

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.370 OF 2000

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

UTTAM SAKHARAM KAMBLE)
Age about 30 years, Resident of Aknoor,)
Taluka – Radhanagari, District Kolhapur)...RESPONDENT

Mr.V.B.KondeDeshmukh, APP for the Appellant – State.

None for the Respondent.

**CORAM : PRASANNA B. VARALE &
V. G. BISHT, JJ.**

DATE : 15th OCTOBER 2020

JUDGMENT : (PER : V. G. BISHT, J.)

1 Being aggrieved and dissatisfied with the impugned judgment and order dated 28th February 2000 passed by the VIth Additional Sessions Judge, Kolhapur, by which the Additional Sessions Judge has acquitted the present respondent-accused herein in Sessions Case No.201 of 1997 under Section 302 of the

Indian Penal Code (IPC), the State has preferred the present appeal.

2 Briefly stated, the facts are that informant who is a resident of Village Aknoor, Taluka Radhanagari, District Kolhapur, is the younger brother of Uttam Sakharam Kamble (respondent-accused). The accused used to reside at Mumbai since the time of his marriage and on 13th August 1997 was residing with the informant.

3 According to the prosecution on 22nd August 1997 accused's wife viz. Shubhangi (deceased for short) had been to Kolhapur at the house of her maternal uncle. The deceased after fetching his wife from the latter's maternal uncle's house was returning to village. According to the prosecution, the informant came to know from two villagers of his village that on way to village while passing through Mangewadi a quarrel took place between them in which the accused allegedly by some weapon hit on the forehead of the deceased and that the deceased was sitting

in the field of one Kundalik Kamble. The informant along with family members rushed towards the said field and found his sister-in-law i.e. the deceased lying on the bundh, groaning in pain and had sustained bleeding injury on the right side of the forehead. When they enquired as to how it had happened, she was not able to speak and was wreathing in pain. They all then took her to Primary Health Center, Solankur and on advise again moved her to CPR Hospital, Kolhapur.

4 The informant, accordingly, lodged the report with CPR Police Chowky on the basis of which Crime No.0 of 1997 for the offence punishable under Section 325 of the IPC came to be registered. Subsequently, the case was transferred to Radhanagari Police Station and registered as Crime No.59 of 1997 and the charge was altered to the offence punishable under Section 302 of the IPC.

5 It appears from the record that PW21 Investigating Officer visited the place of occurrence on 24th August 1997 and

prepared Spot Panchnama. He also seized articles lying there and then recorded statements of some of the prosecution witnesses. Later on, he handed over the investigation to PW22 Police Inspector Dundappa Sangondappa Birajdar. PW22, on his part, recorded statements and supplementary statements of some of the remaining prosecution witnesses, sent property to Forensic Science Laboratory and after getting Chemical Analyzer's Report and as also completion of investigation, forwarded the charge-sheet against the respondent-accused.

6 To substantiate the Charge against the respondent-accused, the prosecution examined as many as 23 witnesses and exhibited number of documents. Respondent-accused was questioned under Section 313 of the Code of Criminal Procedure about the incriminating evidence and circumstances and he denied all of them as false. According to him he is having a dispute with Hindurao (PW14) who made a complaint against him for cutting tree in which he was arrested. Namdeo (PW16) is

husband of sister of Hindurao and also relative of Shubhangi (deceased).

7 The learned trial Court after hearing the prosecution and also defence counsel has acquitted the respondent-accused of the Charge levelled against him. Hence, this appeal.

8 Mr.KondeDeshmukh, learned APP, submitted that the learned trial Court miserably failed to consider the evidence of brother of the deceased viz. PW7 Janardan Baburao Kamble and his wife PW8 Sujata in proper perspective in respect of ill-treatment at the hands of respondent-accused to the deceased. Moreover, the medical evidence and as also the Forensic Science Laboratory reports support the prosecution case and having regard to the totality of the circumstances of the case and as also the cogent and convincing evidence led by the prosecution, the learned trial Court ought to have convicted the respondent-accused, argued learned APP.

9 When the matter is called out, none appeared for the respondent-accused.

10 The present case, admittedly, is based on circumstantial evidence as no one has seen the respondent-accused committing murder of the deceased. In this type of case, the circumstance from which conclusion of the guilt is to be drawn should in the first instance be fully established and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused.

11 The law with respect to circumstantial evidence has been well settled by the Hon'ble Apex Court in a catena of judgments. In the judgment reported as **Hanumant Govind Nargundkar Vs. State of M.P. AIR 1952 SC 343**, the Hon'ble Supreme Court observed as under:

“10 It is well to remember 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. Again, the circumstances should be of a conclusive nature and tendency 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 far 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."

