BARKU BHAVRAO BHASKAR

v.

STATE OF MAHARASHTRA

(Criminal Appeal No.910 of 2010)

JULY 25, 2013

[A.K. PATNAIK AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 – ss.364, 302 and 201 – Prosecution under – Conviction by courts below, holding that chain of circumstances against the accused were complete – Held: Evidence of the doctor who conducted post-mortem proved that the death was homicidal – In view of overwhelming evidence which proved all the circumstances against the accused, order of conviction is justified.

The appellant-accused was prosecuted for the offences punishable u/ss. 364, 302 and 201 IPC. Courts below convicted him on the basis of the circumstances namely the deceased was last seen with the deceased; extra-judicial confession of accused; recovery of blood-stained shirt of the accused and the dead body at the instance of the accused and motive for murder.

In appeal to this Court the appellant-accused *inter alia* contended that there were doubts as to whether the death was homicidal.

Dismissing the appeal, the Court

HELD: 1. In view of the specific statement of PW-6 (the doctor, who had conducted the post-mortem) who ruled out the possibility of the deceased having fallen down, either on her own or by way of an accidental fall by which she could have sustained the injuries, the conclusion that the death of the deceased was a

A homicidal one, has become an irreversible one. [Para 11] [456-H; 457-A-B]

2. The Courts below held that the last seen theory was fully established by the evidence of PWs 3 and 7. Apart from PWs 3 and 7, there was one other child B witness aged about 6 years, who had informed PW-1 about having seen the deceased in the company of the appellant on that very day. Though necessary steps were taken by the prosecution to examine the child, she did not open her mouth in the Court and the High Court C has rightly noted that such a conduct displayed by the child cannot be found fault with, and the very factum of the attempt made to examine the child was held in favour of the prosecution by stating that the prosecution did not want to suppress any material in order to prove whatever D evidence that was existing. [Paras 13 and 14] [458-C, E-G]

3. As regards the circumstance, namely, the blood stains found on the clothes of the appellant the High E Court considered the plea of the accused that blood-group of the accused was not tested so as to ascertain whether the blood stain on his shirt could be of his own blood. The High Court noted that when at the instance of the appellant, his shirt was recovered and when the F appellant was physically examined, it was found that there were absolutely no injuries on the body of the appellant and, therefore, the question of the blood stains from the body of the appellant to get transmitted to his shirt was ruled out. It was, therefore, held that the blood stains found on the appellant's shirt, considered along G with the factum of the appellant having led the prosecution to discover his blood stained clothes and the body of the deceased put together, the blood stains found in the shirt of the appellant, could have been only that of the deceased and none else. There was no other

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valid explanation offered on behalf of the appellant as to how the blood stains came to be found on his shirt, which was recovered at his instance, in the presence of the panch witnesses. The said conclusion arrived at by the High Court was fully justified. [Para 15] [458-H; 459-A-E]

4. As regards the recovery of the body of the deceased, the Courts below noted that such recovery came to be made only at the instance of the appellant, which was witnessed by PW-1, in whose presence at the foot of the mountain, the dead body covered by large and small stones, as well as 2-3 branches of *babool* tree. Therefore, there was no scope to doubt the finding that the recovery of the body of the deceased was only at the instance of the accused. [Para 16] [459-F-H]

5. Motive for murder got proved against the appellant, from the evidence of PWs-1, 4 and 5. All of them in unison deposed that the appellant had an axe to grind against PW-1 (father of the deceased child), since PW-1 had once abused him at the village, as regards the issue relating to the payment received by him, for which he did not render any service. [Para 17] [460-A-B]

6. Therefore, in view of the overwhelming evidence available on record, which proved every one of the circumstances put against the appellant and which has been examined in detail by the trial Court as well as by the High Court, there is no merit in the appeal. [Para 18] [460-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 910 of 2010.

From the Judgment and Order dated 10.02.2006 of the High Court of Judicature at Bombay in Criminal Appeal No. 1024 of 2001.

P.C. Aggarwala, Revathy Raghavan for the Appellant.

