

Anant Bhujangrao Kulkarni

Vs

State of Maharashtra

Criminal Appeal No. 720 of 1981

(M. M. Punchi, S. C. Agarwal JJ)

15.05.1992

JUDGEMENT

S. C. AGRAWAL, J.:-

1. In this appeal by special leave, the appellant, Anant Bhujangrao Kulkarni, is assailing his conviction under S. 302 read with S. 34, I.P.C. under the judgment of the High Court of judicature at Bombay dated March 20, 1981 for the murder of one Digamber Rao Kulkarni.

2. The said murder of the deceased, Digamber Rao was committed on the night intervening October 13 and 14, 1975 at Beed in the State of Maharashtra. The case of the prosecution is that the deceased, who was about 70 years old, was staying alone at Beed while his son Dattatraya was residing at Palsingan situated at a distance of 25 miles from Beed. Two sons-in-law of the deceased, viz., Murlidhar (P.W. 4) and Shesharao Lalurikar were also residing at Beed. On October 13, 1975, the deceased as well as the appellant had gone to Hanuman temple at Beed for hearing Pothi. Waman Shete (P.W. 10), who was employed as a waterman with the deceased, had also gone to the temple for hearing Pothi. After Pothi was over, the deceased along with Waman Shete and the appellant left the temple at about 5.30 p.m. and when they came near the Masjid of Saraf Galli situate at Beed, the deceased told Waman to go to his house and that he (deceased) was gone to the house of the appellant and thereupon Waman left for his house whereas the deceased and the appellant went together to the house of the appellant. Nothing was heard of the deceased thereafter and he did not return to his own house. Waman went to the house of the deceased in the morning of October 14, 1975 but found it locked and thereupon he went to the house of Murlidhar (P.W. 4), to enquire whether the deceased had come there and Murlidhar had told him that the deceased had not come there. On the same day, at about 10 a.m., Waman met the appellant on Tilak Road at Beed and asked him about the whereabouts of the deceased and the appellant angrily retorted that he (Waman) had nothing to do with the deceased and that the appellant would tell the whereabouts of the deceased to Dattatraya, the son of the deceased. Waman conveyed this information to Murlidhar and thereafter Murlidhar went to Palsingan where Dattatraya was residing and enquired whether the deceased had come there and on finding that the deceased had not come there both Murlidhar and Dattatraya came to Beed at about 8.30 p.m. on the same day, i.e., October 14, 1975, and made enquiry from Shesharao, the other son-in-law of the deceased, but the same was fruitless and thereafter Dattatraya went to the Police Station at Beed and lodged a missing report (Ex. 29) to the effect that the deceased had been missing since the evening of October 13, 1975. On October 15, 1975, in the morning, Dattatraya and Murlidhar sent for the appellant to make enquiry from him if he knew the whereabouts of the deceased. The appellant came and met Dattatraya, Murlidhar and Shesharao and, after taking Dattatraya aside, the appellant told him in confidence that the deceased had been murdered by one Anant Manzarikar and that his dead body had been thrown by Anant

Manzarikar in the Ladni (a raised platform with hollowness inside) which was situated in that part of the wada where the appellant was residing and it was buried there. After getting this information from the appellant, Dattatraya went to Police Station, Beed and lodged a report (Ex. 30) wherein the information about the murder of the deceased as given to him by the appellant has been narrated. On the basis of the said report, a case under S. 302/34, I.P.C. was registered and investigation was commenced. During the course of the investigation, the dead body of the deceased was recovered in a Ladni situated in Pargaonkar's Wada at Beed and the post-mortem examination of the dead body was conducted. A wrist watch, 'Camy' make, which was buried under an arch in the western wall of the Baithak in the wada when the appellant was residing, was got recovered by the appellant and the same was identified by Dattatraya. Anant Manzarikar could not be arrested as he was absconding and the police filed a charge-sheet against the appellant and his son, Padmakar and they were tried on charge under S. 302 read with S. 34, I.P.C.

