

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.1061 OF 2007**

Santosh Baburao Shinde
Age - 24 years, Occu - Labour,
Residing at Bangadi,
Taluka Srigonda, District - Ahmednagar
(At present in Yerwada Jail) ...Appellant.

versus

State of Maharashtra
(Wanawadi Police Station, Pune) ..Respondent.

.....
Mr. Daulat G. Khamkar for the Appellant.
Mrs. S.D. Shinde, Addl.P.P. for the State.

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**CORAM : SMT V.K. TAHILRAMANI &
A.S. GADKARI, JJ.**

3rd September, 2015.

ORAL JUDGMENT (PER SMT. V.K. TAHILRAMANI, J.) :

The Appellant - original accused has preferred this Appeal against the judgment and order dated 17th August, 2007 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.637 of 2006. By the said judgment and order the learned Sessions Judge convicted the Appellant under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life and fine of Rs.5,000/-, in default rigorous imprisonment for one

year.

2. The prosecution case can briefly be stated as under :

Deceased Sachin Kambale was residing at Mohammedwadi. He was residing at Mohammedwadi along with his wife, his brother P.W.1-Kailas, P.W.2-Shobha – wife of Kailas and children of Kailas. The Appellant was also residing in the same area. The Appellant, deceased Sachin and P.W.1-Kailas were working with P.W.4-Chandrakant Ghule. It is the prosecution case that on 29th August, 2006 in the evening at about 7 to 7.30 p.m. the Appellant asked Sachin to accompany him to the city. Then they both went to the city. On the way back, the Appellant assaulted Sachin with a knife. Santosh went to the house of P.W.3-Gautam and informed him that he had killed Sachin by assaulting with knife and Sachin is lying in the field of Pangare. Then the Appellant went to P.W.1-Kailas and told Kailas that he had assaulted Sachin and Sachin is lying in injured condition and they should take Sachin to the hospital, otherwise Sachin may die. The Appellant also informed Kailas that Sachin was lying in the field of Pangare. Thereafter Kailas, his wife, Gautam's wife and wife of Sachin went to the spot. The Appellant also

accompanied them. They brought the body of Sachin to the brick factory of P.W4-Chandrakant Ghule. They enquired with the Appellant about the incident. Thereupon the Appellant told that he had assaulted Sachin with knife. P.W.4-Chandrakant Ghule went to the police chowky and reported about the incident. They brought Sachin to the police chowky. The Appellant was with Chandrakant Ghule when he went to the police chowky. Sachin was sent to Sassoon Hospital. On the way to the hospital, Sachin expired. P.W.1-Kailas lodged F.I.R. Thereafter investigation commenced. The dead body of Sachin was sent for postmortem. During postmortem, incised wounds were found on the right fronto-parietal region, left ring finger, right little finger and left knee. Two chopped wounds were found- one on the thumb and one on the right leg, two stab wounds were found one each on the chest and abdomen. In addition there were 13 abrasions. According to the doctor who conducted the postmortem the cause of death was traumatic and hemorrhagic shock as a result of stab injuries. After completion of investigation, charge-sheet came to be filed.

3. Charge came to be framed against the Appellant under Section 302 of the Indian Penal Code. The Appellant pleaded not

guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the Appellant as stated in paragraph 1 above, hence, this Appeal.

4. We have heard learned counsel for the Appellant and the learned APP for the State. We have carefully considered their submissions, the facts and and circumstances of this case, the judgment and order passed by the learned Sessions Judge and evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the prosecution has not proved its case against the Appellant beyond reasonable doubt.

5. There is no eye witness in the present case and the case is based only on circumstantial evidence. It is well settled 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. The circumstances should be of a conclusive nature 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 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. This has been laid down by the Supreme Court in the case of **Hanumant vs The State Of Madhya Pradesh** reported in **AIR 1952 SC 343**. This case has been uniformly followed and applied in a large number of cases which rest on circumstantial evidence alone. Keeping in mind these principles, we have evaluated the evidence.

6. The circumstances against the Appellant are - (i) last seen; (ii) extra-judicial confession' (iii) motive; (iv) knife and bloodstained clothes seized from the Appellant and (iv) the C.A. report (Exhibit 81) which shows that blood of 'B' group was found on the pant of the Appellant and the knife seized from the Appellant.

