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Crl.A.No. 954 OF 2001
ITEM NO.102

COURT NO.10

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.954/2001@@
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JAGANNATH @ JAGGU ... APPELLANT (S)

VERSUS

STATE OF MAHARASHTRA ... RESPONDENT (S)
(With office report)

Date : 01/08/2002 This appeal was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For Appellant(s): Mr. Varinder Kumar Sharma,Adv.

For respondent(s): Mr. V.N. Raghupathy,Adv.

UPON hearing counsel the Court made the following
O R D E R

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Mr. Varinder Kumar Sharma, learned counsel started his arguments at 11.50 A.M. and concluded at 2.40 P.M. Thereafter, Mr. V.N. Raghupathy, learned counsel started his arguments at 2.45 P.M. and concluded at 2.55 P.M.

The appeal is dismissed in terms of the signed order.

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(Ganga Thakur)
P.S.to Registrar

(Prem Prakash)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.954 OF 2001

Jagannath

& ..Appellant

Versus

State of Maharashtra

& ..Respondent.

O R D E R

The 2nd Additional Sessions Judge, Yavatmal, Maharashtra found the appellant guilty for having committed the murder of one Maroti Shelkar and convicted him for offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.250/- and in default to suffer rigorous imprisonment for 15 days. He also found the appellant guilty of offence punishable under Section 323 IPC for having caused injuries on PWs. 4, 5 and 6. However, he did not award any separate punishment in view of the fact that he had imposed life sentence under Section 302 IPC.

This is an out of normal criminal case where the entire prosecution case is based on the abnormal behaviour of the appellant leading to murder. There being no proper identification of the appellant at the time of attack which led to the murder. The prosecution has relied upon a chain of circumstantial evidence which according to it conclusively proves that it is the appellant and the appellant alone who could have committed the murder in question. As stated above, the Sessions Court as well as the High Court have accepted the circumstantial evidence as being sufficient to convict the appellant.

The circumstances relied upon by the courts below are as below. The appellant whose past history is not known was found in the village of Darwah on the morning of 10th May, 1993. It is stated that he was collecting contributions from the people for some procession for which collection the receipts were duly executed. His presence at Darwah is almost as good as admitted on the date of incident. It is stated by the prosecution that on the evening of 10th May, 1993 the appellant posing himself to be as CID Officer engaged the rickshaw of PW-7 and went towards the farm house of Advocate Rathod. There it was seen that without any reason he picked up fight with people who met at the farm-house of Mr. Rathod. The peculiar facts to be notice in this part of the prosecution case is that the appellant had disrobed himself and was naked when he attacked the persons. Subsequent to this attack, it is stated that he also assaulted PW-7 who had taken the appellant to the farm house of Mr. Rathod in his rickshaw. For some reason nobody took any particular notice of this incident but prosecution alleges that later in the evening also this appellant was seen moving around near about the place of incident where the murder took place. It is the further case of the prosecution that at about 4-4.30 a.m. in the early morning of 11th May, 1993 when PWs 4, 5 and 6 along with the deceased were sleeping, the said PWs. 4, 5 and 6 heard the voice of the deceased Maroti Shelkar and woke up to see one naked person assaulting the deceased. These witnesses also state that the said person also assaulted them and caused certain simple injuries and thereafter he ran away from the place of incident.

Maroti Shelkar who was injured in the attack was taken to the hospital by PWs. 4, 5 and 6 where he was declared dead.

On a complaint being filed an investigation having commenced, it is stated that the appellant was arrested and certain clothes were recovered which was later proved to be that of the appellant from the place near the farm house of Advocate Rathod. On the basis of the above case, the

appellant was charged for the murder of said Maroti Shelkar and, as stated above, he was found guilty of the charges framed against him and was sentenced to imprisonment for life by the Sessions Court and confirmed by the High Court.

Learned Sessions Judge accepted the prosecution case and relied upon 7 circumstances to hold the appellant guilty of the charge of murder. They are as follows :

1. Presence of the accused as Darwah on 10.5.1993;
2. Presence of the accused nearby the place of the incident on the night of the occurrence;
3. Accused was naked at the time of occurrence of incident and subsequently also, he was seen in a naked condition;
4. Full pant and shirt found near the farm house of Shri Rathod, Advocate;
5. Seizure of piece of cloth (shela) having stone tied therein from the place of incident and the accused was seen with the same piece of cloth prior to the incident near farm house of Shri Rathod Advocate;
6. Injury found on the person of the accused;
7. Identification of the accused in test identification parade.

