

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1090 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

**RAJENDRA MANOHAR GHADIGAONKAR)
Age about 25 years, Residing at Pendur,)
Ghadiwadi, Tal : Malvan, District Sindhudurg)...RESPONDENT**

Mr.A.R.Patil, APP for the Appellant – State.

None for the Respondent.

**CORAM : A. S. GADKARI &
V. G. BISHT, JJ.**

DATE : 1st OCTOBER 2020

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

1 Being aggrieved and dissatisfied with the impugned judgment and order dated 7th May 2002 passed by the Sessions Judge, Sindhudurg-Oros, by which the Sessions Judge has acquitted the present respondent-accused in Sessions Case No.16 of 2001 under Section 302 read with 34 of the Indian Penal Code (IPC), the State has preferred the present appeal.

2 Briefly stated, the facts are that on 25th December 2000, at about 11.00 a.m., informant's nephew viz., Ankush alias Aniket went out of the house without informing anybody and did not return. His mother viz. Smt.Radha Krishna Ghadi (PW10) accordingly lodged a missing report with the concerned Police Station on 26th December 2000. On 26th December 2000, at about 5.30 p.m., the dead body of said Ankush was found in a nullah having injuries on the head and abdomen. The informant, accordingly, lodged the report on the basis of which Crime No.91 of 2000 came to be registered with Police Station Malvan, District Sindhudurg, for offences punishable under Sections 302 read with 34 of the IPC.

3 It further appears from the record that deceased Ankush, at the relevant time, was about 7½ years old. Accused Rajendra Manohar Ghadigaonkar (A-1) was the neighbour of the said Radha. Both of them were having illicit relations. It further appears that few days prior to the incident, the deceased had seen his mother and A-1 in a compromising position and therefore, had

told her that he would disclose this to his father. A-1 had then assured Radha that he would do something about Ankush.

4 It further appears from the record that there was a rumor in the village that Radha had developed illicit relations with one Vilas Ghadi and she suspected that A-1 was the person behind spreading the said rumor and therefore, had rushed on the person of A-1 armed with a *chappal*, so as to beat him. The prosecution alleges that A-1 had then threatened Radha “*rande tula baghun ghein*” and that he had also threatened to make her cry.

5 According to the prosecution, on 25th December 2000, when Radha returned from the forest at about 11.00 a.m., her youngest son viz., Sanket (PW11) told her that Aniket had accompanied Dada i.e. A-1.

6 After tracing of the dead body of Aniket, PW19 Chandrakant Anantrao Madne prepared Inquest Panchnama (Exh.26), seized clothes of the deceased, seized stones, soil and

soil mixed with blood from the spot, recorded the First Information Report (FIR) of Tatu Arjun Ghadi (PW5) and recorded statement of prosecution witnesses, attached cricket bat pursuant to the statement given by A-1 under Section 27 of the Indian Evidence Act and later on handed over the investigation to PW20 Mukund Rajaram Bhosale. PW20, on his part, also recorded statement of various witnesses, collected blood samples of accused and forwarded all the attached muddemal articles to the Forensic Science Laboratory, Pune and after having received the Chemical Analyser's Reports and as also completion of investigation, forwarded the charge-sheet against the accused.

7 To substantiate the charge against the respondents-accused, the prosecution has examined as many as twenty witnesses and exhibited number of documents. Respondents-accused were questioned under Section 313 of the Code of Criminal Procedure (Cr.P.C.) about the incriminating evidence and circumstances and they denied all of them as false. The learned trial Court, after hearing the prosecution and also defence

counsel, has acquitted respondents-accused of the Charge leveled against them. Hence this appeal.

8 Vide order dated 3rd February 2004, this court (Coram : S.S.Parkar & V. K.Tahilramani, JJ.) on considering the evidence, admitted the appeal as against respondent-accused no.1 only. However, appeal against respondent-accused no.2 came to be dismissed.

9 Mr.A.R.Patil, learned APP, strenuously submitted that the prosecution case being based on circumstantial evidence, the prosecution has successfully established that it was A-1 alone who committed the murder of Aniket. The motive behind the crime is also well established by the prosecution by adducing the necessary evidence to that effect. The whole evidence led by the prosecution is not appreciated and marshaled in proper perspective, as a result of which an erroneous finding of acquittal came to be recorded by the learned trial Court, argued learned APP. For all these reasons, the present appeal deserves to be allowed, argued learned APP.

