

**SUPREME COURT OF INDIA**

Deepak Chandrakant Patil (A-2)

Vs

State of Maharashtra

Criminal Appeal No. 1402 of 2004

(B. P. Singh and Altamas Kabir, JJ)

08.03.2006

**JUDGMENT**

**B. P. SINGH J.**

The appellant herein has appealed against the judgment and order dated July 13, 2004 of the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Appeal No. 227 of 2000, convicting him of the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs. 1, 000/-, in default to undergo rigorous imprisonment for one year. The High Court, while recording the order of conviction against the appellant herein, acquitted four other accused on a finding that the evidence as against them did not prove their complicity in the offence beyond reasonable doubt.

2.The facts of the case are that on 28-12-1998 accused Arun Marathe, hereinafter referred to as A-1, had gone to see off his daughter at the Parbhani railway station since she was to go on a school trip organized by her school. The appellant herein, namely, Deepak Chandrakant Patil, hereinafter referred to as A-2, was also present-at the railway station. The son of the deceased was also a member of the group which was going on a school trip to different places. It appears that A-1 took objection to the fact that no school teacher was accompanying the students. He insisted that school trip should be cancelled as no teacher was asked to accompany the students. It appears that the deceased took exception to the conduct of A-1 and an altercation followed. In that process, A-1

threatened the deceased with serious consequences. Nothing else happened on that day. On the following day i.e., on 29-12-1998, the wife of the deceased namely Surekha Sawargaonkar P.W. 15 received a telephone call at about 4 p.m. and the caller identified himself as Deepak Patil, A-2 appellant herein. It is the case of the prosecution that the appellant went to the school to find out address of the deceased and thereafter made a call at about 4 p.m. There is some controversy as to whether P.W. 8 went to the school on 28-12-1998 or 29-12-1998. That, however, is not very material because there is direct evidence to prove that on 29-12-1998 the appellant went to the house of the deceased at 10.00 p.m. and asked him to accompany him since he was called by A-1 who wanted to talk to him. This was object to by the wife of the deceased P.W. 15 saying that if A-1 wanted to talk to the deceased he should come to his residence. However, the deceased was persuaded to accompany A-2 to the house of A-1 and they both left for the house of A-1 on the motorcycle of the deceased. The case of the prosecution is that an auto rickshaw with three persons sitting in it followed them. These three occupants of the auto rickshaw were later identified as accused Nos. 3 to 5 (A-3 to A-5).

3. When the deceased did not return home till 11 p.m., the wife of the deceased P.W. 15 along with her son P.W. 13 and one other person Narayan Gore P.W. 6 went to the house of A-1 to inquire about the deceased. At about 12 midnight when they reached the house of A-1 they met a person who feigned ignorance about the whereabouts of the deceased. In the mean time, A-1 came out and when questioned, A-1 gave an evasive reply about the whereabouts of the deceased. P.W. 15, the wife of the deceased, told A-1 that he would have to suffer serious consequences if he did not disclose the whereabouts of the deceased, to which A-1 commented that what more harm was left to be done. After waiting till about 2.30 a.m., when the deceased did not return, P.W. 15 went to the Police Station and gave an oral report to the effect that the deceased had gone with A-2, the appellant herein, and had not returned. After the oral report was lodged, two Constables of the Police Station went in search of the deceased. At about 3 a.m., they reached the house of A-1 and saw that he was talking to the appellant and one other person, apart from the wife of accused No. 1. One of the Constables P.W. 12 as also P.Ws. 15 and 13 inquired A-1 as to where the deceased was. The appellant who was present there stated that he had a quarrel with the deceased and his body was lying in an unconscious state in the garden behind the house of A-1. He accompanied P.Ws. 12, 13 and 15 and others and showed them the place where the body of the deceased was lying. It was found that the deceased was dead. Thereafter, P.W. 15 went to the Police Station and lodged a First Information Report.

4. The police started investigation and in due course took accused into custody.

5. It is the case of the prosecution that A-3 to A-5 made disclosure statements and got recovered blood stained clothes. The appellant also made a disclosure statement on 4-1-1999 and got recovered blood stained clothes and a Jambia (the weapon of offence).

