

Santosh Padu Sinare Vs. the State

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Court : Mumbai

Decided On : Jan-23-2013

Judge : Naresh H. Patil & a.R. Joshi

Appeal No. : Criminal Appeal No. 737 of 2004

Appellant : Santosh Padu Sinare

Respondent : The State

Judgement :

NareshH. Patil, J.

1] Heard.

2] The appellant / accused was convicted and sentenced for offence punishable under section 302, 363 and 201 of the Indian Penal Code vide judgment and order dated 13.1.2004 passed by the Sessions Judge, Raigad at Alibag in Sessions Case No. 149 of 2003. He was sentenced to suffer imprisonment for life for offence punishable under section 302 and for other offences three years and fine of Rs.500/- in default to suffer S.I. for 15 days. Substantive sentences were directed to run concurrently.

3] The prosecution case in brief is that the accused was residing adjacent to the house of the complainant. The said house consisted of two rooms. Accused was staying alone in the said house. He was a mason. Complainant P.W. 2 Suresh

Harischandra Tokare is also a mason. They were knowing each other very well. At times both of them used to go together for doing labour work. Sankrant day fell on 14th January 2003. The prosecution case is that on the said day Sneha daughter of P.W. 2 Barku Ganpat Karale left the house for distributing Tilgul to villagers at about 5 to 5.30 p.m. P.W. 2 had one son and a daughter. In the evidence P.W. 2 Barku stated that when he returned home he enquired about his daughter with his wife who informed that she had gone out to distribute Tilgul and to play but so far she did not return. P.W. 2 asked the wife to search the daughter in the house of his elder brother. The wife went out to search but could not trace the daughter. The wife had even visited the house of elder brother. Search started thereafter.

4] The news spread regarding missing of the daughter of P.W. 2. At about 8.30 to 9.00 p.m. P.W. 2 proceeded to Neral Police Station and lodged a complaint about missing of her daughter. The accused at the relevant time was staying in the house of the complainant as his house was in a dilapidated condition. He also started searching the girl. He was consoling the parents of the girl by saying that Sneha would be traced out. Search operation went on for five days but Sneha could not be found.

5] It is the prosecution case that on 19.1.2003 filthy odour started coming from the adjacent house of the accused. P.W. 2 Barku and other villagers tried to peep inside the house of the accused from window by opening the plank of the window. It was found that the door of the house of the accused was locked. At the relevant time the accused was sleeping in the neighbouring house. Boys in the village woke up the accused. They demanded keys from the accused. Accused told them that the keys were not available as he must have dropped it somewhere, saying so he ran away. Villagers caught him and made him to sit in the house of the complainant P.W. 1 Suresh. Intimation was given to police by the complainant. Police broke opened the door of the house of the accused and it was noticed that Sneha daughter of P.W. 2 was there in the house of the accused lying dead. She had suffered serious injuries to her head. There was swelling on her private part and other part. The body was in a decomposed state, insects were seen all around. Maggots had also developed. P.W. 1 Suresh lodged complaint at Nerul Police Station The police started investigation. Spot panchnama was drawn. The

body was sent for postmortem. The medical officer opined cause of death as head injury (unnatural). In Column no. 17 of the postmortem report following injuries were noted by the doctor:

(1) Irregular edged injury on both sides of genitals on abd. Noelo infiltration of blood.

(2) Dark red coloured clotted blood seen on (lt) temporal area - @ contusion.

(3) Dark red coloured blood seen on (Rt) side of chest wall of area 6x4 cm @ contusion.

6] Charge sheet was filed against the appellant. The charge was framed against the accused on 2.9.2003 for offence punishable under section 363, 376, 302 and 201 of Indian Penal Code. Accused pleaded not guilty and claimed to be tried.

7] P.W. 1 Suresh deposed that on his complaint police registered first information report and started investigation. Spot panchnama was prepared by the police in the presence of P.W. 1. Accused is relative of this witness. He is son of maternal aunt of P.W. 1. In his deposition the witness stated that the accused was not putting lock to his house whenever he was out, but for the first time lock was seen to the house of the accused at the time of the incident in question. The accused was in habit of drinking liquor and used to get collapsed under the influence of liquor. At times he was not returning home. He deposed that house of the accused consisted of two rooms, one kitchen room and front room, window door was closed by the accused by putting plastic sheet. On the day of the incident the accused was sitting there in the house and did not allow them to enter the house and to search the girl.

8] P.W. 2 Barku father of the girl deposed about the incident, missing of the girl, behaviour of the accused. According to P.W. 2 the house of the accused was just adjoining his house. He too supported P.W. 1 in saying that accused was in habit of consuming liquor.

