(2011) 02 BOM CK 0133

Bombay High Court (Goa Bench)

Case No: Criminal Appeal No. 86 of 2009

State of Goa	APPELLANT
Vs	
Smt. Sapana @ Savita Naik	RESPONDENT

Date of Decision: Feb. 21, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 378
- Penal Code, 1860 (IPC) - Section 302, 392

Citation: (2011) 1 Crimes 726

Hon'ble Judges: S.B. Deshmukh, J; F.M. Reis, J

Bench: Division Bench

Advocate: C.A. Ferreira, P.P, for the Appellant;

Final Decision: Dismissed

Judgement

F.M. Reis, J.

The above appeal challenges the judgment and order dated 25/03/2009 passed by the learned Additional Sessions Judge, Panaji, Goa in Sessions Case No. 31/2005, whereby the Respondent who was the accused was acquitted of offences u/s 302 and 392 of the IPC.

2. The case of the Appellants/prosecution was that an FIR No. 118/2005 was registered by the Mapusa Police Station to the effect that the Respondent/accused on 14/06/2005 between 7.00 a.m. and 11.30 a.m. at Revora, Bardez, Goa assaulted her sister by name Sunita Pilgaonkar with wooden stick and crow bar thereby killing her on the spot and robbed her gold ornaments. The accused was charge sheeted on 13/09/2005 before the Court of the learned Judicial Magistrate First Class, Mapusa which was subsequently committed to the Sessions Court and the charges were framed against the Respondents u/s 302 and 392 of the IPC. After examining the witnesses of the Appellants/prosecution and on perusal of the material produced by the Appellants, the learned Additional Sessions Judge by the impugned

judgment dated 25/03/2009 acquitted the Respondent for offences punishable u/s 302 and 392 of the IPC on benefit of doubt. Being aggrieved by the said judgment, the Appellants preferred the above appeal which came to be admitted on 7/12/2009.

3. Shri C.A. Ferreira, the learned Public Prosecutor appearing for the Appellants has assailed the impugned judgment and submitted that the learned Sessions Judge has totally failed to appreciate the evidence on record which conclusively establishes that the Respondent had committed the offences punishable u/s 302 and 392 of the IPC. The learned Public Prosecutor pointed out that though there was no eye witness to establish the commission of the murder by the Respondent, there was sufficient circumstantial evidence on record which conclusively establishes that the Respondent had assaulted the victim and, as such, had committed the offence punishable u/s 302 of the IPC. The learned Counsel further submitted that the Appellants had established that the gold ornaments belonging to the victim were sold by the Respondent to the goldsmith which besides being the circumstance to establish the fact that the Respondent had committed the offence of murder nevertheless she was also liable to be punished for committing an offence u/s 392 of the IPC. The learned Counsel took us through the evidence of the prosecution witnesses and pointed out that the chain of events had been established by the Appellants on the basis of different circumstances which establish beyond reasonable doubt that the Respondent had committed offences punishable u/s 302 and 392 of the IPC. The learned Public Prosecutor further submitted that the learned Sessions Judge had erroneously acquitted the Respondent by giving the benefit of doubt.

4. On perusal of the material on record and the evidence adduced by the Appellants, we find that the main circumstances which are claimed to be established by the Appellants to implicate the Respondent for the offences are as under:

(i) Last seen together with the victim;

(ii) Recovery of the gold ornaments; and (iii) Illicit relationship between one Krishna Phadte and the victim.

5. There is no dispute that the Appellants have not evidenced of any eye witness to establish that the Respondent had committed the crime. The case of the Appellants is based on circumstantial evidence. The Appellants examined 33 witnesses in support of their case. The contention of the Appellants is that the Respondent had committed the murder of her sister in order to rob her of her gold ornaments. Considering that there are no eye witnesses to the crime, it would be essential to ascertain as to whether on the basis of material on record, the Appellants were able to establish beyond reasonable doubt each and every incriminating circumstance and that such circumstance forms a chain of events so as to establish the guilt of the accused. For the purpose of establishing the guilt of the accused, it is necessary that each and every circumstance must be clearly established on the basis of reliable

evidence and that every such circumstance should form a chain so that the guilt of the accused is conclusively established.

6. Dealing with the first circumstance claimed by the Appellants to the effect that the Petitioner was last seen in the company of the accused, we find that from the evidence on record there is no material which conclusively establishes that the deceased was last seen in the company of the accused. On the contrary, the evidence of the children of the deceased establishes that the daughter of the deceased by name Priyanka has stated that before she and her brother had left to go to school, the Respondent left the house along with her son to go to Calangute. As such, it cannot be said from such evidence on record that the Respondent was the last person seen in the company of the victim. The Tipparam Prabhakar Vs. The State of Andhra Pradesh, has held at para 16 thus:

16. 31. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

Hence, we find that the said circumstance sought to be relied upon by the learned Public Prosecutor has not been established by any cogent and positive evidence on record.

