio cerebral injuries are possible with the weapon before the Court like iron pipe (Article B). That external injuries are also possible with the said weapon.

In the cross-examination, this witness has stated that the injuries noticed by him are not possible by fall of the brick on the construction site.

12 PW-8 is Prakash V. Salunkhe, Police Inspector then attached to Nirmal Nagar Police Station. As stated hereinabove, the examination-in-chief of this witness has already been narrated in paragraph no.2 (v).

This witness in his cross-examination, has admitted that Manish Singh i.e. PW-6 had stated before him that when Manish went to the hospital and enquired with Nagendra Singh, his uncle, about the assault, the deceased had disclosed to him that nobody had assaulted him.

13 The present case is based on circumstantial evidence. It is the settled position of law that suspicion, howsoever, strong it may be, is in itself insufficient for conviction on its sole basis. It is also the settled position of law that in a case, based on circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In case resting on circumstantial evidence, it is incumbent on the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have the definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime.

14 After taking into consideration the evidence of the prosecution witnesses and cumulative effect of the circumstances which are put forth by the prosecution for establishing the guilt of the appellant according to us are not beyond the shadow of doubt. That the test requires exclusion of

other alternative hypothesis that the appellant only is responsible for the commission of the said crime, cannot be said from the evidence on record, that it complies with the test for proof beyond reasonable doubt. It is by now settled position of law that in a case based on circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In a case, resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have the definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime in question.

15 The present case is based on the circumstantial evidence as stated hereinabove and the prosecution has relied upon the two main circumstances i.e. the recovery of the wrist watch of the deceased at the instance of the appellant and the recovery of an iron rod from the construction site. It is to be noted here that the said recovery is effected

from open space and the record is absolutely silent about any Chemical Analyser's report which demonstrates that the said iron rod recovered at the instance of the appellant was having any blood stains on it, least to say that the blood stains of the blood group of the deceased.

16 It is to be noted here that the discovery of the wrist-watch of the deceased at the instance of accused from his house after lapse of substantial time, and without any specification or mark thereon is in our considered opinion, is a weak piece of evidence as the Police Officer i.e. PW-1 Popat Gaitonde in his cross-examination has admitted the fact that the wrist-watches like muddemal article are easily available in the market. With a view to establish the identity of the wrist-watch seized from the accused and the one which was produced in the Court, the manufacturing number or the series of the writ-watch has not been mentioned in the panchanama and the said witness has also admitted in the cross-examination that he did not disclose watch number in the panchanama. Likewise, the discovery of an iron rod from the parapet wall of the construction site which was accessible to the public at large is of no help to the prosecution for connecting the appellant in the crime in question. As stated above, the record is silent about any Chemical Analyser's report or any other document which

discloses that the said iron rod was stained with blood and the said blood was of the blood group of deceased. As a matter of fact, the discovery panchanama of the iron rod is silent about any blood stains on the said iron rod and therefore it was obvious that the Chemical Analyser's report is also silent about the same. We find that above two circumstances which have been put forth by the prosecution for proving the guilt of the appellant in the present crime cannot said to be the circumstances which are of conclusive nature i.e. they are showing the definite tendency of implicating the accused in the present crime. We are of the considered opinion that the circumstance so put forth by the prosecution do not form a complete chain which would exclude the every hypothesis of the innocence of the accused and unquestionably points towards the guilt of the accused. A cumulative effect of analysis of the evidence put forth by the prosecution is that the prosecution has failed to establish a complete chain of circumstantial evidence which would lead to the unequivocal result i.e. the appellant is only guilty person in the present crime. We are of the considered opinion that the evidence put forth by the prosecution does not lead to the conclusion that the appellant and appellant alone is perpetrator of the present crime. A cumulative effect of the aforesaid discussion results into the acquittal of the appellant from all the charges.

17 Criminal Appeal is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the appellant, be refunded to him. Since the appellant is in jail, he be released forthwith, if not required in any other case.

(A.S. GADKARI,J.)

(P. V. HARDAS,J.)