

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.441 OF 2007

RUPCHAND CHINDU KATHEWAR

... APPELLANT(S)

Vs.

STATE OF MAHARASHTRA

....RESPONDENT(S)



ORDER

This appeal by way of special leave has been filed against the concurrent judgments of conviction of the Sessions Court and the High Court by which the appellant, Rupchand has been sentenced to undergo imprisonment for life for having committed the murder of Parasram Bhoyar, resident of village Pathari, police station Goregaon.

The facts of the appeal are as under:

Bhaiyalal Patel PW.1, a resident of village Saitola, which is adjacent to village Pathari, was at the relevant time working as a Police Patil of villages Saitola and Pathari. On 14th May, 1999, he received a message from one Premlal Rane of village Pathari that a dead body was lying in the field of Shriram Maldhari, a resident of village Pathari. Bhaiyalal Patel thereupon proceeded to Pathari and thereafter to the field of Shriram Maldhari and found the dead body of Parasram Bhoyar lying there. He accordingly made a report and on that basis a first information report was registered at Police Station, Goregaon. PW.7 Krishna, the Police Station in-charge then visited the place of murder, entered the inquest proceedings relating to the dead body, and referred it for the post mortem examination. As there was some suspicion with regard to the appellant's involvement, an attempt was made to arrest him but he was not available and was ultimately arrested on 29th May, 1999. The appellant allegedly made a statement under Sec. 27 of the Evidence Act before recovery witnesses that he had concealed the axe used in the murder in his house and on this basis the murder weapon was recovered. On the completion of the investigation the accused was charged for an offence punishable under Sec. 302 of the IPC and was brought to trial.

The prosecution in support of its case examined PW.1-Bhaiyalal Patel, PW.2-Murlidhar Bisen allegedly an eye-witness, PW.3-Babulal Bhojraj another witness who had last seen the accused in the company of the deceased and before whom he had made an extra judicial confession, PW.4 Dr. Satish Jaiswal, the Medical Officer who had conducted the post-mortem examination on the dead body, and PW.7 the Investigating Officer, Krishna. The appellant in his statement under Section 313 Cr.P.C., denied the allegations levelled against him and pleaded an alibi. The trial court on an appreciation of the evidence convicted the appellant for the offence of murder. This judgment has been confirmed by the High Court in appeal. The High Court held that the fact that the deceased Parasram had met with a homicidal death was clear from the evidence of PW.2 Murlidhar Bisen which inspired confidence in that he had witnessed the murder at about 6.00 a.m. on 13th May, 1999. The Court also observed that the statement of PW.3 Babulal Bhojraj who had last seen the appellant and the deceased together was also a circumstance in favour of the prosecution and that the evidence of Dr. Satish Jaiswal PW.7 the Doctor confirmed the eye witness account that the deceased had been done to death with an axe.

We have heard learned counsel for the parties and gone through the record. It will be noticed that there are several circumstances against the appellant, viz. the eye witness account of PW.2-Murlidhar

Bisen, the evidence of PW.3 Babulal Bhojraj who had last seen the appellant and the deceased together and then the medical evidence. In the light of the fact that the eye witness account appears to be rather shaky, we have gone through the medical evidence as a whole with very great care with the help of learned counsel for the parties.

We are of the opinion that entire matter would hinge almost exclusively upon the statement of PW.2 Murlidhar Bisen and if his statement could be taken to be uninspiring the entire prosecution case would become extremely weak which would necessitate some kind of corroboration from other material evidence as in the case of a single witness the evidence must be qualitatively unimpeachable.

