

VKS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1276 OF 2007

Anand Augstin Bhambal	]	
age : 25 years,	]	
Residence Mariyam, B-wing, Ground floor,	]	
Room No.1, Kalyan	]....	<u>Appellant</u>
District Thane	]	Ori. Accused No.1.
	]	
[At present lodged in Nasik Central Jail]	]	

Versus

The State of Maharashtra	]	
at the instance of Kolshewadi	]	
Police Station, Kalyan	]....	<u>Respondent</u>
District Thane	]	Ori. complainant.
	]	

Mr. N. N. Gawankar a/w Mr. Manas Gawankar a/w
Ms. Sharon Patole, for the Appellant.

Mrs. Sangeeta D. Shinde, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : 24th MARCH , 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. The appellant-original accused No.1, in Sessions Case No.165 of 2005, who stands convicted, by Ad-hoc District Judge-1, Kalyan, by judgment dated 12.9.2007, for the offence punishable under

Section 302 and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for 8 months and also under Section 392 of the IPC and sentenced to suffer rigorous imprisonment for 7 years and to pay fine Rs.1,000/- in default further to undergo rigorous imprisonment for six months, by this appeal challenges his conviction and sentence.

2. The facts, as are necessary, for the decision of this appeal may be stated as follows :-

P.W.2 Spruha, the daughter of P.W.1 Bimba and the deceased Bhagwan, performed registered marriage with the appellant on 1.11.2004. However, she did not disclose the said fact to her family members. In April, 2005, she had given her gold chain to the appellant. When she demanded the same, appellant informed that he had hypothecated it as he needed money. In May, 2005, the appellant came to P.W.2 Spruha's parent's house alongwith accused No.2 Raju Kamble with a proposal for marriage with P.W.1 Spruha. However, as the appellant was jobless, P.W.2 Spruha's father refused the proposal. Thereafter on 3.7.2005, the appellant promised to return her gold chain to P.W.1 Spruha, and for that purpose called her at Kalyan Railway Station, on the next day

at about 10.30 a.m. alongwith her mother.

3. Accordingly, on 4.7.2005, P.W.2 Spruha and P.W.1 Bimba, her mother went to Kalyan Railway Station under the guise of purchasing vegetables. There they waited for some time. However, the appellant did not turn up. At about 12.30 p.m., when they returned to their house, they found the door open. When they went inside, they noticed the dead body of Bhagwan lying on the cot with his legs tied with saree. They also noticed that he has sustained several injuries on his person. Immediately they took him to Shridevi Hospital where he was declared dead. After returning to the house, P.W.1 Bimba and P.W.2 Spruha found that cash amount of Rs.2500/-, gold rings, gold necklace and some other articles were stolen from the house. P.W.1 Bimba, therefore, reported the matter to the police.

4. P.W.15 PSI Adhagale, who, at the relevant time was on duty at Kolshewadi Police Station, recorded the complaint of P.W.1 Bimba and on the said complaint, he registered C.R.No.145 of 2005 against the unknown person. Alongwith P.W.1 Bimba, he visited the spot and made inquest panchanama of the dead body vide Exh. 77A and referred the dead body for postmortem.

5. P.W.16 Police Inspector Bajarang Patil, then took over further investigation of the case. He visited the spot and in presence of panchas made spot panchanama Exh. 77. From the spot, he seized the iron pipe of the vacuum cleaner and some blood stained clothes. On the same day, he recorded statements of 10 witnesses including neighbours. Again on 5th July, 2005, he visited the spot and recorded the statement of P.W.4 Rekha and some other witnesses. On that day at about 4.00 p.m. present appellant came to be arrested by Police Inspector Pawar. PSI Vibhute arrested accused No.2 Raju Kamble. Both the accused were produced before P.W.16 PI Patil. He arrested them under panchanama Exh. 109 and referred them for their medical examination. Some minor injuries were found on the hands of the appellant and his medical certificate is produced at Exh. 90. During the course of interrogation, accused No.2 Raju gave disclosure statement which was recorded at Exh.110 and at his behest the stolen necklace came to be seized under panchanama Exh.111.

6. On 6th July, 2005, the appellant gave disclosure statement; the memorandum panchanama of the same was made vide Exh.112 and at his behest, from his house, the other stolen articles like mobile phone,

camera, gold rings, gold coins and some cash amount came to be seized under panchanama at Exh.113.

