

Dharmendra Vs. The State of Maharashtra, through Police Station Officer

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Court : Mumbai Nagpur

Decided On : Jul-08-2014

Judge : The Honourable Mr. B.P. Dharmadhikari & C.V. Bhadang

Appeal No. : Criminal Appeal No. 399 of 2011

Appellant : Dharmendra

Respondent : The State of Maharashtra, through Police Station Officer

Advocate for Pet/Ap. : Shri. Daga

Judgement :

B.P. Dharmadhikari, J.

1. By this appeal filed under Section 374 of the Code of Criminal Procedure, the appellant accused challenges the judgment and order dated 19.07.2011 passed by the Session Judge, Chandrapur, in Sessions Case No. 4 of 2010, holding him guilty of an offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.3,000/or in default to suffer Rigorous Imprisonment for six months.

2. The prosecution story in brief is that on 14.10.2009 at 4.00 P.M., Room No. 2 of Shivshankar lodge, Bramhapuri was procured by the appellant accused giving his name as Manoj Meshram. The lady whose identity was disclosed as Diksha

Meshram was accompanying him. They claimed to be the residents of Chamorshi, District Gadchiroli. This room was given to them by the first informant Sandip Anil Maturkar (P.W.1) working in adjacent liquor shop as also in the lodge. P.W.3 Kartik Naktode is regular employee of that lodge and in his absence, Sandip used to take entry of the customers in the register maintained at lodge. On 14.10.2009 at 6.00 P.M., Kartik Naktode reported at lodge and hence P.W.1 Sandip went to his liquor shop where he worked in the evening and went back to his own house at 9.30 P.M.

3. On 15.10.2009 at 8.00 A.M., P.W.3 Kartik informed P.W.1 Sandip that the lady was lying dead on the bed in Room No. 2 and man was not seen. Sandip, therefore, went to lodge and thereafter reported the matter to the Police. A.D. No. 56 of 2009 under Section 174 of Criminal Procedure Code was taken note of and Police Inspector Jagdip Bhakte (P.W..7) of Bramhapuri Police Station started investigation. He visited lodge, prepared spot panchnama, articles lying in the room were seized, inquest was drawn and then dead body was forwarded for post mortem examination. The register of Shivshankar lodge was also seized from its owner by name Sandip Suresh Amle. He recorded statement of witnesses from time to time. The Medical Officer opined strangulation by ligature and throttling, to be the cause of death. After this opinion, P.W.7 recorded offence against Manoj Meshram vide Crime No. 203 of 2009 under Sections 302 and 201 of I.P.C. Certain seizure of cloths and articles received from the Rural Hospital, Bramhapuri were effected on 15.10.2009. As person by name Manoj Meshram could not be traced, on 16.10.2009, P.W.7 Shri Bhakte issued letter to Editors of all local Newspapers to publish photograph of the deceased. On 27.10.2009, Manohar Shankar Dhoke, brother of the deceased and Smt. Ranjana Dilip Fuley, friend of the deceased came to Police Station Brahmapuri. They established the identity of the deceased as Sheela wife of Dharmendra Laxman Sahare, after seeing photographs of dead body and belongings. Their statements were recorded and then P.W.7 arrested accused Dharmendra Laxman Sahare on the very same day. His cloths, mobile phone were seized. On 02.11.2009, mobile phone of the deceased was also seized. On 19.11.2009, requisition was issued to the Tahsildar for holding identification parade. In the said Identification parade, P.W.1 and P.W.3 identified Dharmendra Laxman Sahare as the person who posed to be Manoj

Meshram. During investigation, prosecution found that Dharmendra husband of the deceased Sheela had called her at Shivshankar lodge where he obtained room by disclosing false identity and then committed murder of his wife. He had already performed second marriage without divorcing Sheela and litigation was going on between the accused and the deceased. After further investigation and post mortem, Chemical Analyzer's report, collection of marriage invitation card of deceased and accused etc., charge sheet came to be filed against the appellant for the offence punishable under Sections 302 and 201 of I.P.C. in the court of J.M.F.C., Brahmapuri, who made it over to the Sessions Court under Section 209 thereof.