9] P.W. 3 is Ajay Ramesh Gori a panch on inquest of the dead body. He had described the condition of the dead body which was wrapped in a blanket. The

body was in decomposed condition. Injuries were on the head of the girl and on the backside. One hammer was also found lying there. There were blood stains on the hammer. This witness is a panch of seizure of clothes of the accused. Spot panchnama and panchnama of seizure of the clothes of the accused are Exhibited as 12 and 13.

10] P.W. 4 is Shobhabai Balu Ahir, who is aunt of deceased Sneha. She has supported the prosecution case.

11] P.W. 5 is Dr. Gajanan Sheshrao Chavan. He stated that vaginal swab and smears were sent to chemical examination and the report was received as negative as definite opinion could not be given in respect of accusation of sexual assault on deceased Sneha as the body was decomposed.

12] P.W. 6 Sunil Shankarrao Bhoite is investigating officer who has given detailed account of the investigation stages and steps taken during the investigation. Chemical Analyser's report is placed on record.

13] The learned counsel for the appellant / accused submitted that the case is based on circumstantial evidence. It is settled principle of law that in such cases chain of circumstances must be complete. Minute details of the incident in question and circumstances connecting the accused with the crime are required to be established. In this case the chain of circumstances is not established. The prosecution heavily relied upon a circumstances wherein dead body of Sneha was found in the house of the accused. Accused was not residing in the house on regular basis. During the last five days from the date of incident in question the accused was residing in the house of the father of Sneha. The offence could have been committed by any other person and to falsely involve the accused dead body must have been kept in the house of the accused. This possibility cannot be ruled out. According to the learned counsel the conduct of the accused was worth noticing. He was involved in searching Sneha and if he had committed offence he would have ran away to save himself.

14] The learned A.P.P. Submitted that circumstances clearly indicate involvement of the appellant / accused. He has committed heinous and condemnable offence.

A small girl Sneha going to celebrate Sankrant and distribute Tilgul was taken away by the accused in whom the family had lot of confidence. At times the accused was residing with the family of Sneha's parents. Residences were adjacent to each other. The appellant was in the best position to take advantage of the situation. Considering the habits of the accused consuming liquor the prosecution case is required to be considered. The learned A.P.P. further submitted that the house of the accused was locked from outside. The conduct of the accused at the time of breaking open the door is worth noticing. It indicates guilty mind of the appellant. The learned A.P.P. Submitted that no sympathy is required to be shown to the appellant merely on account of some discrepancies pointed out in the evidence of prosecution.

15] We have perused the entire evidence, medical evidence and considered the submissions.

16] The prosecution has led evidence on recovery of dead body of Sneha from the house of the accused. There is no ambiguity in that respect. The P.W. 1 has supported the prosecution case in respect of the character and background of the accused. Accused and the complainant are poor persons doing masonry work. They were residing just adjacent to each other. It seems that P.W. 2 and his family confided in the accused and used to allow him to enter in the house, stay with them for some time and allow him to have food with them. P.W. 2 had one son and one daughter.

17] After P.W. 2 and villagers could smell bad odour coming out of the house of the accused, they started enquiring with the accused and after breaking open the door in the presence of police, found dead body of Sneha wrapped in a blanket. Dead body was in decomposed condition. Maggots were seen. There were injuries on the person of deceased Sneha. Hammer was also seen near the dead body. The conduct of the accused at the relevant time has been brought on record. P.W. 1 Suresh has deposed before the court that normally the house of the accused was open but the accused was reluctant to open the lock. The police had to be called. In the presence of the police the door was broke opened. The situation of the window bar and planks is also brought on record. The villagers had tried to

peep through the window after they started smelling bad odour.

18] It is true that nobody had last seen the deceased Sneha with accused. But considering the prosecution case in its entirety it would be difficult to disbelieve the prosecution case. In cases based on circumstantial evidence the prosecution is duty bound to bring on record strong circumstances and complete the chain of circumstances. It depends on facts of each case and the nature of circumstances.

19] In the facts of the case the prosecution had brought on record the relationship between the families. The accused was in advantageous position being immediate neighbour and frequent visitor. It is curious to notice that accused was residing in the house of the complainant. For five days Sneha was not traced out. Ultimately bad odour of the decomposed body was coming out of the house and villagers had to get the door opened in the presence of police. This was a case where the accused would have explained the circumstances before the court while giving statement under section 313 of the Cr.P.C. but accused did not answer and explain the circumstances. The accused has given answers to questions 58 and 59 as under:-

Q. 58. Do you want to examine yourself on oath? Ans. No.

Q. 59 Do you want to examine any defence witness? Ans. No.

20] It is unfortunate case where tender child of 3 years leaving house on auspicious day to celebrate an event, does not return home.

There is no merit in the appeal. The same is dismissed.

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