

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 623 OF 2012

Rajendra S/o Bhaskar Sonwane, Aged 35 **APPELLANT**
Years, Occupation Agriculture, Resident of
Shahajanpur Rui, Taluka and District Beed

V E R S U S

The State of Maharashtra . **RESPONDENT**

Mr. V.R. Dhorde, Advocate for the Appellant
Mr. S.D. Ghayal, A.P.P. for the Respondent – State

**CORAM : A.V. NIRGUDE &
INDIRA K. JAIN, JJ.**

DATE : 26th February, 2016

ORAL JUDGMENT (Per A.V. NIRGUDE, J.) :-

1. This appeal challenges judgment and order dated 27th September, 2012, in Sessions Case No. 162 of 2011, vide which the learned Sessions Judge, Beed, convicted the accused, who is now appellant, for the offence punishable under section 302 of the Indian Penal

Code and was sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- with a default clause. The accused / Appellant was also convicted for the offence punishable under Section 201 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year. Both the sentences were made to run concurrently.

2. ***The prosecution case that came before the trial Court, in short, can be narrated as under :-***

One Sunil and appellant Rajendra were resident of Shahajanpur Rui, Taluka and District Beed. On 19th July, 2011, Sunil went to Hirapur weekly market in the morning, but did not come back for two days. A missing report was filed on 21st July, 2011 by his brother i.e. complainant Prabhakar. On 22nd July, 2011, Sunil's dead-body was found in a well at Shahajanpur. It was found that Sunil had sustained number of injuries. It was thus a case of homicidal death. On 23rd July, 2011, police lodged complaint against unknown person and started investigation. It was transpired during investigation that it was appellant / accused who had committed murder and so appellant was charge-sheeted.

3. At the time of trial, the prosecution examined in all 13 witnesses. As indicated above, there was no eye witness to the incident. The case depended mostly on circumstantial evidence.

4. The prosecution relied upon two witnesses, they are P.W. Nos. 6 and 7 to establish that on 19th July, 2011, at about 04.00 p.m., accused Rajendra, deceased Sunil and witness P.W. 6 - Lahu together went to a restaurant at Beed and had snacks.

5. P.W. No.6 – Lahu stated that he knew deceased Sunil. On 19th July, 2011, he had come to Beed for distribution of milk on his motorcycle. After he supplied milk, he went to a restaurant Balaji hotel. At about 10.30 a.m., he received a phone call from Sunil. Sunil asked him whether he would take him to village Hirapur. Sunil consented. Sunil then came there. Sunil then took him to Hirapur on his motorcycle. On the way, Sunil received a phone call from appellant / accused Rajendra. Rajendra too requested Sunil to take him to Hirapur. Then both of them went to market where they met appellant / accused Rajendra. They spent some time in the market. They then came back to Beed and again went to the restaurant Balaji hotel. This time they had snacks together. Lahu then

stated that he received a phone call of his acquaintance. So he left the restaurant and went to his village. At about 08.30 p.m. on that day he received a phone call from Baban Gore (P.W.No.5), the brother of deceased Sunil. Baban asked him whether Sunil was with him. To this, he told Baban that he had left Sunil with Rajendra. On the next day also Baban asked him about Sunil and he told that he had no occasion to meet Sunil on next day.

6. P.W. No.7 - Sheshrao is the owner of Balaji hotel. He stated that on 19th July, 2011, he noticed P.W. No.6 - Lahu, appellant / accused Rajendra and one unknown person sitting in his restaurant having snacks.

7. Both these witnesses at the most indicate that deceased Sunil was in the company of accused / appellant Rajendra till 05.00 p.m. The peculiarity of deposition of P.W. No.6 - Lahu is that he did not mention to police or others during intervening period prior to discovery of dead-body of Sunil that Sunil was with him and appellant / accused was also with them.

