

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.169/2008

RAJBALI @ VAKIL BHULLAN DUBE

APPELLANT (

S)

VERSUS

STATE OF MAHARASHTRA

RESPONDENT

(S)

O R D E R

1. Heard Ms. Savitri Pandey, learned Amicus Curiae for the appellant and Mr. Kunal Cheema, learned counsel appearing for

the

respondent/State.

2. The appellant is the sole accused in this case who is aggrieved by the judgment of the High Court of Judicature at Bombay dated 4.5.2007 passed in Criminal Appeal No.365 of 2003 in and by which the High Court confirmed the conviction and sentence imposed on

the

appellant under Section 302 and 201 IPC.

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sentence imposed on the appellant was imprisonment with fine under Section 302 IPC and rigorous imprisonment for one year

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Narendra Prasad

Date: 2015.07.28

16:32:02 IST

Reason:

fine under Section 201 IPC.

3. The case of the prosecution was that the

appellant murdered one Sunil Laxminarayan Tiwari to grab the room which was in the occupation of the deceased by letting it out as well as by receiving some premium for letting out the same.

4. As the narration goes, PW.1 the Police Sub-Inspector attached to Vakola Police Station received a phone call on 2.1.2000 at about 7.30 A.M. from an unknown person that a dead body wrapped in a gunny bag was lying near the toilet of Dhobighat Compound, Vakola, Santacruz (East), Bombay. When PW.1 visited the said place he found a gunny bag and a quilt. On opening the said gunny bag in the presence of panchas and photographer he found a headless trunk of a male aged about 25 years without left arm. After seizing the articles and the body he sent it for post-mortem to Cooper

Hospital.

PW.1 registered the FIR.

5. Subsequently, on 19.1.2000 a left hand and a head was found in a drainage at Dhobighat at Vakola.

Thereafter, the head and arm which was found separately was fitted with the dead body which was recovered earlier and was found to be matching.

Subsequently, on 23.3.2000 the appellant was arrested and based on the admissible part of his statement a hacksaw blade, black colour used insulation tape, a gunny bag and a grinding stone were recovered in the presence of PWs.12 and 15. Such

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recoveries were effected on 27/28.3.2000.

6. In the light of the said evidence gathered the appellant was proceeded against before the Trial Court. The prosecution mainly relied

upon the evidence of PWs.1, 4, 6, 7, 9, 10, 12 and 15, apart from the medical evidence and Serology Report (Exhibit 38).

Being a case of

circumstantial evidence, the Trial Court found that the chain of circumstances conclusively disclosed that the appellant was responsible for the killing of the deceased and convicted him for offences referred to above and imposed the sentence.

7. The Division Bench having once again examined the above evidence both oral as well as documentary also found that the chain of circumstances was complete in every respect and, therefore, the conviction and sentence imposed cannot be interfered with.

8. Ms. Savitri Pandey, learned Amicus Curiae for the appellant vehemently contended that there was no clinching evidence to link the appellant with the killing of the deceased, that the identity of the body of the deceased itself was highly doubtful and there was no reliable material evidence to show that the appellant was solely responsible for the killing of the deceased.

9. As against the above submissions, Mr. Kunal Cheema, learned counsel for the

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respondent contended that the evidence of PWs.1, 4, 6, 7, 9, 10, 12 and 15 read along with the medical evidence, apart from the recoveries made at the instance of the appellant sufficiently demonstrated that the appellant alone was responsible for the killing of the deceased.

10. Having heard the respective counsel, we are also convinced that the conviction and sentence imposed upon the appellant was

perfectly in order and there is no scope for interference. As rightly pointed out by the learned counsel appearing for the respondent/State, after the headless and

armless trunk was recovered on 2.1.2000 by PW.1 the severed head and arm could be recovered only on 19.1.2000.

Till that stage there was no scope for the prosecution to identify as to who was the deceased. Once the head and the

arm was secured and the same was examined by PW.14/Doctor, who gave a categoric opinion that

the head and the arm clearly match with the trunk recovered earlier, then the identification of the deceased became certain.

