

A SUDAM @ RAHUL KANIRAM JADHAV
v.
STATE OF MAHARASHTRA
(Criminal Appeal Nos. 185-186 of 2011)

B JULY 4, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

*Penal Code, 1860: ss.302, 201 – Homicidal death –
C Death due to strangulation – Five deceased – Conviction
based on circumstantial evidence – Appellant-accused living
with the deceased woman as husband and wife, along with four
children, two from her first husband and two from the appellant
– By projecting himself to be single, appellant married
D another woman (PW-6) – When deceased woman discovered
the illicit relationship of appellant and PW-6, she agreed to
pay Rs.15000 to PW-6 to leave appellant – Appellant,
thereafter, came back with the deceased woman and children
to his village – After two days, the dead bodies of the
E deceased woman and children found in the village pond –
Relying on circumstantial evidence, trial court convicted the
appellant u/ss.302 and 201 and awarded death sentence –
High Court confirmed conviction and death sentence – On
F appeal, held: All the deceased met homicidal death – The
evidence of mother of deceased and PW.6 showed that
deceased and four children were last seen alive with the
appellant two days prior to recovery of dead bodies –
Appellant had also made extra-judicial confession before
PW.6 that he committed murder on account of the
G harassment meted out to him by his wife – The circumstances
led to one and the only conclusion that the appellant had
committed the murder of all the five persons – Accordingly
conviction of appellant upheld – As regards sentence, the
appellant killed the woman with whom he lived as husband*

H

SUDAM @ RAHUL KANIRAM JADHAV v. STATE OF 1105
MAHARASHTRA

and wife, a woman who was in deep love with him and willing to pay Rs.15,000/- to PW.6 to save the relationship – The manner in which the crime was committed clearly showed it to be premeditated and well planned – He not only killed the deceased but crushed her head to avoid identification – Killing four children, tying the dead bodies in bundles of two each and throwing them in the Pond would not have been possible, had the appellant not meticulously planned the murders – It showed that the crime was committed in a beastly, extremely brutal, barbaric and grotesque manner – The offence resulted into intense and extreme indignation of the community and shocked the collective conscience of the society – The case in hand fell in the category of the rarest of the rare cases and the trial court did not err in awarding the death sentence and the High court in confirming the same – Sentence/ Sentencing.

Evidence: Circumstantial evidence – Held: To bring home the guilt on the basis of the circumstantial evidence, the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused – In a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established – The circumstances so proved must unerringly point towards the guilt of the accused – It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else – It has to be considered within all human probability and not in fanciful manner – In order to sustain conviction, circumstantial evidence must be complete and must point towards the guilt of the accused – Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence.

The prosecution case was that the victim (deceased-woman) was living with the appellant as his wife. The

A deceased-woman had two children from her first marriage and two children from her marriage to the appellant. The deceased-woman came to know about the illicit relationship of the appellant with PW-6. Thereafter, the appellant, PW-6 and the deceased-woman had serious dispute over the issue. The appellant orally agreed to divorce Pw-6 and pay Rs. 15,000/- to her. The said amount was agreed to be paid by deceased-woman. Thereafter, PW-6 went back to her village. The deceased-woman and her children came back with the appellant. After two days, the dead body of the deceased-woman and her four children were found floating in the village pond.

The trial court held that the circumstances clearly led to the only conclusion that the appellant had committed the murder of the four children and the deceased-woman and in order to cause disappearance of evidence of murder threw the dead bodies in the pond and convicted the appellant under Sections 302 and 201 IPC and awarded the death sentence. On appeal, the High Court concurred with the findings of the trial court and confirmed the conviction and the death sentence. The instant appeal was filed challenging the order of conviction and sentence.

Dismissing the appeal, the Court

HELD: 1.1. All the deceased met homicidal death. P.W.10 who had conducted the post mortem of the dead bodies of the four children clearly stated in his evidence that all the four children died of asphyxia due to throttling. P.W.4 who conducted post-mortem examination of deceased (victim-woman) opined that she died of asphyxia due to strangulation. In view of that there was no doubt that all the five deceased met homicidal death. [Para 6] [1111-D-E]