12 The Hon'ble Supreme Court in **Padala Veera Reddy Vs. State of A.P. 1989 Supp (2) SCC 706**, opined as under :

"10 Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra, (1982) 2 SCC 351 (13).)”

13 In C. Chenga Reddy & Ors. Vs. State of A.P.,(1996) 10 SCC 193, the Hon'ble Apex Court while considering a case of

conviction based on the circumstantial evidence, held that :

“21 In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.”

14 In Ramreddy Rajesh Khanna Reddy Vs. State of A.P., (2006) 10 SCC 172, the Hon'ble Supreme Court again considered the case of conviction based on circumstantial evidence and held as under:

“26 It is now well settled that with a view to base a conviction on circumstantial evidence, the

prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67 and Reddy Sampath Kumar v. State of A.P. (2005) 7 SCC 603)."

15 The Hon'ble Apex Court in the case of Sattatiya vs. State of Maharashtra, (2008) 3 SCC 210, held as under:

"10 We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the

innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. This Court further observed in the aforesaid decision that:

“17 At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court – **Bharat v. State of M.P. (2003) 3 SCC 106**. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime.”

16 In G. Parshwanath vs. State of Karnataka (2010) 8 SCC 593, the Hon'ble Apex Court elaborately dealt with the subject and held as under :

“23 In cases where 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. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have

regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.”

17 In the case of Rajendra Pralhadrao Wasnik vs. State of Maharashtra (2012) 4 SCC 37 the Hon'ble Court observed as under:

“12 There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstance from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to have any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the

accused has committed the crime.”

“13 To put it simply, the circumstance forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstance, the inference of guilt can be justified only when all the incriminating facts and circumstance are found to be incompatible with the innocence of the accused or the guilt of any other person.”

Keeping these principles in mind, we have analyzed the prosecution evidence. Following are the circumstances which the prosecution has endeavoured to establish complete chain of circumstances - (i) homicidal death of Shubhangi, (ii) motive and (iii) last seen.

Homicidal Death :

18 In order to prove the homicidal death of the deceased, the prosecution has examined PW10 Dr.Sudarshan Baburao Patil. PW10 states in his evidence (Exh. 32) that on 26th August 1997 he

was Medical Officer at CPR Hospital, Kolhapur and had performed postmortem on the dead body of Shubhangi Uttam Kamble. According to him, he found following injuries at Column No.17 of the postmortem report :

- “1) Sutured wound over forehead rt. side in direction running from middle border of rt. eyebrow 2 inches above forehead.
- 2) Sutured wound over rt. eyebrow lat. 1/3rd upto lat. margin. Horizontal direction.
- 3) Sutured wound over 1 inch below outer of rt. eye running horizontally over rt. maxilla for 1. inches.
- 4) Blackish discolouration around rt. eyeball
- 5) Subconjunctival haemorrhage of rt. eyeball covering whole of Bulbar conjunctiva.
- 6) Rt. Cornea shows Ulceration with Haziness.

19 It is his further evidence that all the above injuries were anti-mortem. On internal examination he noted following injuries at Column No.19 :

“19.Head

(i) Injuries under the scalp, their nature -

- 1) Big diffused haematoma about 5 cms in diameter under scalp on rt. side of cranium
- 2) Diffused haematoma beneath the rt. temporalis muscle

(ii) Skull-Vault and base – describe -

Multiple fractures of rt. orbit and base of skull on Anterior cranial fossa extending into middle Cranial fossa.

(iii) Brain - The appearance of its coverings, size weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted -

Brain matter congested and oedematous

Rt. cerebral Hemispheres lacerated just below the fractures

Clot over lt. Cerebral hemisphere posteriorly

Bleeding in post-cranial fossa seen.

20 It is his further evidence that injuries observed by him in Column Nos.17 and 19 were possible by hard and blunt object and it appears that when the muddemal Article nos.1 and 2, namely, stones were shown to him, he opined that those injuries

were possible by the stones. He then proved his postmortem report at Exh. 33. According to him the cause of death was due to cardiac respiratory failure due to fracture skull with intra cerebral haemorrhage.

21 From the line of cross-examination it appears that this witness was suggested that if a person falls from scooter, he may die but the said suggestion was out-rightly denied by this witness. He also denied that the injuries noted by him at Column Nos.17 and 19 were possible if a person falls forcefully from the scooter.

22 Having regard to the nature of the injuries and as also opinion as to the cause of death, there remains no manner of doubt that the deceased died a homicidal death.

