

STATE OF MAHARASHTRA
v.
ARJUN
(Criminal Appeal No. 1155 of 2004)

NOVEMBER 5, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860 – ss. 302/34 and 201/34 – Prosecution under, of two accused – Conviction of both by trial court on the basis of circumstantial evidence – High Court convicting A-1 while acquitting A-2 – Appeal against acquittal – Held: Circumstances relied on not sufficient to fasten the guilt on A-2.

Respondent-Accused No.2 was prosecuted u/ss. 302/34 and 201/34 IPC alongwith Accused No. 1 for having caused death of a person. Prosecution case was that the deceased was objecting to the illicit relationship between the accused persons. The case was based on circumstantial evidence. Trial court convicted both the accused relying on five circumstances. High Court confirmed the conviction of Accused No. 1 while acquitting the respondent-accused.

In appeal against acquittal, State contended that in the circumstances that respondent had illicit intimacy with Accused-1; that he purchased rat killer, gunny bag, nylon rope and cotton rope; that the dead body of the deceased was discovered at his instance; and that the dead body was found in gunny bag tied with cotton ropes and two stones were tied with nylon rope, respondent is liable to be convicted.

Dismissing the appeal, the Court

A **HELD:** Regarding the circumstances of purchase of
rat killer poison and the gunny bag , there was no
evidence to show that either the rat killer poison or the
gunny bag was purchased prior to the date of
occurrence. The body of the deceased was found in a
B decomposed state. The Doctor who conducted the post
mortem, categorically stated that in view of the
decomposed state of the dead body, it was not possible
to say whether any rat killing poison was used. The only
other circumstance is purported, discovery of the dead
C body at the instance of the respondent. The High Court
has found that this so-called discovery on the basis of
the information given by respondent-accused has not
been established. Thus, the High Court's judgment does
not suffer from any infirmity to warrant
D interference. [Paras 5 and 6] [498-E-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No.1155 of 2004.

E From the final Judgment and Order dated 8.8.2003 of the
High Court of Judicature at Bombay, Bench at Aurangabad in
Criminal Appeal No. 204 of 1998.

Sushil Karanjkar and Ravindra Keshavrao Adsure for the
Appellant.

F Shivaji M. Jadhav and Pramji Paul for the Respondent.

The Judgment of the Court was delivered by

G **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is
to the judgment of a Division Bench of the Bombay High Court
at Aurangabad. Two persons – Indrajit Kaur (hereinafter
described as A-1) and the present respondent Arjun
(hereinafter described as A-2) had filed the appeal questioning
their conviction and imposition of sentence, as done by the
learned Second Additional Sessions Judge, Osmanabad.
H Each one of them was convicted for offences punishable under

Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced to undergo imprisonment for life and to pay a fine of Rs.3,000/- with default stipulations. They were also convicted for the offences punishable under Section 201 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- with default stipulations. The appeal was allowed by the impugned judgment, so far as present respondent is concerned.

2. According to the prosecution, the accused persons were having illicit relationship which was being objected to by Jagnandan Singh (hereinafter referred to as the 'deceased'). Taking exception to his interference to their illicit relationship, the accused persons decided to take away his life and accordingly he was killed. Since, there was no direct evidence, the prosecution relied upon certain circumstances to establish that the accused persons were guilty. The Trial Court found the five incriminating circumstances to be sufficient to fasten the guilt on the accused persons and, accordingly, convicted them, as aforementioned. In appeal, the High Court found that the evidence was sufficient so far as accused No.1 is concerned, but was insufficient so far as the present respondent is concerned. It is to be noted that apart from five allegedly incriminating circumstances, which were pressed into service so far as the present respondent is concerned, there were other materials to hold accused No.1 guilty. The High Court was of the view that the circumstances highlighted were not sufficient to fasten the guilt on A-2 and directed his acquittal while upholding the conviction of A-1.

3. In support of the appeal, learned counsel for the appellant-State submitted that the accusations were established against A-1. The same analogy should have been applied in the case of the present respondent. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.

A 4. The circumstances which were pressed into service to fasten the guilt on the accused are, as follows:

1. Illicit intimacy with accused No.1.

B 2. The accused No.2 purchased two packets of rat killer poison from the shop of Motichand, PW-5.

3. The accused No.2 purchased gunny bag (article 16), cotton rope (Articles 17, 18 and 19) and nylon rope (article 20) from the shop of Abhay Bhoj, PW-6.

C 4. Discovery of dead body of Jagnandansingh from Morda Tank at the instance of accused No.2.

D 5. Dead body of Jagnandansingh was found in a gunny bag that the dead body was tied by means of cotton rope and that two stones were found to have been tied to gunny bag by means of nylon rope.

E 5. So far as the purchase of rat killer poison and the gunny bag is concerned, there was no evidence to show that either the rat killer poison or the gunny bag was purchased prior to the date of occurrence. It is to be noted that the body of the deceased was found in a decomposed state. The Doctor who conducted the post mortem categorically stated that in view of the decomposed state of the dead body, it was not possible to say whether any rat killing poison was used. The only other circumstance is purported discovery of the dead body at the instance of the respondent. The High Court has found that this so-called discovery on the basis of the information given by A-2 has not been established.

G 6. Above being the position, we find that the High Court's judgment does not suffer from any infirmity to warrant interference. The appeal is, accordingly, dismissed.

H K.K.T.

Appeal dismissed.