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SUBHASH HARNARAYANJI LADDHA

v.

STATE OF MAHARASHTRA

DECEMBER 5, 2006

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Penal Code, 1860; Ss. 302, 364, 465, 467, 471 r/w S. 120B:*

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*Conspiracy and murder—Land/property belonging to deceased allegedly sold by accused by forging power of attorney—Hatching of conspiracy and committed murder of the deceased misappropriated the amount received in consideration of sale proceeds of the land/property—FIR—Charge-sheet against accused Nos. 1 to 5—Trial Court found accused persons guilty of committing crime u/ss. 302, 364, 465, 467 and 471 r/w S. 120B and convicted and sentenced them accordingly—Affirmed by High Court—On appeal, Held:*

D

*In conspiracy to forge power of attorney, involvement of accused-appellants not proved—Purported agreement to sell having not proved, contents thereof wholly inadmissible in evidence—Therefore, no part thereof including consideration amount specified therein could be used by the prosecution against accused—No allegation imputed against accused-appellants in a report filed by the wife of the deceased—No evidence brought on record to show involvement of accused persons—Since deal about selling of land was stated to be settled between the deceased and PW25, inference could not be drawn about involvement of accused in both conspiracies—Conspiracy having not been established as regards commission of forgery, the larger conspiracy*

E

*of committing the murder could not be established/proved—Suspicion, however grave, is no substitute for proof—Circumstantial evidence insufficient to prove pre concert amongst the accused persons—Hence accused entitled to benefit of doubt—Judgment of conviction and sentence set aside—Evidence—Circumstantial evidence.*

F

*of committing the murder could not be established/proved—Suspicion, however grave, is no substitute for proof—Circumstantial evidence insufficient to prove pre concert amongst the accused persons—Hence accused entitled to benefit of doubt—Judgment of conviction and sentence set aside—Evidence—Circumstantial evidence.*

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**Deceased purported to have entered into an agreement of sale in respect of certain land with the appellants on consideration amount of fifteen lakh rupees. An advertisement for sale of the land/properties in question was issued in a newspaper on 26.7.2000. Admittedly, a Deed of Sale was executed by the accused No.1 in favour of the appellants for certain sale consideration on**

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8.8.2000. There exists a dispute as to whether he had accepted a sum of Rs.75,000/- or a sum of Rs.2 lakhs by way of earnest money. A purported General Power of Attorney is said to have been executed by the deceased in favour of accused no.1. Accused No.5 has allegedly impersonated as the deceased. Later, the power of attorney was found to be a forged one. As the deceased was found missing since 3.9.2000, a report to that effect was lodged by his wife (PW38), but the deceased could not be traced out. She filed another report. The High Court recorded the principal allegations contained in the report that she was informed by her husband that a deal for selling the land/property was settled with PW25, who had given a sum of Rs.75,000/- by way of earnest money and in that view of the matter she suspected that Accused No.1 might have abducted her husband and kept him confined to some place or might have caused danger to his life in order to grab the amount received by him on the basis of the forged general power of attorney. On the basis of the report, a First Information Report was registered by the police under Section 364 IPC. In the meanwhile a dead body was found by the Police. A First Information Report was also recorded by the Police. On the same day accused, PW1 surrendered before the Police. He informed the investigating officer that the deceased was murdered by Accused No.1. He turned out an approver. In his statement he furnished details as to how the deceased had been murdered. He also disclosed the role played by him at the instance of accused No.1.

A charge-sheet was filed by the Police against accused No.1 for committing the crime under Sections 364, 302, 201, 420, 467, 468, 471 read with Section 34 IPC and accused Nos.2 to 4 for committing the crime under Sections 420, 467, 468, 471 read with Section 34 IPC. The statement of PW1 was recorded under Section 306 of the Code of Criminal Procedure after grant of pardon to him. Initially charges were not framed against Accused Nos. 2 to 4 under Sections 302 and 102B of the Indian Penal Code but later the same were altered by an order dated 20.7.2004. The appellants were convicted by the Trial Judge for the offence alleged and sentenced accordingly. Aggrieved, they filed appeals, which were dismissed by the High Court. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1. Purported *circumstultra vires* had weighed the Trial Judge as also the High Court to arrive at a finding of guilt against the accused-appellants revolve around execution of the sale deed as also the purported

A earnest note. [47-G]

B 1.2. The theory propounded by the prosecution was that the accused had entered into two conspiracies, one was the smaller one being forgery of power of attorney which was used for execution of the sale deed and the other one leading to murder of the deceased. The smaller conspiracy appeared to have given rise to the larger conspiracy, namely, murder of the deceased so that accused no.1 can appropriate the entire amount of consideration. Both the conspiracies although might have been hatched at two different stages, were treated to be parts of the same transaction. [48-C-D]

