



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 126 OF 2017

1. Barku Baburao Kolape,
Age : 28 years, Occu. : Labour,
R/o. Ambode, Tq. & Dist. Dhule,
Tambapura, Gavali Wada,
Jalgaon.

2. Ranjana Vijay Sardar,
Age : 40 years, Occu. : Labour,
R/o. Sanglud, Taluka Daryapur
District : Amravati

... Appellants.

Versus

The State of Maharashtra,
Through Dhule Taluka Police
Station, Dhule

... Respondent

...
Mr. Deepak D. Chaudhari, Advocate for Appellants.
Mrs. V. S. Choudhari, APP for Respondent - State
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 15th SEPTEMBER, 2023

PRONOUNCED ON : 03rd OCTOBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Instant appeal arises out of judgment and order of conviction passed by learned Additional Sessions Judge, Dhule in Sessions Case No. 27 of 2016, holding appellants Barku and Ranjana guilty of committing offence punishable under section 302 read with section 34 of Indian Penal Code (IPC).

PROSECUTION STORY IS AS UNDER

2. Informant Rohidas (PW1) set law into motion alleging that, on 05.01.2016, while he was proceeding on Nagpur-Surat highway at 10:00 a.m., he saw dead body of an unknown male person lying in pool of blood with head injury. He reported the incident, on the strength of which crime bearing No.06 of 2016 was registered about murder of unknown person for unknown reasons.

3. Investigation revealed complicity of accused. Precise accusation of prosecution is that deceased was troubling accused no.2-Ranjana on account of money. Therefore, she and accused no.1-Barku took deceased after making him consume liquor and then he was assaulted and done to death. Resultantly, both accused were charge-sheeted and tried before learned Additional Sessions Judge, who, on appreciation of evidence, accepted the case of prosecution as proved beyond reasonable doubt and vide above judgment and order dated 27.01.2017, convicted and sentenced both appellants for imprisonment for life.

Aggrieved by the above, by invoking section 374 of the Code of Criminal Procedure (Cr.P.C.), appeal has been preferred by the appellants on various grounds spelt out in the appeal memo.

SUBMISSIONS

4. Learned counsel for appellants would submit that prosecution has miserably failed to establish the case beyond reasonable doubt. According to him, there is no direct evidence and the case is based on circumstantial evidence. However, it is his submission that, none of the circumstances relied by the prosecution are firmly and cogently proved. He took us through the testimonies of prosecution witnesses and would submit that there is no evidence about accused to be in the company of deceased, but still learned trial court has held accused persons guilty. That, case of prosecution is based on assumptions and presumptions. That, there is no iota of evidence about deceased to be acquainted with accused no.2 or deceased to be staying with her and further there is no evidence that he used to trouble her for money. Thus, it is his submission that there is no material or foundation in support of accusations raised. That, even learned trial court has not considered and appreciated the evidence in proper perspective and even settled law has not been applied. Consequently, he prays to set aside the said judgment by allowing the appeal.

5. In answer to above, learned APP for the State would submit that there is cogent and trustworthy evidence about

deceased to be living with accused no.2. That, he did not work or earn and moreover allegedly harassed accused no.2 for money and therefore, she connived with accused no.1 and they both initially made him drink liquor and took him to the spot. It is pointed out that, investigation revealed that deceased was done to death and his body was thrown. That, evidence of witnesses examined by prosecution has not been disturbed or shaken. Investigation revealed involvement of accused persons and therefore they were arrested and charge-sheeted. That, finding the case to be full-proof, learned trial Judge has correctly held accused guilty. According to him, there is no merit in the appeal and so she prays that the same be dismissed.

6. In the light of charge, it is first to be seen whether death of Govind is shown to be homicidal one. For getting satisfied to that extent, we have visited the evidence of autopsy doctor (PW4 Dr. Chaudhary), who, while conducting autopsy, has noticed following external and internal injuries which are as under :-

1. *Lacerated injury over forehead, extends from left eyebrow mid portion till right eyebrow mid portion 7 X 2cm X bone deep horizontally, margin irregular, underlying bone fracture.*
2. *Lacerated injury over lateral half right eyebrow 0.5cm right lateral to injury No.1 3cm X 1cm X bone deep, horizontal.*
3. *Contused abrasion over left cheek over zygomatic portion 2cm X 2cm dark, red, obliquely placed.*

