

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.46 OF 2016

YUVRAJ SAMPATRAO GHORPADE)
Age 37 years, Occ. – Agriculture)
R/at : Madhyal Taluka Kagal,)
District - Kolhapur)...**APPELLANT**

V/s.

THE STATE OF MAHARASHTRA)...**RESPONDENT**

Ms.Payoshi Roy i/b. Dr.Yug Mohit Chaudhary, Advocate for the Appellant.

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

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

DATE : 15th OCTOBER 2020

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

1 The appellant-original accused has preferred this appeal under Section 374 of the Code of Criminal Procedure (Cr.P.C.) challenging the judgment and order of conviction and

sentence passed by the learned Ad-hoc Additional Sessions Judge, Kolhapur, in Sessions Case No.176 of 2013 dated 24th November 2015 by which the trial Court convicted the appellant-accused for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and sentenced him for life imprisonment with a fine of Rs.1000/- and in default of payment of fine, ordered to undergo simple imprisonment for 1 month. The trial Court further convicted him for the offence punishable under Section 201 of the IPC and sentenced him to suffer rigorous imprisonment for 3 years with a fine of Rs.1,000/- and in default of payment of fine, ordered to undergo simple imprisonment for 1 month. The trial Court was, however, pleased to acquit the appellant-accused for the offence punishable under Section 394 read with Section 397 of the IPC.

2 Briefly stated, the prosecution case is that the informant is a resident of Village Alabad, Taluka Kagal, District Kolhapur and was Police Patil of the said village at the relevant time. On 8th May 2013, at about 10.00 a.m., the informant

stepped out of the house to proceed to his field and when he reached near the field of one Bhimrao Ramu Kamate, he saw a half burnt body near a Neem tree. When he went near, he found that the dead body was of a male and face was tied with a cloth. He, accordingly, informed telephonically to the concerned Police Station. Later on, he lodged the report with Murgud Police Station alleging therein that some unknown person for some unknown reason committed murder of that person with a sharp weapon and in order to destroy the evidence, burnt the dead body.

3 The First Information Report (FIR) was registered vide Crime No.41 of 2013 with Murgud Police Station for the offence punishable under Section 302 and 201 of the IPC. The investigation was taken up by PW15 Investigating Officer who prepared Inquest Panchnama, Spot Panchnama, Seizure Panchnama of various articles seized from the spot and recorded statement of witnesses. It further appears from the record that pursuant to the Disclosure Statement given by the appellant-

accused, he seized the clothes which the appellant-accused was wearing at the time of incident and he further came to know that the appellant-accused had robbed Dattatray Mahadev Patil (deceased) of amount Rs.60,000/- and killed him and in order to destroy his identity, put the body on fire. It further appears that the necessary articles seized during the course of investigation were sent to Forensic Science Laboratory. After completion of investigation, the Investigating Officer forwarded the charge-sheet against the appellant-accused.

4 To substantiate the Charge against the appellant-accused, the prosecution has examined as many as fifteen witnesses and exhibited number of documents. The appellant-original accused was questioned under Section 313 of the Cr.P.C. about the incriminating evidence and circumstances and the appellant-accused denied all of them as false and termed the prosecution case as false.

5 Upon appreciation of oral evidence and circumstances, the trial court convicted the appellant-accused in the manner stated hereinabove. Hence, this appeal.

6 Ms.Roy, learned counsel for the appellant-accused, submits that the prosecution has failed to establish the guilt of the appellant-accused. According to her the cardinal principle regarding the appreciation of circumstantial evidence is that even if one link is missing then the chain of evidence to link the crime undisputedly to the accused person is incomplete and an incomplete chain of evidence cannot be the base of conviction. According to learned counsel, the learned trial Court precisely overlooked this cardinal principle vis-a-vis the circumstantial evidence and wrongly relying on the testimony of the sole so called witness viz. PW7 Rajaram Pandurang Kamate, wrongly convicted the accused. The learned counsel also invited our attention to the evidence of PW7 and submitted that the testimony of PW7 itself goes to show that this witness was not knowing the

accused, and surprisingly, exactly after more than two years was able to identify the accused before the court. Our attention was also drawn to the cross-examination wherein PW7 admitted that police had told him that he should identify the accused, which means on the instructions of police only this witness was able to identify the accused before the court. Apart from above, the motive, which plays a crucial role in such type of cases, is also not established by the prosecution and thus, seen from any angle, there is nothing but total failure on the part of the prosecution to bring home the charge. Since all these material aspects were not looked in proper perspective, the accused came to be convicted wrongly. The impugned judgment, in the circumstances, deserves to be set aside by allowing the appeal.