7. The first two circumstances relied upon by the prosecution are 'last seen' and extra-judicial confession. On the aspect of last seen the prosecution has examined P.W.1-Kailas, P.W.2-Shobha and P.W.3-Gautam. Kailas had stated that he was residing at Mohammedwadi along with his family including his brother (deceased Sachin) and Sachin's wife. He knew the Appellant-Santosh as the Appellant was working at the brick factory of Ghule (P.W.4) where Sachin was also working. Kailas has stated that on 29th August, 2006, they all returned home at about 6.30 p.m. At that time Sachin was sitting in the house of Gautam (P.W.3) whose house was adjacent to the house of Kailas. The Appellant was also present in the house of Gautam. At about 7 p.m., Kailas went to call Sachin to come and have tea. Sachin told Kailas that he had already had tea. Thereafter the Appellant asked Sachin to accompany him to the city and they both went to the city. Kailas has further stated that at about 10 p.m. Appellant-Santosh came back from the city and he called Gautam (P.W.3) and thereafter he informed him (Kailas) that he had assaulted Sachin and he led them to the field of one Pangare, where they saw Sachin lying in injured condition.

8. P.W.2-Shobha is the wife of P.W.1-Kailas. Shobha has stated that at about 6 p.m. they returned home. Her husband asked her to prepare tea. At that time she saw the Appellant coming towards the house. In the meanwhile, the Appellant and Sachin went to the house of Gautam (P.W.3). In between 7 to 7.30 p.m. the Appellant and Sachin went outside. Shobha has further stated that at about 10 p.m. Santosh alone came to the house. Sachin was not with him. Santosh told her husband that he had killed Sachin and asked her husband to take Sachin to the hospital so that Sachin would survive. The Appellant further stated that Sachin was lying in the field of Pangare. Santosh and her husband then went to the spot. Her husband (Kailas) started shouting. On hearing shouts of her husband, wife of Sachin, Gautam, Gautam's wife went to the spot. They saw Sachin was lying there with bleeding injuries on his stomach and head. He was unconscious. Thereafter they took Sachin to the brick factory of Ghule (P.W.4). There Santosh told her husband that he was suspecting that Sachin had some relations with his wife. Hence, he killed him. The last witness on the aspect of last seen is P.W.3-Gautam. Gautam has stated that they returned home at about 6 p.m. Sachin was in his house. Santosh then took Sachin

with him. They both went to the city. He and Kailas saw Santosh and Sachin going to the city. At about 10 p.m. Santosh came to his house. He was shouting. On hearing shouts of Santosh, Kailas came to the house of Gautam. Santosh then told them that he had killed Sachin with knife and he is lying in the field of Pangare. Thereafter he, Kailas and Santosh went to the spot where Sachin was lying. They noticed that Sachin had sustained bleeding injuries.

9. Thus as far as the aspect of last seen is concerned, P.W.1-Kailas, P.W.2-Shobha and P.W.3-Gautam have deposed about it. We have gone through the original record and we have noticed a very disturbing aspect. In the original record which is recorded in Marathi, we find that this aspect of last seen as deposed by P.W.1, P.W.2 and P.W.3 has not been put to the Appellant in his statement under Section 313. As this circumstance has not been put to the Appellant and he has not been given an opportunity to explain about the same, this circumstance cannot be taken into consideration against the Appellant.

10. The next circumstance is extra-judicial confession. Four

witnesses have deposed in relation to this circumstance i.e. P.W.1-Kailas, P.W.2-Shoba, P.W.3-Gautam and P.W.4-Chandrakant. We have already reproduced above what P.W.1, P.W.2 and P.W.3 have stated in relation to extra-judicial confession made by the Appellant to them. In addition, P.W.4-Chandrakant has also deposed about extra-judicial confession being made by the Appellant. Chandrakant has stated that at about 10.30 p.m. he received telephone of one Santosh Gaikwad. Chandrakant was informed that Sachin was assaulted near brick kiln. Chandrakant immediately rushed to the brick kiln. He found that P.W.1-Kailas, P.W.3-Gautam and the Appellant were present. Blood was seen oozing from the stomach of Sachin. Chandrakant has stated that he made enquiry with the Appellant as to why the Appellant had assaulted Sachin, whereupon the Appellant is stated to have told him that he had doubt that his wife and Sachin had some relation. Hence, he stabbed Sachin with knife. It is pertinent to note that P.W.4-Chandrakant has stated that when the Appellant made this extra-judicial confession, at that time P.W.3-Gautam was present. However, the cross-examination of Gautam shows that the Appellant did not state anything in his presence nor had anyone made any enquiry with the Appellant in his presence. This

falsifies the circumstance of extra-judicial confession made by the Appellant to P.W.3-Gautam as well as P.W.4-Chandrakant.