A Sachin J. Patil, Sanjay V. Kharde, Asha Gopalan Nair, for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This B appeal is directed against the judgment of the High Court of Bombay dated 10.02.2006, in Criminal Appeal No.1024 of 2001. The sole accused is the appellant before us. He was convicted by the trial Court in Sessions Case No.49 of 2001, for the offences punishable under Sections 364, 302 and 201 C of IPC. He was imposed with sentence of life for the offence proved under Section 302 IPC and five years' rigorous imprisonment for the offence under Section 354 IPC apart from three years rigorous imprisonment for the offence under Section 201 IPC. The trial Court also imposed fine with a default D sentence. On appeal, the High Court having confirmed the conviction and sentence imposed, the appellant has come before us by filing this appeal.

2. The case of the prosecution as projected before the trial Court, to be stated in a nutshell was that the deceased was a E female child aged about 6 years and was the daughter of the complainant PW-1. The accused was also related to the family of PW-1. PW-1 used to undertake masonry work. The appellant also worked under PW-1 on certain occasions and according to PW-1, as supported by the version of his brother PW-5, there F was some dispute relating to payment received by the appellant, by way of wages and for which no services were rendered by him. It is the case of the prosecution that the appellant was responsible for the killing of the deceased Rakhi, daughter of PW-1 and the motive attributed for such killing was the wage G dispute that was pending between the appellant and PW-1. The occurrence took place on 03.12.2000.

3. According to the prosecution, the mother of the deceased, PW-3, had seen the deceased in the company of H the appellant at around 10.30 am at her residence when the

appellant said to have fed sugarcane to the child Rakhi. PW-3 at that time was stated to be washing the clothes and after completing her domestic work, she noticed that both of them were not present in the house. At around 1.15 pm, according to PW-7, a sweet vendor in that area had an occasion to see the appellant and the deceased, since the appellant bought some sweets in his shop for the deceased. Thereafter, in the evening, after PW-1 returned back from his work, he found that the deceased Rakhi was not at home. He then along with his brother PW-5 and one Balvant PW-4, went to the house of appellant but they could not find the child over there. PW-3 informed that she saw the child in the company of the appellant and that since the appellant was nowhere to be found she felt that the accused might have taken the deceased Rakhi to the village Kakane, as he was earlier stating that he wish to take the child to the village to see his mother who happened to be the grand-mother of the child. The complainant PW-1 along with PW-4, stated to have gone to the village Kakane and made enquiries about the missing child Rakhi but neither the accused nor the deceased were found there. Thereafter, in the evening, PW-1 came to know that appellant was seen taking the child along with him by one Mohna, another child of the same age group as the deceased. PW-1 once again went back to the village and brought the appellant to his house and on his way back, the appellant appeared to have made an extra-judicial confession by stating that if he was not beaten, he would tell the truth and so saying revealed that he had killed the child on account of the wage dispute as between him and PW-1. The appellant then stated to have informed that he took the deceased Rakhi to Patvihir Shivar area, near the mountain and killed her there where he stated to have hidden the dead body under the stones.

4. Thereafter, the appellant was taken to the police station, where a complaint Ext.1 was lodged wherefrom, the appellant took the policeman along with PW-1 and 7-8 others to Patvihir Shivar area in the Jeep, where the appellant identified the spot

A of the incident. At the instance of the appellant, the dead body of the deceased Rakhi was recovered by removing the stones and it was found that the deceased had sustained bleeding injuries on her head and ear and that at that point of time she was wearing her school uniform. Further, at the instance of the B appellant, in the presence of PW-2, a panch witness, the blood stained shirt of the accused was also recovered under Exts.16 and 17. The said shirt was recovered at a location on Khedgaon road, about two furlongs away from the village Nakode and it was found hidden under a stone. In support of C the prosecution, as many as nine witnesses were examined and several exhibits were marked.

5. While PW-1 is the complainant, PW-2 is panch witness for recovery of the blood stained shirt of the appellant, PW-3 and PW-7 were examined for the last seen theory of the D appellant, along with the deceased. PW-5, the brother of PW-1, deposed about the earlier dispute between the appellant and PW-1. PW-6 is Dr. Priyanka Asher who conducted the postmortem and issued Ext.21 report. The chemical analysis reports relating to the clothes of the deceased, as well as that E of the appellant were marked as Ext.4. Based on the evidence recorded, when the incriminatory circumstances were put against the appellant under Section 313, the appellant made a simple denial of those circumstances and did not come forward with any explanation. No defence witness was F examined on the side of the appellant. It is based on the above evidence, that the trial Court found the appellant guilty of the offences falling under Sections 364, 302 and 201 IPC, for which the sentence came to be imposed, which was ultimately confirmed by the High Court.