C 1.3. With a view to ascertain the involvement of accused-appellants, it is noticed that in the conspiracy to forge power of attorney, it has not been proved that apart from accused nos.1 and 5 anybody else was involved. The purported agreement to sell having not been proved, the contents thereof were wholly inadmissible in evidence. If it was not admissible in evidence, no part thereof far less the amount of consideration specified therein or the amount of earnest money stated therein could be used by the prosecution against the accused. If the said document had not been proved, no reliance thereupon could be placed for any purpose whatsoever. The said agreement also said to have been cancelled. PW25, on whose deposition the High Court had relied upon, stated that a sum of Rs.2 lakhs was paid by way of earnest money. PW38, wife of the deceased, however, states that only a sum of Rs.75,000/- was paid. She further states that the original agreement was with PW25. She did not produce the same. The Public Prosecutor did not offer any explanation whatsoever as to why the original agreement for sale was not produced. According to PW38 she obtained a xerox copy of the said agreement of sale from the Collectorate. At whose instance the said xerox copy was filed with the Collector of the District has not been established. [48-E, F, G, H]

G 1.4. In her report dated 18.9.2000, PW38 did not disclose about the agreement for sale. She did not make any allegation against the accused even in her second report. The suspicion that the deceased was done away with must have been crystallized by then but no allegation whatsoever was made against the accused. There is furthermore nothing on record to show that they had anything to do with Accused No.1 during the period between 16.5.2000 to 30.6.2000 when the purported power of attorney was executed. [49-B]

H 1.5. No evidence was brought on records to show the involvement of the accused persons prior to 3.9.2000. Even no prosecution witness had stated

that the deceased was done away with as he came to learn about the forgery and that he had been deprived of a huge sum of amount. If the statement of PW38 was correct that a deal had been made by her husband with PW25 only, it is difficult to arrive at an inference that the accused persons were parties to both the conspiracies. [49-D, E] A

1.6. Statement of PW 38, wife of the deceased before the court was made on the basis of what she had learnt from her husband. She had no direct knowledge thereabout. Her statement was not admissible in evidence under Section 32 of the Indian Evidence Act. [49-G] B

1.7. In absence of any connecting links in the chain there is no reason to agree with the findings of the Courts below that conspiracy by the accused for committing forgery of the power of attorney has been established. If ingredients of conspiracy have not been established for proving the prosecution case as regards commission of forgery, the larger conspiracy also cannot be said to have been proved. [49-H; 50-A] C

2.1. Except PW1 nobody has deposed with regard to commission of murder. PW1, in his statement before the police, did not even name accused no.2. His name was disclosed by him, for the first time, in his statement made before the Magistrate under Section 164 Cr.P.C. In his statement before the Magistrate he merely alleged that accused no.1 had taken him to a Hotel where accused no.2 was sitting. Why accused no.1 took him to the hotel has not been explained. Why accused no.1 wanted accused no.2 to pay him some money has also not been disclosed. Even if the statement made by PW1 that accused no.1 did ask the accused no.2 to pay some money, the very fact that he declined to do so stating "who has asked him to commit murder of the deceased" is itself pointer to the fact that even accused no.2 was not a party to the conspiracy. [50-B, C] D E F

2.2. In the facts and circumstances of the case, it will be hazardous to convict the appellants only on the basis of slander evidence. Suspicion howsoever grave may be is no substitute for proof. Circumstantial evidence which might have been brought on records are not such which can lead to a firm conclusion that there had been a pre-concert amongst the appellants on the one hand and the accused no.1 on the other. There is even no allegation far less any proof that at any point of time prior to 3.9.2000 the accused no.2 had met accused no.1. [50-D, E] G

2.3. It is also noticed that even the investigating officer did not consider H

**A** it appropriate to charge the appellants for commission of murder of the deceased or they being party to the conspiracy. For the reasons stated, the appellants are entitled to benefit of doubt. [50-E, F]

CRIMINAL APPELLATAE JURISDICTION : Criminal Appeal No. 844 of 2006.

**B** From the final Judgment and Order dated 28-2-2006 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in CrI. A. No. 698/2004.

Vijay Kotwal, Uday Umesh Lalit, Venkateshwara Rao Anumolu, Meenakshi Arora and Gaurav Agrawal for the Appellant.

