

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.697 OF 2017

Tamanna Maruti Gharbude

...Appellant

Versus

The State of Maharashtra

...Respondent

Mr. Subir U. Sarkar a/w Ms. Chadha for the for the Appellant.
Mr. Arfan Sait, APP for the Respondent.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 12th JANUARY, 2021.

JUDGMENT: (PER S.M. MODAK, J)

. The issue involved in this appeal is whether the conviction recorded by the court of Additional Sessions Judge-2, Kolhapur on the basis of circumstantial evidence is legal and proper ? Whether circumstantial evidence adduced on behalf of prosecution establishes a complete chain ? Whether the circumstantial evidence is trustworthy and reliable ? The charge was framed for the offences punishable under section 302, 201 of IPC and the court was pleased to convict the accused for the offence punishable under section 302 of IPC and acquit the accused for the offence punishable under section 201 of IPC.

2. Accused-appellant Tamanna, the deceased Siddharam Solapure and PW-2-Gopal Yadugade were working at Balaji Crusher near Arjuni Village, Tal: Kagal, District Kolhapur. PW-8-Avinash Powar is the owner of Balaji Crusher. All were residing in huts erected at the site. PW-1-Anil Budake, the first informant and PW-3-Ananda, were the supervisors at the site. The deceased owed Rs.15,000/- to the accused and he was not repaying. Being annoyed the accused murdered the deceased in the intervening night of 15/10/2015 and 16/10/2015. There is no eye witness to the incident. The prosecution relied upon the following circumstantial evidence:

- (a) Last seen together.
- (b) Extrajudicial confession given by accused Tamanna to PW-2-Gopal Yadugade immediately after the incident.
- (c) Recovery of weapon at the instance of accused.
- (d) Blood stains on the weapon and also on the clothes of accused.
- (e) Motive in non returning the amount of Rs.15,000/- by the deceased.

3. According to the appellant-accused there is no satisfactory circumstantial evidence and there are missing links. His contentions are as follows:

- (a) PW-2-Gopal Yadugade hiding himself after hearing of confession about murder.
- (b) Extrajudicial confession is not proved and the

testimony of PW-2-Gopal Yadugade is not trustworthy.

- (c) Giving of extrajudicial confession is to be proved just like any other piece of evidence and it has not happened.
- (d) The facts narrated in the said confession needs to be proved independently and it has not happened.
- (e) Recovery of weapon is from the place accessible to all and it cannot be attributed exclusively to the appellant.
- (f) Evidence on the point of motive is neither reliable nor satisfactory. In fact there is no evidence on the point of motive.
- (g) Blood stains noticed on the weapon does not belong to the deceased and the blood noticed on the clothes of the accused does not connect him with the commission of crime.

4. He relied upon following judgments:

- 1. *State of Rajasthan vs. Raja Ram*¹;
- 2. *Kasamoddin Nooruddin Kawwal vs. The State of Maharashtra*²;
- 3. *Gambhir vs. State of Maharashtra*³ and
- 4. *Prem Thakur vs. State of Punjab*⁴

5. Learned APP supported the judgment. He pointed out that the conduct of the accused prior to, during and after the incident. He

1 (2003) 8 Supreme Court Cases 180

2 Criminal Appeal No.333 of 2015

3 (1982) 2 Supreme Court Cases 351

4 (1982) 3 Supreme Court Cases 462

invited our attention to the answers given by the accused to the questions put during statement recorded under Section 313 of Cr.P.C. and in the separate written statement filed by him before the trial court.

6. In the case of *Rajaram* (referred above), the Hon'ble Supreme Court has again reiterated the law on the point of appreciation of circumstantial evidence. When there is no direct evidence, still the court can draw an inference about involvement of the accused and about his guilt only when the circumstances relied upon by the prosecution are proved and not otherwise. This has been observed in this case.

7. After hearing them and perusal of record, we find that the trial court has not committed any wrong in appreciating the evidence and drawing an inference based on proved facts. The trial Court has also applied the law correctly. There are certain areas wherein observations of the trial court are not as per the evidence. We have made our observations accordingly. While doing that exercise we have considered the observations of Hon'ble Supreme Court in above referred judgment. Still they are not sufficient to interfere with the findings . Hereinafter we will give the reasons for our opinion.