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6. The case on hand was based on the circumstantial evidence, which were placed before the trial Court and based on the appreciation of the said evidence, the conviction came to be imposed. The trial Court after analyising the medical evidence as demonstrated by PW-6, the doctor, who conducted

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the postmortem, as well as the certificate issued by her, reached a conclusion that the death of the deceased was a homicidal one. Based on the other evidence the trial Court also reached a conclusion that there were clinching circumstances against the appellant and that there was no missing link in the chain of circumstances demonstrated before it.

7. The circumstances which were examined by the trial Court were formulated and noted by the High Court, which were five in number. The circumstances were:

"(i) Rakhi being last seen in the company of the accused.

(ii) Extra-judicial confession of the accused.

(iii) Discovery of the blood stained shirt at the instance of the accused which bears
blood stains of the same group as that of the deceased.

(iv) Discovery of the dead body at the instance of the accused.

(v) Motive."

8. Both the Courts have discussed each one of the circumstances in depth. The ultimate conclusion was that the circumstances were incapable of being explained on any other reasonable hypothesis, except that the guilt of the appellant, were totally inconsistent to draw an inference of innocence of the appellant.

9. When we examine the circumstances dealt with by the Courts below in the foremost, it will be worthwhile to refer to the injuries sustained by the deceased, as there was an argument raised on behalf of the appellant that there were grave doubts as to whether the death itself was the homicidal one. The injuries as found in the postmortem report were as under:

A "1) Abrasion of about 0.5 cm x 0.5 cm on inner part of upper lip swelling.

2) Abrasion of about 2 x 2 cm on left frontal area.

3) Abrasion of about 0.1 cm x 0.1 cm behind left ear lobula.

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4) Swelling of left side of face.

5) Left black eye.

C 10. On the internal examination, she found following injuries.

1) Haematoma on the left side under the scalp.

2) Fracture of coronal sutured line extending towards temporal and parietal parts on both the sides.

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3) Brain tissue congested.

Meningeal tear on temporal region right side, and on E parietal region left side (about 2 x 2 cm each side)"

11. With that, when we consider the opinion of the postmortem doctor PW-6, according to her those injuries were antemortem in nature and the internal injuries were corresponding to the external injuries. The cause of death was F shock due to cardio-respiratory arrest on account of the head injuries. The postmortem report was Ext.22. When we examine the evidence of PW-6, there was a clear suggestion put to her to the effect that these injuries could have been sustained by a fall or by an accident. It was suggested that if a person falls from G a mountain or a considerable height, the very same injuries could have been sustained. While answering the said suggestion in affirmative, PW-6, however, qualified her statement by stating that the injuries sustained by fall will not be as extensive as it was in the case of the deceased. The said H specific statement of PW-6, therefore, ruled out the possibility

of the deceased having fallen down, either on her own or by way of an accidental fall by which she could have sustained the injuries, which were noted in the postmortem report Ext.22. Further the trial Court has also stated that on behalf of the accused, the homicidal cause of death was not seriously disputed. In such circumstances the conclusion that the death of the deceased was a homicidal one, has become an irreversible one and proceeding on the above basis, the only other factor left to be examined was as to who was responsible for causing the said homicidal death of the deceased. When we examine the said question, the circumstances narrated by the Courts below require to be considered. All that we can examine in this appeal is as to whether there were any serious flaws in the judgment of the Courts below, while holding that the circumstances found proved against the appellant were all clinching and that there were no missing link in those circumstances, in order to hold that the appellant was not guilty of the charges found proved against him.

12. When we examine first of the circumstances, namely, the last seen theory put against the appellant, we find that the evidence of PW-3 and PW-7, were relied upon to support the said circumstance. PW-3 is none other than the mother of the deceased. The Court has found that the appellant being a relative, his presence at 10.30 am on the date of the occurrence in the house with the deceased sitting on his lap, was noted by PW-3, when she was washing the clothes and attending to the other domestic chores. The Courts have found that there was no reason for PW-3 to utter any falsehood on this aspect and that she had seen the deceased and the appellant together till about 11 am, in the morning and thereafter, she was under the impression that the appellant, as was suggested earlier, would have taken the girl to his mother's place in the village, who also happened to be the grand-mother of the child. Such an impression gained by PW-3, could not have been ruled out. However, when the child was not traced till the evening, it was quite natural that PW-1, the father of the deceased, was duly

A informed, who along with PW-5, his brother, stated to have made an intensive search and in that process, they came across the version of PW-7, a petty shop owner, in whose shop the appellant and the deceased were found at around 1.15 pm, when the appellant procured some sweets valued at Rs.1 for
B the deceased child.