H

1.2. The evidence of PW.5, the mother of the deceased and PW.6 was to the effect that the deceased-woman along with the four children was living with the appellant. The appellant married PW.6 projecting himself to be single and the protest made by the deceased led to the divorce. The evidence of these witnesses and PW.8 showed that the deceased and four children were last seen alive with the appellant two days prior to the incident when the dead bodies of the four children were found floating in the Pond and of the deceased under a boulder. The appellant had also made extra-judicial confession before PW.6 and PW.9. He confessed to have committed the murder on account of the harassment meted out to him by his wife. The evidence of the said witnesses showed that the appellant had motive to commit the crime, was last seen with the deceased and had made extra-judicial confession before the two witnesses PW.6 and PW.9, admitting the commission of crime. Further, he absconded and he was unable to explain how the woman with whom he was living as husband and wife and the children met the homicidal death. To bring home the guilt on the basis of the circumstantial evidence, the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner. In order to sustain conviction, circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but

A

B

C

D

E

F

G

H

A inconsistent with his innocence. The circumstances, lead to one and the only conclusion that the appellant had committed the murder of all the five persons. Accordingly the conviction of appellant is upheld. [Para 13] [1113-E-H; 1114-A-D]

B 2. The appellant had chosen to kill the woman with whom he lived as husband and wife, a woman who was in deep love with him and willing to pay Rs.15,000/- to PW.6 to save the relationship. Appellant had not only
 C killed the two children of the deceased who were born from the first husband but also killed his own two children. He projected himself to be single and changed his name to dupe a woman and in fact succeeded in
 D marrying her. However, when the truth came to light, he committed clearly showed it to be premeditated and well planned. It seemed that all the four children and the woman were brought near the Pond in planned manner, strangled to death and dead bodies of the children thrown in the pond to conceal the crime. He not only killed
 E the deceased but crushed her head to avoid identification. Killing four children, tying the dead bodies in bundles of two each and throwing them in the Pond would not have been possible, had the appellant not meticulously planned the murders. It showed that the
 F crime has been committed in a beastly, extremely brutal, barbaric and grotesque manner. It resulted into intense and extreme indignation of the community and shocked the collective conscience of the society. The appellant is a menace to the society who cannot be reformed. Lesser
 G punishment shall be fraught with danger as it may expose the society to peril once again at the hands of the appellant. The case in hand fell in the category of the rarest of the rare cases and the trial court did not err in awarding the death sentence and the High court in
 H confirming the same. [Para 14] [1114-F-H; 1115-A-D]

SUDAM @ RAHUL KANIRAM JADHAV v. STATE OF 1109
MAHARASHTRA

CRIMINAL APPEAL JURISDICTION : Criminal Appeal A
No. 185-186 of 2011.

From the Judgment & Order dated 22.4.2009 of the High B
Court of Judicature at Bombay Aurangabad Bench in
Confirmation Case No. 1 of 2009 and Criminal Appeal No. 128
of 2009.

Manoj Prasad, Sadashiv Gupta, Ajay Kr. Chaudhary for the
Appellant.

Sushil Karanjakar, Sachin J. Patil, Sanjay Kharde, Asha C
Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Appellant, an D
accused held guilty of committing the murder of four children
and a woman with whom he was living as husband and wife
and sentenced to death is before us with the leave of the Court.

2. Residents of Rupla Naik Tanda, a remote village in E
District Nanded in the State of Maharashtra were horrified when
few of its natives found four dead bodies floating in the village
pond in the morning of 21st August, 2007. A male child of six
years alongwith a female child of ten years and another female
child of ten years alongwith a male child of two to four years F
were tied separately. P.W.1 Yashwant Jadhav, Inspector of
Rupla Naik Tanda outpost came to know about the presence
of dead-bodies in the pond through a villager and reached
there at 8.00 A.M. There besides the aforesaid dead-bodies,
he found the body of an unidentified woman with Mangalsutra G
on her neck below a boulder. He accordingly informed the
Mahur Police Station and on that basis crime under Section
302 and 201 of the Indian Penal Code was registered and the
investigation was entrusted to the Police Inspector Parmeshwar
Munde (P.W.14). He went to the spot took out the dead bodies
from the Pond and prepared the inquest reports. During the H

A course of investigation, Maroti Madavi identified the dead body of the woman to be his daughter, Anita and the two children of deceased Anita born to her from the first husband and two children from the appellant herein. Search was made to apprehend the appellant but he was not found till 24th August, 2007. During the course of investigation, it further transpired that the deceased Anita who was living with the appellant as his wife had come to know about his illicit relationship with P.W.6, Muktabai. The deceased used to protest the said relationship. This relationship led to serious dispute amongst deceased Anita, Muktabai and the appellant. Appellant orally divorced Muktabai and agreed to pay Rs.15,000/- to her. It was the deceased Anita who promised to pay the amount. Thereafter, Muktabai went to her village and the appellant the deceased Anita and the four children came to Juna Pani where because of the strained relationship, appellant committed the murder of Anita and the four children.

