

CRIMINAL APPEAL No. 157 OF 2015

Vs.

The State of Maharashtra ... Respondent

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : Smt. V. K. TAHILRAMANI, J.
ACTING CHIEF JUSTICE, &
P. N. DESHMUKH, J.
(SPECIAL VACATION BENCH)

DATE : MAY 10, 2018

PC :-

1. This appeal takes exception to judgment dated 19th November, 2014 passed by Additional Sessions Judge, Karad in Sessions Case No. 7 of 2013, by which Appellant is convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer rigorous imprisonment for life and pay

fine of Rs. 1,000/- in default to suffer simple imprisonment for two months.

2. In brief, it is case of prosecution that:

(i) PW 3 Smt. Sharanawati Pujari, mother of deceased Raju @ Rajendra lodged report (Exhibit 28) against Appellant on 23.8.2012 suspecting him to have committed murder of deceased, as according to her complaint, Appellant about one month prior to the incident after having quarrel with his mother left his family and started residing with complainant in her house alongwith deceased Raju and his wife PW 4 Anita Pujari. It is further case of prosecution that when he was residing in the house of complainant, deceased was insisting him to do some work instead of wasting time. On this count, there was quarrel between deceased and accused on two occasions and one such quarrel took place on the night of 22nd August, 2012 at 9.30 p.m. when deceased slapped Appellant, and Appellant extended threat to him, saying that “soon you will come to know what I can do to him.” It is case of prosecution that deceased used to

sleep out of the house by the side of road, as she goats owned by him were tied in the shed adjoining to their hut and for their security, deceased used to sleep alongwith axe kept next to him.

(ii) In the background of above, it is the case of prosecution that on 23rd August, 2012 at 6.00 p.m. deceased was found lying in the pool of blood with injuries on throat, chest, and Appellant was not found in the house. Therefore, suspecting Appellant, report came to be lodged by the complainant. On the basis of report, offence came to be registered vide C.R. No. 186 of 2012 for the offence punishable under Section 302 of IPC and was investigated by PW 10 API Ashok Choudhari, during the course of which he visited spot, drew spot panchanama and seized quilt, shawl having blood stains and drew inquest panchanama in presence of independent panchas. On 24.8.2012, Appellant surrendered before the police, who is arrested and from his person his shirt and pant came to be seized under panchanama. All the seized muddemal articles were forwarded to Chemical Analyser. After recording statement of witnesses and

on receipt of C.A. reports and P.M. report, charge-sheet is filed before learned J.M.F.C. Karad.

3. In the course of time, case is committed to the Court of Sessions. Charge is framed against Appellant for the offence punishable under Section 302, to which he pleaded not guilty and claimed to be tried. His defence is of total denial and false implication, contending that as the relations between his mother and complainant are strained, as also the relations between wife of deceased and his mother were also strained, he is falsely implicated in the case by them. Appellant, however, did not examine any witness to establish his defence.

4. Prosecution has examined in all 11 witnesses and commenced evidence by examining PW 1 Ravindra Patil, who has proved spot panchanama and seizure of articles from the spot; PW 2 Pandurang Sawant, panch on inquest panchanama; PW 3 Sharanawati Pujari, complainant; PW 4 Anita Pujari wife of deceased; PW 5 Aasalam Desai who has proved seizure panchanama of clothes of Appellant (Exhibit 33); PW 6 Pramod

Babar who has proved seizure panchanama of clothes of deceased; PW 7 Anandrao Karale on circumstance, however, he was declared hostile; PW 8 Dr. Chandrakant Satpute who has performed autopsy and issued P.M. report (Exhibit 48); PW 9 ASI Vasant Kadam and PW 10, Ashok choudhari, Investigating Officer of the crime.

5. Heard learned advocate Ms. Rohini Dandekar, appointed for Appellant. She submitted that admittedly, case of prosecution is based on circumstances. However, prosecution has not proved its case beyond reasonable doubt, establishing each and every circumstance. It is further contended that there is no evidence to connect Appellant with the present crime and prayed that appeal be allowed.

