

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.222 OF 2019

SWAPNIL RAMCHANDRA DHURI)...APPELLANT

V/s.

1) THE STATE OF MAHARASHTRA	)
	)
2) YASHWANT SABAJI DHURI	)
	)
3) SUDESH SURYAKANT DHURI	)
	)
4) SUBHASH @ RAMCHANDRA GAJANAN	)
DHURI	)...RESPONDENTS

Mr.Sainand Chaugule, Advocate for the Appellant.

Mr.R.K.Mendadkar a/w. Mr.T.V.Jadhav, Advocate for Respondent Nos.3 and 4.

Mr.Ganesh Bhujbal, Advocate for Respondent No.2.

Mr.H.J.Dedhia, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 9th APRIL 2019

JUDGMENT : (PER : A.M.BADAR, J.)

1 By this appeal, the appellant/First Informant, who happens to be son of deceased Ramchandra Dhuri, is challenging the judgment and order dated 25th October 2017 passed by the learned Additional Sessions Judge, Sindhudurg, Oros, in Sessions Case No.24 of 2016, thereby acquitting respondent nos.2 to 4 of the offence punishable under Section 302 read with 34 of the Indian Penal Code.

2 Facts, in brief, leading to the prosecution of respondent nos.2 to 4 and their resultant acquittal of the offence punishable under Section 302 read with 34 of the Indian Penal Code can be summarized thus :

- (a) Ramchandra Dhuri (since deceased) was residing with his wife PW8 Sitabai Dhuri, his son PW4 Swapnil Dhuri and other relatives at Village Math Dhuriwadi in Vengurla Taluka of Sindhudurg District. Respondent no.2/accused no.1 Yashwant Sabaji Dhuri was his neighbour.

Ramchandra Dhuri (since deceased) was doing agriculturist by occupation and was doing the work of grazing cattle.

- (b) According to the prosecution case, accused/respondent nos.2 to 4 viz. Yashwant Dhuri, Sudesh Dhuri and Subhash Dhuri were on inimical terms with Ramchandra Dhuri (since deceased). Ramchandra Dhuri (since deceased) and other villagers were objecting to the work of mining in the village whereas accused persons were supporting the mining work at the village. Similarly, accused persons used to insist that there should be program of dance of wooden horse in festival Shimga. However, villagers as well as Ramchandra Dhuri (since deceased) were objecting for such performance. This, according to the prosecution, had impelled accused persons to eliminate Ramchandra Dhuri on 26th March 2016 by murdering him in the forest in the vicinity of the village.
- (c) According to the prosecution case, at about 4.00 p.m. of 26th March 2016, Ramchandra Dhuri (since deceased) left his

house for grazing cattle. At that time, respondent no.2/accused Yashwant Dhuri was sitting on the bamboo fencing. After sometime, he also left towards the direction in which Ramchandra Dhuri (since deceased) had gone for grazing the cattle. Till late evening Ramchandra Dhuri (since deceased) had not returned to his house. Hence, his son PW4 Swapnil Dhuri along with his friend PW5 Amit Gawade started searching Ramchandra Dhuri (since deceased). However, he could not be traced out. PW4 Swapnil Dhuri, therefore, lodged missing report with police. On the next day i.e. on 27th March 2016, dead body of Ramchandra Dhuri (since deceased) was found lying in the forest in the vicinity of the village by PW7 Sudhakar Dhuri. The dead body was having injuries.

- (d) On noticing the fact of finding of dead body of Ramchandra Dhuri (since deceased), PW11 Vishnu Khobarekar, Police Constable, registered Accidental Death Case No.8 of 2016 and during inquiry of that case on 28th March 2016, PW4

Swapnil Dhuri lodged report Exhibit 14 pointing finger of suspicion towards accused persons. Accordingly, Crime No.13 of 2016 came to be registered at Police Station Vengurla for the offence punishable under Section 302 read with 34 of the Indian Penal Code.

- (e) Routine investigation followed. Dead body was sent for autopsy. Statement of witnesses came to be recorded. Respondent nos.2 to 4 came to be arrested. At the instance of respondent no.2/accused Yashwant Dhuri, his shirt and pant stained with blood as well as one cutter (instrument for cutting vegetables) came to be seized. Statement of witnesses came to be recorded. On completion of routine investigation, respondent nos.2 to 4 came to be charge-sheeted for the offence punishable under Section 302 read with 34 of the Indian Penal Code.
- (f) The learned trial court framed and explained Charge for the offence punishable under Section 302 read with 34 of the

Indian Penal Code to the accused i.e. respondent nos.2 to 4. They pleaded not guilty and claimed trial.