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

11 Whether the deceased died a homicidal death or otherwise is necessarily a question, which at the very threshold, needs to be looked into. The prosecution, in this regard, has examined PW13 Dr.Krishna Sitaram Jadhav, who conducted an autopsy on dead body of Aniket. It appears from the evidence (Exh.52) of PW13 that he found various external injuries on the dead body of Aniket which are described in Column Nos.17 and 19. As per his evidence, the injuries mentioned in the postmortem notes were possible by a stone or wooden hard and blunt object. According to him, the death could have been caused due to injuries mentioned in Column Nos.17 and 19. However, in the cross-examination, he simply and plainly admits that the injuries mentioned in paragraphs 17 and 19 were possible by fall on a hard surface.

12 Thus, if we go by the medical evidence, then it is quite clear that there was possibility of the deceased having met with

death because of a fall on a hard surface. The evidence does not give clear and concise picture that in all probability, the deceased had met a homicidal death. The searching question as to homicidal death or otherwise still haunts and for that purpose, we will have to necessarily go through the other evidence led by the prosecution.

13 The case of the prosecution rests on circumstantial evidence. The prosecution relied upon following circumstances - (i) motive, (ii) last seen, (iii) illicit relation between A-1 and PW10 Radha, (iv) recovery of bat at the instance of A-1, and (v) recovery of blood stained clothes of A-1 and A-2 at their instance.

14 When the present case pivots around circumstantial evidence, apposite it would be to take note of fundamental principles governing the circumstantial evidence and its appreciation. In the case of **Sharad Birdhichand Sarda v. State of Maharashtra**¹ the Hon'ble Apex Court laid down the golden principles of standard of proof required in a case sought to be

¹ AIR 1984 SC 1622

established on circumstantial evidence with reference to several past decisions, including that in the case of Hanumanth v. State of Madhya Pradesh² in the following:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793] where the observations were made: [SCC para 19, p.807: SCC (Cri) p. 1047] : (at p. 2634, para 19 of AIR).

² AIR 1952 SC 343

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between may be and must be is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

“154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

15 Thus, circumstantial evidence in the context of a crime, essentially means such facts and surrounding factors which do point towards the complicity of the charged accused; and then, chain of circumstances means such unquestionable linking of the facts and the surrounding factors that they establish only the guilt of the charged accused beyond reasonable doubt, while ruling out any other theory or possibility or hypothesis.

16 Having taken note of the basic principles while dealing with the case based on circumstantial evidence, when we examine the record, several shortcomings and loopholes in the investigation and in prosecution evidence manifest themselves at once. How and in what manner, we proceed to enumerate.

17 PW5 Tatu Ghadi, informant, has been examined (Exh. 29) by the prosecution only on the point that the deceased was missing from his house from 25th December 2000 and his dead body was found on 26th December 2000, at about 5.30 p.m., and accordingly this witness lodged the report (Exh. 31) on 27th December 2000 alleging therein that some unknown person for unknown reasons committed the murder of the deceased.

18 Interestingly, this witness is declared hostile by the prosecution and we fail to understand for what reason this witness was declared hostile because he had deposed in consonance with the contents of his own FIR. Be that as it may, except proving the contents of the FIR, this witness nowhere takes the case of the prosecution further.

19 The important witness from the point of view of the prosecution is PW10 Radha Krishna Ghadi and PW11 Sanket Krishna Ghadi i.e. minor son of PW10.

20 PW10 Radha states in her evidence (Exh. 42) that the house of A-1 is adjacent to her house. She had illicit relations with him. According to her, one Vilas Ghadi, who used to sleep in house of Tatu Ghadi (PW5) i.e. the informant, used to visit her house. A-1 disliked it. There was rumor in her village that she had sexual relations with Vilas Ghadi. She had told about the said rumor to Tatu Ghadi (PW5), brother of her husband. Her evidence further shows that Tatu Ghadi (PW5), Vilas Ghadi and Devendra had been to house of the A-1. They inquired with A-1 but he did not disclose anything. She even told A-1 that he i.e. A-1 should not defame her in the village. Later on, there was a quarrel between her and A-1 and she rushed on the person of A-1 to beat him by *chappal*. A-1 had threatened her “*rande tula baghun ghein*” and that he will make her cry.