8. P.W. No. 5 is Baban is brother of deceased Sunil. He stated

that on 19th July, 2011 Sunil left him for going to weekly market. He did not come back till late hours for next 2 – 3 days. He and others took search for Sunil. This witness however did not mention that he had any occasion of inquiry with P.W. No.6 - Lahu for whereabouts of Sunil. P.W. 5 Baban however suggested that appellant / accused Rajendra could have committed murder of his brother because they suspected that he had illicit relations with Sunil's wife, who is P.W. No. 9 - Radhabai.

9. Radhabai – P.W. 9 stated that she had no relations with Rajendra.

10. During the investigation, Rajendra was arrested. In a case of this nature, what transpires after arrest of the accused is likely to hold the key for prosecution case. It is expected that the Investigation Officer would find out as to what happened between the accused and the deceased prior to the homicide and in what way the accused disposed of the dead body.

11. P.W. 13 - Suresh Gaikwad, P.I. of Police Station Beed Rural is the Investigation Officer. He took up investigation of this case on 23rd July,

2011. He stated that when the dead-body was found earlier, four injuries on the head of deceased were found caused by sharp weapon. He also stated that the dead-body was found tied with winding wire. The hands and legs were also tied by scarf. On 25th July, 2011, he arrested the accused. On 26th July, 2011 accused Rajendra showed a spot where the victim was assaulted. He seized soil from that spot and sent it for chemical analysis. On 28th July, 2011, while the appellant / accused Rajendra was in police custody, he led police to his well from where murder weapon was recovered. The sickle was also sent for chemical analysis.

12. The report of Chemical Analyst was received, but was not helpful for prosecution. It mentioned that the soil collected on the alleged spot of assault did not contain any blood nor the murder weapon was found stained with blood.

13. The learned judge of the trial Court believed the prosecution case and convicted the accused.

14. The question that arose for our consideration is, 'whether

prosecution has proved the chain of circumstances which would lead to the irrefutable conclusion that the appellant had committed murder of the deceased'. We discussed the material evidence in earlier paragraph of this judgment. All that we could find is that the prosecution could prove that deceased Sunil was seen in the company of the appellant / accused Rajendra on 19th July, 2011 in or about 02.00 p.m. to 05.00 p.m. But P.W. Nos. 6 and 7 did not indicate that the appellant and the deceased had any quarrel during this time. The prosecution however could not show as to what happened after 05.00 p.m. between deceased and the appellant / accused Rajendra. As said above, during investigation, the Investigation Officer ought to have brought on record circumstances which would indicate that it was the appellant / accused who caused bleeding injuries to the deceased. The Investigation Officer could have recovered blood stained clothes belonging to the appellant / accused from him. He could have also brought on record as to how the dead-body was taken to the spot where it was found. He could brought on record as to from where the winding wire was obtained for tying up the dead-body. He could have further found out as to how the accused / appellant Rajendra could carry the dead-body from the spot where he was killed to the well, in which the dead-body was ultimately found. The Investigation Officer did not make

any effort to record memorandum panchnama regarding purchase of sickle as well as winding wire.

15. Assuming he had identified the accused, yet discovery by the accused during investigation of the shop from where he purchased the articles used in committing offence was necessary. Such panchnama was not made and not proved. The Investigation Officer certainly could not have performed better. Even his superior officer could not have performed better. It is because of insufficient investigation by P.W. No.13 - Suresh Gaikwad, we hold that the material discussed above was not sufficient to form a chain of circumstances against the appellant.

The appeal should therefore succeed. Hence, the following order :-

O R D E R

- 1) The Appeal stands allowed.
- 2) The impugned judgment and order dated 27th September, 2012, passed by the learned Sessions Judge, Beed, in Sessions Case No. 162 of 2011 stands set aside.

- 3) The appellant is hereby acquitted from the offence punishable under Sections 302 and 201 of the Indian Penal Code.
- 4) The appellant be released from the custody if not required in any other case.

(INDIRA K. JAIN, J.)

(A.V. NIRGUDE, J.)

srm/26/2/16