- (g) In support of its case, the prosecution has examined in all 15 witnesses. Panch witness to the Memorandum Statement and resultant Recovery Panchnama namely Vijaykumar Sarvade is examined as PW1. Exhibit 40 is the Memorandum Statement of respondent no.2/accused Yashwant Dhuri and Exhibit 41 is the resultant Recovery Panchnama of shirt, pant and cutter (instrument for cutting vegetables). PW2 Mahesh Dhuri and PW3 Ashok Gawade are witnesses, who had seen dead body of Ramchandra Dhuri (since deceased) lying in the forest on 27th March 2016. PW4 Swapnil Dhuri – son of deceased Ramchandra Dhuri is examined to prove motive as well as First Information Report (FIR) Exhibit 45 lodged by him on 28th March 2016. He was accompanied by PW5 Amit Gawade in search of deceased Ramchandra Dhuri, when the deceased went missing. PW6 Anand Gawade, Talathi, is examined to prove motive behind the crime. PW7 Sudhakar Dhuri is a

person who found dead body of Ramchandra Dhuri lying in the forest on 27th March 2016. In order to establish last seen theory, the prosecution has examined PW8 Sitabai Dhuri – widow of deceased Ramchandra Dhuri. PW9 Chandan Jadhav is a Police Constable who carried muddemal to the Forensic Laboratory. PW10 Suhas Patkar, Police Constable had registered the FIR lodged by PW4 Swapnil Dhuri. PW11 Police Sub-Inspector Vishnu Khobarekar had registered case of accidental death on 27th March 2016. PW12 and PW13 - Madhukar Aabhale and Manohar Patil have partly investigated the crime in question. PW14 Ratansing Rajput, Police Inspector, is examined to prove Memorandum of Statement as well as Recovery Panchnama - Exhibits 40 and 41 respectively. This witness has also partly conducted the investigation of the crime in question. Autopsy Surgeon Dr.Prashant Chavan of Rural Hospital, Vengurla, is examined as PW15. Exhibit 70 is the report of postmortem examination of dead body of deceased Ramchandra Dhuri.

(h) Defence of the accused persons was that of total denial. They, however, did not enter in the defence.

(i) After hearing the parties, the learned trial court concluded that the prosecution has failed to establish guilt of the respondent nos.2 to 4 for the offence punishable under Section 302 read with 34 of the Indian Penal Code and accordingly, they came to be acquitted. This acquittal is challenged by PW4 Swapnil Dhuri, who happens to be the son of deceased Ramchandra Dhuri.

3 We have heard the learned counsel appearing for appellant Swapnil Dhuri. He vehemently argued that prosecution has duly established the fact that soon before death of Ramchandra Dhuri, accused no.1 Yashwant Dhuri (respondent no.2) was in company of the deceased. Similarly, blood stained clothes of accused no.1 Yashwant Dhuri came to be seized in presence of PW1 Vijaykumar Sarvade by Investigating Officer PW14 Ratansing Rajput. Those clothes were found to be stained

with blood. The learned counsel further argued that a stick came to be seized from the spot of the incident. With this, according to the learned counsel for the appellant, the learned trial court erred in acquitting the accused persons.

4 The learned counsel appearing for respondent nos.2 to 4 supported the impugned judgment and order of acquittal by contending that plausible view is taken by the learned trial court in acquitting the respondent nos.2 to 4, and therefore, appeal deserves to be dismissed. We have also heard the learned APP appearing for the State and also perused the record made available.

5 We are dealing with an appeal challenging acquittal of respondent nos.2 to 4. The principle to be followed by the appellate court considering the appeal against judgment of acquittal is to be interfered only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and where admissible evidence is ignored,

then the appellate court can re-appreciate the evidence, even where the accused have been acquitted. However, generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. If two views are possible on evidence adduced in the case, one pointing innocence of the accused and the other pointing his guilt, then the view which is favourable to the accused needs to be adopted. The case in hand is that of circumstantial evidence. There is no eye witness to the incident of murder of deceased Ramchandra Dhuri, whose death is proved to be homicidal by the prosecution through evidence of PW15 Dr.Prashant Chavan, Autopsy Surgeon. Evidence of this witness shows that the dead body was having several injuries and upon internal examination of the dead body, thyroid cartilage was found to be fractured. With this, the Autopsy Surgeon has opined that the death of Ramchandra Dhuri was caused because of asphyxia due to strangulation and we see no reason to question the finding of the learned trial court regarding homicidal death of Ramchandra Dhuri. The question will be whether the prosecution

has established guilt of the accused persons in the crime in question beyond all reasonable doubts by adducing circumstantial evidence of a conclusive nature. It is well settled that in such cases, the circumstances, in which the conclusion of guilt is to be drawn, are required to be fully established by the prosecution. Chain of evidence pointing out guilt of the accused must be so complete as not to leave any hypothesis of innocence of the accused. Circumstances established by evidence adduced by the prosecution should be consistent only with the sole hypotheses of the guilt of the accused persons.