6. Four persons were examined as eye witnesses in the course of investigation but three of them, who were examined at the trial as eye witnesses, turned hostile. They are P.Ws. 9, 10 and 14. They did

not support the version disclosed by them in the course of investigation that they had seen the appellant as well as A-3 to A-5 assaulting the deceased near the place where his dead body was found.

7. The Trial Court on consideration of the evidence on record acquitted A-1 as it found no material to prove his complicity. So far as A-3 to A-5 are concerned, the Trial Court did not place reliance on the identification parade which was held after much delay. The blood stained clothes were found to be having stains of human blood of 'A' Group, which was also the blood group of the deceased. The Trial Court did not accept that evidence since no evidence was led as to the blood group of the accused. The recoveries made at the instance of the accused were also disbelieved because the panch-witness, who witnessed those recoveries, happened to be brother of the P.W. 15 who had been called from far away only to witness the recoveries. No independent witness was examined to prove the recoveries. The Trial Court also suspected the prosecution to be guilty of interpolation in the panchnamas.

8. In the absence of direct evidence, since the eye witnesses turned hostile, the Trial Court considered the circumstances as they appeared on record which were of incriminating nature and involved the appellant in the commission of the offence. The others were given the benefit of doubt. The circumstances taken note of by the Trial Court are the following:

(1) An incident took place on the 28th of December, 1998 in which the deceased was involved in an altercation with A-1. A-2 was also present at the railway station when the incident took place.

(2) The appellant visited the school to inquire about the address of the deceased.

(3) The appellant visited the house of the accused on 29-12-1998 at about 10 p.m. and asked him to accompany him to the house of A-1 who wanted to talk to him. The deceased accompanied the appellant and was last seen by his wife and son P.Ws.15 and 13, when he accompanied the appellant to go to the house of A1.

(4) The appellant made a statement in the presence of Police Constables as also P.Ws. 13 and 15 to the effect that he had a fight with the deceased and that he could point out the place where his body was lying. He pointed out the place from where the dead body was recovered.

(5) Blood stained weapon was discovered pursuant to the disclosure statement made by the appellant.

(6) Blood stained clothes having human blood of Group 'A' were recovered following the disclosure statement of the accused.

(7) The accused were identified by P.Ws. 13 and 15 in the test identification parade.

9. For the reasons which we have noticed earlier the last three circumstances were discarded by the Trial Court. However, the Trial Court was satisfied that the appellant was present at the railway station where the incident took place on the earlier date and there was an altercation between the deceased and A-1. So far as his (appellant's) going to the school on the 29th December, 1998 is concerned, the school teacher P.W. 8, who was examined to prove this fact, was declared hostile since P.W. 8 stated in the course of his deposition that the Appellant had come to the school on 29th and inquired about another school trip which was being arranged. He, therefore, did not support his earlier version stated in the course of investigation that the appellant had visited the school to find out the address of the deceased. As to the alleged telephone call made by the appellant to P.W. 15 on 29-12-1998, there appears some discrepancy as to whether the call was made on 28th or 29th December. The Trial Court as well as the High Court have believed the evidence of P.Ws. 15 and 13, the wife and son of the deceased, who had testified to the fact that the appellant had come to the house at about 10 p.m. on 29-12-1998 and had persuaded the deceased to accompany him to the house of A-1. These witnesses also fully supported the prosecution case about the presence of the appellant in the house of A-1 at about 3 a.m. on 30-12-1998. He had told them that he had a quarrel with the deceased and he knew the place where his body was lying. The appellant had also pointed out that place and the body of the deceased was found there. On these findings, the Trial Court while acquitting the remaining accused, found the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code.

10. An appeal was preferred by the State against the order of acquittal passed in favour of the remaining accused. The appellant also preferred an appeal against his conviction and sentence. The High Court by its impugned judgment and order affirmed the order of acquittal passed in favour of the remaining accused holding that the view taken by the Trial Court could not be said to be either unreasonable or perverse and in any event did not call for any interference in the appeal against acquittal. So far as appellant is concerned, his conviction has been upheld by the High Court.