3. Police after usual investigation submitted the charge-sheet under Section 201 and 302 of the Indian Penal Code and the appellant was ultimately committed to the Court of Session to face the trial. Appellant denied to have committed any offence and claimed to be tried.

4. In order to bring home the charge the prosecution has altogether examined 14 witnesses besides a large number of documents have been exhibited. There is no eye-witness to the occurrence and relying on the circumstantial evidence the trial court came to the conclusion that the circumstances proved clearly lead to one and the only conclusion that the appellant had committed the murder of the four children and Anita and in order to cause disappearance of evidence of murder threw the dead bodies in the Pond. For coming to the aforesaid conclusion, the trial court held that the appellant had motive to commit the crime and the five deceased were last seen in the company of the appellant. Further extra-judicial confessions given before PW.6, Muktabai and PW.9, Ishwar were reliable.

Failure to explain the circumstances under which all of them met A
homicidal death were taken into consideration to hold the
Appellant guilty of the charge. Abscondence was another
circumstance relied on by the trial court to hold the appellant
guilty. The trial court awarded the death sentence. On appeal,
the High Court concurred with the findings of the trial court and B
finding the case to be one amongst the rarest of the rare cases
confirmed the death sentence.

5. We have heard Mr. Manoj Prasad, learned Counsel
appearing for the appellant; whereas respondent-State is C
represented by Mr. Sushil Karanjakar.

6. All the deceased met a homicidal death has not been
questioned before us. Dr. Bandiwan (P.W.10) who had
conducted the post mortem of the dead bodies of the four D
children has clearly stated in his evidence that all the four
children died of asphyxia due to throttling. Dr. Bhosale (P.W.4)
who conducted post-mortem examination of deceased Anita
in his evidence, has opined that she died of asphyxia due to
strangulation. In view of this, we have no manner of doubt that
all the five deceased met homicidal death. E

7. Mr. Prasad, however, contends that the circumstantial
evidence brought on record do not point out towards guilt of
the appellant. Mr. Karanjakar, however, submits that the
circumstances proved point towards the guilt of the appellant. F

8. PW.5, Anusayabai is the mother of the deceased and
she has stated in her evidence that her daughter Anita was
earlier married to one Anil Gedam and they were blessed with
two children. Because of differences, he deserted Anita and
the deceased thereafter started residing with her. According G
to her evidence, Anita suddenly left her house with the children
and she did not make any enquiry as she thought that she had
gone to her husband's place. After few days, according to this
witness she came to know that the deceased was not residing
with her husband Anil but in fact residing with the appellant. She H

A went to the house of the appellant, saw the deceased along with her children residing there. According to her evidence when she came to know about the dead bodies of the children floating in the Pond she went there and identified the dead bodies. They were the two children of the deceased and her husband Anil, B and other two children of the deceased and the appellant. She also found the dead body of her daughter Anita there.

9. PW.6, Muktabai has stated in her evidence that proposal for her marriage came on behalf of a person called Rahul and she was told that he is unmarried. Her evidence is C that the prospective bridegroom came to her house and proposed to marry her claiming that he was single. After marriage, both of them resided at the village for eight to ten days and thereafter went to Karim Nagar and resided there for about a month. According to her evidence, she returned to her D village along with her husband to attend the marriage of her cousin and while they were residing there the deceased Anita came there and informed her that the name of her husband is not Rahul but appellant Sudam and she had two children from him. Hearing this, the appellant fled away from there.

E 10. Muktabai has further deposed in her evidence that after some time the appellant came to her house and on being questioned, he disclosed that he was being harassed by the deceased Anita. Appellant further disclosed to this witness F Muktabai that the two children were his from Anita. The deceased requested this witness to release the appellant, whereupon appellant undertook to maintain both PW.6, Muktabai and the deceased Anita but later refused to accept the aforesaid proposal. According to her, appellant orally G divorced her and promised to give her Rs.15,000/-. Thereafter, according to this witness, Anita alongwith children went with the appellant. Few days thereafter, the Police came to her house and enquired the whereabouts of the appellant and the deceased. She was shown the photographs of four children and the deceased Anita. This witness has further stated that H

SUDAM @ RAHUL KANIRAM JADHAV v. STATE OF 1113
MAHARASHTRA [CHANDRAMAULI KR. PRASAD, J.]