**C** Sushil Karanjkar and Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

**D** **S.B. SINHA, J.** These three appeals arising out of a common judgment of conviction and sentence, were taken up for hearing together and are being disposed of by this common judgment. Accused Nos.2 to 4 before the learned Sessions Judge are before us. Accused No.1 was Ajay @ Rameshwar Raghuram @ Sheshrao Galat Dhabekar, Accused No.5 was Baijrao @ Rawalsingh Saju Rathod. Accused No.1 was convicted for commission of an offence under Sections 302, 364, 467, 468, 471 read with Section 120B of the Indian Penal Code whereas Accused No.5 was convicted for commission of an offence under Section 465 of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for two years.

**E** The deceased was one Yadav Navkar. He was resident of Survey No.45 of Village Umri, Taluka Akola. He purported to have entered into an agreement of sell in respect of the said land with the appellants herein on or about 16.5.2000. The amount of consideration stipulated therein is said to be fifteen lakhs. There exists a dispute as to whether he had accepted a sum of Rs.75,000/- or a sum of Rs.2 lakhs by way of earnest money. A purported General Power of Attorney is said to have been executed by the deceased in favour of accused no.1 on 30.6.2000. Accused No.5 is said to have impersonated as the deceased. The said power of attorney was found to be a forged one.

**F** An advertisement for sale was issued in a newspaper known as "Daily Dshonnati" on 26.7.2000 stating that 1 Hectare 1 Are in Survey No.45 is available for sale. Admittedly, a Deed of Sale was executed by the accused

**G** No.1 in favour of the appellants herein for a sale consideration of Rs.9 lakhs

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on 8.8.2000.

As the deceased was found missing since 3.9.2000, a report to that effect was lodged by his wife Smt.Kaushalyabai (PW38). As despite the said report of Kaushalyabai, the deceased could not be traced out, another report was made by her stating that her husband could not be traced since 3.9.2000. The High Court recorded the principal allegations contained in the said report in the following terms:

“....that her husband Yadav Navkar had left the house on 3rd September, 2000 at about 9 O’clock and he had stated he will return within half an hour but he had not returned. The missing report was registered and search was carried out for Yadav Navkar but he was not traced. Meanwhile, Kausalyabai received a letter in the name of her daughter Geeta purported to have been addressed by Yadav Navkar informing her that he had gone to village Pandhari near Shegaon and then he had left for Shirdi. Since Yadav Navkar was still not traceable search was being carried out. Thereafter, Kausalyabai received information that the land owned by her husband bearing Survey No. 45 of village Umri, Taluka Akola was sold by one Ajay Galat (accused no. 1) under the garb of general power of attorney executed by Yadav Navkar in his favour to accused nos. 2 to 4 and that the said power of attorney was executed by Yadav Navkar in favour of the accused no. 1 on 30.6.2000. She also learnt that the sale-deed in respect of the said land was executed on 8.8.2000 for consideration of Rs. 9 lacs. However, since Yadav Navkar along with his family members had gone to pilgrimage and had returned to Akola on 1.7.2000 in the morning it was impossible for Yadav Navkar to execute the power of attorney on 30th June, 2000. Moreover, earlier there was an agreement of sale executed between the deceased and accused nos. 2 to 4 in respect of the very same property under which Yadav Navkar had received an amount of Rs. 75,000/-. The said agreement which was executed on 16th May, 2000 was later on cancelled and hence there was no possibility of Yadav Navkar selling the same land to accused nos. 2 to 4. On 14th October, 2000 Kausalyabai lodged a report stating all the above referred facts. She also stated in the said report that accused no. 1 Ajay Galat had been to her house on 3rd September, 2000 and her husband had gone with him and then her husband had not returned. She suspected the role of accused no. 1 in commission of murder of her husband....”

A It was further alleged that she was informed by her husband that the deal was settled with a person named Suresh Deshmukh (PW25) and he had given a sum of Rs.75,000/- by way of earnest money and in that view of the matter she suspected that Accused No.1 might have abducted her husband and kept him confined to some place or might have caused danger to his life in order to grab the amount received by him on the basis of the said forged general power of attorney.

B On the basis of the said report, a First Information Report was registered by the police under Section 364 IPC.

C In the meanwhile a dead body was found by the officers of Police Station Bhaidehi, Madhya Pradesh. A First Information Report was also recorded by the officer of the said Police Station. Information with regard to the dead body was received by the officers of Police Station Civil Lines, Akola on 22.10.2000. On the next day, i.e., on 23.10.2000 PW38 Kaushalyabai along with others went to Police Station Bhaidehi and on the basis of the articles purported to have been found on his dead body as also the photographs of the dead body, she identified it to be that of her husband Yadav Nawkar.

