

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.71 OF 2020
WITH
CRIMINAL APPLICATION NO. 1767 OF 2022
IN
CRIMINAL APPEAL NO.71 OF 2020**

Shashikant @ Pappu Shivanand Zurale,
Age:37 years, Occ.: Nil,
R/o.: Mahadeo Galli, Andoor,
Tq.: Tuljapur, Dist.: Osmanabad .. Appellant

Versus

The State of Maharashtra
Through Police Inspector,
Naldurg Police Station,
Tq.: Tuljapur, Dist.: Osmanabad .. Respondent

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Advocate for Appellant (*Appointed*): Mr. P. P. More
APP for Respondent: Mr. K. S. Patil

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**CORAM: SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE: 17th JUNE, 2022

ORAL JUDGMENT (*Per Sarang V. Kotwal, J.*):

1. The appellant has challenged the Judgment and Order dated 06.10.2018 passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.30 of 2017. By the impugned Judgment and Order the appellant was convicted for the offence punishable under Section 302 of the IPC and was

sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.2000/- and in default he was directed to undergo rigorous imprisonment for 1 year. The appellant was granted set off under Section 428 of the Code of Criminal Procedure, 1973.

2. The prosecution case is that, on 23.01.2017, the appellant committed murder of Anil Shivaappa Karpe in a dilapidated house of Shri Dhumal at village Andoor, Taluka Tuljapur, District Osmanabad. The deceased was uncle of the Appellant's wife. According to the prosecution case, the deceased was trying to mediate in the dispute between the appellant and his wife. The appellant did not like that and therefore committed his murder.

3. The appellant was arrested on 24.01.2017 and since then he is in custody. The F.I.R. was lodged by son of the deceased - Amar Karpe. According to the first informant, the deceased was not found for some time on 23.01.2017. When the

informant and his friends were looking for the deceased, the dead body was found in the dilapidated house of Shri Dhumal. The appellant was seen near the dead body and, therefore, suspicion was expressed against him. After registration of the F.I.R., investigation was carried out, the appellant was arrested, statements of witnesses were recorded, Inquest Panchanama was conducted, Spot Panchanama was conducted and Postmortem was performed on the dead body. After conclusion of the investigation, charge-sheet was filed and the case was committed to the Court of Sessions.

4. During trial, the prosecution examined 9 witnesses. The defence of the appellant was of total denial. On the conclusion of the trial, the appellant was convicted and sentenced as mentioned earlier.

5. PW-1 Amar Karpe was the first informant. He was son of the deceased. He has stated that, on 23.01.2017, at about 10 to 10:30 p.m., he received

telephonic message from his friend that his father was missing. PW-1 and others started searching for his father. When they went to the dilapidated house of Shri Dhumal, he and others saw the dead body of PW-1's father in the house. The appellant was found near the dead body. This witness and PW-6 Ganesh Karpe tried to catch the appellant, but he ran away. PW-1 called Dr.Zinge, who declared his father to be dead. The F.I.R. was lodged on 24.01.2017. It is produced on record at Exhibit-34. In the F.I.R., he had expressed suspicion not only against the appellant; but also against Appasaheb Shete, Sunil Karpe and Anita Karpe. According to him, all of them in collusion with each other, committed murder of the deceased by strangulation and smothering. The appellant had carried the dead body at the spot where it was found.

In the cross-examination he has stated that one of the suspects Sunil Karpe was his paternal uncle and there was dispute about compensation in respect of their land which was

acquired. He admitted that no complaint was lodged regarding any dispute between the appellant and his wife Sushma. He admitted that he did not have personal knowledge about the matrimonial dispute between the appellant and his wife. The dilapidated house where the dead body was found was at the backside of his house. He also did not have any personal knowledge regarding the deceased trying to mediate between the appellant and his wife. In the F.I.R., he has mentioned that the hands of the dead body were tied with a thin jute string.

6. In this connection, evidence of PW-5 Sushilkumar Karpe and PW-6 Ganesh Karpe is on similar lines. Sushilkumar Karpe was cousin of the deceased. He accompanied PW-1 Amar Karpe and PW-6 Ganesh Karpe to that place where the dead body was found. According to him, jute string was tied on the left wrist of the deceased. This evidence is similar to that of PW-1.

7. PW-6 Ganesh Karpe was another witness who had accompanied PW-1 when the dead body was found. He was nephew of the deceased. His evidence is also similar to PW-1 and PW-5.

PW-1 Amar Karpe, in his subsequent statement recorded under Section 164 of the Code of Criminal Procedure had not blamed the other suspects but had concentrated only on the appellant.

8. PW-2 Dattatraya Alure was a Panch for the Spot Panchanama and Inquest Panchanama. PW-4 Swaminath Halgode was Pancha in whose presence the clothes of the appellant and the other suspects were seized. PW-7 Mahadevi Karpe was wife of the deceased but she did not have any personal knowledge about the incident. She deposed that the deceased had left his house at around 03:30 p.m. on 23.01.2017 and they started searching for him after 09:00 p.m. She admitted that the deceased was suffering from epilepsy for about 5 years before his death. She admitted that he was weak physically.