11. In the further investigation made by PW.1, the examination of the other independent witnesses, namely, PWs.1, 4, 6, 7, 9, 10, 12 and 15 disclosed that the appellant was staying along with the deceased in a room which was owned by PW.9, that after the death of the

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deceased the appellant revealed to PW.9 and 10 that the deceased had gone away leaving the possession of the room with him and that is how he continued to pay the water charges to PW.9.

12. The evidence of PWs.4 and 6 also disclosed that by impersonating himself as the deceased the appellant offered the room, which was earlier in the possession of the deceased for rent and at the instance of PW.4, PW.6 took the said room on rent from the appellant by paying an advance of Rs.8,000/- fixing the monthly rent at Rs.400/-.

The said version of PWs.4,6, 9 and 10 was not in any manner shaken in cross examination made on behalf of the appellant. Even otherwise their version was very natural, cogent and convincing.

13. With that when we come to the evidence of PW.7, we find that he was knowing the deceased by virtue of the fact that as an Auto rickshaw driver and the deceased being a mechanic, PW.7 he used to visit the place of deceased where the appellant was also staying. In that manner, PW.7 was able to state that he could identify the trunk of the deceased by knowing the physical features, apart from making a clear statement that the appellant was very much staying along with the deceased.

14. The evidence of PWs.12 and 15, the panch witnesses who were independent and who testified to the fact that it was at the

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instance of the appellant the recoveries were made, mainly the gunny bag, hacksaw blade, grinding stone and a black insulin tape and also the clothes of the accused which were stained with human blood.

15. It is true that in the hacksaw blade there was no blood stains noted. We must state that the above-said recoveries including the hacksaw blade could be made only on 27/28.3.2000 i.e. about 5 days after the arrest of the appellant. The dead body was recovered on 2.1.2000, while the hacksaw blade was recovered from a grass field on 28.3.2000. Therefore, when the said weapon was lying in a field thereby providing scope for insects and ants having access to the said material, it is quite understandable that no blood could be traced from the hacksaw blade. However, from the clothes of the appellant human blood was noted. That apart the black colour insulin tape which was recovered at the instance of the appellant fully matched with the same coloured tape which was used to wrap the body of the deceased, apparently for stuffing it into the gunny bag

from which it was recovered on 2.1.2000.

16. Apart from the above material evidence when the appellant was very much in the company of the deceased as was stated by PWs.9 and 10, it is not known why he made a statement to PW.9 that the deceased had left for Vasai handing

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over the room to him. Whereas he was found killed in the very same place where they were living earlier. It is also not known why the appellant impersonated himself to PWs.4 and 6 apart from the fact that he did not report to the police about the absence of the deceased on or after 1.1.2000.

17. Therefore, we find that from the fact that the deceased was last seen in the company of the appellant and the above material evidence gathered in the investigation it came to light that the appellant had every role to play in eliminating the life of the deceased. In the absence of acceptable explanation from him for the very many questions relating to the absence of the deceased after 1.1.2000 which reasons were known to the appellant it will have to held that the appellant miserably failed to extricate himself from the accusations against him.

18. The conclusion of the Trial Court as well as the High Court that every circumstance found proved against the appellant disclosed that it was the appellant and the appellant alone was responsible for the killing of the deceased is therefore perfectly justified.

19. We, therefore, do not find any merit in this appeal. The appeal fails and the same is dismissed.

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20. Before parting, we must record our appreciation for the assistance rendered by Ms. Savitri Pandey, learned Amicus Curiae. We direct the Supreme Court Legal Services Committee to pay to her a sum of Rs.10,000/- as remuneration for ably assisting this Court.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[UDAY UMESH LALIT]

NEW DELHI;
JULY 24, 2015.

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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(s). 169/2008

RAJBALI @ VAKIL BHULLAN DUBE

Appellant(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(with office report)

Date : 24/07/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Ms. Savitri Pandey, Adv. (A.C.)

For Respondent(s) Mr. Kunal Cheema, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

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

The appeal is dismissed in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

(Signed order is placed on the file)