11. As far as the Appellant making extra-judicial confession to P.W.1-Kailas and P.W.2-Shobha is concerned, this extra-judicial confession, according to the prosecution, was made by the Appellant to these witnesses when the Appellant came to the house of Kailas. Again we find that this circumstance has not been put to the Appellant in his statement under Section 313 of the Criminal Procedure Code. We have gone through the original Marathi record of the statement of the accused under Section 313 of the Cr.P.C. and we find that the question put to the Appellant in relation to the extra-judicial confession is that thereafter you (Appellant) also came back from the city and called Gautam and told him that Sachin is lying in injured condition and Sachin should be taken to the hospital, otherwise Sachin would die. Thus, nowhere in his statement under Section 313 of Cr.P.C. this circumstance was put to the Appellant that he made extra-judicial confession to P.W.1-Kailas and P.W.2-Shobha when he went to the house of Kailas. Obviously as this circumstance was not put to the Appellant and he had no

opportunity to give his explanation regarding the same, this circumstance cannot be taken into consideration.

12. The purpose of Section 313 of the Code is set out in its opening words- 'for the purpose of enabling the accused personally to explain any circumstance appearing in the evidence against him.' In *Hate Singh, Bhagat Singh v. State of Madhya Pradesh* (AIR 1953 SC 468) it has been laid down by the Supreme Court that the statements of accused persons recorded under Section 313 of the Code 'are among the most important matters to be considered at the trial'.

13. The object of examination under Section 313 of the Cr.P.C. is to give the accused an opportunity to explain the case against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

14. The word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general

nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

15. The Supreme Court in the case of **Shaikh Maqsood v. State of Maharashtra** reported in **(2009) 6 SCC 583** has observed thus :

“It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must, therefore, be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.”

16. In the present case, we find that as far as the extra-judicial confession to P.W.1-Kailas and P.W.2-Shobha is concerned, this circumstance has not been put to the Appellant. So also the circumstance of last seen has not been put to the Appellant under Section 313 of the Cr.P.C. As far as the extra-judicial confession at the brick kiln of P.W.4 is concerned, we have already given our reasons as to why we are not inclined to place any reliance on the same. In this view of the matter, the last circumstance which remains against the Appellant is seizure of bloodstained clothes and the bloodstained knife from him.

17. P.W.5- panch witness Rajesh Ghule has stated that on 30th August, 2006 he was called to the police station. Police seized the knife from the Appellant. The knife was bloodstained. Police also seized the clothes which were on the person of the Appellant. There were bloodstains on the clothes. These articles were sent to the Chemical Analyser. As per the C.A. report (Exhibit 31), the pant of the Appellant was found stained with blood of 'B' group and the knife was found stained with blood of 'B' group. The learned APP submitted that the clothes of the deceased were also found stained with blood of 'B' group from which it can be safely gathered that the blood group of the deceased was 'B'. She submitted that the presence of blood of 'B' group on the pant of the Appellant and the knife which were seized from the Appellant is a very strong incriminating circumstance against the Appellant. As far as this circumstance is concerned, from the record it is seen that the C.A. report was not put to the accused in his statement under Section 313 of the Cr.P.C. In such a case, the seizure of knife and bloodstained clothes at the instance of the Appellant would lose its importance.

18. After keeping in mind the principles relating to a case based on circumstantial evidence which we have stated in paragraph 5 above, we have evaluated the evidence and in the present case, we find that it cannot be said that all the links in the chain of circumstances are complete. Every link in the chain of circumstances relied upon by the prosecution in the present case has some or other infirmity or lacuna and therefore, such evidence cannot be relied upon to base a conviction. Looking to all the above facts, we are of the opinion that the prosecution has not proved beyond reasonable doubt that the Appellant committed the murder of Sachin by assaulting him with a knife. Looking to the evidence on record, we are of the opinion that the Appellant deserves to be given the benefit of doubt. Hence, the following order :

- (i) The impugned judgment and order dated 17th August 2007 passed by the learned Additional Sessions Judge, Pune in Sessions Case No.637 of 2006 convicting the Appellant under Section 302 of the Indian Penal Code is set aside. The Appellant is acquitted thereunder.
- (ii) The Appellant be released from jail forthwith, if not required

in any other case.

- (iii) The fine amount, if any, paid by the Appellant be refunded.

The Appeal is allowed in above terms.

(A.S. Gadkari, J.)

(Smt. V.K. Tahilramani, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.