9. PW-8 Sayyad Mazhar Ali (PSI) has filed the charge-sheet. PW-9 Ramakant Panchal (API) had conducted investigation and had recorded statements of the witnesses.

10. The most important evidence in this case is that of PW-3 Dr. Sharda Wagadkar, who had conducted postmortem examination. The postmortem notes were produced on record at Exhibit-50. This witness has deposed that the postmortem examination revealed following injuries on the dead body-

[i] Abrasion over right wrist joint 2 to 3 in numbers having size approximately 0.1 X 0.1 X 0.1 Cms. Of each

[ii] Abrasion over right knee joint having size approximately 0.1 X 0.1 X 0.1 Cms.

[iii] Abrasion over left knee joint having size approximately 0.2 X 0.1 X 0.1 Cms.

[iv] Abrasion over right foot having size approximately 0.2 X 0.1 X 0.1 Cms.

[v] Abrasion over left foot having size approximately 0.3 X 0.1 X 0.1 Cms.

The age of the injuries was within 6 hours of the examination. They were simple in nature. She had preserved visera and reserved her opinion regarding the cause of death. According to her, death was caused within 6 to 8 hours from his last meal. After going through the CA Report, since no poison was found; she gave her opinion that the cause of death was due to 'threat of injuries and shock'. In the cross-examination she agreed that the injuries on the dead body were possible due to fall on the road.

The C.A. Reports produced on record have no significance at all. No blood was detected on any clothes.

11. Learned Judge in his impugned Judgment observed that the presence of the appellant at the spot and jute string on the wrist of the deceased led to the conclusion that the deceased was murdered. The motive was locked in the heart of

the appellant. On this reasoning, the appellant was convicted.

12. Learned Counsel for the appellant submitted that the motive is not proved. Even the fact of homicidal death is not proved. No connection is shown between the appellant and the incident. PW-1 did not have any personal knowledge about the dispute between the appellant and his wife. He submitted that there is no evidence against the appellant and therefore he ought to be acquitted.

13. Learned APP submitted that since the appellant was found near the dead body, he had some exclusive knowledge about the incident which he was bound to explain; failing which, the presumption under Section 106 of the Indian Evidence Act, 1872 operates against him. He submitted that, in the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 no explanation was offered by the appellant. There was an injury to the appellant and even that

injury was not explained. The motive is brought on record through the evidence of PW-1 and, therefore, all these circumstances form complete chain pointing to the guilt of the appellant.

14. We have considered the submissions and we have carefully perused the record.

15. The most important aspect of this case is the medical evidence which we have reproduced above. The deceased had suffered absolutely minor abrasions on hands and legs. The Doctor has admitted that those injuries were possible by a fall. There was neither any other external injury nor any other internal injury. The opinion of the Doctor is that the death was due to 'threats of injuries and shock'. The death was not attributable to any assault. Thus, from this evidence it is quite clear that the prosecution has failed to prove the basic requirement of the offence of murder i.e. the homicidal death. The prosecution has not proved that it was a case of homicide. Since the case of the prosecution is

destroyed through this medical evidence; the rest of the prosecution case falls like a house of cards. The other piece of evidence are so weak that they need not be taken into account. However, according to the prosecution, these circumstances are as follows-

- (i) motive,
- (ii) a jute string having found on the wrist of the dead body and
- (iii) injury to the appellant.

As far as motive is concerned, PW-1 has admitted that he did not have any personal knowledge regarding dispute between the appellant and his wife. Absolutely no evidence is brought on record to show that the deceased was interfering in the affairs of the appellant and his wife. The motive is not proved at all. Significantly, PW-1 has expressed suspicion not only against the appellant but against 3 others. He has also admitted that after he was paid compensation amount, he had dropped the names of the other 3 suspects. Therefore, the evidence of PW-1 itself

is not free from doubt. He is not a reliable witness. Even otherwise, presence near the dead body does not indicate that the appellant was responsible for the death of the deceased. As mentioned earlier, there was no assault. The death was not proved to be a homicidal death. Therefore, these circumstances are innocuous and not incriminating at all.

16. As far as injury to the appellant is concerned, it was a small abrasion on the right forehead of the size 0.5 X 0.5 cm. The abrasion is so minor that it indicates nothing.

17. Finding of the jute string on the left wrist of the dead body also does not connect the appellant with either the string or with the dead body.

18. Thus, we find that it is the case where there is absolutely no evidence against the present appellant. The prosecution has miserably failed to prove the case against the appellant.

Therefore, the appeal deserves to succeed. Hence, the following order-

ORDER

[I] The appeal is allowed.

[II] The Judgment and order dated 06.10.2018 passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.30 of 2017 is quashed and set aside.

[III] The appellant is acquitted of the charges faced by him.

[IV] The appellant shall be released forthwith if not required in any other case.

[V] Learned Advocate appointed to represent the appellant, shall be paid his fees in accordance with the Rules.

19. The Appeal and the companion application are disposed of.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]
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