7 The learned Public Prosecutor for the respondent-State submitted that the prosecution has been able to prove its case beyond any shadow of doubt. It is contended that the medical, forensic and ocular evidence clearly point towards the guilt of the appellant-accused and therefore, the learned Sessions Judge has

not committed any error in convicting the appellant-accused for the said offence. Hence, he prays for rejection of the appeal.

8 Admittedly, the conviction is based on circumstantial evidence as no one has seen the appellant-accused committing the murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. This necessarily implies that the onus / burden lies on the prosecution to prove that the chain of events is complete to permit no conclusion other than one of guilt of the accused.

9 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."

10 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

clinging 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)."

11 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.”

12 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.”

13 In Rumi Bora Dutta vs. State of Assam¹ the Hon'ble Apex Court held that :

“When a case totally hinges on the circumstantial evidence, it is the duty of the Court to see that the circumstances which lead towards the guilt of the accused have been fully established and they must lead to a singular conclusion that the accused is guilty of the offence and rule out the probabilities which are likely to allow the presumption of innocence of the accused.”

14 Similarly, in the case of Dharam Deo Yadav vs. State of U.P.² the Hon'ble Apex Court held that :

“Each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against

1 AIR 2013 SUPREME COURT 2422

2 2014 CRI.L.J. 2371 (S.C.)

the guilt is possible. Even when there is no eye-witness to support the criminal charge, but prosecution has been able to establish the chain of circumstances which is complete leading to inference of guilt of accused and circumstances taken collectively are incapable of explanation on any reasonable hypothesis save of guilt sought to be proved, accused may be convicted on the basis of such circumstantial evidence.”

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 Dattatray Patil, (ii) motive and (iii) last seen.

Homicidal Death :

15 In order to prove the homicidal death of the deceased, the prosecution has examined PW12 Dr.Bapuso Pandurang Satpute.

16 PW12 states in his evidence (Exh. 56) that on 8th May 2013 Murgud Police sent dead body of Dattatray Patil i.e. the deceased and he personally conducted the postmortem on the body. On external examination he found CLW over right posterior parietal region measuring 10 x 2 x 2 cm. and on palpation, fracture posterior parietal bone on right. On internal examination he found subcutaneous haemorrhage present. Depressed fracture, right parietal bone 10 x 2 x 2 cm. in horizontal direction. According to him, the probable cause of death was head injury. All the injuries noted by him were sufficient in the ordinary course of nature to cause death and the injuries were possible by muddemal Article no.3 i.e. stone. He then proved he postmortem report at Exh. 57.

17 In the cross-examination this witness was suggested that if a person consumes alcohol and falls on a stone like muddemal Article no.3, then the injuries noted by this witness were possible, to which this witness termed as incorrect. However, he volunteered that such injuries can be possible in an

accidental case. But here it is not the case of accidental nature and therefore, we are of considered opinion that having regard to the cause of death and also the nature of injuries noted by PW12, we have no hesitation in our mind to hold that the deceased died homicidal death.

MOTIVE :

18 It is well established principle that where the prosecution case depends on circumstantial evidence, motive assumes importance and goes a long way to prove the case of prosecution as held by the Hon'ble Apex Court in the case of **Shivaji vs. State**³.

19 In the instant case, the motive attributed to the accused is that he murdered the deceased to commit theft of Rs.60,000/-. However, at the very beginning, we have already noted that the learned trial Court was pleased to acquit the appellant-accused of the charge of robbery. Therefore, the alleged motive on the face of it does not survive.