4. In this background, Shri Daga, learned counsel for the appellant Dharmendra, has argued that case is totally based only on circumstantial evidence and though Chemical Analyzer's report mentions blood stains on bed sheets or cloths of the deceased, in spot panchnama or seizure, such blood stains do not find any reference. He contends that the prosecution has relied upon the identification parade conducted by P.W.6 Tahsildar and that Identification parade itself is defective. P.W.1 was not the employee at Shivshankar lodge and entry of names of Manoj Meshram and Deeksha Meshram against Room No. 2 was not made by him. To substantiate this contention, he has invited our attention to said entry dated 14.10.2009 at Exh. 12 and the signature of P.W.1 appearing on a summons issued to him at Exh. 15. He further contends that P.W.3 Kartik had no opportunity to watch appellant either on 14.10.2009 or then on 15.10.2009. He contends that even if prosecution story is accepted to be correct, police got definite identity of the deceased only on 27.10.2009 and thereafter accused is also arrested on the very same day. As per P.W.3, Police had taken appellant to Shivshankar lodge within 4 to 5 days of occurrence of the incident. Even P.W.1 has pointed out such visit. P.W.1 had also visited Police Station and had occasion to see the accused. Thus, identification by these persons is of no assistance. He invites attention to the evidence of P.W.7 to show that sketch of accused was drawn before 16.10.2009 and it was published in the Newspapers and circulated to the other police stations. P.W.1 and P.W.3 had opportunity to see that sketch. He further contends that neither P.W.1 nor P.W.3 urged that on 14.10.2009, room was given to the appellant, though he had no document to establish his identity as it was earlier

given to him on 08.10.2009. His effort is to show that only to enable P.W.3 Kartik to implicate the appellant, visit of the appellant to the lodge even on 08.10.2009 is sought to be brought on record.

5. He has invited attention of the Court to the provisions relating to Identification Parades as included in Criminal Manual as per the directions of this Court. He contends that those provisions are observed in breach here by P.W.6 Tahsildar. Dummies lined up with the appellant were conspicuously different than him and, therefore, it was easy for anybody to identify or single out the appellant. Independent panchas though shown to be present on memorandum (Exh. 38), they have not been examined. He contends that even that memorandum is not drawn as per procedure. He has argued that the requisition at Exh. 42 sent to P.W.6 is only in relation to alleged visit by the appellant to lodge on 14.10.2009 and it mentions that P.W.1 and P.W.3 had then seen the appellant. He contends that it is not for the alleged visit dated 08.10.2009.

6. He also places reliance upon the judgments in the case of Surjit Singh Gyansigh Aurora vs. State of Maharashtra, reported at 2002 ALL MR (Cri) 2219 (para 16) and Mangesh Ramchandra Karande and Anr. vs. State of Maharashtra, reported at 2008 ALL MR (Cri) 3022 (para 6), to urge that no conviction can be sustained on the strength of such Test Identification Parade (TIP). The evidence of D.W.2 Ravindra and D.W. 3 Suresh is read out to explain that these persons were dummies in TIP and their personality varied drastically from that of the appellant. In this background, he has also pointed out defence of alibi while answering the questions under Section 313 of Code of Criminal Procedure. He submits that D.W.1 Kalpana, wife of accused was listed as witness by the prosecution but she was not examined, rather the appellant examined her. Her evidence clearly shows that the appellant was not and could not have been at Bramhapuri or in lodge on 14.10.2009 or 15.10.2009. He also invites attention to the fact that though P.W.7 claims that sketch of the accused was drawn on the basis of guidelines given by Sandip, there is no such statement or information supplied by Sandip on record. His two statements i.e. one at the time of report and other immediately thereafter, recorded by P.W.7, do not contain any material on these lines.

