

# SUPREME COURT OF INDIA

Shamrao Dattu Kumbhar

Vs.

State of Maharashtra

Crl.A.No.1396 of 204

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

08.05.2008

## ORDER

1. Shamrao Dattu Kumbhar, the appellant herein, being aggrieved by and dissatisfied with the judgment of conviction and sentence dated 18.7.2001 passed by a Division Bench of the High Court of Judicature at Bombay in Criminal Appeal No.557 of 1995 whereby and whereunder the appeal preferred by the State from the judgment and order dated 27.3.1995 passed by IIIrd Additional Sessions Judge, Kolhapur, in Sessions Case No.165 of 1994 acquitting him from the charges of Sec.302/201 of the Indian Penal Code was allowed.

2. A headless dead body was found on the Railway track at about 6 O' clock in the morning on 22.2.1994 by PW.7, Malappa Chavan. On the dead body there were some marks of injuries on the chest. An information thereupon was given to the Station Master of the Railway Station. The dead body was removed from the Railway track. A telephonic message was received by PW.12-PSI Gandhi, who was on duty at the Railway Police Station Miraj about the discovery of the said dead body. An inquest of the dead body was made by him. An F.I.R. was also lodged under Sec.302/201 of the Indian Penal Code at his instance at about 11.50 hours on 22.2.1994.

3. The father of the deceased Bhausahab Khot who examined himself by PW.1 identified the dead body.

4. Some suspicion in regard to his involvement was raised as against the appellant on the premise that he had illicit relationship with the wife of the deceased.

5. Although the High Court in its judgment noticed that the appellant was arrested on 22.5.1995, it transpires that in fact the arrest took place on 25.2.1994. Allegedly at the instance of the appellant bicycle, tiffin box, the head of the deceased as also his undergarments were recovered. The head of the corpse was also identified by PW.1 as also PW.16-Rajendra Khot - the brother of the deceased. Yet at about 19.3.1994 the knife which was said to be the weapon of offence as also other blood stained clothes were recovered.

PW.4 - Bhausahab Patil is said to be a panch witness.

6. During the investigation, PW.6 Abha Shankar Khot contended that he was an eye witness to the occurrence. We may notice that his statement in terms of Sec.164 of the Code of Criminal Procedure was recorded on 24.2.1994. It may not be necessary for us to refer to the said statements or his deposition before the learned trial court as both the courts below did not rely thereupon on the premise that he had been examined by the police after about eight days.

7. The learned Sessions Judge recorded a judgment of acquittal opining that only on the basis of the purported recoveries coupled with the alleged motive on the part of the appellant to commit the said crime by themselves were not sufficient to hold that he was guilty of commission of the murder of Ashok.

8. The High Court, however, by reason of the impugned judgment laid great emphasis not only on the purported motive on the part of the appellant to commit the said offence but also on the recoveries purported to have been made at his instance.

9. As indicated hereinbefore, the motive on the part of the appellant to commit the murder of the deceased is said to be the illicit relationship of the deceased with his wife.

10. The said motive on the part of the appellant is said to have been proved inter alia by PW.1 and PW.8-Ujwala, the wife of the accused. PW.1 is the father of the accused. He, in his deposition, denied the existence of the motive. What he said in his deposition was that it might be that the accused had suspicion about the illicit relationship.

PW.1 therefore is not a witness to prove the existence of the motive.

11. That takes us to the evidence to the wife of the accused PW.8. In her deposition, she stated that the deceased used to come to their house for hearing cassettes.

12. On a query by her husband why the deceased had been coming to their house PW.8 stated that if he had any suspicion in his mind he should warn him. He should ask him not to come to their house. It was done. The deceased thereby stopped coming to their house. It, however, appears that the deposition of the said witness as regards existence of the motive has been misread by the High Court. The statements are as under:

"My brother in laws wife is Bharati Bhimrao Kumbhar. We used to go together for doing work in the field and also for going to the flour mills. At that time Abha Shankar Khot used to chase us. On Friday one chit was found in our house, to my husband. My husband then read over it. Thereafter he started beating me with a stick. It was written in the said chit that come to the field of Shalu at about 12 noon.