3. Both the accused pleaded not guilty. In his statement recorded under S. 313, Cr. P.C., the appellant stated that the deceased had come to his house at 6 p.m. on October 13, 1975, but he (deceased) left his house some time thereafter and that later at about 8.30 p.m. on the same day, he heard the deceased shouting, "Melo, Melo" from near the Ladni situated in front of his-house and on hearing the noise, the appellant came out of his, house and saw Anant Manzarikar standing with a sword in his hand and on seeing the appellant Anant Manzarikar asked him not to disclose anything to anybody and threatened the appellant that if he discloses the matter, he would give him the same treatment as he had given to the deceased. The appellant further stated that Anant Manzarikar was accompanied by his father and brothers at that time and that some time later, Anant Manzarikar and his father and brothers had tied the dead body of the deceased in a gunny bag and dropped it in a Ladni in the western side of his house. The appellant further pleaded that he was frightened by the threats given by Anant Manzarikar and he did not come out of his house for two days till he met Dattatraya on October 15, 1975 and informed him about the incident.

4. The Additional Sessions Judge, Beed, by his judgment dated August 29, 1977 acquitted Padmakar of the charge but convicted. the appellant of the offence under S. 302 read with S. 34, I.P.C. The said conviction of the appellant has been affirmed in appeal by the High Court.

5. From the medical evidence, namely, the statement of Dr. Madan Kale (P.W. 1), who conducted the post-mortem examination of the dead body of the deceased, and has proved the Post-Mortern Report (Ex. 7), it is established that the deceased had received multiple injuries amongst which three were incised wounds. Injury No. 1 was an incised wound in front of neck at the level of thyroid bone and according to Dr. Kale it was sufficient in the ordinary course of nature to cause the death of the deceased and the said injury could be caused by means of a sword. The post-mortern examination was conducted on October 15, 1975 between 5.15 p.m. to 6.30 p.m. Dr. Kale (P.W. 1) has stated that death had occurred between 36 to 48 hours prior to the post-mortern examination which indicates that the death of the deceased had taken place some time after 6 p.m. on October 13, 1975. It is thus evident that the death of the deceased was homicidal and the only question that needs to be considered is whether the appellant had a role in committing the said crime. There is no direct evidence to connect the appellant with the crime and the case of the prosecution rests on circumstantial evidence only. The High Court has relied upon the following circumstances to uphold the conviction of the appellant:

- 1) The deceased was last seen alive with the appellant on October 13, 1975 at about 6 p.m. when the deceased returned from the Hanuman temple after-hearing Pothi and went with the appellant to the house of the appellant.

2) The dead body of the deceased was found in the Ladni in the portion of the wada which in exclusive possession of the appellant and the appellant had given the information about the place where the dead body was lying.

3) A wrist watch was found buried under an arch in the western wall of the Baithak in the house of the appellant and it was taken out by the appellant. The said wrist watch was identified by Dattatraya as the one which was being used by the deceased.

4) The conduct of the appellant in giving vague and evasive reply to Waman when he asked the appellant about the whereabouts of the deceased in the morning of October 14, 1975.

6. As regards the first circumstance that the deceased was last seen alive in the company of the appellant on October 13, 1975 at about 6 p.m. there is the evidence of Waman (P.W.10) as well as Laxman (P.W. 5). The appellant in his statement recorded under S. 313, Cr. P.C. has also admitted that after Pothi was over the deceased had come with the appellant to the house of the appellant at about 6 p.m. The case of the appellant is, however, that the deceased had left his house after some time. In view of the evidence of Waman (P.W. 10) and Laxman (P.W. 5) as well as the admission made by the appellant in his statement recorded under S. 313, Cr. P.C., it must be held that the deceased was last seen alive in the company of the appellant on October 13, 1975 at about 6 p.m. and the first circumstance is established.