7. On 7th July, 2005, in pursuance of the disclosure statement made by appellant, his blood stained clothes were seized under panchanama at Exh. 115. On the same day the blood stained clothes of accused No.2 Raju also came to be seized in pursuance of memorandum panchanama Exh.117, vide seizure panchanama at Exh.102. As a part of further instigation, P.W.16 PI Patil, sent the seized muddemal to Chemical Analyzer alongwith the blood samples of the appellant and accused No.2. The C.A. reports are produced at Exh Nos 118 to 121. Further to completion of investigation, P.W.16 PI Patil, filed chargesheet in the court against the appellant and accused No.2 Raju.

8. On the case being committed to the Sessions Court, the trial Court framed charge against the appellant and co-accused No.2 vide Exh. 37/1. Both of them pleaded not guilty to the charge and claimed trial.

9. To prove its case, the prosecution examined in all 16 witnesses and on appreciation of their evidence, trial Court convicted and sentenced the appellant as aforesaid; whereas accused No.2 was

convicted for the offence punishable under Section 411 of IPC and sentenced to suffer rigorous imprisonment for two years and fine of Rs.1,000/- in default to suffer further rigorous imprisonment for six months.

10. This judgment of the trial Court, is being challenged in this appeal by the learned counsel for appellant Mr. N.N. Gawankar, whereas supported by the learned APP Mrs. S.D. Shinde. In our considered opinion, before adverting to their submissions, it would be useful to refer to the evidence on record.

11. To prove the homicidal death of P.W.1 Bimba's husband Bhagwan, the prosecution has examined P.W.8 Dr. Deepak Gupta, who has conducted postmortem on his dead body on 4.7.2005 and found following external injuries.

1. Linear superficial scratch mark on left back 2" below scapula border. minimum bleeding.
2. Superficial abrasion of ½ cm on right mid cheek, minimum bleeding.

On internal examination, he found following injury.

“C.LW. about 1” in size 2” above and medial to ear bone deep on right occipital direction, slanting upward to sagittal suture, bleeding plus (continuous bleeding) with no underline fracture. Brain blood vessels were congested and extra dural haematoma about size 2” x 3” x 1” at right occipital region”

12. According to him, these injuries were antemortem and were sufficient in the ordinary course of nature to cause death. In his opinion the cause of death was intra-cranial haemorrhage due to head injury. He has issued postmortem report Exh.87 accordingly. In cross examination, suggestions are put up to him that both external injuries were minor. It was also suggested to him that the size of heart was double than normal size which symptom showed that the patient was suffering from some heart disease. The suggestion was also made to the effect that the injuries found on the dead body are possible by accidental fall. He has not denied these suggestions.

13. The argument is, therefore, advanced that the prosecution has failed to prove the homicidal nature of the death. However, in our considered opinion, the opinion given by P.W.8 Dr.Gupta, in his examination-in-chief that the cause of death was intra cranial haemorrhage due to head injury, has remained unchallenged on

record. His evidence, clearly goes to prove that there was C.L.W. on right occipital region which resulted into extra dural haematoma because of which the patient has died. The inquest panchanama Exh.78A also goes to prove fresh head injury with bleeding.

14. Further the evidence of P.W.1 Bimba and P.W.2 Spruha goes to prove that when they returned to the house, they found the dead body of Bhagwan on the cot and two sarees were found tied to the body by the side of legs. If the death was due to accidental fall as submitted by the learned counsel for the appellant, there is no explanation how the dead body was found on the cot. Therefore, in the light of categorical opinion given by P.W.8 Dr. Gupta, it has to be held that the prosecution has proved that the deceased Bhagwan has succumbed to homicidal death.

15. To prove its case against the accused, the prosecution has mainly relied on the evidence relating to recovery of gold ornaments and stolen property at the instance of appellant and accused No.2 Raju, immediately after the incident within two days.

16. The evidence of P.W.2 Spruha goes to reveal that she has got married with the appellant secretly without the knowledge of her

parents or family members as she was in love with him. A registered marriage was performed on 1.11.2004. However, she did not disclose about it to her parents till the incident. In May 2005, the appellant came to her house alongwith accused No.2 Raju, however, her father refused permission for the marriage as the appellant was jobless at that time. Thereafter on 3.7.2005, the appellant called her at Pornima Talkies bus stop and told her to come on the next day alongwith her mother at the ticket house of Kalyan railway station. He assured that there he will return the gold chain which she had given to him in April, 2005. Accordingly, on 4.7.2005 she and her mother P.W.1 Bimba went to the ticket house at the Kalyan railway station under the guise of purchasing vegetables. They waited there from 10.30 a.m., but the appellant did not turn up. At about 12.05 p.m., she even made phone call to the house of appellant and she was informed by his mother that he was not in the house. Hence when she and her mother returned to the house, at about 12.30 p.m., they noticed that one part of vacuum cleaner was lying near show-case. When they entered into bed room, they found that her father was lying in the bed in injured condition. He had head injury and he was unconscious. Thereafter he was taken to Shridevi Hospital where he was declared dead.