We have gone through the statement made by PW.2 very carefully. He stated that he had gone to the field of Gyaniram Chauhan adjoining the land of Shriram Maldhari at about 5.00 a.m. on 13th May, 1999, and at about 6.00 a.m. he had heard a cry for help and on looking that way had seen the appellant standing in the field giving axe blows on the deceased's head. PW.2 further stated that he got frightened and did not go near that place but returned home and did not inform anybody about the incident. He further stated that he had, later the same day, met Shriram Maldhari, and he had asked him to accompany him to the field for plucking mangoes but he had made an excuse and had stayed away but had not told him about the dead body in his field. It is, therefore, obvious that though this witness had seen the murder at about 6.00

a.m. on 13th May, 1999, he did not tell anyone about the incident, and the incident had in fact been reported by PW.1 Bhaiyalal Patel from information received from Premlal PW.5. It is also significant that the FIR was accordingly lodged after an inordinate delay at 4.00 p.m. on 14th May, 1999. We are cognizant to the fact that a mere delay in lodging the FIR would not be fatal to the prosecution story, but there is a proviso to this broad principle, that the evidence read as a whole must inspire confidence. As already indicated above, PW.2 was the only eye witness and his statement under Section 161 was recorded after a delay of about 36 hours. Moreover, we find his conduct to be wholly unnatural. His evidence must, therefore, be looked at with suspicion. We have, therefore, gone through the medical evidence to see if the prosecution story was in any manner corroborated as it is the case of the appellant's counsel that the murder was a blind one and the entire story had been concocted after the dead body had been recovered.

We have perused the evidence of PW.4 Dr. Satish Jaiswal. The post mortem examination itself is tell tale and indicates some very significant facts. Column 12 of the form talks about the body being highly decomposed, Column 13 refers to the fact that insects and Maggots were crawling all over the face, whereas column 19 (iii) reveals that the brain was absent and that Maggots were crawling in the skull cavity. The Doctor also deposed that in his opinion the death had occurred about 60 hours before the post-mortem examination but in

cross-examination he modified his statement to say that it could be less than 60 hours but not less than 48 hours under any circumstances. We have also gone through the inquest report which is equally revealing and refers to the fact that Maggots were crawling all over the body and that the anus was swollen and that the skin thereat had peeled off.

Relying on the aforesaid information gathered from the prosecution evidence Mr. P. Ramesh Kumar, the learned counsel for the appellant has submitted that the eye witnesses account was not borne out by the medical evidence. He has referred us the MODI's Medical Jurisprudence and Toxicology, Twenty-third Edition pages 438-440. We find from a perusal thereof that the rectum and uterus protrude within 48 to 70 hours after death. Likewise we see from the chart on page 438 that Maggots come on to the body within a minimum of 24 hours 18 minutes and a maximum of 76 hours, making an average of 39 hours 43 minutes. We must, accordingly, take the average as the basis of our decision and, therefore, observe that the death had occurred atleast 40 hours before the body was first examined at the time of the inquest report on 14th May, 1999. It is also significant that while dealing with the condition of the brain after death this is what Modi says with regard to its putrefaction : (Page-440):

The putrefaction of the adult brain initially begins at its base, and then proceeds to the upper surface. It is hastened if any injury to the

brain or skull is present. The brain becomes soft and pulpy within 24 to 48 hours in summer, and becomes a liquid mass from three to four days.

It is clear from the inquest and the post mortem reports that the brain had disappeared. In this background, and taking the medical evidence to be correct, the incident could not have happened on 13th May, 1999 at 6.00 a.m. and must have happened much earlier in any case between 40 to 70 hours before the alleged time of death. It is true that Modi has himself referred to the fact that the putrefaction and decomposition of a dead body would be dependent on several factors including the age of the person, the nature of the weapon used, the health of the deceased, the climate etc. but Modi has taken the mean as the basis for the various putrefactive processes so as to generalize the evidence in such cases, as an exact time schedule with regard to the stages of decomposition cannot always be made available. We, therefore, find that the eye witnesses account is in fact diluted by the medical evidence. Clearly, the murder was a blind one and had not been witnessed by PW.2. In this background, the other circumstantial evidence becomes irrelevant.

We accordingly set aside the order of the Sessions Judge as also of the High Court, allow the appeal and order the appellant's acquittal.

.....J
(HARJIT SINGH BEDI)

.....J
(J.M. PANCHAL)

NEW DELHI,
July 28, 2009.