6 On this backdrop, let us see whether prosecution has established last seen theory propounded by it. In order to establish this theory, prosecution has relied on evidence of PW8 Sitabai Dhuri – widow of deceased Ramchandra Dhuri. Her evidence makes it clear that respondent no.2/accused Yashwant Dhuri used to reside adjacent to her house. She deposed that on 26th March 2016, her husband Ramchandra Dhuri (since deceased) had taken bullocks for grazing and at that point of time,

respondent no.2/accused Yashwant Dhuri was sitting on the bamboo fencing of the front yard of his house. As per version of PW8 Sitabai Dhuri, after sometime, respondent no.2/accused Yashwant Dhuri also went in the direction where deceased Ramchandra Dhuri had gone. Subsequently, her husband Ramchandra Dhuri (since deceased) never returned to the house and his dead body was found on the next date.

7 The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. In the case in hand, even if evidence of PW8 Sitabai Dhuri is accepted as it is, then also, it cannot be said that deceased Ramchandra Dhuri was lastly seen in company of accused Yashwant Dhuri. It was after sometime, accused Yashwant Dhuri left his house and went in the direction where the deceased had gone. This evidence of PW8 Sitabai Dhuri cannot be construed to hold that the accused was in

company of the deceased and was lastly seen with the deceased. Following the direction in which the deceased had gone does not mean that the accused must have intercepted the deceased and had killed him. With such evidence, it cannot be positively established that the deceased was lastly seen in company of accused Yashwant Dhuri. Moreover, there is no evidence on record to suggest that rest of the accused persons namely Sudesh Dhuri and Subhash Dhuri were in company of the deceased when the deceased was lastly seen alive.

8 The next circumstance relied by the prosecution to infer guilt of the accused persons is that of voluntary disclosure statement and resultant recovery at the instance of respondent no.2/accused Yashwant Dhuri. For this purpose, reliance is placed on evidence of PW1 Vijaykumar Sarvade – panch witness and PW14 Ratansing Rajput – Police Inspector, who had recorded the voluntary disclosure statement of accused Yashwant Dhuri. As per version of both these witnesses, on 2nd April 2016, accused Yashwant Dhuri gave a disclosure statement that he had kept

clothes and cutter (instrument for cutting vegetables) at his house and he would recover the same and accordingly, Memorandum Statement Exhibit 40 came to be recorded. Both these witnesses unanimously stated that, then, they along with accused persons and others went to the house of accused/respondent no.2 Yashwant Dhuri and from his house he had recovered shirt and pant kept for drying so also a cutter (instrument for cutting vegetables). Those articles were accordingly seized vide Panchnama Exhibit 41. The prosecution has not pointed out how cutter (instrument for cutting vegetables) was used in commission of the crime in question. That article was not even shown to the Autopsy Surgeon for eliciting the fact that injuries found on the deceased can be caused by it. So far as recovery of clothes is concerned, as per version of PW1 Vijaykumar Sarvade, the seized clothes were kept on clothes string for drying. Neither PW1 Vijaykumar Sarvade nor PW14 Ratansing Rajput have spoken about packing and sealing of seized clothes by use of sealing wax. There is no evidence on record to show that blood of the blood group of the deceased was found on seized clothes. Though the

prosecution has examined Carrier Constable PW9 Chandan Jadhav, evidence of this Carrier Constable does not show that he had carried muddemal to the Forensic Laboratory in sealed condition. As such, evidence on record does not suggest that seized articles were duly sealed and submitted to the Forensic Laboratory in sealed condition. The question is not of tampering but possibility of tampering of the seized clothes. This possibility is not ruled out by the prosecution and therefore, finding of human blood on clothes of respondent no.2/accused Yashwant Dhuri cannot be given any overbearing importance.

9 We have also perused evidence adduced by other witnesses which is of formal nature, as stated in the foregoing paragraphs. Some witnesses are examined to demonstrate that dead body was found in the forest adjoining to the village and official witnesses have spoken about the line of investigation carried out by them.

10 So far as motive for commission of the crime in question is concerned, the prosecution has relied on evidence of First Informant PW4 Swapnil Dhuri and that of PW6 Anand Gawade, Talathi. As per version of these witnesses, deceased Ramchandra Dhuri had opposed the proposal of the accused regarding program of dance with wooden horse at Shimga festival as well as he had opposed the mining activities in the field. Careful perusal of evidence of PW6 Anand Gawade, Talathi, shows that proposal of program of dance with wooden horse was not only opposed by deceased Ramchandra Dhuri but the said proposal was objected to by all villagers of Village Math Dhuriwadi. Similarly, mining activities at the village were objected to by all villagers and not only by deceased Ramchandra Dhuri. Proved motive furnishes additional link in the chain of proved circumstances. In a case where there is a motive, it affords added support to the finding of the court that the accused were guilty of the offence charged with. However, in the case in hand, prosecution has failed to bring no record the circumstances

pointing out guilt of the accused persons and evidence regarding motive is also not trustworthy.

11 In view of the foregoing discussion, it cannot be said that the view taken by the learned trial court in acquitting the accused persons is not a plausible view in the matter. It cannot be said that the impugned judgment and order of acquittal is perverse or illegal. In the result, we pass the following order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)