3 AIR 1996 SC 55

LAST SEEN THEORY :

20 We are also aware of the principle that if the evidence against the accused is clear and clinching, failure on the part of the prosecution to establish motive is of no consequence. Since the whole case of the prosecution rests on the testimony of PW7 and more particularly the fact that majority of the prosecution witnesses have not supported the prosecution case, we find it proper to go through the testimony of PW7. Before that, we would like to point it out here that PW1 Suresh Bhimrao Chougule (Exh. 22) - informant is a formal complainant as he had no occasion to see the incident in question. He only saw the half burnt dead body of the deceased and then set the police machinery in motion.

21 PW7 Rajaram Pandurang Kamate states in his evidence (Exh. 45) that he knew the deceased. On 7th May 2013, around 10.30 a.m., he was proceeding to his field. He saw two persons were sitting near Neem tree. Their faces were towards tree. They were sitting with bottles of liquor. He identified one of them as

the deceased and the person sitting with deceased was stout and short. It is his specific evidence that he could not identify him.

22 His evidence further shows that on 18th May 2013 he heard the news in the village that in the field of Bhimrao Kamate someone was burnt. Subsequently, he realized that the dead body was of the deceased. He then identified the appellant-accused before the court as the person who was sitting with the deceased on 7th May 2013.

23 The evidence of this witness can be conveniently divided into two major parts. The first part shows that on 7th May 2013 this witness had an occasion to see two persons sitting near a Neem tree. Out of those two persons, one was deceased and another was a stout and short person. This witness could not identify that stout and short person. This necessarily means that, that stout and short person was not known to this witness. Further, the evidence also makes it abundantly clear that this witness was not able to see the features of that stout and short

person, otherwise he could have given a vivid description and details of the person including facial features of that person. The possibility of this witness seeing that stout and short person from behind cannot be ruled out.

24 The second part of his evidence shows that he was able to identify that short and stout person before the court on the date of his examination i.e. 21st May 2015. The natural question springs up is that when the accused was not known to this witness nor he had seen his features on 7th May 2013 and the fact that admittedly no Test Identification Parade was carried out, then how after more than two years he was able to identify confidently the appellant-accused before the court. There is reason for that and we find that reason from his cross-examination. In the cross-examination PW7 very categorically admits that police had asked him that he should identify that person (accused). This admission is a clear pointer to the fact that on the instructions of police, this witness identified the appellant-accused as the accused in his evidence before the court. Quite disturbingly, the learned trial

Court miserably failed to appreciate and analyze the evidence of this material witness in a proper perspective and rather, if we may say so, misinterpreted the evidence of this witness.

25 The kind of evidence adduced by PW7 does not positively establish that the deceased was last seen with the accused. There is absolutely no clinching and overwhelming evidence to show that immediately before the incident, the deceased was seen in the company of the appellant-accused.

26 This brings us to the remaining evidence on record. The prosecution has also placed reliance on various recoveries at the instance of appellants-accused and as also reports issued by Chemical Analyzers. However, in view of several loopholes as noted hereinabove and the failure of main circumstances finding its way to connect appellants-accused cogently and conveniently with the crime, the recoveries and Chemical Analyzers Reports lose their worth and force.

27 On re-appreciation of the evidence, we are of the considered opinion that the prosecution has failed to prove the guilt of the appellant-accused beyond all reasonable doubts. The judgment of conviction and sentence passed against the appellant-accused is not sustainable either in law or on facts and is liable to be set aside.

28 In the result, the following order is passed :

ORDER

- i) Appeal is allowed.

- ii) The judgment and order dated 24th November 2015 in Sessions Case No.176 of 2013, whereby the sentence and conviction was awarded by the learned Ad-hoc Additional Sessions Judge at Kolhapur, is quashed and set aside and the appellant-accused is acquitted of the offence charged against him.

- iii) The appellant-accused be set at liberty forthwith, if not needed in any other case.

(V. G. BISHT, J.)

(PRASANNA B. VARALE, J.)