7. One Jalandhar and Mala, a girl occupying adjacent Room No. 3 were shown as prosecution witnesses but they have also not been examined. He further contends that P.W.1 in his deposition nowhere associates Sheela with the appellant. He expresses surprise over the fact that the person like P.W.1, not officially connected with Shivshankar lodge, proceeded to identify cloths of the deceased after a year in Court and also identified her mangalsutra. He comments upon the evidence of P.W.4 Smt. Ranjana, a social worker, claiming to be a friend of the deceased, as artificial one and by way of after thought. He contends that if the appellant had made any phone call to the deceased Sheela, which Sheela received in presence of this witness, why the police authorities did not produce any CDR to substantiate such call. He also states that narration of events of P.W.5 Manohar, brother of the deceased, is untrustworthy and father of Sheela has not been examined at all. Therefore, the entire narration of events by P.W.5 Manohar is hearsay. He also points out that said witness does not speak of P.W.4 Ranjana, accompanying him to Police Station. He further states that on 25.10.2009, the accused was working in his shop only, was arrested from his residence Only and had never absconded.

8. A glass used for drinking water in room no. 2 at lodge was sent to expert to obtain opinion about finger prints, after obtaining specimen of the accused, but that report has not been produced. The Investigating Officer has accepted that there is difference in photograph at Exh. 55 ienotice circulated and sketch of Manoj Meshram at Exh. 58. He also points out that P.W.7 has not deposed anything about TIP. He did not forward cloths of accused for Chemical Analysis. To point out how circumstantial evidence needs to be appreciated, he relies upon Panchsheel as laid down by the Hon'ble Apex Court in the case of Sharad Biridhichand Sarda vs. State of Maharashtra, reported at AIR 1984 SC 1622(1) and its later judgment in the case of Ramreddy Rajesh Khanna Reddy and Anr. vs. State of A.P., reported at 2006 (10) SCC 172.

9. Mrs. Jachak, learned APP appearing for the respondent State, relies upon the prosecution evidence to urge that due to the impression that Sheela was residing with her husband Dharmendra, the parents of Sheela or her brother did not lodge any police report. Only when it came to handing over of interview call to Sheela, visit to house of Dharmendra (appellant) became essential and then only absence

of Sheela at the residence of Dharmendra, became known. She submits that accused and deceased were on visiting terms and since accused married Kalpana, without obtaining divorce from Sheela, he had, therefore, every reason to kill Sheela as the litigation was going on between the parties. She further points out that the inquest panchnama at Exh. 28 mentions blood on mattress and, therefore, its nonmention either in spot panchnama or in seizure of cloths is not fatal. According to her, signature of P.W.1 on Exh. 12 and Exh. 15 is the same and Exh. 12 only shows use by him of his initials. She further reads out paras 3 and 6 of the deposition of P.W.1 to urge that said witness has connected the appellant with dead body. She relies upon narration of events by P.W.4 Ranjana, to demonstrate that it was the appellant who invited Sheela to Bramhapuri and then took her to lodge. She points out that both of them had gone to the very same lodge on 08.10.2009 and, therefore, P.W.3 Kartik could identify them. She further contends that Test Identification Parade conducted by P.W.6 Tahsildar is perfectly legal and valid. It is her submission that thus, a chain of events so complete as not to lead to any other conclusion but the guilt of the appellant is successfully established in this matter. There is no circumstance incompatible with presumption of his innocence and, therefore, the judgment delivered by the trial Court does not call for any interference.