EXTRAJUDICIAL CONFESSION

8. The main thrust of the prosecution evidence is on the confession given by the accused to PW-2-Gopal. Apart from the accused and the deceased, PW-2-Gopal is also residing at the Crusher

site. On 13/10/2015 as usual he slept at night, deceased Siddhram and accused Tamanna also went in their room. Till the time accused Tamanna woke him up, the witness was not aware about happening of any incident. Accused Tamanna came to him and woke him up. At that juncture accused Tamanna confessed before him about murder of Siddhram with the help of sickle. It is true that law attaches importance to admission of guilt given by the wrong doer. The logic behind is why a person may tell something against him or which is prejudicial to him or which is against his interest.

9. There are various kinds of evidence which is generally adduced in a criminal trial. One is direct evidence. Second is circumstantial evidence. Admission/Confession is another kind of evidence which may be proved on behalf of the prosecution. When evidence of this kind is adduced, the court will have to consider various parameters. The person to whom confession is given, in what circumstances it was given, what is the time gap in between the incident and giving of confession, how was the relationship in between the wrong doer and the listener of confession. Confession might have been given after prolong gap after the incident. When confession is not given by addressing to a particular person but various persons sitting there or listening. In those eventualities, the confession may not stand on high pedestal as it stands when confession is given immediately and to a known person.

10. There may be a case wherein the Court can rely simply on confession, if the parameters opined by the Hon'ble Apex Court and

by this Court in various judgments are fulfilled.

11. However generally, the court seeks for corroboration to the evidence of confession. So whether to rely simply on confession or whether to seek for corroboration is an issue depending upon the facts and circumstances of that case. Hon'ble Supreme Court in case of *Rajaram* (referred above) has reiterated the law on the point of confession in paragraph No.18. Parameters to be considered while appreciating the evidence of confession are laid down. In that case PW-3-Ananda was a close relative of PW-4-Shrikant and history sheeter. So also PW-4-Shrikant was not on good terms with the accused. Accused confessed about the crime before them. Hon'ble Supreme Court has refused to interfere in the acquittal of accused.

12. When we apply the ratio laid down in the above mentioned judgment to the facts before us, we find that the extrajudicial confession given by the accused to the deceased inspires confidence. The Trial Court has discussed it in paragraph Nos.52 to 54 and in paragraph No.65 to 70. We agree to these findings.

13. We find that there were unstrained relationship in between the accused and PW-2-Gopal. In fact both were knowing each other, working with the same employer and residing at one and the same site. It is important to consider circumstances in which extrajudicial confession was given. As usual PW-2-Gopal slept. It is the accused who came to him and woke him up. What was the reason for accused

to do this act ? We can consider the mentality of the accused at that time.

14. He has already done an objectionable act therefore thought it essential to tell this fact to some one else. He might have realized that he has committed wrong. After the person comes out of that anger state of mind, he realized the type of mistake he has committed. Probably this may be the state of mind of the accused. PW-2-Gopal was known to him. Accused might have thought that even after confessing, the witness may not tell this fact to anyone. We can also consider the strong impulsion in the mind of accused to admit the guilt. In fact witness Gopal was sleeping. The accused after returning might have kept quiet and might have slept also. But he has not done that. Instead of that he woke up the witness and told him the heinous act committed by him.

15. It is important to note that the accused has confessed about the crime within a short span of time. There is no gap at all. We do not know the exact time of assault. There is reason to believe that it is in the intervening night of 15/10/2015 and 16/10/2015. So what we feel is that extrajudicial confession in this case satisfies the precautionary requirements laid down in various judgments.

16. No doubt the deceased and PW-2-Gopal are related to each other. Deceased is nephew of the witness (sister's son). On 13/10/2015 the deceased had an occasion to go to his native place at

Saundatti and he returned back on Thursday. The witness Gopal was also on good terms with the accused Tamanna. Prior to the incident both had gone to Nipani for roaming. After they returned back, the incident took place in the intervening night. So it seems that witness Gopal was on good terms with the deceased as well as the accused.

17. The conduct of the witness Gopal after the confession is criticized on behalf of defence. Till the time he narrated the incident by going to Gaykanwadi and informing to PW-5-Khot, he has kept mum. He has concealed himself in the field of sugarcane. According to defence, why he has not narrated the incident immediately after hearing the confession. The fact that he has kept mum for some period would be a natural conduct of listener in such eventuality. On the other hand he might take a bold stand and inform it to someone or police. Being afraid of danger to his life witness Gopal has exhausted first option where he considered it as a natural conduct on his part. We find explanation for the said conduct, in the conversation in between the witness on one hand and the deceased on the other hand.