MOTIVE :

23 At the very beginning, interestingly, much to the dismay of prosecution, PW5 Ramesh Sakharam Kamble – informant (Exh. 26) and PW9 Jijabai Sakharam Kamble (Exh. 31)

who are none other than the brother and mother of the accused were found lacking and forthright in furthering the cause of prosecution, inevitably came to be treated hostile by the prosecution without any gain. Surprisingly, they even expressed ignorance whether the accused had married the deceased. However, it appears from the cross-examination of PW5 informant that on 26th August 1997 he was at CPR Hospital where the deceased died. Atleast, he knows about the death of Shubhangi.

24 Even otherwise, if the FIR lodged by this witness is read minutely, then it would be seen that he had no personal knowledge as to the incident and rather came to know from his villagers that on 22nd August 1997, the deceased was assaulted by accused and that the deceased was lying in an injured condition in the field of Kundalik Kamble. It is also pertinent to note here that those two villagers are not named in the FIR nor examined by prosecution. Except the fact of death of the deceased, nothing is there to add to the cause of prosecution.

25 The motive attributed on the part of accused by the prosecution is that the accused used to demand monies, harass and beat the deceased after the marriage. It may also be noted here that the deceased had married the accused against the wishes of her family members. On this count, there is no dispute. The material witnesses examined by the prosecution on this point are PW7, PW8, PW13 and PW14.

26 PW7 Janardhan Baburao Kamble, who is brother of deceased, states in his evidence (Exh. 29) that after the marriage Uttam (respondent-accused) and Shubhangi (deceased) started residing with Hindurao Kamble (PW14) at Sion (Mumbai). Later on, they decided to reside separately but for that they were in need of Rs.15,000/- to pay as deposit. The deceased, on the say of accused, demanded that amount from him but however, he could pay Rs.5,000/- to her due to his financial condition. Accused and the deceased then started residing at Vikhroli. They often used to call him on telephone. This witness further states that the deceased told his wife on phone that accused is harassing,

ill-treating, demanding amount from her and also suspecting her character.

27 It is his further evidence that on 9th August 1997 accused threatened the deceased with her life if she did not bring the amount and therefore, the deceased went to Hindurao Kamble (PW14) at Sion. On 12th August 1997 the deceased went to Aknoor with Hindurao Kamble and his family because the father of Hindurao Kamble was ill, who eventually died subsequently.

28 The last part of his evidence shows about the information received by him from PW1 informant about the serious condition of the deceased. It appears that in the hospital this witness could not communicate with the deceased but came to know from the informant that accused had beaten the deceased.

29 From the first part of evidence of this witness it is quite clear that accused and the deceased were constantly in touch with this witness albeit telephonically. The evidence on the point

of harassment appears to us quite vague because nowhere it is specifically mentioned the exact amount demanded by the accused and the purpose therefor. Rather, the kind of harassment deposed by this witness was confided by the deceased to his wife. This is not natural. This witness being the brother of the deceased, the deceased at the first instance ought to have narrated her harassment to him instead her sister-in-law. Even otherwise, the evidence of this witness does not find corroboration from the mouth of his wife namely PW8. How and in what manner will have to be seen itself from the testimony of PW8.

30 PW8 Sujata Janardan Kamble (Exh. 30) testified that after accused and the deceased started residing at Vikhroli, the deceased used to call her casually. The deceased used to complain that the accused is demanding amount for pest control machine, not providing food and beating her. Thus, the evidence of this witness is quite contradictory to the evidence of PW7 and there is absolutely no corroboration between their versions.

31 Reverting back to the evidence of PW7 and more particularly the second part of his examination-in-chief which shows that on 9th August 1997 the accused had threatened the deceased with life if she failed to bring the amount and therefore, the deceased had gone to Hindurao Kamble at Sion. Let us find it out what PW14 Hindurao Kamble has to offer on this count.

32 PW14 Hindurao Tukaram Kamble states in his evidence (Exh. 43) that in the month of August 1997 at about 12 night the deceased with her brother Sanjay came to his house. He enquired about arrival at such late hour. The deceased told that a quarrel between herself and the accused had taken place. It is his further evidence that he did not enquire details about the quarrel as it was night time.

33 This witness is none other than the cousin of accused and thus is in close relation to the deceased and as also the accused. Pertinently enough, the evidence of this witness shows that the deceased had accompanied her brother Sanjay to the

house of this witness – a material fact which is not at all deposed by PW7 or PW8. In normal course, the deceased ought to have disclosed the reason for approaching the house of this witness because of the serious threats of death allegedly given by the accused. However, again there is no due corroboration from the mouth of PW14.