17. There is corroborating evidence of P.W.1 Bimba also, who has deposed that after the Doctor declared him dead, she and P.W.2 Spruha, returned to the house and found that some gold ornaments like gold ear rings, gold coin on which IDBI 2000 was marked, three silver coins, upon which picture of Saibaba and Goddess Laxmi was carved; three gold rings out of them two were having Badam shape and one was having "B" mark, cash amount of Rs.2500/- and gold necklace were missing from the house. She lodged report about the same vide Exh.17.

18. On the next day, police came to her house and her supplementary statement came to be recorded. At that time P.W.1 Bimba, had taken search and found that one Nokia mobile phone and one Kodak camera were also missing. She also came to know from her neighbour P.W.4 Rekha that the appellant had made phone calls to her house, making enquiry about P.W.2 Spruha at 10.45 a.m., 12.15 p.m. and again at about 1.00 p.m. As per evidence of P.W.1 Bimba, her stolen articles were shown to her on the third day of the incident at the police station, which she identified. She has also deposed about the love affair between her daughter P.W.1 Spruha and the appellant and her husband refusing to give consent for the marriage, as the appellant was unemployed at that time.

19. Then there is evidence of P.W.4 Rekha, a neighbour, who has received phone calls from the appellant on the day of incident making enquiry about P.W.2 Spruha. The said phone calls were received at about 10.45 a.m., 12.15 p.m. On both the occasions, P.W.2 Spruha was not in the house. She has stated that she disclosed about this fact to P.W.1 Bimba after the funeral was performed.

20. There is recovery of these very articles, which were stolen from the house of P.W.1 Bimba and P.W.2 Spruha, at the instance of appellant and accused No.2 Raju. P.W.16 Investigating Officer PI Patil has given evidence in detail as to how at the behest of the present appellant, on the third day of the incident, these stolen articles were recovered. His evidence proves that during interrogation, on 6th July, 2005, the appellant gave disclosure statement that he was ready to produce the articles stolen from the house of the deceased, which he has kept in his house, beneath the mattress of the cot, in one plastic bag. The memorandum panchanama of his statement was made at Exh. 112. Thereafter he took P.W.16 PI Patil and the panchas to his house at Azad Nagar, Kalyan and produced plastic bag kept beneath the mattress of the cot and in that plastic bag there was camera of Kodak company, mobile of Nokia company, three silver coins, one gold

coin and three rings and cash amount. All these articles were seized under panchanama at Exh.113.

21. In evidence before the Court, P.W.1 Bimba and P.W.2 Spruha, have identified these articles, as belonging to them and stolen from their house, on account of specific identification marks thereon, the description of which they had given in the complaint itself.

22. The evidence of P.W.16 PI Patil also goes to prove the recovery of gold necklace stolen from the house of P.W.1 Bimba. This recovery was made at the instance of accused No.2 Raju, in pursuance of memorandum panchanama of disclosure statement given by him vide Exh.110. The said necklace was recovered from one plastic drum containing water, from the house of accused No.2's brother Balu. The said necklace was seized under panchanama vide Exh.111. P.W.1 Bimba and P.W.2 Spruha have identified the said necklace as belonging to them. There is also recovery of blood stained clothes of the appellant and the accused No.2 Raju under Section 27 of the Evidence Act. The C.A. report Exh. 118 goes to prove that the blood stains found thereon were matching with the blood group of the deceased.

23. The submission of learned counsel for the appellant is that both the panchas to the recovery panchanamas of the stolen articles as well as blood stained clothes, have not supported the prosecution case. They are declared hostile. Though the learned APP has cross examined them, nothing worthwhile is elicited in their cross examination to prove the prosecution case. Hence according to him, recovery evidence cannot be relied on as there is no independent corroboration to the testimony of Investigating officer P.W.16 PI Patil.