He did not rely upon two other circumstances in the prosecution case, namely, seizure of cloth having stone tied therein as well as the identification of the accused in test identification parade. It is based on the above circumstances the learned Sessions Judge came to the conclusion that the appellant was guilty of the murder alleged against him and the High Court having dismissed his appeal, he is before us in this appeal.

Mr. Varinder Kumar Sharma, learned counsel appearing for the appellant contended that there being no eye witness to the incident in question by merely relying upon certain circumstances which are not established beyond reasonable doubt, the courts below could not have convicted the appellant. He also pointed out that there is no motive whatsoever for the appellant to have committed the crime. He further contended that learned Sessions Judge having rejected a part of the prosecution case could not have relied upon the evidence of those witnesses who have contradicted themselves to convict the appellant. He further submitted that eye-witnesses to the incident having not identified the accused in any test identification parade their evidence as to the identification could not be relied upon for establishing the identity of the accused as to the incident of the murder.

We have heard the learned counsel for the State Mr. V.N. Raghupathy and perused the judgment as well as the records of the case.

The first circumstance relied upon by the courts below clearly shows that on the morning of 10th May, 1993 the appellant was found at Darwah collecting contributions for some procession for which actually he had given the receipts. The evidence of PW-15 in this regard clearly shows that the appellant was present at Darwah on 10th May, 1993. The evidence of PWs. 7 and 8 establishes the fact that this appellant had engaged the rickshaw of PW-7 and had gone towards the farm house of Advocate Rathod. There he was posing himself as CID Inspector and had picked up fight with the persons there. In the course of fight it has come in evidence that he had removed his clothes and was naked. Thereafter, he picked up fight in the state of nakedness with PW-7.

This peculiar character of the accused of indulging in disrobing himself and attacking people without any reason is something not common to ordinary people and being an abnormal behaviour should be construed as a characteristic of the appellant in regard to which the prosecution has examined independent witnesses, therefore, there can be no hesitation in coming to the conclusion that the appellant was in the habit of attacking even strangers without having any reason for the same and at a time when he was naked. In this background, if we analyse the later incident, it is to be seen that the appellant was found loitering around the place of incident late in the evening of 10th May, 1993. Thereafter, the evidence of PWs. 4, 5 and 6 shows that a person similar to the description of the appellant being naked attacking the deceased who was sleeping around 4-4.30 a.m. in the early morning of 11th May, 1993. Though these witnesses have not been able to identify the appellant as the person who assaulted the deceased, it is clear from their evidence that a naked person fitting the description of the appellant attacked the deceased with a stick and ran away from that place. It is the further case of the prosecution that sometime after the incident in question the appellant was seen near about the place of the incident again being naked and on being confronted, he inflicted injuries on himself. The wounds on the person of the accused are proved to be self inflicted injuries from the evidence of the doctor. This coupled with the fact of recovery of the appellant's clothes from near about the place of the incident as also the stick and the fact that the appellant's presence at the place of the incident sometime prior to the incident and sometime later thereafter in the peculiar circumstances of being naked, in our opinion, gives sufficient reason to draw a reasonable conclusions that it is the appellant and the appellant alone who could have caused the murder of the deceased as found by the courts below.

It is true that in a case of circumstantial evidence courts would be cautious in appreciating the circumstances alleged by the prosecution but in the present case, the circumstances relied upon by the prosecution are established beyond all doubts and the chain of circumstances being complete, there can be no hesitation in accepting the guilt alleged against the accused. In the instant case from the morning of 10th May if one traces the activities of the appellant and the peculiarity of his character right up to the morning of 11th May, 1993, it is clear that the conclusions arrived at by the courts below are justified.

In these circumstances, we are unable to agree with the learned counsel for the appellant that the courts below have, in any manner, committed any error in the appreciation of the evidence.

For the reasons stated above, this appeal fails and the same is dismissed.

& & .. & & & & & & & J.
(N.Santosh Hegde)

New Delhi;
August 1, 2002.

& & & & & & & & .J.
(Bisheshwar Prasad Singh)