

The State of Maharashtra Vs. Ramkishan and Others

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Court : Mumbai Aurangabad

Decided On : Jul-06-2015

Judge : S.S. Shinde & a.I.S. Cheema

Appeal No. : Criminal Appeal No. 125 of 1996

Appellant : The State of Maharashtra

Respondent : Ramkishan and Others

Judgement :

S.S. Shinde, J.]:

1. This Criminal Appeal is filed by the Appellant “ State, challenging the Judgment and Order dated 22.12.1995 passed by the 2nd Additional Sessions Judge, Aurangabad in Sessions Case No.118/1993, thereby acquitting the accused for the offence punishable under Section 302 and 201 r/w.34 of I.P. Code.

The prosecution case, in brief, is as under:

2. Deceased Keshavrao Kuber was residing at Mauje Georai Kuber along with his son Laxman Kuber [PW-2], wife Annapurna Kuber [PW-8] and other family members. His elder son Kiran [PW-1] is a Roller Driver in Irrigation Department at Aurangabad. Deceased Keshavrao was an agriculturist by occupation and having his agricultural land at Georai Kuber, Taluka and District Aurangabad.

3. The accused are also resident of the same village. The accused nos. 2 and 3 are real brothers. Accused no. 3 Pandharinath is having his grocery shop. Accused no. 4 Janardhan Kuber was the Sarpanch, whereas accused no. 1 Ramkisan and accused no. 5 Tulsiram are also resident of the same village, having good relations with each other.

4. On 21.09.1992, deceased Keshavrao returned from Karmad at about 5.00 p.m. He did his usual work and after taking meal in the night, he had some talk with his brother Ramrao Kuber [PW-7]. After the meal, at about 10.00 p.m., deceased Keshavrao went for easing towards the river adjoining to the village. However, he did not return back to his house.

5. In the morning, it was noticed by his wife Annapurnabai [PW-8] that, her husband had not returned in the house. Thereafter, Laxman [PW-2] and other family members made his search in the field with a view that, he might have stayed there in the night. Deceased Keshavrao was not traced in the village. The information was given to Kiran [PW-1], who immediately went in the village. All family members searched deceased Keshavrao in the village and also nearby the places.

6. Deceased Keshavrao was not found throughout a day on 22.09.1992. In the morning on 23.09.1992, the body of Keshavrao was seen floating in a public well known as ~Bhudki™, which is situated adjoining to the field of one Eknath Ramji Kuber. The dead body of deceased Keshavrao was kept in a gunny bag up to the neck. After receiving the said information, Kiran [PW-1] and other family members went to the well and saw the body of Keshavrao. Thereafter, Kiran went to Karmad to Karmad Police Station where he lodged a complaint [Exh.17]. Thereafter, the offence was registered as Crime No. 113/1992 for the offence under Section 302 and 201 of IP Code by PSI Shri Nanarao Ghuge [PW-19] the then PSI of Karmad Police Station.

7. Shri Nanarao Ghuge [PW-19] has visited the place of offence and drawn inquest panchanama [Exh.63], and body was sent to the Medical College Hospital, Aurangabad, for post mortem. He had also drawn panchanama of place of offence [Exh. 64]. He has recorded statements of nearby witnesses.

8. Thereafter, a ~Dog Squad™ was called. Shri Shaikh PSI [PW-15] of the Dog Squad gave smell of the shirt of the deceased to the Dog, who went to the shop of the accused no. 3 Pandharinath Kuber and then towards well. After the suspicion, the accused nos. 1 to 3 were called in the Police Station, but they were allowed to go after inquiry. 9] No progress was made in the investigation for long time, so Kiran [PW-1] took initiative. He made an application to the Superintendent of Police and Deputy Superintendent of Police, Aurangabad, for the proper inquiry of the accused. He has, therefore, collected the information from Jagannath Udawant [PW-10], Abaji Paraji [PW-11] and Janardhan Kuber [PW-12] that, they had seen the deceased Keshavrao going to the shop of the accused no. 3 Pandharinath in the night at about 10 to 10.30 p.m. After arresting all those accused, further investigation was carried by the Police.

10. It was transpired in the investigation that, deceased Keshavrao went to the shop of the accused no. 3 Pandharinath. He was assaulted by all accused. They had killed him and his body was kept in a gunny bag and then the body was carried towards ~Bhudki™ well in that night and thrown in the well. According to the prosecution, the entire incident was witnessed by Parwatibai Patil [PW-14], second wife of accused no. 3 Pandharinath.

11. After arrest of the accused no.1 Ramkisan Kuber, he has also attempted to commit a suicide. So, separate offence under Crime No.114/1992 is also registered against him for the offence punishable under Section 309 of I.P. Code.

12. Shri Nanarao Ghuge [PW-19] the then API has made search of Parwatibai [PW-14] but she was not found in the village and nearby places. Thereafter, he has collected post mortem notes [Exh. 85] on 06.02.1992. Shri Ghuge [PW-19], API, carried the investigation under the supervision of Gautam Gaikwad [PW-20]. Further investigation was handed over to CPI Shri Gautam Gaikwad [PW-20].

