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KESHAV

v.

STATE OF MAHARASHTRA

DECEMBER 12, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Penal Code, 1860 – s. 302 – Prosecution for murder – Circumstantial evidence – Accused and deceased last seen together – Accused making extra-judicial confession to wife of the deceased – No FIR or missing persons report lodged – Five days after the alleged incident, human skeleton, clothes of deceased on the side of the skeleton and post card bearing name and address of the deceased, found – Motive was alleged that accused was demanding back the loan given to deceased – Recovery of knife at the behest of the accused – Conviction by courts below on the basis of motive and the circumstances of the case – On appeal, held: Conviction not justified – Conviction cannot be based solely on the motive – Death of the deceased not proved in the facts of the case – Circumstances of last seen together becomes relevant only when the death is proved – Recovery of knife u/s 27 of Evidence Act is not admissible – It has no nexus with the cause of death since the prosecution case was that death was caused by hard blunt object – Identification of the deceased not established – Extra-judicial confession not worth reliance – Evidence Act, 1872 – Medical Jurisprudence.

Appellant-accused alongwith another accused was prosecuted for having killed his brother-in-law. Prosecution case was that the appellant was demanding back the loan given to the deceased. The deceased was expecting some amount towards compensation from the State. The deceased, along with the appellant and PW 6 (another lender), left for collecting the amount of compensation. They were seen together by PW5. Deceased did not return back home. Two days thereafter, appellant informed the wife of the deceased (PW 3) that he had killed her husband.

Neither an FIR was lodged nor a 'missing of person' report was given. Five days after the day, the deceased and the appellant were seen together, PW1 informed the police that he had seen a human skeleton in his brother's land. Investigating Officer found a human skeleton, some clothes and a post card. He also found a big stone having some blood stains. Post card bore the name and address of the deceased. After post mortem report, FIR was lodged. Appellant and the co-accused were arrested. A knife was recovered at the behest of the appellant. Trial Court convicted the appellant, relying on the circumstances viz. (1) motive, (2) last seen together with the deceased, (3) extra judicial confession made to PW 3, (4) discovery of bloodstained clothes from the house of the accused, and (5) discovery of knife. However, the co-accused was acquitted. High Court confirmed the conviction. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The impugned judgment cannot be sustained. This case does not satisfy the tests laid down by the Supreme Court* for determination of the guilt of the accused charged for commission of murder on the basis of circumstantial evidence. [Paras 14 and 15] [272 B-D]

**Sharad Birdichand Sarda vs. State of Maharashtra 1984 (4) SCC 1116; Bodhraj vs. State of Jammu and Kashmir 2002 (8) SCC 45; and State of Goa vs. Sanjay Thakran (2007) 3 SCC 755 – relied on.*

2. By no norms, a dead body would be skeletalised within a period of 3-4 days. It shall in ordinary course take atleast a few weeks, as the occurrence took place in the month of December. Atleast a week's time is necessary for a dead body to be skeletalised even during a very hot summer. The doctor who performed the post-mortem report did not spell out the possible time of death. He probably was not in a position to determine the same. He might not have even been called upon to do so by the Investigating Officer. [Paras 12 and 13] [271 G-H] [272 A-B]

A *HWV Cox's Medical Jurisprudence and Toxicology* – referred to.

3. There is nothing on record to show that vultures or other animals ate away parts of the dead body. Had that been so, the same would have been noticed by PW-1 and his brother as well as by the Investigating Officer. At least it would have found some mention. All parts of the dead body including small intestine were missing. The dead body was lying in an open field at least for four days. How apparels and cloths purported to be belonging to the deceased had been found near the dead body separately is beyond any comprehension. If he was killed by using a hard and blunt substance on his head as it appears from the post-mortem report, portion of the clothes of the deceased would still be found over the skeleton and not at a distance from it. If the dead body was eaten away by vultures or other animals the garments would have also been found in torn condition and beyond recognition. In this situation the evidence that the garments have been recognized by the mother and wife of the deceased, for the purpose of identification of the dead body to be that of the deceased, cannot be accepted. [Para 6] [269 F-H] [270 A-B]

4. No DNA test was conducted. The Investigating Officer even could not decipher as to whether the dead body is of a male or a female. No expert was examined to establish that an identification was forensically possible. [Para 10] [270 G-H]

5. A judgment of conviction cannot be recorded only on the basis of motive. The circumstance of last seen together becomes relevant only when the death is proved to have taken place within a short time of the accused and the deceased being last seen. [Para 8] [270 C-D]

State of Goa vs. Sanjay Thakran 2007 (3) SCC 755 – referred to.