10. Chemical Analyzer's report, which could have connected the accused with crime scene, is of no help in the present matter. Exh. 61 is the report on two bed sheets in the room and on saree, petticoat, blouse, brassier and nicker of the deceased. Chemical Analyzer's report discloses that there were blood stains on it. The blood is found to be of human and in last observation, it is stated that cloths were stained with blood group AB. Neither blood group of deceased nor blood group of accused is on record. The cloths of accused were not forwarded to the Chemical Analyzer. Though several articles were seized from room, including a glass used for drinking water, it is an admitted position that the said glass was not forwarded for obtaining report of finger prints upon it. The Investigating Officer in his cross examination in para 27 had stated that he had collected finger prints of the accused and forwarded the same to the expert but then that report was not submitted by him to the Court. He also accepted that he did not collect call details of mobiles of accused and the deceased. It becomes significant because

according to P.W.4 Ranjana, the deceased had lastly received a call from her husband to come to Bramhapuri. According to prosecution, body of Sheela was then found in Shivshankar Lodge at Brahmapuri. In para 13, P.W.7 had accepted that he had obtained signature of the accused to tally it with signatures in register at lodge but he did not forward the same to handwriting expert. During arguments, it was not in dispute that except for identification of the accused by P.W.1 and P.W.3 and the identification parade, there is no other material on record to connect the accused with the crime scene and crime in question.

11. P.W.7 in para 28 has accepted that he had prepared sketch as per guidelines given by P.W.1 Sandip and P.W.3 Kartik. He also accepted that there was difference in photograph shown at Exh. 55 and sketch at Exh. 58. Exh. 55 is the arrest/ court surrender form which bears photograph of the appellant/ accused. Exh. 58 is intimation dated 16.10.2009 forwarded by P.W.7 to police stations in neighbouring districts which contains photograph of the deceased as also a drawing of the suspect. This communication mentions that dead body of a woman whose identify was disclosed as Deeksha Meshram was found in the lodge on 15.10.2009 and a person accompanying her viz., Manoj Meshram had vanished from the lodge after strangulating her. P.W.7 has stated that this sketch is prepared as per instructions given by P.W.1 and P.W.3. Undisputedly, the identity of the deceased came to be established on 27.10.2009. The perusal of the evidence of P.W.1 shows that his statement was obtained by the police twice. In para 16, he has stated that he had not given description of Manoj to police while giving complaint. P.W. 7 claims that he recorded other statement of P.W.1 Sandip on the very same day i.e. on 15.10.2009. The learned APP could not point out from said statement or any other document description of Manoj supplied by either of these witnesses. Similarly, our attention could not be drawn to any document on record which revealed that any witness had described Manoj Meshram to police authorities. It is, therefore, obvious that instructions or information on the basis of which the police authorities prepared sketch of Manoj Meshram for its circulation on 16.10.2009 assumes importance. It appears to be first description of Manoj to the police and it could have been compared with the appellant to test the veracity of identification by P.W. 3 or 1. Sketch could not have been prepared without suitable information in relation to personality of said Manoj and prosecution ought

to have produced it to demonstrate how Manoj's description matches with Dharmendra.

12. The perusal of the evidence of P.W.3 shows that he denied that the accused did not visit his lodge either on 08.10.2009 or 14.10.2009 with the deceased. He has further stated that 4 5 days after the incident, the police had brought the accused to the lodge. He also accepted that before conduct of Identification Parade, the police had called him to Police Station. It is, therefore, doubtful whether the police authorities got knowledge of identity of the accused Manoj Meshram only on 27.10.2009 or were aware even before that. The incident has come to light on 15.10.2009 and if the accused was taken to lodge by the police authorities within 4 5 days after the incident, it is much prior to 27.10.2009. Whether somebody else was apprehended as Manoj Meshram and was taken to the Lodge?

13. P.W.3 had not seen the accused on 14.10.2009 or 15.10.2009. He claimed that he had seen him with the deceased on 08.10.2009. An entry in the lodge register to support this version was also produced on record. The entry shows stay of Manoj Meshram and Diksha Meshram on 08.10.2009 till 09.10.2009. In cross examination, he accepted that a person staying in lodge is required to show his identity card and he was not knowing Manoj Meshram prior to 08.10.2009. He has further stated that as he was satisfied that the person visiting lodge was Manoj Meshram only, he allowed him to stay in the lodge on 08.10.2009. It is in this situation that the doubt arises about evidence of P.W.1 and P.W.3 when they claim that on 14.10.2009 present appellant/ accused had come to their lodge and stayed with Deeksha Meshram i.e. the deceased Sheela. The police had recorded the statements of one Jalandhar and a girl by name Mala, who stayed in adjacent room in the intervening nights of 14.10.2009 and 15.10.2009, however, they have not been produced as witnesses to establish that it was the appellant who was present in the room with the deceased on that night. This also applies to absence of report of handwriting expert or fingerprints expert. PW7 Investigating Officer has during crossexamination, denied knowledge of any police raid on Shivshankar lodge in 1994 but has accepted that girl in adjacent room with Jalandhar was not Jalandhar's wife. This IO also accepted that he did not conduct any investigation