6. Learned APP, on the other hand, has supported impugned judgment by referring to the material evidence, and contended that when the entire evidence is considered collectively in its true spirit, the only conclusion which can be drawn is guilt of Appellant as from the evidence on record,

prosecution had established all the circumstances which are conclusive in nature to connect the accused with present crime and thus, contended that appeal be dismissed.

7. In the background of facts as aforesaid, admittedly, case of prosecution is based on circumstantial evidence. By now, law on circumstantial evidence is well established that to establish the case based on circumstantial evidence, it is necessary for the prosecution to establish each and every incriminating circumstance beyond reasonable doubt, and prosecution has to further establish the circumstances so proved are inter-woven to each other so that it can lead to no other conclusion than guilt of accused. Keeping above settled principle in mind, we have considered evidence of material witnesses if it is sufficient to establish guilt of accused beyond reasonable doubt.

8. In view of case of prosecution as aforesaid, perusal of evidence of PW 3 Sharanawati, the complainant, would reveal that Appellant is son of her eldest son Kenchappa, who is

resident of village Yenake, taluka Karad, district Satara and since one month prior to the incident, which has occurred on 22.8.2012, Appellant had come to reside with complainant at her house at village Kole, taluka Karad, after having quarreled with his mother, and since then was residing with complainant, her son deceased Raju and his wife Anita. She has further stated that as Appellant was not doing any work, therefore, there used to be quarrels between Appellant and deceased. As per her evidence, one such quarrel took place one day prior to the incident after they had dinner at 9 p.m., and in fact, deceased had suggested Appellant that he would buy she-goats for him, who will look after them and earn the livelihood. As Appellant did not agree for the same, deceased slapped him, upon which Appellant extended threats to deceased saying that “since deceased has slapped him, he would show him what he can do to him”. Such incident might have occurred at 11.30 p.m.

.. Complainant further stated that thereafter she slept on the cot inside the house while Appellant slept on the floor

next to her cot, Anita slept in the inner room while deceased slept outside the house, adjacent to the road where she goats were tied in the shed, for their security purpose, having axe kept next to his bed. According to complainant, deceased used to sleep outside for such reason, and in the morning at 6.00 a.m. one of their neighbours came and informed that deceased was lying in the pool of blood, and therefore, she came out of the house and found deceased lying in his bed, having sustained injuries on his neck, forehead, chest, while Appellant was neither found in the house nor at the spot. It is for this reason, complainant suspected Appellant and lodged report against him at exhibit 28.

9. In the entire cross-examination of this witness, nothing has come on record to create doubt on her version. In fact, case suggested to this witness of false implication of Appellant due to some dispute between complainant and her sister-in-law Shantavva as marriage between Appellant and daughter of Shantavva could not be solemnized, is denied by

her.

10. Evidence of PW 4 Anita Pujari fully corroborates version of complainant Sharnawati on the point of Appellant residing in their house for about three weeks prior to incident, and on the quarrels between deceased and Appellant, and on the part of deceased insisting Appellant to do some work and earn livelihood. She has further deposed of the incident which took place on the day of incident between deceased and Appellant when deceased slapped Appellant, due to which he extended threats to show him what he can do to him.

11. PW 4 Anita further deposed of her sleeping in the inner room and of Appellant sleeping on the floor next to the bed of her mother-in-law, while her husband deceased sleeping outside the house, and of one of their neighbours informing that deceased is lying in the injured condition. Similar suggestions put to this witness about Appellant's false involvement due to strained relations between herself, complainant and mother of Appellant, is denied by her.

12. From the evidence of above two witnesses, it is thus established by prosecution that about three weeks prior to the incident, Appellant was residing in the house of complainant where deceased was residing with his wife Anita and during this period there used to be quarrel between deceased and Appellant and one such quarrel took place on the night of incident, when Appellant gave threats to deceased, and in the background of above facts, Appellant committed assault on deceased by axe on his neck.