6. The post card which was purported to have been recovered was not marked as an exhibit. Nobody proved the contents of the

said post card. It is also difficult to believe that although the post card remained under open sky for a period of at least four days in the winter season, the same was still readable and could be found near the dead body. [Para 7] [270 B-C] A

7. Extra judicial confession purported to have been made by the appellant to PW-3 also cannot be relied upon as ordinarily she would have disclosed the same to her relative and lodged a first information report immediately thereafter. [Para 9] [270 D-E] B

8. Recovery of knife at the behest of the appellant also looses much significance as the prosecution case itself is that the death was caused by inflicting an injury by a hard and blunt substance. Discovery, in terms of Section 27 of the Evidence Act would have been admissible in evidence, provided the recovery was that of a fact which was relevant to connect the same with the commission of crime. Recovery of a weapon at the instance of the accused which has no nexus with the cause of death of the deceased is inadmissible in evidence. [Para 9] [270 E-G] C D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 620 of 2006. E

From the Judgment and final order dated 13.9.2005 of the High Court of Judicature at Bombay, Bench at Aurangabad in Crl. A. No. 187/1999.

Sudhanshu Choudhari and Naresh Kumar, for the Appellant. F

Sushil Karanjkar and Ravindra Keshavrao Adsure, for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA J. 1. The deceased Uttam Sonwale is the brother-in-law of the appellant. His sister Sarjabai was married to the appellant. He was a resident of village Deulgaon, Taluka Loha in the District of Nanded. Vimalbai is the wife of the deceased. The deceased had taken some loan from the appellant at the time of the marriage of one of his H

A sisters, Savita. Allegedly the appellant was demanding back a sum of
 Rs.50,000/- to Rs,60,000/-, from him although the principal amount
 was only Rs.5,000/-. Allegedly he did not allow the deceased to sell
 even a portion of the family land for the purpose of returning the amount
 of loan on the ground that his wife Sarjabai had a share therein. The
 B deceased had also borrowed a sum of Rs.1,000/- from PW-6, Nandu
 Bhalke.

2. On 18th December, 1995 PW-6 came to the agricultural land
 of the deceased, where he and his wife had been working and demanded
 C back the said amount of Rs.1,000/-. Appellant and another person
 Gautam (original accused No.2) also came there. The deceased was
 expecting payment of some amount of compensation from the State.
 They allegedly decided to leave for Nanded for collecting the said amount
 of compensation. At about 3.00 p.m on that day they were allegedly
 D seen together by PW-5, Taterao Sonwale. The deceased did not return
 back home. Allegedly on 20th December, 1995 the appellant informed
 the wife of the deceased that he had killed him and asked her not to
 disclose the said fact to anybody. He undertook to takeover the
 responsibility of cultivating her land and perform the marriage of her
 E daughters. No First Information Report was lodged. No report was also
 given to the police in regard to the missing of the deceased, Uttam
 Sonwale.

3. PW-1, Shrikant Devidasrao Bhore was a resident of Nanded.
 He came to the police station, Vazirabad at about 1.00 or 1.30 p.m. on
 F 23rd December, 1995 informing the Officer Incharge therein that one
 human skeleton had been seen in his brother's land. The Investigating
 Officer visited the place and allegedly saw a human skeleton, some
 clothes and a post card. He also found nearby a big stone having some
 blood stains. The skeleton was sent for post-mortem on 24th December,
 G 1995 which was received in the hospital at about 11.00 a.m. on 24th
 December, 1995. Post-mortem examination was conducted at 10.00
 a.m. on 25th December, 1995. Except the brain matter, nothing else was
 found. The post-card purported to have been seized bore the name and
 H address of the deceased. After the receipt of the post-mortem report,

a First Information Report was lodged on 26th December, 2005 by the Officer Incharge. A

Appellant and Gautam were arrested. At the behest of the appellant, recovery of a knife is said to have been made.

4. The learned trial court as also the High Court, on analysing the materials brought on records by the prosecution, found the following circumstances as against the appellant to record a judgment of conviction against him. B

- (a) Motive ; C
- (b) Last seen together with the deceased on 19th December, 1995 ;
- (c) Extra judicial confession said to have been made before PW.3, Vimalbai ; D
- (d) Discovery of bloodstained clothes from the house of the accused.
- (e) Discovery of a knife at the behest of the accused from thorny shrubs situate near the scene of the offence. E