D On the same day Sunil Manmothe (PW1) surrendered before the Akola Police. He informed the investigating officer that Yadav Nawkar was murdered by Accused No.1. He turned as an approver and was examined by the prosecution in support of its case as PW1. In his statement he furnished details as to how the deceased had been taken from Akola on 3.9.2000 to various places and was ultimately murdered. He also disclosed the role played by him at the instance of accused No.1 after the said incidence of murder.

E During investigation, *inter alia*, it was found that Accused No.5 had executed an earnest note in respect of the land belonging to the deceased. Rajesh Ingole and Suresh Deshmukh were called to identify Accused No.5 as they were witnesses to the earnest note dated 16.5.2000 (Article "L").

F A charge-sheet thereafter was filed by the Police Officer incharge of Akola Civil Lines Police Station. In the charge-sheet Accused No.1 was alleged to have committed crime under Sections 364, 302, 201, 420, 467, 468, 471 read with Section 34 IPC and Accused Nos.2 to 4 have committed crime under Sections 420, 467, 468, 471 read with Section 34 IPC. The statement of PW1 was recorded under Section 306 of the Code of Criminal Procedure after grant of pardon to him on 26.12.2001. Initially charges were not framed

against Accused Nos. 2 to 4 under Sections 302 and 102B of the Indian Penal Code against the appellants but later the same were altered by an order dated 20.7.2004. A

The prosecution, in support of its case, examined 49 witnesses. We are, however, concerned with the evidence of those witnesses only, namely, PW 1 Ajay Galat who became the approver; PW25 Suresh Deshmukh in whose presence the purported agreement to sell (Article L) dated 16.5.2000 was executed; and PW38 Kaushalyabai who was the complainant. B

The appellants were convicted by the learned Trial Judge. Their appeal before the High Court has also been dismissed by reason of the impugned judgment. C

Accused No.1 being not before us, it is not necessary for us to scrutinize the entire evidence on record. It is also not necessary to go into the niceties of legal questions as regards the mode and manner in which the PW1 was granted pardon and was made an approver by the police. Accused No.5 has been convicted under Section 365 IPC and sentenced to two years RI. He has accepted the verdict and did not prefer any appeal before the High Court. D

The case of the prosecution, to some extent, may be held to have been proved, namely, Accused No.1 in collaboration with Accused No.5 forged the general power of attorney and he, relying on, on the basis thereof executed a deed of sale in favour of Accused Nos.2 to 4. Prior thereto an advertisement was published in the newspaper and a sum of Rs.9 lakhs in cash was received by Accused No.1 from the appellants herein and out of the said sum he deposited a sum of Rs.8 lakhs in different banks. His involvement in the murder of the deceased is also not in dispute. The identity of the dead body is also not in dispute before us. The mode and manner in which the deceased has been done away with is also accepted. The role played by the approver Accused No.1 may not also be of much significance for our purpose. E F

The purported circumstances which had weighed the learned Trial Judge as also the High Court to arrive at a finding of guilt against the appellants herein revolve around execution of the sale deed as also the purported earnest note (Article L). It is also not in dispute that PW1 had named the accused No.2 in his statement but had not named the accused Nos.3 and 4. G

The High Court proceeded to hold that keeping in view the fact that the prosecution did not explain non production of original Agreement to Sell H

A dated 16.5.2000 and merely produced a xerox copy thereof, the same was not admissible in evidence. It, however, relied upon the oral testimonies of PW25 and PW38 to form an opinion that in view of the fact that the amount of consideration fixed in the Agreement to Sell dated 16.5.2000 was Rs.15 lakhs, the sale deed having been executed for a consideration of Rs.9 lakhs, the appellants herein must have conspired with the accused No.1 for commission of the said offence. It was also noticed that when the accused No.1 took PW1 to Hotel Dreamland where the accused no.2 was sitting, he was asked by the former to pay some amount to him but he refused to do so saying "who had asked you to murder the deceased". It was opined that the aforementioned circumstances are sufficient to come to the conclusion that the appellant  
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C herein conspired amongst themselves to commit the said crime.

The theory propounded by the prosecution was that the accused had entered into two conspiracies, one was the smaller one being forgery of power of attorney which was used for execution of the sale deed and the other one leading to murder of the deceased. The said smaller conspiracy appeared to  
D have given rise to the larger conspiracy, namely, murder of the deceased so that accused no.1 can appropriate the entire amount of consideration. Both the conspiracies although might have been hatched at two different stages, were treated to be parts of the same transaction.