4. *Lacerated injury over upper lip mid portion 3.5cm X 1cm X oral mucosa deep, horizontally placed.*
5. *Lacerated injury over mid portion of lower lip mid line 1 x 6cm x muscle deep, obliquely placed.*
6. *Black eye contusion over right eye eyelids and immediately beneath the lower eyelids 6cm X 4cm blue, horizontally placed.*
7. *Contusion over left eye upper lid 3cm x 0.8cm blue, horizontal.*
8. *Faint ligature mark encircling around neck for length of 37cm having maximum breadth 3.5cm left lateral aspect of neck. The ligature mark is 02cm below right mastoid is, 4cm below left mastoid, 05cm below chin, 10cm above suprasternal notch and 08cm below occiput. The ligature mark is also present in continuation over both side mandible portions of face and over both cheeks over either side of the angles of mouth.*
9. *Multiple contused abrasions over back of right upper limb including arm, elbow, forearm and hand; varying 0.5cm x 0.5cm to 01 x 01cm, dark red.*
10. *Multiple contused abrasion over right lumbar of abdomen varying; 0.5cm x 0.5cm to 05cm x 01cm, dark red.*
11. *Multiple contused abrasion over back of left upper limb arm, elbow and hand, over back of left shoulder; varying 0.3cm x 0.2cm to 03cm x 0.5cm, dark red.*
12. *Multiple contused abrasion over front of mid portion of right leg; varying 0.3cm x 0.3cm to 03cm X 01 cm, dark red.*
13. *Multiple contused abrasion over nose varying 0.1cm x 0.1cm to 0.2 x 0.2cm, dark red.”*

We have also gone through his cross at the hands of learned defence counsel in the trial court. In our view, opinion issued by doctor has not been rendered doubtful. Consequently, here, prosecution has shown that death of Govind is nothing but homicidal one.

7. Now it is to be further seen whether appellants herein are responsible for the same. Evidence on record shows that case of prosecution is based on evidence of following witnesses :-

PW1 Rohidas Patil is the informant, who lodged the FIR (Exh.17).

PW2 Sunil, who is the owner of the house where deceased and accused No.2 were residing.

PW3 Sudam has acted as pancha to spot panchanama (Exh.20), panchanama of seizure of articles from the spot (Exh.21) and inquest panchanama (Exh.22).

PW4 Dr. Kapileshwar Chaudhary is the autopsy doctor, who issued PM note (Exh.24). According to him, cause of death is due to smothering.

PW5 Nandu and **PW6** Kantilal claim to have seen both accused beating deceased on the Nagpur highway on 04.01.2016 at 7.30 p.m and on being intercepted by these witnesses, the trio to have left the place and proceeded towards Dhule on one motorcycle.

PW7 Bhagwan is the owner of 'Anand Hotel and Beer Bar' situated on the Nagpur-Surat highway. He has not supported prosecution.

PW8 Rajendra identified the dead body to be of his brother, namely, Govind.

PW9 Satish has acted as pancha to the seizure panchanama of clothes of both accused and deceased i.e. Exhibits 45 to 47 respectively.

PW10 Ramesh Ratnaparkhi is the Investigating Officer.

PW11 Bharat has acted as pancha to memorandum and discovery of muddemal at the instance of accused No.1, i.e. Exhibits 49, 50 and 51. He has not supported prosecution.

8. Prosecution is mainly relying on the evidence of **PW2** Sunil i.e. owner of the room where accused Ranjana and deceased resided for three weeks, so also **PW5** Nandu and **PW6** Kantilal, who were passers by and are claiming to have witnessed quarrel between accused persons and deceased.

9. **PW2** Sunil, in his evidence at Exh.18 gave evidence that he had rented out his premises to Govind (deceased) and Ranjanabai (Accused no.2) for Rs.1800/- per month. They stayed there for three weeks. They used to quarrel and he used to intervene to request them not to quarrel or otherwise to vacate the premises. He identified arrested accused Ranjana.

In cross at the hands of learned counsel for accused no.1, he admitted that he had not informed police that he had rented the house to Govind and Ranjanabai, whereas, while under cross at the hands of learned counsel for accused no.2, there is omission regarding this witness asking accused and deceased to vacate the premises if they continue to quarrel.

10. Now let us go through the evidence of **PW5** Nandu and **PW6** Kantilal, who are examined at Exhs.26 and 27 respectively. They both claim to be traveling on a motorcycle at 7:30 p.m. on 04.01.2016 on Nagpur highway. They both are speaking about seeing both accused before the court, quarreling and beating deceased. They claimed that they intervened. PW5 Nandu claims that he also snapped photo of the accused as well as deceased in mobile and has given description of the motorcycle. He stated that the male accused gave his residence as Jalgaon, whereas the female accused identified herself as wife of deceased. Thereafter, all three of them went away on the motorcycle towards Dhule. PW5 Nandu claims that on next day he learnt about the murder.

Likewise, **PW6** Kantilal also spoke about seeing quarrel while they were passing by and seeing one lady and two gents quarreling, he and PW5 Nandu approaching them. Accused and deceased were under influence of liquor. This witness also deposed

that the lady and one gents were assaulting the person, who was heavily drunk. These witnesses intervened the quarrel. PW6 Kantilal also stated that PW5 Nandu snapped photograph of the motorcycle.