5. Original accused No.2, Gautam was, however, acquitted.

6. Only a skeleton was recovered. Moot question, therefore, is as to whether within a period of 4-5 days, a dead body could be skeletonised. There is nothing on record to show that vultures or other animals ate away parts of the dead body. Had that been so the same would have been noticed by PW-1 and his brother as well as by the Investigating Officer. At least it would have found some mention. All parts of the dead body including small intestine were missing. The dead body was lying in an open field at least for four days. How apparels and cloths purported to be belonging to the deceased had been found near the dead body separately is beyond any comprehension. If he was killed by using a hard and blunt substance on his head as it appears from the post-mortem report, portion of the clothes of the deceased would still be found over the skeleton and not at a distance from it. If the dead body H

A was eaten away by vultures or other animals the garments would have also been found in torn condition and beyond recognition. In this situation the evidence that the garments have been recognized by the mother and wife of the deceased, for the purpose of identification of the dead body to be that of the deceased, cannot be accepted.

B 7. The post card which was purported to have been recovered was not marked as an exhibit. Nobody proved the contents of the said post card. It is also difficult to believe that although the post card remained under open sky for a period of at least four days in the winter season, the same was still readable and could be found near the dead body.

C 8. A judgment of conviction cannot be recorded only on the basis of motive. The circumstance of last seen together becomes relevant only when the death is proved to have taken place within a short time of the accused and the deceased being last seen. (See *State of Goa vs. Sanjay Thakran* : (2007) 3 SCC 755. Matter might have been different if a murder of wife is allegedly to have been committed by a husband within the four walls of a room which was occupied by them.

E 9. It is difficult to rely upon extra judicial confession purported to have been made by the appellant to PW-3 as ordinarily she would have disclosed the same to her relative and lodged a first information report immediately thereafter. Discovery of knife at the behest of the appellant also loses much significance as the prosecution's case itself is that the death was caused by inflicting an injury by a hard and blunt substance. F Discovery, in terms of Section 27 of the Evidence Act would have been admissible in evidence, provided the recovery was that of a fact which was relevant to connect the same with the commission of crime. Recovery of a weapon at the instance of the accused which has no nexus with the cause of death of the deceased is inadmissible in evidence.

G 10. No DNA test was conducted for the said purpose. The Investigating Officer even could not decipher as to whether the dead body is of a male or a female. No expert was examined to establish that an identification was forensically possible.

H 11. In HWV Cox's Medical Jurisprudence and Toxicology a

detailed discussion has been made in regard to the time of death as also the identification of a dead body. According to Cox, even a depressed skull fracture may be seen due to damage long after death, from the pressure of stones or earth upon the body or even due to damage during or after recovery of the skeleton.

In regard to skeletalisation of the dead-body it is stated:-

“The complete removal of soft tissues again is a very variable process. As mentioned above, it may occur within a couple of weeks or even few days if animal predators are unusually active. Much depends upon the environment- especially the temperature- and the activity of the insects and other animals.

In temperate climates, much depends upon the time of year at which the person died. In Northern Europe, a person dying in the open country in the autumn will stand much less chance of becoming skeletalised before the next summer than if he died in the early months of the year with the hot weather yet to come.

As a very rough generalization, in temperate climates, a body not subjected to much major animal predation will retain some soft tissue for up to a year and remnants of soft tissues such as tendon tags, periosteum and joint capsule may be visible for two to five years. Again generalizations are so inaccurate as to be misleading. In the hotter climatic conditions of the tropics, skeletalisation may occur within weeks, again mainly due to the massive removal of tissue by insect life and larger animals. The earliest complete skeletalisation seen in Britain is three weeks during a very hot summer, but there are many reports of much more rapid skeletalisation in India.”

12. By no norms, thus, a dead body would be skeletalised within a period of 3-4 days. It shall in ordinary course take atleast a few weeks.

13. As indicated hereinbefore the occurrence took place in the month of December. It cannot be said to be a hot summer days. Even

A atleast a weeks' time is necessary for a dead body to be skeletalised even during a very hot summer. The doctor who performed the post-mortem report did not spell out the possible time of death. He probably was not in a position to determine the same. He might not have even been called upon to do so by the Investigating Officer.

B 14. What would be the legal parameters for determination of the guilt of the accused charged for commission of murder on the basis of circumstantial evidence is now well settled. [See *Sharad Birdichand Sarda vs. State of Maharashtra* : (1984) 4 SCC 1116 ; *Bodhraj vs. State of Jammu and Kashmir* : (2002) 8 SCC 45 and *Sanjay Thakran (supra)*]. This case in our opinion does not satisfy the tests laid down therein.

C 15. For the reasons abovementioned, the impugned judgment cannot be sustained. It is accordingly set aside. The appeal is allowed.
D Appellant, who is in custody shall be released forthwith, if not required in connection with any other case.

K.K.T.

Appeal allowed.