13. The clothes of the deceased were recovered at the instance of accused no. 1 Ramkishan vide memorandum and discovery panchanama [Exh.84 and 85]. The information was received by police that, Parwatibai [PW-14] was residing at Karjat, so she was brought to Karmad Police Station from Karjat. She was staying along with her brother-in-law Ashok Walke [PW-16]. After interrogation, they were sent to

Shri Govind Gotiwale [PW-17] the Special Judicial Magistrate, Aurangabad, for recording their statements under Section 164 of Criminal Procedure Code.

14. Thereafter, the investigation was carried out by Shri Mahanwar in absence of Shri Gaikwad CPI. After completing the investigation, the charge sheet was filed against all the accused in the Court of Judicial Magistrate First Class, Aurangabad, who, in turn, committed the case to the Court of Sessions at Aurangabad, for trial according to law.

15. After full-fledged trial, the trial Court acquitted the accused. Hence this Appeal.

16. The learned APP appearing for the Appellant “ State invited our attention to the medical evidence and submits that, the prosecution has proved beyond reasonable doubt that, the death of the deceased Keshavrao was homicidal. It is submitted that, the trial Court has not considered the evidence of the Parwatibai [PW-14] properly. She was an eye witness to the incident. She has stated in detail the manner in which the incident had taken place. She has attributed overt act to each of the accused. The prosecution also examined Jagannath Bhikaji Udawant as PW-10. He stated that, when he was sleeping on the ~ota™ in front of his house, on the relevant night, he was awakened. At that time, he saw accused nos. 1, 2 and 4 went away with the gunny bag. It is submitted that, another witness namely Abaji Paraji Kuber [PW-11] also deposed that, on the relevant night, when he was sleeping in front of his house, he woke up at about 1.00 to 1.30 a.m. for urinal. He saw accused persons were passing from the road and they were carrying one gunny bag over their head. Therefore, the learned APP appearing for the Appellant “ State submits that, there is corroboration from the evidence of the PW-10 and PW-11 to the version of Parwatibai, who had actually witnessed the incident. Therefore, the learned APP submits that, Appeal deserves to be allowed.

17. On the other hand, the learned counsel appearing for the original accused submits that, the prosecution has not proved that, Parwatibai got married with the accused Pandharinath. It is submitted that, the Police recorded the statement of the prosecution witnesses belatedly, and therefore, the trial court has rightly given benefit of doubt. Therefore, it is prayed that, the Appeal may be dismissed.

18. We have given careful consideration to the submissions of the learned APP and the learned counsel appearing for the original accused. With their able assistance, we have perused the entire evidence. Upon perusal of the evidence of Dr. Hemant Vasant Rao Godbole, who was examined as PW-13, it is abundantly clear that, the death of the deceased Keshavrao was homicidal. The real question is that, who was the author of the death of deceased Keshavrao. According to the prosecution, PW-14 Parvatibai, who witnessed the actual incident, and to that extent she deposed before the Court, attributing the overt act to each of the accused. We have carefully perused the deposition of Parvatibai before the Court, it appears that, her statement was recorded by the Police after three months from the date of incident. She was cross examined by the Advocate for the accused Nos. 2 to 4. She stated that, her first husband was Pralhad Patil of village Tembe Dongaon. She has not taken any divorce from Pralhad Patil. She further stated that, one week prior to the date of incident, she got married with accused Pandharinath. The prosecution has not brought on record the documentary evidence to show that, Parvatibai was married with the accused Pandharinath. She was cross examined by the advocate for the accused Nos. 1 and 5. She stated that, she resided at Georai for 6 days after the incident. She did not meet any one i.e. neighbour, friends during the said period. She did not know anybody else. She was not allowed to go outside the house within said period by accused. One use to go outside for call of nature but she had not gone during said period. She has given contradictory statement in her evidence about her marriage with Pandharinath. At one place, she stated that, her marriage was performed just one week prior to the date of incident, and at another place, she stated that, she was married with accused Pandharinath 7-8 months before the incident. As already observed, her statement was recorded by the Police after three months from the date of incident. If her evidence is considered in its entirety, the same does not inspire confidence, and therefore, the same is rightly disbelieved by the trial Court.

19. Coming to the evidence of other two witnesses namely Jagannath Bhikaji Udawant [PW-10] and Abaji Paraji Kuber [PW-11] that, on the relevant night, they saw the accused carrying gunny bag. Their statements were also recorded by the Police after the gap of 18 days from the date of incident. It has also brought on record by the prosecution that, when dead body was taken out from well, the head

of the deceased was outside the gunny bag. In fact, the prosecution witnesses i.e. PW-10 and PW-11 have not stated that, the dead body was inside the gunny bag and head was outside, which was allegedly carried by the accused during the said night. The entire prosecution case rests upon the evidence of Parwatibai [PW-14], Jagannath Bhikaji Udawant [PW-10] and Abaji Paraji Kuber [PW-11]. Upon re-appreciating the evidence of PW-14, PW-10, PW-11 and other prosecution witnesses, it does not inspire the confidence so as to reverse order of acquittal.

20. In the light of the discussion herein above, we are of the considered view that, the trial Court has taken a possible view. We are in the agreement with the findings recorded by the trial Court, and therefore, we do not wish to lengthen the judgment.

21. For the reasons aforesaid, Appeal sans merit, hence dismissed. Bail bonds of accused stands cancelled.

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