24. We are, however, unable to accept this submission because the law is well settled that seizure panchanamas of the articles under Section 27 of the Evidence Act, can be proved even on the basis of sole testimony of Investigating Officer because in the first place the evidence of Police Officer carries equal weightage and it cannot be disbelieved merely because he is a Police Officer. As held by the Apex Court, in **Madan Singh -vs- State of Rajasthan, A.I.R. 1978 SC 1511**, if the evidence of Investigating officer who recovers material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution cases. It is also well settled that the presumption that people act honestly applies to Police Officers also. If the panchas are not available or unreliable, the panchanama can be proved by

Investigating Officer. There is no principle of law that police officer's evidence cannot be relied upon without corroboration. Here in the present case the evidence of Investigating Officer P.W.16 PI Patil, is having a ring of truthfulness and sense of straightforwardness. His cross examination has not made any dent in his credibility or reliability. Therefore, there is absolutely no reason to disbelieve his evidence merely because the panchas are won over or have not supported the prosecution case.

25. As rightly held by the trial Court, recovery of these stolen articles is made within two days from the date of incident at the behest of the appellant and therefore, the presumption under Section 114(a) of the Evidence Act can definitely be invoked in the instant case. In this respect a useful reference can be made to the case of **Shri. Bhagwan -vs- State of Rajasthan, 2001 (6), SPJ 272**, wherein it was held that the possession of the fruits of the crime recently after it has been committed is proved, affords a strong and reasonable ground for the presumption that the party in whose possession they are found was the real offender, unless he can account for such possession in some way consistent with his innocence.

26. Here in the case, the appellant has not offered any explanation about his possession of the stolen articles within two days from the incident. A specific question was put to him to that effect in his statement under Section 313 of the Code of Criminal Procedure, but he has failed to offer any explanation about his recent possession. In the instant case presumption under Section 114(a) of the Evidence Act, will extend also to the presumption that it was the appellant who has committed murder of deceased Bhagwan as both the transactions robbery and murder are part of one and same incident.

27. Again in this respect a useful reference can be made to **Parabhadrapa -vs- State of Karnataka, 1983 (2), SCC 330**, wherein it was held that when murder and robbery are proved to have been integral parts of one and the same transaction, presumption arising under illustration (a) of Section 114 of the Evidence Act is required to be drawn that not only the appellant committed murder of the deceased, but also committed robbery of gold ornaments which form part of the same transaction.

28. In **Gulabchand -vs- State of Madhya Pradesh (1995) 3 SCC 574**, also the Apex Court held that when the prosecution proved that the offence of robbery and murder were committed in one

and the same transaction, and and soon thereafter the stolen properties were recovered, the Court may legitimately draw presumption not only to the fact that the person in whose possession the stolen articles were found committed the robbery, but also he committed the murder.

29. In the instant case the appellant was found in possession of the stolen articles, within two days from the date of incident, it is also proved on record that the offence of robbery and murder were committed in one and the same transaction, they are integral parts of the same incident. The appellant has failed to offer any explanation for the possession of the articles to rebut the presumption which is necessary to be drawn from the facts on record. Therefore, this sole circumstance by itself becomes sufficient to prove the guilt of the appellant for both the offences punishable under Sections 302 and 392 of the IPC.

30. As regards recovery of blood stained clothes of the appellant, the trial Court has not placed reliance thereon in the absence of evidence showing that the clothes were sealed with wax and for the non examination of the carrier. In our considered opinion, even if the evidence relating to the same which was only in the nature

of additional link or corroborating factor is excluded from the consideration, it will not make much difference as the recovery evidence of stolen articles is clinching piece to prove the guilt of appellant beyond reasonable doubt.

31. Prosecution has also relied upon evidence of P.W.9 Dr. Pravin Ugale, who has, on examination of the appellant on 5.7.2005, found two abrasions on his left middle finger and issued certificate Exh. 90. No explanation is offered by the appellant about the injuries which again form an additional link indicating the complicity of the appellant in the incident of murder. The evidence of P.W.4 Rekha also goes to prove that the appellant was confirming by making phone calls to her, whether the P.W.1 Bimba and P.W.2 Spruha were at home or not for committing the offence.

32. The spot panchanama Exh.77 also goes to prove that no damage was caused to the door of the house which proves that someone known to the deceased had come to his house and therefore, the deceased allowed entry of that person into the house. If the robbery was committed by some unknown person, then it goes without saying that the deceased would not have allowed that person to enter into the house and the said person could not have done so

without breaking the door.

33. If this entire evidence proved on record, is appreciated in its proper perspective, then the only inference that can be drawn is consistent with the inference that the appellant and appellant alone had committed the offence. The trial Court has therefore, rightly held the guilt of the appellant to be proved beyond reasonable doubt for both the offences punishable under Sections 392 and 302 of IPC. The appeal, therefore, holds no merit. Consequently, the appeal stands dismissed, confirming the conviction and sentence of the appellant.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]