7. The next circumstance is with regard to the recovery of the gold ornaments. To establish the said aspect, the prosecution has examined PW5 who was a rikshaw driver who has stated that the Respondent had engaged his rikshaw to go to Revora and thereafter he had brought her back and dropped her at Mapusa near Union Pharmacy with a bag which she had brought from the house at Revora. The claim of the prosecution is that during the said period of time of about half an hour when she went to the house at Revora she had committed the murder. The PW5 has stated that he had parked the rikshaw on the road which is close to the house. The learned Sessions Judge has examined the evidence of the witness PW5 and found that there were material contradictions in his deposition which have not been substantially explained. Though the rikshaw driver states that he had parked his vehicle very close to the residential house, it is very surprising that he was not able to hear any screams or any other actions in the house considering that the allegations are that the accused had caused eighteen injuries on the body of the deceased. The said rikshaw driver had not stated that he had heard any sound inside the house nor had noticed any blood stains on the clothes of the Respondent which creates a doubt with regard to the evidence of the said witness. There was no

incriminating material which had been found at the scene of offence which could implicate the Respondent in the crime. The said witness has improved his statement in the Court when he said that the Respondent came from the house with a bag which was not stated in the statement before the police and no explanation was given when he was controverted in the cross-examination. The case of the prosecution that the gold ornaments were kept with the goldsmith Shri Ulhas Shirodkar by the Respondent has also not been established. PW6 who is the goldsmith appears to be not at all reliable. Apart from that there is a contradiction about the opening of the cupboard where the gold ornaments were found missing between the statement of the husband of the deceased and the Investigating Officer. The learned Sessions Judge has appreciated the evidence of the said goldsmith and found that the statement made by him cannot establish that the gold was handed over to him without even issuing an acknowledgment receipt nor paying any amount. The learned Sessions Judge has found his testimony as being shrouded in mystery and does not appeal to common sense. On minute examination of the evidence of the said goldsmith, the learned Sessions Judge was justified in coming to the conclusion that the said goldsmith was unreliable.

8. The next circumstance which was sought to be established by the Appellants is with regard to the illicit relationship between the deceased and one Krishna Phadte. The learned Sessions Judge has appreciated the evidence of the husband of the deceased and found that such allegations were not at all well found. The learned Sessions Judge has also examined the daughter of the deceased named Priyanka and found that the contention about any such illicit relationship has not been established. On examination of the evidence adduced by the Appellants, we find that in his deposition before the Court, the husband of the deceased namely Pundalik Pilgaonkar did not have any grievance on that count against the deceased. He has further stated that said Krishna Phadte was treating his wife as his sister and she was tying rakhi to him. He has also stated that the father of Krishna Phadte had given the house on rent for one year. We find no fault in the findings of the learned Additional Sessions Judge that the said circumstance has not been established.

9. The M.C. Ali and Another Vs. State of Kerala, has held at para 57 thus:

57. This settled proposition of law has been reiterated by this Court in Chandrappa v. State of Karnataka. In this case, the provisions of Section 378 of the Code of Criminal Procedure, 1973 were critically examined. After adverting to numerous decisions of this Court, it was observed as follows:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ''substantial and compelling reasons'', ''good and sufficient grounds'', ''very strong circumstances'', ''distorted conclusions'', ''glaring mistakes'' etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ''flourishes of language'' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

From the above, it becomes evident that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. The acquittal reinforces and reaffirms the presumption of innocence of the accused."

10. On the basis of the overall evidence on record and considering the impugned judgment passed by the learned Sessions Judge we find that the Appellants have failed to establish the circumstances claimed by them so as to implicate the Respondent in the crime. The Appellants have failed to establish the circumstance to take any inference of guilt of the Respondent. No definite circumstance has been established pointing towards the guilt of the Respondent nor can the cumulative effect of any such circumstances form a chain so as to conclude that in all probability the crime was committed by the Respondent. The chain to establish the guilt of the Respondent has not at all been proved by the Appellants by any cogent and reliable evidence. The learned Sessions Judge was as such justified to come to the conclusion that the Appellants have failed to establish beyond reasonable doubt the guilt of the Respondent and give the benefit of doubt to the Respondent and acquit the Respondent.

11. We find no infirmity committed by the learned Sessions Judge while passing the impugned judgment. We find no merit in the above appeal and, consequently, the appeal stands dismissed.