21 Her evidence then shows that on 25th December 2000, A-1 came to her *padvi* and embraced her and this fact was noted by Aniket. Aniket told her that he would disclose the fact and name to his father. However, A-1 told her that he will see of

“anlya” and she shall not worry. She then went to forest to bring wood and returned with firewood at 11.00 a.m. She called her her children for rice porridge (rice kanji). Sanket (PW11), her youngest child came. However, Aniket (deceased) did not come. She made an enquiry with Sanket as to whereabouts of Aniket. Sanket told her that Aniket had accompanied Dada. Her children used to call A-1 as Dada. When she enquired with A-1 about Aniket, the latter expressed ignorance and started quarreling with her.

22 Her evidence further shows that there was a cricket match in the village and therefore, she went there to search for Aniket and met Suresh Sawant (PW7). Suresh Sawant told her that he had seen Aniket near a tank near the animals. Her evidence lastly shows that on 26th December 2000 she had been to Katta Outpost and lodged missing report of Aniket.

23 Three notable aspects from the evidence of this material witness are thus : One, after she had a quarrel with A-1, A-1 had allegedly threatened her to see her and that he would

make her cry. Two, after the deceased had seen this witness and accused in a compromising position, she got worried, but was assured by A-1 that he would see what can be done with the deceased. Three, her youngest son had seen the deceased going with A-1, thereby implying that the deceased was last seen in the company of A-1.

24 Before we advert to the above narrated material aspects, we would like to have a quick glance of her cross-examination. Her missing report is duly proved by PW15 Ashok Sitaram Sonsurkar, Police Head Constable. It is pertinent to note from her cross-examination that she had, by lodging the report, not suspected anybody or any foul play with the deceased. This conduct of PW10 Radha assumes significance, particularly when allegedly not only she was threatened by A-1 but as the deceased had seen them in a compromising position, A-1 had assured her that he would see as to what can be done with the deceased and as also the deceased was lastly seen in the company of A-1. These circumstances, in our considered opinion, were able to

cast shadow of doubt as to the role played by A-1 and she ought to have suspected or given the name of A-1 while lodging the missing report or any other kind of report with the concerned Police Station.

25 One more thing from her cross-examination. According to her, she was also told by PW7 of having seen Aniket near a tank and animals. Surprisingly, she nowhere states that she was told by PW7 that he had seen Aniket in the company of A-1. Thus, it cannot be said in the light of her own examination-in-chief that the deceased was lastly seen in the company of A-1. As far as her youngest son Sanket informing her that the deceased had gone along with A-1, we would like to go through his evidence.

26 PW11 Sanket Krishna Ghadi is examined at Exh. 44 by the prosecution. It appears that, at the relevant time, he was six years old and was not able to understand the sanctity of oath and therefore, no oath was administered to him while recording of his evidence. It further appears that his evidence was recorded in

Question – Answer form. Though he answered that he knows A-1 but was not able to answer the question when he was asked as to what he called A-1. Even he was not able to answer the question when asked, as to what had happened to his brother Aniket and whether he had seen Aniket accompanying anybody.

27 According to the prosecution, PW11 was the only witness, who had seen the deceased leaving the house in company of A-1. But the above being the shape of evidence, the prosecution must have been left high and dry. No other evidence is forthcoming.

28 PW6 to PW9 have been treated hostile by the prosecution without any gain.

29 PW1 and PW2 are the witnesses in whose presence the accused allegedly gave disclosure statement as to the clothes which they were wearing at the time of the incident and which came to be seized later on. Similarly, PW3 and PW4 are the panch

witnesses in whose presence Spot Panchnama was drawn and stones from the spot came to be seized.

30 From the above, we conclude that the prosecution has not been able to establish the following circumstances : (i) last seen, (ii) motive and (iii) illicit relations between the A-1 and Radha. When all these material circumstances are failing in its purpose, the remaining circumstances in the form of recovery of blood stained clothes and cricket bat will not take the case of the prosecution to its desired destination.

31 For what has been discussed hereinabove, we hold that the incriminating circumstances have not been established by cogent evidence and such circumstances do not form a complete chain that rules out any hypothesis except guilt of the respondent-accused. The finding of the trial Court could not be said to be perverse. It is based on a proper appreciation of evidence.

32 In the result, we do not find merit in the appeal and pass the following order :

ORDER

Appeal is dismissed.

(V. G. BISHT, J.)

(A. S. GADKARI, J.)