SUPREME COURT OF INDIA

Umesh Tukaram Padwal

Vs.

State of Maharashtra

Crl.A.No.1029 of 2014

(N.V.Ramana,J., Mohan M.Shantanagoudar and Ajay Rastogi,JJ.,)

03.09.2019

JUDGMENT

Mohan M. Shantanagoudar,J.,

1. This appeal is directed against the judgment dated 09.10.2013 of the High Court of Judicature at Bombay in Criminal Appeal No. 130 of 2006, confirming the judgment passed by the Additional Sessions Judge, Kalyan in Sessions rECSse No. 282 of 2002. The impugned judgment confirmed the conviction of Accused No. 1 for the offence punishable under Section 420 of the Indian Penal Code (for short "IPC") for cheating the deceased and the informant out of a sum of Rs. 45,000/-, and of Accused Nos. 1 and 2 for the offences punishable under Sections 364 and 302 read with Section 34, IPC, for abducting the deceased in order to murder him, and subsequently committing such murder, in furtherance of their common intention. Accused Nos. 1 and 2 are Appellant Nos. 1 and 2 herein.

2. The case of the prosecution in brief is as follows:

> About a month prior to the incident, PW-1 Jayram Dhum, the informant and the maternal uncle of the deceased Dnyaneshwar, came to know that Umesh Padwal (Accused No. 1) used to arrange jobs at the Jindal plant at Vasind and charge money in return. As the deceased was unemployed, on 1.7.2002, PW-1 approached Accused No. 1 to procure employment for the deceased at the Vasind plant. Accused No. 1 demanded a sum of Rs. 60,000/- to arrange a job as desired. On 7.7.2002, PW-1 met Accused No. 1 at a juice shop in Kalyan, and paid him a sum of Rs. 10,000/-. On 10.07.2002, the deceased Dnyaneshwar came to Kalyan from his native place, with a sum of Rs. 45,000/-, out of which PW-1 deducted Rs. 10,000/-, which he had paid on behalf of the deceased. The next day, on 11.07.2002, at around 11.30 a.m., they again met Accused No. 1 at the same juice shop in Kalyan, and handed over the remaining sum of Rs. 35,000/- to him. At this rendezvous, Accused No. 1 was accompanied by Pravin Godse (Accused No. 2), who Accused No. 1 introduced as his neighbour and friend. From there, Accused No. 1 left with Accused No. 2 and the deceased for the Jindal plant at Vasind,

telling PW-1 that he need not come along. At around 8 p.m. in the evening, PW-1 went to Accused No. 1's house to inquire about the whereabouts of the deceased, who had not yet returned to Kalyan, and learnt that Accused No. 1 had not returned either. Since the deceased was untraceable, the first information was eventually lodged with the Police Station for the aforementioned offences on 13.07.2002. The body of the deceased was recovered on 14.7.2002 from the valley at Goraksha Gad at the instance of Accused No. 1. The clothes of the deceased were also recovered nearby. Accused No. 1 also led to the recovery of some personal documents of the deceased that had been handed over to Accused No. 1 previously by PW-1, as well as a sum of Rs. 10,000/-, a nylon rope and a piece of electric wire. Accused No. 2 led to the recovery of a sum of Rs. 800/-. After the investigation, the police filed a charge-sheet against four persons including the appellants herein. It was alleged that the four accused had strangulated the deceased and thrown his body into the valley at Goraksha Gad.

3. The Trial Court convicted Accused Nos. 1 and 2 and acquitted the other two accused. The judgment of the Trial Court was confirmed by the First Appellate Court. Since the acquittal of the other accused was not challenged, we make no reference to the allegations made and evidence adduced against them in the rest of the judgment.

4. Heard the learned advocates on either side and perused the records.

5. There is no eye-witness to the incident of abduction and murder in question, and the prosecution relies on circumstantial evidence. The three main circumstances incriminating Accused Nos. 1 and 2 for the offences of abduction and murder of the deceased which have been relied upon by the prosecution are as follows:

(i) The motive for commission of the offences;

(ii) the circumstance that the deceased was last seen with Accused Nos. 1 and 2 by PW-1; and,

(iii) the recovery of the dead body of the deceased at the instance of Accused No. 1, and of other incriminating articles at the instance of Accused Nos. 1 and 2.

6. As far as the offence of cheating is concerned, it is important to begin by noting that it is not in dispute that Accused No. 1 often used to arrange jobs for people at the Jindal plant at Vasind. As per PW-1's evidence, he approached Accused No. 1 to secure a job for the deceased, for which the deceased had to pay Accused No. 1 a sum of Rs. 45,000/-. The evidence of PW-2, the mother of the deceased, also shows that such a sum was arranged by the deceased and taken to Kalyan in order to pay Accused No. 1 for getting him a job. However, there is no evidence to show that Accused No. 1 had any intention to not arrange a job for the deceased as promised. It must be noted here that the Trial Court and the High Court have also not discussed the evidence relating to the offence of cheating in much detail. Even otherwise, the evidence on record, particularly looking to the answers given by

the prosecution witnesses in this regard, does not inspire confidence in the mind of the Court. In such circumstances, it cannot be said that Accused No. 1 had any intention to cheat the deceased and PW-1 during the initial discussions with PW-1 or while accepting money from PW- 1 and the deceased. We are thus of the considered opinion that the Courts below erred in convicting Accused No. 1 for the offence under Section 420, IPC.