about travel of accused between Brahmapuri and Gadchiroli. Thus, independent evidence which could have been used to bring on record the involvement of the appellant, has not been produced. Appellant accused has examined his 2nd wife Kalpana as defence witness to show that he was at Mul for market and not at Brahmapuri on 14.10.2009.

14. The other material available on record is identification parade conducted by P.W.6 Naib Tahsildar, who conducted identification parade in respect of the appellant in District Central Prison, Chandrapur. The identification was done by P.W.1 Sandip and P.W.3 Kartik. Independent Panch witness Haribhau Tonge and Mahadev Deshkar have not been examined by the prosecution.

15. When P.W.3 accepts that after 4 to 5 days of incident, accused was brought by the police to lodge and on the same lines P.W.1 also states that accused was brought to lodge once before holding of identification parade, but in veil, the possibility of these persons seeing him before such parade, cannot be ruled out. This fact becomes significant in view of difference in photograph at Exh. 55 and sketch at Exh. 58, accepted by P.W.7 Investigating Officer. We have to also keep in mind the fact that P.W.1 Sandip was not employee of Shivshankar lodge and he was not having any official capacity to depose about the register maintained at said lodge.

16. Criminal Manual contains guidelines about Identification Parades. The guidelines are contained in circular of Home Department, having No. MIS.1054/84588 dated 22.04.1955. It is stated that these guidelines are to be adhered to and that the same are not exhaustive. The exercise of discretion by the officer holding identification parade in this respect is declared to be the sole criterion. The guidelines state that witnesses should be prevented from seeing the suspect before he is paraded with other persons. The witnesses who have previously seen photograph or description of the suspect, should not be led in identifying the suspect by reason of their recollection of the photograph or description. The suspect should be placed amongst persons (if practicable eight or more), who are as far as possible of the same age, height, general appearance (including standard of dress and grooming) and position in life. The suspect should

be allowed to select his own position in the line and should be asked expressly, if he has any objection to the persons present with him or the arrangements made. He needs to be informed that his Advocate can remain present at such parade. The suspect is also free to change his position after each witness leaves the room. The stage at which Executive Magistrate has to commence writing the memorandum is also indicated. Such a memorandum has to mention that except the persons in line in parade and two respectable persons, nobody else was allowed to remain in the room and all police officers and constables were asked to withdraw. The name of respectable person who fetches the accused from lock up must be indicated and the fact that identifying persons were in different room and they could not see him when he was brought from lock up to the said room, should also be noted.

17. The defence has examined two persons who were lined up with the appellant during said identification parade. These persons are D.W.2 Ravindra Mathankar and D.W.3 Suresh Nimkar. Mathankar has stated that his height was 5 feet 5 inches while accused was taller than him. He further stated that seven persons were made to stand in row for identification and some of them were of his height while some were more in height. He pointed out that he was of black complexion while the accused was healthy and fair in complexion. In cross examination he has stated that when he was in jail, he was strong and sound. He further stated that he could not state whether the accused was black or fair. He further stated that witness identified the accused and before second witness came, sequence ie Sr. No. of each persons standing in line was changed. He stated that second witness also identified the accused. P.W.3 Suresh stated that his height was 5 feet 3 inches and accused was of 5 to 6 inches, taller than him. Some dummies in the line were more in height than him while some were less in height. He further stated that faces of dummies were different than the accused. In cross, he denied that his height and the height of the accused was same.