7. With regard to the second circumstance about the recovery of the dead body of the deceased, it may be pointed out that the dead body was recovered from a Ladni in Pargaonkar's wada. From the Note of Spot Inspection (Ex. 13), it appears that the said wada consists of two parts. In the first or the front part of the wada, Anant Manzarikar and his family was residing at the material time. Beyond the first part is situated the second part or the back side part of the wada. The two parts are connected by a door frame. The appellant was residing in a room in the back part of the wada. There are two Ladnies in the wada. One Ladni is under the Malwadi Baithak which is towards the north of the Angan in front of the room in which the appellant was residing. The other Ladni is situated on the western side under the open space and it adjoins the western side wall of the room of the appellant and the southern wall of the wada. According to the Memorandum of scene of offence (Ex. 26), blood stained earth was found on the floor of the Ladni and one tin of Dalda (vanaspati oil) having blood stains was also found there. Some blood was also found on the step of the Ladni and on the mouth of the Ladni. The dead body was, however, found in the other Ladni adjacent to the room occupied by the appellant. There was heap of earth in the open space on the western side top portion of the said Ladni and nearby there was a pit indicating fresh digging of earth and the earth dug from the said pit was found to have been dropped on the dead body in the Ladni. Since there were no leaves on the door between the front part and the rear part of the wada, it cannot be said that the Ladni in which the dead body was recovered was in exclusive possession of the appellant. It may also be mentioned that in the report (Ex. 30) lodged by Dattatraya with the Police it is stated that the appellant had himself given the information that the dead body was lying in the said Ladni. The fact that blood stained earth as well as blood was found in the other Ladni indicates that the deceased was first brought to that Ladni and from there he was removed to the other Ladni where it was found. The recovery of the dead body from the Ladni in the portion of the wada in which the appellant resides is, therefore, not inconsistent with the innocence of the appellant and it cannot be regarded as an incriminating circumstance.

8. Coming to the third circumstance relating to the recovery of the wrist watch, it may be pointed

out that in the missing report (Ex. 29) lodged by Dattatraya at the Police Station, Beed on the evening of October 14, 1975, there is no mention that the deceased was having a wrist watch with him. A note is appended to the said report wherein Dattatraya had taken care to indicate as under:

"The age of Digamberrao Trimbakrao is 75 years and white colour the clothes as usual used white dhote Banian shirt and on the head red turban and in the leg shoes."

There is mention about the wrist watch in the report (Ex. 30) lodged with the Police Station, Beed on October 15, 1975 wherein it has been stated that the deceased was having a wrist watch of 17 jewels of Camy company. Dattatraya (PW 12) has stated, during cross-examination that he had purchased the wrist watch about five years back and that he had given it to his father (deceased) about two years ago. He has also admitted that his father had been using another watch of Sando Company before he (PW 12) gave the wrist watch in question and the deceased had been using the said wrist watch for about six months before his death. PW 12 has also admitted that he was having no wrist watch with him at present.

9. The recovery of the wrist watch at the instance of the appellant is sought to be proved by Azizuddin (PW 3), the attesting witness of the Panchnama (Ex. 11). In the said Panchnama, it is stated that on the western wall of the Malvad Baithak in the house of the appellant, there is a niche in the arch towards north on the right side corner and the appellant dug some earth from the said niche by his hand and took out the buried wrist watch from there and the said wrist watch was of the following description :

"100.00 One wristwatch of Camy company, 17 jewels English script dial on the reverse No. 6300 and English have Trade Mark in which a belt of white of steel chain. The watch is in order."

10. Azizuddin (PW 3) has stated that the flooring of the Baithak was of stone slabs and that there were two arches - one in the western wall and the other in the southern wall of the Baithak and that there is no door in the arches and the flooring of the arches is of stone slabs and that the appellant took out some earth from a part of the arch of the western side wall. PW3 has also stated that the appellant dug about one inch in that part of the arch and that no earth was sticking to the wrist watch when it was taken out by the appellant. PW 3 has also stated that he did not remember the time that the wrist watch was showing when it was taken out by the appellant. The Investigating Officer, Subhash (PW 13), has, however, deposed that there were no stone slabs on the floor of the Baithak and that there were no stone slabs under the arches of the Baithak and the appellant dug out some earth by his hands, in one arch while taking out the wrist watch from there. PW 13 has further stated that some dust was sticking to the wrist watch but no mud or cow dung was sticking to the wrist watch. There is a contradiction between the statements of Azizuddin (PW 3) and Subhash (PW 13) on the question whether there were stone slabs on the floor of the Baithak from where the wrist watch was recovered. Moreover, the Panchnama (Ex. 11) and the evidence of PW 3 would indicate that when the wrist watch was recovered it was in working order and was running. The offence took place on the evening of October 13, 1975 and the wrist watch was recovered on October 16, 1975 at 1 p.m. If the watch was buried, as claimed, it is difficult to understand how it was found in working order when it was recovered. Moreover, keeping in view the statement of Dattatraya (PW 12) that he was not having a wrist watch with him and the fact that no mud was found sticking to the wrist watch when it was recovered and the fact that no mention was made about the wrist watch in the missing report (Ex. 29) lodged by Dattatraya with the Police on October 14, 1975, we are unable to