34 There is one more reason to question the testimony of this witness and the reason for that is the cross-examination of this witness. In the cross-examination this witness states that there is a dispute between himself and accused regarding landed property and as also the residential house at Village Aknoor. Thus, the animosity between this witness and the accused cannot be overlooked while appreciating his evidence.

35 PW13 Shalan Hindurao Kamble wife of PW14 states in her evidence (Exh. 41) that Shubhangi was brought to her house by Sanjay at about 12 at night as a quarrel between her and accused had taken place. On being enquired, the deceased disclosed that her husband told her that if she will not leave his

house before his arrival then he will break a bottle and from broken bottle he will damage her face. She further disclosed that her husband beat her and hence she left the house and came to her with her brother. At that time her husband was also present.

36 The evidence of this witness heavily contradicts the evidence of her husband viz. PW14. PW13 has entirely given altogether a different story than PW14. While according to PW14 when he enquired with the deceased as to visiting his house at odd hours, the deceased replied of having taken a quarrel between her and her husband. As against this, the evidence of PW13 Shalan shows that PW14 was also very much present when she confronted the deceased as to the reason of her visiting their house to which she narrated altogether a different story which we have already noted above from the evidence of PW13. Needless to say, we find the testimony of both these witnesses poles apart and record our disappointment. We are, thus, not persuaded to accept either of the testimonies.

37 The above being the nature of evidence, we conclude that the prosecution has failed to establish the alleged motive even remotely.

LAST SEEN THEORY :

38 On this point again the prosecution has placed reliance on the testimony of PW13, PW14 and PW20. We may recall from the evidence of PW13 that the deceased was dropped at the house of this witness by her brother Sanjay. It appears from the evidence of PW13 that the deceased stayed with them for three days, as her father-in-law had died at Village Aknoor, they along with the deceased went to Aknoor. At Aknoor, the deceased stayed with them for four days. Accused was not with them. However, subsequently, the accused came to Village Aknoor and stayed at his house at Aknoor. On the next day of arrival at Aknoor, the deceased went to Kolhapur to her maternal uncle. Accused had also left Aknoor to go to the house of maternal uncle of Shubhangi.

39 What we infer from the evidence of this witness is that at no point of time, this witness had seen the accused in the company of the deceased. Her evidence does not clear the fact that moment they reached Aknoor along with the deceased, the accused also joined them. Rather, according to this witness, the accused had stayed at his house at Aknoor and not with them. Further, when the deceased left Aknoor for the house of her maternal uncle from the residence of this witness, the accused also left his house for the house of maternal uncle of the deceased from his house. This simply suggests that there was no occasion for this witness to see the deceased in company of the accused and that they leaving together from Aknoor to the house of the maternal uncle of the deceased.

40 Now the question is whether the accused was seen in the company of the deceased at the house of the maternal uncle of the deceased at Kolhapur. Herein comes the testimony of PW20 Abaji Hindurao Kamble.

41 PW20 Abaji Hindurao Kamble states in his evidence (Exh. 52) that the deceased was his sister's daughter. On 18th August 1997, the deceased had come to his house at Kolhapur alone. He enquired why she had come alone to which she replied that her cousin father-in-law died at Aknoor and she had come for funeral rites. He then asked the deceased to stay at his house till he returns from Mumbai and they left Kolhapur on 19th August 1997.

42 It is his further evidence that on 23rd August 1997 he came to know about admission of deceased at CPR Hospital.

43 The evidence of this material witness is quite clear to the effect that the deceased had visited his house all alone on 18th August 1997. It is further clear that as this witness wanted to go to Mumbai on the next day, he asked the deceased to stay in his house till his arrival from Mumbai. It is also clear from his evidence that till his departure from Kolhapur to Mumbai, the accused had not visited his house. Thus, the prosecution has failed to establish the chain of circumstances heavily relied on in

the form of last seen theory. There is no evidence worth the name.

44 None of the circumstances is duly proved by the prosecution by producing cogent and convincing evidence. Evidence produced on record does not establish each and every circumstance connecting the accused with the alleged crime. It does not complete the chain of circumstances; which indicate that none other than the accused has committed the murder of his wife viz. Shubhangi i.e. the deceased.

45 For the aforesaid reasons, we are of the considered view that the trial court was perfectly right in acquitting the accused. There is no perversity or illegality in the order of acquittal.

46 We, therefore, do not find any merit in this appeal and hereby dismiss the same.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)