11. In cross **PW5** Nandu answered that he had handed over mobile to police. He further volunteered that after copying the photographs, his mobile was returned. He admitted that he did not handover memory card. There is omission about female accused disclosing that she was wife of deceased. He also admitted that he did not inform police that the female sat on the rear side of the motorcycle while going. While under cross at the hands of learned counsel for accused no.2, he admitted that he did not inform to police about assault by accused on the deceased. He volunteered that he did not feel like lodging information.

PW6 Kantilal while under cross was unable to state reason of quarrel. He admitted that his statement was recorded on 05.01.2016. While under cross at the hands of accused no.2 he has answered that there was no light facility at the spot.

12. On critical analysis of evidence of above three witnesses, it is seen that landlord (PW2 Sunil) merely speaks about

quarrel between Govind and Ranjana. Deceased and accused no.2 allegedly stayed for three weeks in his house. He is unable to state nature of quarrel or exact relations between them. Admittedly, there is no written transactions about rent or lease. Since which period, upto which period they both stayed in his premises is also not coming on record.

13. As regards to testimony of **PW5** Nandu and **PW6** Kantilal are concerned, they seem to be chance witnesses. However, their evidence is only about seeing a man and a lady quarreling with another male who was said to be heavily drunk and he being beaten in their presence. With what male person was beaten is not clarified. Admittedly, there is no source of light as the incident had taken place on highway. T.I. parade is admittedly not conducted and Investigating Officer admits to that extent. The only piece of evidence which seems to be a photograph allegedly snapped by PW5 Nandu, is also doubtful as neither memory card nor the mobile of PW5 Nandu is seized and got examined through expert. Which police official got the photographs or in whose mobile it was forwarded is also not coming on record. Surprisingly, for such serious lapses, evidence of PW5 Nandu and PW6 Kantilal gets watered-down and not worthy of credence.

14. Another piece of evidence which allegedly emerged is alleged CCTV footage which investigating machinery claims to have seized from PW7 Bhagwan, manager/owner of the hotel, namely, 'Anand Hotel and Beer Bar' over Nagpur Surat highway. He has unfortunately not supported prosecution. In cross, he answered that he has watched the footage and he himself is seen sitting at the counter, whereas in the said second photograph deceased is seen. In third and fourth photograph one lady is seen while leaving the hotel. Only on such material photographs are got exhibited in trial court. He further answered that, according to him, deceased alone has visited the hotel. He stated that he is seeing accused persons for the first time in the court and police did not record his statement. His statements are under section 164 are confronted, but admittedly, such statements are not substantive piece of evidence. Even the lady spotted in the CCTV footage is shown to be covering her entire face with orange scarf. Said scarf was seized from the person of the deceased at the time of autopsy, but unless the lady wearing the scarf is precisely identified, it is unsafe to consider mere such material in a serious case like murder.

15. Following are the vital admissions by Investigating Officer:-

- (i) "I have not sent the CCTV footage for expert opinion.
- (ii) I have not recorded statements of waiters of hotel.
- (iii) I have not attached the mobile of the witnesses in which photographs of accused and motorcycle were snapped.
- (iv) I have not prepared distinct panchanama at the time of attachment of CCTV footage or photograph.
- (v) I have not filed log book extract.
- (vi) I have not attached bill book of the hotel.

The above answers clearly indicate that investigation was in slipshod manner.

16. To sum up, on taking survey of the above discussed material, though deceased is identified, who is his brother, who were the actual accused has not been proved beyond reasonable doubt. Motive is not getting clear. Identity of the accused is not firmly proved. Theory of last seen together is also of no avail because alleged occurrence was seen by PW5 Nandu and PW6 Kantilal around 7.30 p.m. Autopsy doctor in his substantive evidence at Exh.23 has not given time since death even by approximation. In case based on last seen such aspects are crucial. Therefore, in our opinion, even the above circumstance cannot be considered. Resultantly, finding no incriminating material and none of the circumstances or evidence of prosecution are inspiring

confidence, case cannot be said to be proved beyond reasonable doubt.

17. We have gone through the judgment passed by the learned trial judge. There are various shortcomings and lapses in the investigation. However it is seen that while accepting the case of prosecution as proved learned trial Judge has adopted erroneous approach. More cautious and careful approach was expected while appreciating the evidence of prosecution as it was the case of charge under section 302 of IPC. Therefore, we are constrained to interfere by allowing the appeal and accordingly we proceed to pass following order :-

ORDER

(i) Criminal Appeal stands allowed.

(ii) The conviction awarded by the learned Additional Sessions Judge, Dhule, on 27.01.2017 in Sessions Case No. 27 of 2016 to appellant no.1 - Barku Baburao Kolape and appellant no.2 - Ranjana Vijay Sardar, stands set aside.

(iii) The appellants stand acquitted of the offences punishable under sections 302 read with section 34 of IPC.

(iv) The appellants be set at liberty, if not required in any other case.

(v) The fine amount deposited, if any, be refunded to the accused- appellants after the statutory period.

(vi) It is clarified that there is no change as regards the order regarding disposal of Muddemal.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)