18. P.W.6 Shailendra Tiple has supported the identification parade as conducted by him. He accepted in cross examination that he was required to follow mandatory provisions prescribed vide guidelines. He has further stated that his memorandum reveals everything that did transpire in the parade. He accepted that

his memorandum did not disclose that witnesses who were to identify the accused were sitting in separate room. He also accepted that memorandum did not show that dummies similar to physique of the accused, were selected. He accepted that age of dummies selected was different, that, he did not mention height, complexion and physique of the dummies.

19. The memorandum Exh. 38 is identification by Kartik. Said memorandum mentions names of seven persons in column No. 2 of a printed form with their ages, names of witnesses in column No. 3 and in remarks column, fact of identification by said Kartik. The ages of persons recorded are 28, 25, 33, 20, 29, 25 and 33 years. The age of accused at sr. no. 3 is recorded to be 33 years. The next page is memorandum of identification by P.W.1 Sandip. Again information is filled in same proforma. The same seven persons find mention but in different Sr. No. in later part. The name of Raju Madavi with age 25 is shown at Sr. No. 6 in first part. The same name appears at Sr. No. 7 with age as 33 years in later part. The recording does not show compliance of the above noted provisions or guidelines. It does not show that all seven persons were of same age or of same height or of same general appearance (including standard of dress and grooming) and position of life. It also does not show that the appellant was given option to select his position in line or about right to have his advocate present at that juncture. The fact that witnesses were made to sit in separate room and could not have seen the appellant when he was fetched from lock up, also does not appear anywhere. Name of witness (respectable person) sent to fetch the accused from lock up does not appear anywhere. In view of the entire material looked into by us supra, we find it difficult to accept this identification parade conducted by P.W.6.

20. In Waman s/o Bhimrao Mendhe and Ors. vs. State of Maharashtra, reported at 2008 ALL MR (Cri) 2361, Division Bench of this Court, (to which B.P. Dharmadhikari, J. is a party), has considered the judgment of the Hon'ble Apex Court in the case of Kanan vs. State of Kerala, reported at AIR 1979 SC 1127. The circumstances there were found warranting holding of an identification parade. Here, identification parade is already held but in defective manner.

21. In the case of Mangesh Ramchandra Karande and Anr. vs. State of Maharashtra, (supra), learned Single Judge of this Court has found that trial Court having discarded the first TPI, could not have relied upon identification of accused by complainant in the Court. Here, we have already found the possibility of both witnesses observing the appellant after the incident but before holding of identification parade. The appellant was apprehended from his residence on 27.10.2009 and identification parade has been conducted on 21.11.2009.

22. Apart from two judgments, Shri Daga, learned counsel for the appellant has also relied upon two judgments of the Hon'ble Apex Court in the case of Sharad Biradhichand Sarda vs. State of Maharashtra, (supra) and Ramreddy Rajesh Khanna Reddy and Anr. vs. State of A.P., (supra), to show the standard of circumstantial evidence required and the correct approach to be adopted while appreciating such evidence. The Hon'ble Apex Court has laid down five golden principles and labeled as Panchsheel in para 152 and 153 of its first judgment. Here, we have already noted that evidence which could have established presence of the appellant in lodge, has not been properly processed and pressed into service. Why the prosecution did not process or then suppressed reports of experts which could have shown that Manoj Meshram and appellant are/were one and same, is a moot question. Hence, only on the basis of a defective identification parade, the charge is sought to be substantiated by the prosecution.

23. In this situation, we find that the impugned judgment dated 19.07.2011 cannot be sustained. It is accordingly quashed and set aside. Criminal Appeal is allowed. The appellant Dharmendra Laxman Sahare be set at liberty, if he is not required in any other matter by the State. The seized articles/ muddemal shall be destroyed after the period of appeal is over. The seized mobiles be returned to the persons from whom they were seized, if not already returned, after said period.

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