Supreme Court of India
Pohalya Motya Valvi vs State Of Maharashtra on 30 April, 1979
Equivalent citations: AIR 1979 SC 1949, 1979 CriLJ 1310, (1980) 1 SCC 530
Author: D Desai
Bench: D Desai, R Pathak
JUDGMENT D.A. Desai, J.

1. This appeal under Section 2-A of the Supreme Court (Enlargement of Criminal Jurisdiction) Act, 1970, by Pohalya Motya Valvi, original accused No. 1 in Sessions Case No. 12/71 on the file of Sessions Judge, Dhulia in Maharashtra State arises from a judgment rendered by the High Court of Bombay in Criminal Appeal No. 1329 of 1971 filed by the State of Maharashtra against the judgment of the Sessions Judge, Dhulia, setting aside his acquittal and convicting the appellant for having committed an offence under Section 302, Indian Penal Code and sentencing him to suffer imprisonment for life.

2. Parshi Motya Valvi, the deceased was the brother of the appellant and they were residing together. Motibai, P.W. 4 is the widow of Parshi Motya Valvi. Appellant was married to one Daharibai Who was subsequently divorced. Appellant was keen to contract second marriage and was persuading his brother deceased Parshi Motya to arrange for cash, if necessary, by sale of some cattle heads belonging to the family, but the deceased was putting off the appellant under one pretext or the other and this reluctance on the part of deceased Parshi Motya to provide necessary cash to enable appellant to contract second marriage is proffered by the prosecution as a motive for the crime. On the night of 1st Oct. 1970 both the appellant and the deceased Parshi Motya consumed two bottles of liquor and then took dinner and decided to go in search of extra helping of liquor which led them to the house of Bhikjya P.W. 8 residing at a distance of three miles from the house of the deceased. When both the brothers were at the house of Bhikjya, original accused No. 2 Bhamta is alleged to have joined them. Two bottles of liquor were purchased from Bhikjya and one was consumed at the house of Bhikjya and thereafter both the brothers and original accused No. 2 Bhamta left the house of Bhikjya together during the night. In the early hours of morning of 2nd Oct. 1970 the appellant alone returned to the house and on a query by Motibai, P.W. 4, the widow of the deceased, as to where her husband had gone appellant was found to be evasive in his reply. Motibai thereupon contacted Bhikjya who acquainted her with the events of the previous night. She contacted her father who was staying at Kalipada and Sarpanch Leta, P.W. 3. Leta, P.W. 3 accompanied by Fatya, P.W. 5 and Bhongya, P.W. 7 visited the house of deceased Parshi Motya where appellant was present and he was questioned about the whereabouts of deceased parshi Motya when appellant is alleged to have made some extra-judicial confession. Thereupon Police Patil Kutrya, P.W. 11 was contacted and on his questioning the appellant dead body of deceased Parshi Motya was recovered from the side of a nala. Immediately thereafter Police Patil Kutrya went to Dhengaon Police Station and gave information of the offence. An offence was registered and PSI, Mr. Patil, P.W. 14 commenced investigation. Appellant and Bhamta original accused No. 2 were charge-sheeted for having committed offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

3. The learned Sessions Judge at the conclusion of the trial was of the opinion that the prosecution has failed to bring home the charge against both the accused and acquitted them.

4. The State of Maharashtra preferred an appeal to the Bombay High Court questioning the correctness of acquittal of the present appellant alone and not of accused No. 2. The High Court disagreed with some of the findings of the learned Sessions Judge and was further of the opinion that the established circumstances unequivocally point to the guilt of the appellant as being the murderer of his brother parshi Motya and accordingly convicted him and sentenced him as above, Hence this appeal.