after few days, appellant returned and on being asked, he disclosed that he had committed the murder of Anita and four children as Anita was harassing him. A

11. PW.9, Ishwar had stated in his evidence that the appellant made an extra-judicial confession before him that he strangulated the four children and his first wife to death and threw their dead bodies in the Pond as he was being harassed by his first wife. B

12. PW.8, Pralhad has stated in his evidence that on 19th August, 2007 when he was at his house the appellant along with his wife and four children came and asked for water. He has further stated in his evidence that he requested the appellant to stay back but he left the place along with his wife and four children and two to three days thereafter he came to know that he had killed his wife and the children. C D

13. Thus from the evidence of PW.5, Anusayabai the mother of the deceased and PW.6, Muktabai it is evident that the deceased Anita along with the four children were living with the appellant. The appellant had married PW.6, Muktabai projecting himself to be single and the protest made by the deceased led to the divorce. From the evidence of the aforesaid witnesses and further from the evidence of PW.8, Pralhad it is evident that Anita and four children were last seen alive with the appellant on 19th August, 2007. The dead bodies of the four children were found floating in the Pond and of Anita under a boulder on 21st August, 2007. Appellant has also made extra-judicial confession before PW.6, Muktabai and PW.9, Ishwar. He confessed to have committed the murder on account of the harassment meted out to him by his wife Anita. From the evidence of the aforesaid witnesses it is apparent that the appellant had motive to commit the crime, was last seen with the deceased and had made extra-judicial confession before the two witnesses PW.6, Muktabai and PW.9, Ishwar admitting the commission of crime. Further, he absconded and he is E F G H

A unable to explain how the woman with whom he was living as
 husband and wife and the children met the homicidal death. In
 our opinion to bring home the guilt on the basis of the
 circumstantial evidence the prosecution has to establish that
 the circumstances proved lead to one and the only conclusion
 B towards the guilt of the accused. In a case based on
 circumstantial evidence the circumstances from which an
 inference of guilt is sought to be drawn are to be cogently and
 firmly established. The circumstances so proved must
 unerringly point towards the guilt of the accused. It should form
 C a chain so complete that there is no escape from the conclusion
 that the crime was committed by the accused and none else. It
 has to be considered within all human probability and not in
 fanciful manner. In order to sustain conviction circumstantial
 evidence must be complete and must point towards the guilt
 D of the accused. Such evidence should not only be consistent
 with the guilt of the accused but inconsistent with his innocence.
 The circumstances referred to above, in our opinion lead to one
 and the only conclusion that the appellant had committed the
 murder of all the five persons. Accordingly we uphold his
 conviction.

E
 14. Now we proceed to consider as to whether the case
 in hand fall in the category of rare of the rarest case. The
 appellant had chosen to kill the woman with whom he lived as
 husband and wife, a woman who was in deep love with him and
 F willing to pay Rs.15,000/- to PW.6, Muktabai, to save the
 relationship. Appellant had not only killed the two children of the
 deceased who were born from the first husband but also killed
 his own two children. He projected himself to be single and
 changed his name to dupe a woman and in fact succeeded in
 G marrying her. However, when the truth came to light, he killed
 five persons. The manner in which the crime has been
 committed clearly shows it to be premeditated and well
 planned. It seems that all the four children and the woman were
 brought near the Pond in planned manner, strangled to
 H death and dead bodies of the children thrown in the pond to

**SUDAM @ RAHUL KANIRAM JADHAV v. STATE OF 1115
MAHARASHTRA [CHANDRAMAULI KR. PRASAD, J.]**

conceal the crime. He not only killed Anita but crushed her head to avoid identification. Killing four children, tying the dead bodies in bundles of two each and throwing them in the Pond would not have been possible, had the appellant not meticulously planned the murders. It shows that the crime has been committed in a beastly, extremely brutal, barbaric and grotesque manner. It has resulted into intense and extreme indignation of the community and shocked the collective conscience of the society. We are of the opinion that the appellant is a menace to the society who cannot be reformed. Lesser punishment in our opinion shall be fraught with danger as it may expose the society to peril once again at the hands of the appellant. We are of the opinion that the case in hand falls in the category of the rarest of the rare cases and the trial court did not err in awarding the death sentence and the High court confirming the same.

A

B

C

D

15. In the result, we do not find any merit in these appeals and the same are dismissed accordingly.

D.G.

Appeal dismissed.