place reliance on the evidence adduced by the prosecution with regard to the recovery of the said wrist watch at the instance of the appellant from the Baithak in the wada where the appellant was residing. The third circumstance cannot, therefore, be held to be established.

11. The fourth circumstance relates the conduct of the appellant in not informing Waman (PW 10) about the time when he enquired about the whereabouts of the deceased on the morning of October 14, 1975. We are of the opinion that the said circumstance cannot be held to be established on the basis of the evidence adduced by the prosecution. Waman (PW 10) has stated that on October 14, 1975, at about 10 a.m. he had met the appellant in front of Jain Fine Cloth Stores on Tilak Road and he had asked the appellant as to where the deceased had gone because he had not come back to the house after he had accompanied him (appellant) for taking tea at the appellant's house and on being so asked, the appellant had questioned him (PW 10) in any angry manner as to what he (PW 10) had to do with the deceased and that the appellant had further stated that he (PW 10) should call Dattatraya, son of the deceased, and the appellant would tell Dattatraya as to where the deceased had gone. The said evidence of Waman (PW 10) has been sought to be corroborated by Murlidhar (PW 4) who has stated that Waman (PW 10) had come to him at about 11 a.m. on October 14, 1975 and had informed him of the talk that he had with the appellant. The subsequent conduct of Murlidhar (PW 4) and Dattatraya (PW 12), however, throws a doubt on the veracity of this evidence. In spite of being informed about this talk between him and the appellant by Waman (PW 10) at about 11 a.m. on October 14, 1975, Murlidhar (PW 4) did not make any effort to contact the appellant. Without meeting the appellant Murlidhar went to Palsingan to meet Dattatraya and although both of them had returned to Beed by 8.30 p.m. on October 14, 1975, they did not make any effort to contact the appellant on October 14, 1975. Without contacting the appellant, Dattatraya lodged the missing report (Ex. 29) on October 14, 1975 and in the said report there is no mention of the talk that had taken place between Waman (PW 10) and the appellant on the morning of the October 14, 1975. Even in the report (Ex. 30) that was lodged by Dattatraya with the Police on October 15, 1975, and which forms the basis for the FIR, there is no mention of this fact and it only mentions that the appellant had informed about the murder of the deceased by Anant Manzarikar. The aforesaid conduct of Murlidhar and Dattatraya is thus inconsistent with the evidence of Waman (PW 10) about the appellant having behaved in the manner as stated by Waman on the morning of October 14, 1975 when Waman enquired about the whereabouts of the deceased. We are, therefore, unable to accept the evidence of Waman (PW 10) and Murlidhar (PW 4) in this regard and it must be held that the fourth circumstance is not established.

12. The only circumstances that have been found established are that the deceased was last seen alive in the company of the appellant on October 13, 1975 at about 6 p.m. and that the dead body of the deceased was found in the Ladni near the residential portion of the appellant in Pargaonkar's wada. The said two circumstances, in our opinion, cannot be said to be inconsistent with the innocence of the appellant and on the basis of these two circumstances alone, it cannot be held that the appellant was a party to the murder of the deceased. The conviction of the appellant for the offence under Section 302 read with Section 34, IPC cannot, therefore, be upheld.

13. The appeal is consequently allowed and the conviction and sentences of the appellant for the offence under Section 302 read with Section 34, IPC is set aside. Appeal allowed.

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