18. After confessing the crime, accused told the witness not to disclose it to anybody. The weapon of offence i.e. sickle was in the hand of accused at that time. What can be the psychology of the listener in such a situation. The deceased and accused were knowing each other earlier and they can be called as friends. So one of the friend putting an end to the life of another is sufficient enough to

cause alarm in the mind of witness. So it was but natural for the witness to conceal himself in the sugarcane field for the whole night till next day morning. We find no wrong in the approach of trial Court in dealing with the issue.

LAST SEEN

19. The PW-2-Gopal has slept in one room and the deceased and the accused have slept in another room. It is true that the timing of assault is not known. It may be immediately after they have slept, in the mid night or early hours. It is true that in answering question No.13 put by the trial court, the accused admitted that he was staying with deceased. He has denied other facts. It is true that in a separate statement given under section 313 of Cr.P.C. the accused has denied about borrowing money from the deceased and the deceased not returning to the crusher site after going to the native place. Our attention is brought to this aspect on behalf of the learned APP.

20. The trial court has dealt with this aspect. The trial court has observed that if this is the true fact then how the dead body of the deceased was found at the spot (paragraph No.82). We agree with the said observation. Hon'ble Supreme Court in the case of *Prem Thakur* (referred above) was pleased not to draw an inference on the basis of last seen together by the deceased along with the appellant.

21. When the Appellant was working with the deceased,

nothing was unnatural if they were found in joint company on the evening before murders were committed. In this case also the deceased Siddharam and the appellant-accused Tamanna and witness Gopal were working with the same employer and they were residing on the same site. Trial Court has drawn adverse inference against the accused for not giving explanation when he was found in the company of the deceased lastly. The trial court has relied upon the provisions of section 106 of the Indian Evidence Act (paragraph 77).

22. We do not agree to this finding. We find that the circumstances about “sleeping together by the deceased and accused in one room” can not be considered as circumstance of last seen together strictly. It is for the reason that there is no evidence about the exact time of assault. It is also for the reason that it is but natural for both of them to sleep in the huts at the site.

TIMING OF DEATH

23. Though certain questions were put to prosecution witness about causing injury to the deceased by falling, the defence did not get any support from the answers given by the witness. The evidence of Medical Officer is sufficient to draw an inference about homicidal death of the deceased. In the impugned judgment, the trial court has discussed said evidence in paragraph No.10 to 18. The trial court has rightly dealt with the evidence on this aspect including the evidence of Medical Officer, spot panchanama, inquest panchanama.

24. Learned advocate for the accused has brought our attention to the answer given by the Medical Officer about time of death (paragraph 7). He admits that he has not given opinion about time of death. He was cross examined on the line of “time taken for digestion, development of rigour mortis, presence of lividity”. According to him the cause of death was head injury due to intracranial haemorrhage and hypovolemia(due to blood loss). He has noticed 8 external injuries and 3 internal injuries whereas there were 3 injuries to the brain. We may notice the part of the body of the deceased which was affected due to assault. There were injuries to the ear, occipital region, parital region, neck, left thigh. There was fracture to left hand and other minor injuries. The description is given in column No.17. Apart from that there were 3 fractures to bone, parital region and forearm.

25. It is true that in case of *Gambhir* (referred above) Hon’ble Supreme Court in paragraph 30 and 31 has analyzed the evidence of Medical Officer (probable cause of death) vis a vis the evidence of last seen. Where two doctors could not give a probable time of death of three deceased persons (as the bodies were in high state of decomposition), the High Court opined about non performing duties by the concerned doctors in keeping notes. The Hon’ble Supreme Court criticized the said approach and opined that the Court cannot usurp the evidence of an expert. That is why the Hon’ble Supreme Court was not pleased to accept the theory of the accused being in the company of deceased Siddhram.

26. So also this Court (Nagpur Bench) in the case of *Kasamoddin* (referred above) was pleased to give benefit of not opining the exact or probable time of death of the deceased. It was a case based on circumstantial evidence. There was testimony of only one witness. He had seen the deceased and the appellant going in a particular direction.

27. It is true that the time of death is an important factor. But under what circumstance “absence of giving of opinion about probable time of death” will play an important factor with depend on the facts of each case. In this case we do not find it fatal to the prosecution case. The trial court has referred to this issue in paragraph No.59. We do not find that the appellant can get benefit of this natural lacuna and can take advantage of observations in above two referred judgments. It is for the reason that apart from shortcomings in giving opinion about timing of death (naturally arising or accidental omission or intentional omission) there were also other factors. This is not a situation here.

28. We are more impressed by immediate extrajudicial confession given by the accused and that too to the person to whom he is well acquainted. As we have already said that the circumstance of last seen together is not very much important in this case, we are not inclined to give benefit of absence of opinion about timing of death to the defence.