13. Evidence of PW 8 Dr. Chandrakant Satpute establish that on 23.8.2012 he performed post mortem and found 3 contused lacerated wounds (i) on the forehead; (ii) over anterior and lower 1/3 of part of neck just above supra sternal notch transversely directed on right side, measuring 8 cm x 4 cm x 2.5 cm deep cutting trachea – Oesophagus, strap muscles and vessels in the line of incision; and (iii) on sternal region upper part transversely of size 8 cm x 3.5 cm x 3.5 cm. Deep cutting sternum left sterno clavicular joint and inter coastal muscles left

side in the line of incision. He has opined that injury Nos. (ii) and (iii) above are possible by hard and sharp object and cause of death is hemorrhagic shock due to injury to right jugular vein and right sub clavien artery with cut throat due to hard and sharp object. According to Medical Officer, injury Nos. (i) to (iii) above were sufficient in ordinary course of nature to cause death of a human being, and has also opined that these injuries are possible by axe and issued P. M. notes (exhibit 46).

.. Though in the cross-examination doctor has admitted that injury Nos. (ii) and (iii) are possible by sword, such admission appears to be stray in view of the fact that no weapon sword is involved in this case, and the axe which is found on the spot and seized was found stained with blood of deceased. In that view of the matter, such admission is required to be kept out of consideration.

14. In the background of above evidence, more particularly, perusal of PW 1 Ravindra Patil would reveal that while drawing spot panchanama in his presence, police had

seized articles such as blood stained axe, shawls, blanket from the spot. Similarly, from the evidence of PW 5 Aslam Desai, it is established that on effecting arrest of Appellant on 24.8.2012, blood stained clothes on the person of Appellant, consisting T-shirt and pant, came to be seized by police in his presence under panchanama (exhibit 33). According to evidence of PW 10 API Ashok Choudhari, all the articles were forwarded to Chemical Analyser. C.A. report (exhibit 55) established that blood group of deceased is "O" and according to C.A. report (exhibit 54) articles axe, shawl, blanket, full shirt and banyan of deceased are stained with his blood while pant of Appellant and axe is also stained with blood of group "O" which is of deceased.

15. Similarly, T-shirt of Appellant is certified to be stained with human blood of which group could not be determined. No explanation is putforth by Appellant as to how blood of group "O" is found on his pant or human blood is found on his T-shirt. It is no case of Appellant that he had sustained any injuries. In fact, there is no mention of any injury on the

person of Appellant at the time of his arrest.

16. In view of case of prosecution of shirt of Appellant having stained with human blood of which origin could not be determined, we refer to the case of ***Gura Singh Vs. State of Rajasthan, reported in (2001) 2 SCC 205*** wherein the Supreme Court observed as under:

“In view of the authoritative pronouncements of this Court in Teja Ram's case (supra), we do not find any substance in the submissions of the learned Counsel of the appellant that in the absence of the report regarding the origin of the blood, the trial court could not have convicted the accused. The Serologist and Chemical Examiner has found it that the Chadar (sheet) seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial court as well as the High Court were, therefore, justified in holding this circumstance as proved beyond doubt against the appellant.”

17. Similar view is taken by the Supreme Court in the cases of -

(i) ***R. Shivaji Vs. State of Kerala, reported in 2013***

(14) SCC 266;

(ii) ***Molai & Anr. Vs. State of Madhya Pradesh***
reported in **1999 (9) SCC 581;**

(iii) ***Khujji @ Surendra Tiwari Vs. State of Madhya Pradesh,*** reported in **AIR 1991 SC 1853.**

18. Having considered the aforesaid evidence, all above circumstances lead to the only conclusion that it is the Appellant alone, who is involved in the present crime, as at his instance various muddemal articles, as aforesaid, are recovered. Prosecution has thus, established all the circumstances, which lead to the involvement of Appellant in the present crime. We therefore, find no merits in the appeal and the same is thus, dismissed.

Sd/-

[P. N. DESHMUKH, J.]

Sd/-

[ACTING CHIEF JUSTICE]

Vinayak Halemath