13. Therefore, t he Courts below have held that the last seen theory was thus fully established. An attempt was then made to find fault with the said evidence by contending that the role of PW-7 came to light only through one Mr. Ashok, who
C was not examined. The said contention was rejected by stating that on behalf of the appellant, a requisition was initially made to examine the said Ashok and for the reason best known to him, it was subsequently withdrawn. By referring to the said conduct displayed on behalf of the appellant, it was held that
D the evidence of PW-3 and PW-7, sufficiently establish the circumstance, namely, that the deceased was in the custody of the appellant before she ultimately met with her unfortunate death.

E 14. In fact, there was one other child witness by name Mohna, who appeared to have informed PW-1 about having seen the deceased in the company of the appellant on that very day. Though necessary steps were taken by the prosecution to examine the said child, it is found that the child witness who
F was about 6 years old, did not open her mouth in the Court and the High Court has noted that such a conduct displayed by the said child cannot be found fault with and the very factum of the attempt made to examine the child was held in favour of the prosecution by stating that the prosecution did not want to
G suppress any material in order to prove whatever evidence that was existing. We also fully concur with the said conclusion of the High Court, in so far as the said part of the prosecution case as displayed before the trial Court.

15. The other circumstance, namely, about the blood stains
H found on the clothes of the appellant was concerned, it was

contended that though the blood group found on the clothes of the appellant was 'A' and that the blood group of the deceased was also 'A', it was submitted on behalf of the appellant that the blood group of the appellant was not tested. While examining the said contention, the High Court has taken pains to note that when at the instance of the appellant, his shirt was recovered under Exts.16 and 17 and when the appellant was physically examined, it was found that there were absolutely no injuries on the body of the appellant and, therefore, the question of the blood stains from the body of the appellant to get transmitted to his shirt was ruled out. It was, therefore, held that the blood stains found on the appellant's shirt, considered along with the factum of the appellant having led the prosecution to discover his blood stained clothes and the body of the deceased put together, the blood stains found in the shirt of the appellant, could have been only that of the deceased and none else. The said conclusion arrived at by the High Court was fully justified and no fault can be found with the said conclusion. As regards the blood stains found on the shirt of the appellant, except the *ipsi dixit* submission made on this aspect, no other submission was made and there was no valid explanation offered on behalf of the appellant as to how the blood stains came to be found on his shirt, which was recovered at his instance, in the presence of the panch witnesses.

16. As far as the recovery of the body of the deceased was concerned, the Courts below have noted that such recovery came to be made only at the instance of the appellant, which was witnessed by PW-1, the father, in whose presence at the foot of the mountain called "Munja Dongar", in the precincts of village Patvihir, the dead body covered by large and small stones, as well as 2-3 branches of *babool* tree. The High Court has discussed the said evidence in minute details to hold that the recovery of the body of the deceased was only at the instance of the accused and, therefore, there was no scope to doubt the same.

A 17. With that when we come to motive aspect, which was one other circumstance found proved against the appellant, we find from the evidence of PWs-1, 4 and 5 that all of them in unison deposed that the appellant had an axe to grind against PW-1, since PW-1 had once abused him at the village, as B regards the issue relating to the payment received by him, for which he did not render any service. Though a feeble attempt was made on behalf of the appellant to state that there was some variation in the version of the witnesses, the High Court considered the said submission in detail and has found that they C were all trivial and that there was absolutely nothing to contradict the allegation of motive, as against the appellant, vis-à-vis PW-1, the complainant.

18. Having regard to such overwhelming evidence available on record, which proved every one of the D circumstances put against the appellant and which has been examined in detail by the trial Court as well as by the High Court, we do not find any merit in this appeal. The appeal fails, the same is dismissed.

E K.K.T. Appeal dismissed.