It was written by Abha to Bharati. After reading the said chit he started suspecting about me and started beating me, and therefore I went to my grandfather's place. It is

at Akkule. Thereafter on Sunday my husband came to my grandfather's house. I then asked my grandmother to tell him that I have not come there.

Thereafter my husband went away. My mother then came there after about 8 days. Thereafter myself and my mother came to Kabmur. I then went to the Kabmur Police Station. There I was directed to go to Hatkanangale Police Station. I told in the Police Station that I wanted to lodge a complaint as my husband was beating me. Police asked me to stay for some time. At that time I came to know that there was murder of Ashok Khot."

13. Abha Shankar Khot PW.6 as noticed heretofore was not found to be a trust- worthy witness. His conduct in the entire matter is suspicious. If he had written a chit calling Bharti, who is brother's wife of the appellant, there was no reason as to why the purported suspicion which was in the mind of the appellant as regards the illicit relationship of the deceased with his wife could be the cause for which the murder took place.

14. If the affairs of PW-6 and Bharti had nothing to do with the deceased or the wife of the appellant, evidently motive has not been proved.

15. We may now notice the other evidences brought on record by the prosecution.

16. As indicated hereinabove the principal evidence to rope in the appellant were recoveries made at his instance.

17. We have noticed the role played by PW.4. PW.4 in his deposition admitted that for the purpose of becoming a witness to the purported recoveries he and Sukumar were called to the Police Station. On his own showing he was a regular visitor to the Police Station.

18. He made an attempt to explain the same stating that he had been a regular visitor as he was required to visit it frequently as the police had started a prosecution regarding his vehicle.

19. We fail to understand as to why in a case involving carrying unauthorized passengers in his vehicle which is an offence under the provisions of Motor Vehicle Act, 1988, the Police authorities will ask him to visit the Police Station frequently.

20. According to the said witness himself that upon his visit to the Police Station for the second time, the police had asked him to sit on the vehicle on the premise that another panchnama was to be drawn. He was thus evidently a witness of one more panchnama. Even before the discovery of the said articles, if he is to be believed, the PSI had informed him about the place where they were required to visit for the said purpose and the manner in which the recoveries were to be made. The stay of recovery thereof is itself suspected.

21. In our opinion the High Court was not correct in overturning a judgment of acquittal in a situation like the present one. Investigating officer in a case of this nature

had a limited role to play.

22. The High Court itself has proceeded on the footing that no reliance can be placed on the evidence of PW.6.

23. His evidence apparently did not corroborate the postmortem report which discloses sufferance of several antemortem injuries by the deceased.

24. Even if we believe that the appellant was responsible for making statement which led to the discovery of a large number of articles including the head of the dead body and the knife, it must also to be noticed the discoveries had not been made on one day. Purported recoveries were made on 25.2.1994 and 1.3.1994. If this was only a needle to suspicion on the appellant, the father and other near relatives of the deceased should have disclosed the same on 22.2.1994 itself or immediately thereafter. They did not do so.

25. The High Court furthermore opined that as the blood group of the deceased was Group-B, the same was sufficient to hold the appellant guilty. It was pointed out to the High Court that the blood group of the appellant was also B.

26. We are therefore of the opinion that keeping in view the well-known principle that if two views are possible a court of appeal ordinarily would not set aside a judgment of acquittal and record a judgment of conviction applies in all forms in the instant case.

27. Keeping in view the loopholes contained in the prosecution case itself we have no doubt in our mind that the High Court committed a serious error in the facts of the present case in disregarding the said well-known principle of law.

28. For the reasons aforementioned the impugned judgment cannot be sustained.

29. It is set aside accordingly. The appellant is said to be in jail. He is directed to be set at liberty forthwith unless wanted in connection with any other case.

The appeal is allowed.