7. We are also of the view that the circumstances of 'last seen' and the recovery of the dead body and other incriminating articles relied upon to prove the commission of the offences of abduction and murder have also not been proved by the prosecution beyond reasonable doubt.

8. We first address the circumstance that the deceased was last seen on the morning of 11.07.2002 with Accused Nos. 1 and 2. In this regard, it is the consistent stand of the accused that the deceased, for reasons best known to him, disappeared from the Vasind Railway Station, about which Accused No. 1 had informed PW-1 on the same day. This has been brought out in the deposition of PW-1 as well as the first information he submitted. In the first information given by PW-1 (Exh. P-27), he stated that on the night of 11.07.2002, Accused No. 1 had contacted him by calling a neighbour's residence over the telephone at around 9 to 9.30 p.m., and enquired whether the deceased had reached home. PW-1 told him that the deceased had not returned. Accused No. 1 then revealed that when he and the deceased had arrived at the Vasind Railway Station, he had excused himself to answer nature's call after requesting the deceased to wait for him. However, when he returned, he did not find the deceased at the place where he had left him standing. In a similar vein, PW-1 also admitted in his cross-examination that Accused No.1 had informed him on the night of 11.07.2002 itself that he had lost touch with the deceased at the Vasind Railway Station. It is also important to note at this juncture that neither Accused No. 1 nor Accused No. 2 absconded after the disappearance of the deceased, and were found present in their respective houses. All in all, the material on record indicates that the accused did not have knowledge of the whereabouts of the deceased after his disappearance, and that Accused No. 1 had furnished an explanation as to how he parted with the deceased, on the very day of his disappearance. In our considered opinion, the circumstance of the deceased being last seen with the accused therefore does not point towards their guilt.

9. Importantly, our attention has been drawn to the entries in the register seized from a hotel at Goraksha Gad under the seizure memo at Exh. P-52, where the names of the accused along with the deceased were mentioned. It was alleged that the entry was made by Accused No. 1. This was relied upon to argue that it has been established that the accused were present with the deceased at Goraksha Gad, and did not part with him at Vasind Railway Station at all. However, we are not inclined to accept this argument. Firstly, PW-7, the owner of the hotel from where the register was seized, has not supported the above case of the prosecution. He specifically denied that Accused No. 1 had written the entries in the presence of PW-7 and that he had identified the accused as having visited his hotel. In such circumstances, we find it unsafe to rely on the entries found in this diary. Secondly, there is nothing on record to show that the prosecution made an effort to collect

any admitted writing of Accused No. 1 during the course of investigation and to compare the disputed writing of Accused No. 1 with the same. Without there being proof of the similarity of the handwriting found in the diary seized under Ext. P-52 and any admitted writing of Accused No. 1, it is not open to the Court to presume that the handwriting in the entry found in the register is that of Accused No. 1. Thus, it appears that the prosecution pleads on the basis of mere assumptions that the entries found in the register were made by Accused No. 1. The diary entries can therefore not be relied upon in any manner.

10. Insofar as the circumstance regarding the recovery of the body of the deceased at the instance of Accused No. 1 is concerned, we are of the considered opinion that the prosecution has manipulated the records to reflect such recovery. The voluntary disclosure statement of Accused No. 1 was recorded by PW-10, the Sub-Inspector of Police, and marked as Ext. P-39 (considering only the portion relevant under Section 27 of the Indian Evidence Act, 1872). According to the prosecution, Accused No. 1 led the police to the spot from where the body of the deceased had been thrown down into the valley of Goraksha Gad, and that the body was ultimately found on a tree in an inaccessible part of the valley. PW-10 has deposed that after Accused No. 1 expressed his willingness to reveal the spot from where the body of the deceased had been disposed, PW-10 prepared the memorandum panchnama at Exh. P-39 recording the disclosure statement of Accused No. 1 in the presence of two panchas, both of whom signed the statement along with PW-10. One of the panchas was examined as PW-4 to support the aspect of recovery of the dead body. The other pancha was not examined. PW-4 affirmed that the said panchnama contained his signature. However, he admitted in his cross-examination that he had also visited the police station on 12.07.2002 and 13.07.2002, and further that Accused No. 1 did not state anything in his presence before the police. Thus, it is clear that the evidence of PW-4 belies the evidence of PW-10 that the disclosure statement of Accused No. 1 was recorded in the presence of the panchas on 14.07.2002. It seems that the prosecution wants to make their case watertight by taking PW-4's assistance and bringing him as a witness to the disclosure statement as well. In this regard, the defence is justified in arguing that the prosecution has tried to improve its case from stage to stage by introducing material which was originally absent.