11. Learned counsel for the appellant urged before us that in view of the acquittal of the remaining accused there was in fact no reliable material on record on the basis of which the appellant could be convicted. It is not possible to sustain this submission because the evidence as against the appellant herein is different from the evidence as against other accused. There is no direct evidence as to who assaulted the deceased. Therefore, the evidence of the alleged eye witnesses who turned hostile was of no help to the prosecution. The identification of A-2 to A-5 who were said to be travelling in the auto rickshaw which followed the appellant and the deceased, was not found to be reliable, and the evidence as regards recoveries was also found to be not reliable.

12. So far as the appellant herein is concerned, it has been found as a fact that he had gone to the house of the deceased at about 10 p.m. on 29-12-1998 and he had persuaded him to accompany him to the house of A-1. The deceased was last seen by his wife and son at about 10.30 p.m. on that day when he accompanied the appellant on his own motorcycle to meet A-1. This circumstance is an incriminating circumstance and when considered with the other circumstances appearing against the appellant conclusively proves his guilt. Apart from being last seen with the deceased, there is evidence to the effect that he pointed out the place where the body of the deceased was lying which was in the garden behind the house of A-1. The motorcycle of the deceased was also recovered from the same spot. The evidence is thus conclusive that the appellant and the deceased travelled from the

house of the deceased to the point where he was assaulted and killed. The objective findings also prove that the appellant had brought the deceased towards the house of A-1 and that in fact he had told the deceased that he was required by A-1. Learned counsel submitted that the statement made by the appellant that he had a fight with the deceased and that he could show the place where his body was lying, is not admissible as it was made in the presence of a Police Constable. Assuming that the inculpatory part of the statement may not be admissible in evidence, the statement so far as it relates to other parts disclosed leading to recovery, is admissible. It is also not as if with the aid of Section 106 of the Code the appellant has been convicted because he was unable to give an explanation regarding facts within his exclusive knowledge. In this case, the appellant had brought the deceased from his house and later on pointed out the place where his dead body was found. The evidence on record suggested that he may be acting at the behest of A-1 but even if that is not proved, the evidence as against the appellant is abundant and conclusive enough to prove that he was responsible for the death of the deceased.

13. It has been submitted by the learned counsel for the appellant that there is no direct evidence to prove the participation of the appellant in the commission of the offence in view of the rejection of the evidence of the eye-witnesses. In a case based on circumstantial evidence, there may be no direct evidence to prove the manner of assault or the actual participation of an accused in the assault on the deceased resulting in his death, but if the circumstantial evidence is conclusive in nature, a conviction on the basis of such circumstantial evidence may be recorded. It must be shown that the circumstances established on record are incriminating in nature, and the chain of circumstances established by the prosecution is so complete as not to be consistent with any other hypothesis except the guilt of the accused.

14. Learned counsel for the appellant also submitted before us that the evidence of P.Ws. 15 and 13 to the effect that the appellant was last seen in the company of the appellant became irrelevant in view of the fact that the prosecution had led direct evidence to prove the assault on the deceased. In our view, the submission does not help the appellant. In this case, the circumstance that the deceased was last seen by P.Ws. 15 and 13 in the company of the appellant, is a circumstance which considered with other evidence on record has been found to prove the guilt of the accused. It is not as if the prosecution has tried to set up a case other than what was sought to be proved by the eye witnesses examined in the case who turned hostile. Since the eye witnesses turned hostile, the circumstance that the appellant had accompanied the deceased and was last seen by him was only treated as one of the circumstances in the chain of circumstances to prove his guilt.

15. In the instant case, we are satisfied that the Trial Court and the High Court rightly appreciated the evidence on record and the circumstances proved against the appellant conclusively prove his guilt. Mere fact that there is no evidence to show that he actually assaulted the deceased may not be of any consequence in the facts and circumstances of this case. We may only observe that in the face of the reliable evidence on record that the deceased had accompanied him at 10.30 p.m. on 29-12-1998, the accused-appellant did not offer any explanation as to whether they parted company thereafter. The fact that he knew about the dead body of the deceased lying in the garden behind the house of A-1 is almost clinching in nature and leaves nothing to doubt. Having considered the evidence on record, we are satisfied that there is no justification for interference with the order of conviction and the sentence imposed against the appellant. This appeal is, therefore, dismissed

