

STATE OF GOA
v.
SUBHASH GHOGLE
(Criminal Appeal No. 1107 of 2002)

OCTOBER 21, 2008

[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]

Penal Code, 1860 – s. 302 – Murder – Prosecution case that death by strangulation – Reliance on circumstantial evidence – Conviction u/s. 302 and imposition of life imprisonment – However, acquitted by High Court – On appeal, held: High Court rightly held that the evidence was insufficient, thus, prosecution failed to establish accusations – Evidence – Circumstantial evidence.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1107 of 2002.

From the final Judgment and Order dated 1.7.2002 of the High Court of Bombay at Goa in Criminal Appeal No. 70 of 2000.

A. Subhashini for the Appellant.

J.K. Mohapatra, Amit Singh, Aruneshwar Gupta, Prashant Kumar and Triveni Potekar for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. Challenge in this appeal is to the judgement of acquittal passed by a Division Bench of Bombay High Court at Goa.

The Learned Additional Session Judge, Mapusa had convicted the respondent for offence punishable under Section

- A 302 of the Indian Penal Code, 1860 (for short 'IPC'). The allegation was that on the night of 4th January, 1999 the respondent herein had killed Smt. Bendita Perriera (hereinafter referred to as 'the deceased') by strangulation. The prosecution relied upon circumstantial evidence to further its version. The
- B Trial Court found that the circumstances were sufficient to fasten the guilt on the accused and accordingly convicted him and sentenced him to undergo imprisonment for life. In appeal, the High Court found that the circumstances highlighted were not sufficient to hold the accused guilty and, therefore, directed
- C acquittal.

Learned counsel for the appellant submitted with reference to the evidence of PWs 5 and 9, that their evidence was sufficient to hold the respondent guilty.

- D Learned counsel for the respondent on the other hand supported the judgement of the High Court.

The circumstances highlighted by the prosecution are as follows:

- E "1. The relations between the appellant/accused and the deceased were strained and the strained relations furnishes a motive.
- F 2. The appellant/accused used to usually stay in the company of the deceased on the first floor of the hotel.
- G 3. The appellant/accused and the deceased were alone on the first floor at about 11.30 P.M. This circumstances emerges from the evidence of P.Ws. 9 and 10.
4. Shouts of quarrels were heard from the first floor by P.Ws. 5, 9 and 10.
- H 5. The appellant/accused has not offered any

- explanation regarding his presence at 11.30 P.M. on the first floor. A
6. Both the doors were initially found closed by the witnesses and later on P.W.9 noticed the rear door to be opened. Thus an inference can be drawn that the accused had escaped from the rear door after committing the crime. B
7. Death is homicidal.
8. Injury on the accused is consistent with the prosecution case and which is not explained by the accused. C
9. Statement made by the accused to P.W.1 when he was being examined. D
10. Blood of 'B' group found on the wristwatch, which was identified to be that of the appellant/accused.
11. The false defence taken by the accused furnishes the additional link." E

So far as some of the circumstances are concerned they have no relevance to be question as to whether the respondent was guilty of the charged offence. The prosecution primarily relied on the evidence of PWs 5,9 and 10. So far as the evidence of these witnesses are concerned the only question(s) of any remote substance out of the questions which were put to the accused in the examination under Section 313 of the Code of Criminal Procedure 1973 (in short the Code) are as follows:

"Q.35:- It is in evidence of PW5 that in front of his STD booth there is Lobster pot bar and restaurant run by you and one Bernadette and during night time he presumed that you and her were staying in the said restaurant on the first floor. What do you

A want to say?

Q.45:- It is in the evidence of PW.9 that at mid night at 12.30 he heard the noise of fights between you and Madam Pereira and Madam Pereira shouting and calling him as John. He stated that she was calling him John. He heard her shouts "John help me". What do you want to say?

B

They do not in any way relate to any incriminating material against the accused.

C

So far as PW-10 is concerned his evidence is really of no assistance to the prosecution. They related primarily to the engagement of persons in the restaurant. He has only stated that he heard some noise from outside and heard gagging sound of the deceased on the first floor of the restaurant.

D

In view of the insufficiency of the evidence, as rightly noted by the High Court, the prosecution has failed to establish the accusations, so far as the respondent is concerned. The judgment of acquittal passed by the High Court does not suffer from infirmity to warrant interference.

E

The appeal is dismissed.

N.J.

Appeal dismissed.