MOTIVE

29. There is much stress by the defence on this aspect. Though there is some force in the said argument, ultimately we are not inclined to accept it as a circumstance so as to presume that chain is broken. No doubt it is true that in a case based on circumstantial evidence, motive plays an important role. It is important to note that when there is no evidence on the point of motive, it certainly helps the defense to argue that the link is broken.

30. What transpires from the evidence is that the accused has lent Rs.15,000/- to the deceased and he was not repaying. The concerned witness PW-2 Gopal is not aware about the same. What has come in his evidence is by way of utterances made by the accused to the witness about the crime. PW-4-Shrikant Khot is not aware about financial transaction between both of them. He had gone one step ahead. According to him no quarrel took place between them for the said transaction. (paragraph No.4). Even the owner of the crusher (PW-8-Avinash Pawar) has admitted that money transaction has not taken place in his presence.

31. The accused in his statement under section 313 of Cr.P.C. has denied the fact of borrowing Rs.15,000/- from the deceased. It is also true that there is no witness examined on this aspect. The trial court has considered the circumstance of motive as proved (paragraph No. 83). However any reasoning for arriving at that conclusion is not pointed out to us.

32. We are inclined to hold that the case is not of such kind wherein the accused is to be given benefit of doubt for non proof of motive. Particularly speaking the motive is not important when case rests on direct evidence. There may be motive or may not be motive. There may be evidence or may not be evidence. This is not 100 % correct in a case based on circumstantial evidence, motive is one amongst several links. In a case based on circumstantial evidence, Law does not expect number of circumstances which taken together will form a chain. It depends upon the facts and circumstances. In a given case there may be a transaction involving several circumstances. So prosecution needs to prove every circumstance. However, there may be a case in which transaction may not last longer. There may be a few circumstances upon its happening the entire chain may complete.

33. In this case what we find is that the prosecution case rests on narrow compass. Accused murdered deceased, confessed before PW-2-Gopal and came to be arrested on 16/10/2015. There is no eye witness. However, PW-1, the first informant, PW-3-Ananda and PW-2-Gopal went to the spot and found the dead body concealed below the dry leaves. Even though the case rests on narrow compass we find that few circumstances relied upon by the prosecution are self explanatory and sufficient to point finger towards accused.

34. So in this case we do not find that giving evidence on the point of motive will be of any material help to the accused so as to

escape from the clutches of law.

CHEMICAL ANALYZER'S REPORT

35. Lastly, there is evidence of recovery. We have got three reports of chemical analyzer. They are at Exhibit 47 pertaining to analysis of blood sample of accused Tamanna. Both samples were found not suitable for grouping. So blood group of the accused could not be known. We have got another report opining about blood group of the deceased. The result was not conclusive. Third report pertains to articles found at the spot, about clothes of the deceased, about clothes of the accused and of weapon i.e. sickle. The human blood was found on all these articles. Only on full shirt of accused Tamanna and bandi of deceased blood group ascertained was of "A" group. It is difficult to infer that the blood group found on full shirt of accused belongs to blood of deceased only and it is for the reason that blood group of the accused could not be opined. Blood group on the sickle though was of human, its group could not be ascertained. The trial court in paragraph No.74-80 has opined that blood group on full shirt of the accused must be the blood of deceased. For the reasons stated above, we defer with the said inference.

SEIZURE OF SICKLE

36. The trial court believed on the evidence of PW-5-Basavraj Shivlingnayya Hiremath, recovery panch and PW-13-Amarsinh Jadhav, the Investigating Officer and concluded about discovery of the place where the sickle was concealed. The trial court has rightly

opined that even though sugarcane field is open place, recovery was made inside the field. Though the field is visible, nothing is visible if it is concealed inside the field. Accordingly, trial court has inferred about knowledge about the same to the accused only. (paragraph No.74). So it is the accused only who is aware about the place wherein he has concealed the weapon of offence. Human blood was found on it. This circumstance goes against the accused and it has been rightly considered by the trial court.

FINAL CONCLUSION

37. For the above reasons, we differ in certain areas with the trial court, though other circumstances discussed above are sufficient enough to infer about guilt of the accused-appellant. So we find that even though on limited available circumstance the chain is established, it is the accused only who has committed murder of the deceased. The trial court has acquitted the accused for the offence punishable under section 201 of IPC. We find that there is no reason to interfere in the conclusion arrived at by the trial court. Hence, the appeal stands dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)

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