E With a view to ascertain the involvement of appellants, we may notice that in the conspiracy to forge power of attorney, it has not been proved that apart from accused nos.1 and 5 anybody else was involved. Article L, the purported agreement to sell having not been proved, the contents thereof were wholly inadmissible in evidence. If it was not admissible in evidence, no part thereof far less the amount of consideration specified therein or the  
F amount of earnest money stated therein could be used by the prosecution against the appellants. If the said document had not been proved, no reliance thereupon could be placed for any purpose whatsoever. The said agreement also said to have been cancelled. PW25, on whose deposition the High Court had relied upon, stated that a sum of Rs.2 lakhs was paid by way of earnest money. PW38, however, states that only a sum of Rs.75,000/- was paid. She  
G further states that the original agreement was with PW25. He did not produce the same. The Public Prosecutor did not offer any explanation whatsoever as to why the original agreement for sale was not produced. According to  
H PW38 she obtained a xerox copy of the said agreement of sale from the Collectorate. At whose instance the said xerox copy was filed with the Collector of the District has not been established.

Inconsistencies in the statements of PW25 and PW38 are galore. If the said agreement was cancelled, whether the amount of earnest money was returned to the appellants or not has not been stated.

In her report dated 18.9.2000 PW38 did not disclose the said agreement for sale. She did not make any allegation against the appellants herein even in her second report. The suspicion that the deceased was done away with must have been crystallized by then but as indicated hereinbefore no allegation whatsoever was made against the appellants. There is furthermore nothing on record to show that they had anything to do with Accused No.1 during the period between 16.5.2000 to 30.6.2000 when the purported power of attorney was executed.

The learned Trial Judge, in his judgment, opined that till execution of the sale deed the appellants had nothing to do with the commission of the offence. According to the learned Trial Judge they came in picture only at the time of execution of the sale deed. They may be present on the date of the execution of the sale but that by itself in our considered opinion, does not lead to an inference that they were parties to conspiracy. No evidence was brought on records to show the involvement of the appellants prior to 3.9.2000. Even no prosecution witness had stated that the deceased was done away with as he came to learn about the forgery and that he had been deprived of a huge sum of amount. If the statement of PW38 was correct that a deal had been made by her husband with PW25 only, it is difficult to arrive at an inference that the appellants were parties to both the conspiracies. In her own words:

“...He had settled the deal of agricultural land with Suresh Deshmukh and he had immediately handed over to me an amount of Rs.75,000 received as an earnest money. He did not tell me about any other transaction with anybody besides the aforesaid deal...”

Her statement before the court was made on the basis of what she had learnt from her husband. She had no direct knowledge thereof. Her statement was not admissible in evidence under Section 32 of the Indian Evidence Act.

In absence of any connecting links in the chain we are unable to agree with the findings of the learned Trial Judge as also the High Court that conspiracy by the appellants for committing forgery of the power of attorney has been established. If ingredients of conspiracy have not been established

A for proving the prosecution case as regards commission of forgery, the larger conspiracy also cannot be said to have been proved.

Except PW1 nobody has deposed with regard to commission of murder. PW1, in his statement before the police, did not even name accused no.2. His name was disclosed by him, for the first time, in his statement made before the Magistrate under Section 164 Cr.P.C. In his statement before the learned Magistrate he merely alleged that accused no.1 had taken him to Dreamland Hotel where accused no.2 was sitting. Why accused no.1 took him to the hotel has not been explained. Why accused no.1 wanted accused no.2 to pay him some money has also not been disclosed. Even if the statement made by PW1 that accused no.1 did ask the accused no.2 to pay some money, the very fact that he declined to do so stating "who has asked him to commit murder of the deceased" is itself pointer to the fact that even accused no.2 was not a party to the conspiracy.

It is in the aforementioned situation, we are of the opinion that it will be hazardous to convict the appellants herein only on such slander evidence. Suspicion howsoever grave may be is no substitute for proof. Circumstantial evidence which might have been brought on records are not such which can lead us to a firm conclusion that there had been a pre-concert amongst the appellants on the one hand and the accused no.1 on the other. There is even no allegation far less any proof that at any point of time prior to 3.9.2000 the accused no.2 had met accused no.1.

We may also notice that even the investigating officer did not consider it appropriate to charge the appellants herein for commission of murder of the deceased or they being party to the conspiracy. As noticed hereinbefore only in 2004 the charges against the appellants were amended.

For the reasons stated above we are of the opinion that the appellants herein are entitled to benefit of doubt. The appeals are allowed and the impugned judgment of conviction and sentence is set aside. The appellants shall be set at liberty forthwith unless wanted in connection with any other case.

S.K.S.

Appeal allowed.