11. Additionally, we find that the timings of the events starting from the recording of the disclosure statement of Accused No. 1 to the recovery of the body have not been established clearly, which casts further doubt on the aspect of recovery. PW-4 deposed in his examination-in-chief that he was called to the police station to act as a pancha around 12.30 p.m. on 14.07.2002, but he also deposed in the same breath that he was called for the first time to the police station at 7.35 a.m. that morning. As noted above, he admitted in his cross-examination that he had also visited the police station on the two preceding days. Furthermore, PW-4 admitted that he arrived at the scene of offence around 12.30 to 1.00 p.m., along with the police, Accused No. 1 and some relatives of the deceased, including PW-1. Thus, PW-4's testimony pertaining to the time of being called to the police station and of visiting the spot of recovery is replete with inconsistencies. The deposition of PW-10, the Sub-Inspector, further complicates the matter. He admitted in his cross-examination that when Accused No. 1 told him about the body of the deceased being at Goraksha Gad,

PW-10 started preparing the memorandum panchnama pertaining to A1's disclosure (Ext. P- 39), which was recorded at the police station. At about 6.35 a.m., he and the panchas along with Accused No.1 started for Goraksha Gad. Thus, the timings deposed to by PW-10 are fully contrary to the evidence of PW-4. The evidence of PW-4 also reveals that the dead body was found "hanging to one tree" and was completely decomposed. The dead body was taken out of the valley in a trolley, and the panchanama was prepared thereafter. Though it is the case of the prosecution that the body was thrown in the valley, there is nothing on record to show in what manner the body was found hanging on a tree. The defence, in that context, argued that the death must have been a suicidal death, and not homicidal. In addition, if the body was fully decomposed, as PW-4 has deposed, the identification of the dead body also becomes doubtful. Thus, the evidence relied upon by the prosecution is full of irreconcilable inconsistencies which cast serious doubt on the presence of the panchas during the recording of the disclosure statement and the recovery of the body of the deceased. In our considered opinion, the prosecution has made a botched attempt to improve its case regarding the recovery of the dead body from time to time. Having regard to the totality of the facts and circumstances, we are not satisfied with the evidence on record as well as the reasons assigned by the Courts below in relying on the circumstance of the recovery of the dead body at the behest of Accused No. 1.

12. In light of the above discussion, we are of the view that the other recoveries made at the instance of Accused Nos. 1 and 2 are also tainted and cannot be relied upon. Importantly, the panchas examined to prove such recoveries did not fully support the case of the prosecution either.

13. The only circumstance that remains to be discussed is the circumstance of motive. Essentially, the proof of the motive for the offence of abduction and murder alleged by the prosecution depends on whether the offence of cheating was committed by Accused No. 1. This is because it is alleged that Accused No. 1 knew that he could not arrange employment for the deceased, but still accepted money for this purpose from PW-1 and the deceased, with an intention to cheat them, and subsequently, Accused Nos. 1 and 2 murdered the deceased in order to avoid repayment. We have already discussed in the preceding paragraphs that the evidence relating to cheating is unreliable, and that it cannot be said that Accused No. 1 committed this offence. Thus, the entire argument of motive stands negated. Even otherwise, if the alleged motive is held to have been proved by the prosecution, the said circumstance cannot be made the sole basis to convict the accused for the offences of the abduction and murder of the deceased.

14. It is also relevant to note at this juncture that the prosecution has even failed to establish the probable cause of death of the deceased, though it was recorded in the inquest panchnama (Ext. P-19) that death was caused by strangulation. The doctor who prepared the post-mortem report (Ext. P-18) was not examined by the prosecution to prove the contents of the report. However, as per the report, which has been admitted by the accused, the doctor could not identify any of the injuries on the body as ante-mortem, or give an opinion on the cause of death, since the body was highly decomposed. No ligature marks could be seen on the neck either, because of the state of decomposition.

15. In a case based on circumstantial evidence, the circumstances relied upon by the prosecution should be proved beyond reasonable doubt, and such proved circumstances should form a complete chain so as not to leave any doubt in the mind of the Court about the complicity of the accused. In the instant case, none of the circumstances relied upon by the prosecution have been proved beyond reasonable doubt, and there is no question of a complete chain of circumstances being formed that would point towards the guilt of the accused. In our considered opinion, the benefit of doubt should therefore be granted in their favour. We are accordingly of the opinion that the Courts below erred in convicting Accused Nos. 1 and 2 for the offences of the abduction and murder of the deceased.

16. Accordingly, the impugned judgment of the High Court as well as of the Trial Court stand set aside and the appeal is allowed. Accused No. 1 is acquitted of the offence under Section 420, IPC. Accused Nos. 1 and 2 are acquitted of the offences under Sections 364 and 302 read with 34, IPC.

17. Vide order dated 08.08.2014, this Court granted bail to the appellants. Their bail bonds stand discharged.