5. It is common ground that there is no direct evidence implicating the appellant. Prosecution case rests on circumstantial evidence. As the case depends on circumstantial evidence, at the outset the well-established principles governing the appreciation of evidence in a case dependent upon circumstantial evidence may be borne in mind. Briefly, the principles are that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence; that the circumstance relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must be of an incriminating character. All the proved circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

6. In paragraph 24 of the judgment the High Court has summarised the circumstances relied upon by it which in the opinion of the High Court unquestionably point to the guilt of the accused. It is better to reproduce them so that the examination becomes pertinent, pinpointed and confined within narrow limits. Says the High Court:

To summarise, the circumstances which could be said to be proved against the accused No. 1 would be that the deceased and the accused No. 1 left the house together at about 10 p. m. and the deceased carried a spear in his hand. Both of them went to the house of Bhikjya by about midnight and consumed liquor. The accused No. 1 did not return home till next morning and returned alone. When questioned by the widow of the deceased Motibai, he offered a false explanation. Immediately after his arrest, he gave the information leading to the discovery of the spear which was found to be stained with human blood, and that was the spear which the deceased had carried. Similarly, there were human bloodstains on the dhoti of the accused No. 1. Finally he has given a false explanation.

7. On these established circumstances the High Court was of the opinion that no other view is possible except that the appellant was responsible for the murder of the deceased.

8. We propose to examine each one of the circumstances relied upon by the High Court in the order in which they have been set out.

9. The first and the second circumstances relied upon by the High Court can be examined together. It is alleged that the deceased and the appellant left their house together around 10 p.m. on 1st Oct. 1970 on their way to the house of Bhikjya in search of liquor. There is evidence of Bhikjya, P.W. 8 to

that effect and it has been accepted by both the Courts. Ordinarily, when a person is accused of committing murder of another, the fact that the accused and the deceased were last seen alive in company of each other and the failure of the accused to satisfactorily account for the disappearance of the deceased is considered a circumstance of an incriminating character. According to Bhikjya, P. W 8 the appellant and deceased Parshi Motya came to his house around midnight time and asked for two bottles of liquor. But further according to Bhikjya, at about that time accused No. 2, Bhamta also joined them. According to Bhikjya all the three, i.e. deceased, appellant and Bhamta left his house together. Undoubtedly thereafter deceased was not seen alive by anyone but two persons were in company of the deceased, viz., appellant and Bhamta when they left the house of Bhikjya. Now, Bhamta was the co-accused. This very circumstance has not been found to be of some importance against Bhamta. To some extent the circumstance ceases to be of an incriminating character because not only the appellant should account for the disappearance of the deceased but simultaneously on evidence of Bhikjya, original accused No. 2 Bhamta would also be required to explain the same circumstance. Not only was Bhamta acquitted in respect of the offence, the State even did not choose to question his acquittal though it did prefer appeal against the acquittal of the present appellant. In this background the fact that deceased was seen last alive in the company of the accused would cease to be a circumstance of an incriminating character.

10. The next two circumstances, viz., circumstances 3 and 4 may be examined together. It is alleged that the appellant did not return home till the next morning and when he returned to the house in the early hours of the morning he was alone and When questioned by Motibai, P.W 4, the widow of the deceased, he offered a false explanation. Evidence of Motibai, P.W. 4 would show that when the appellant returned to the house in the early hours of the morning she asked a question as to where the deceased was and the appellant replied that he was overcome and intoxicated under the influence of liquor and that he did not know where deceased had gone. Now, unless the charge against the appellant is held proved there is no other positive evidence on record to show that the explanation is false. Evidence of Motibai herself would show that both her husband and the appellant had consumed liquor at the house and then left together in search of extra helping. Evidence of Bhikjya would show that two bottles of liquor were purchased from him by the appellant and the deceased and one bottle was consumed at his house. This was the state of inebriation of the appellant and the deceased. If, therefore, the appellant when he might have returned to his senses in the early hours of morning thought of returning to the house and when questioned said that he was intoxicated under the influence of liquor and did not know the whereabouts of the deceased, it is difficult to say that the explanation is false. The fallacy lies in arguing backwards in the sense that if the appellant is shown to have committed murder of his brother, obviously the explanation is false. But that is impermissible. Therefore, circumstances Nos. 3 and 4 have no evidentiary value.

11. The next and the fifth circumstance relied upon by the High Court is that after the appellant was arrested he gave information leading to the discovery of the spear which was found to be stained with human blood, and this spear was identified to be one which was in the hand of the deceased when he in the company of the accused left the house on the night of 1st October 1970 to go to the house of Bhikjya. While examining this circumstance it has been observed by the High Court that it is a circumstance of clinching character.

12. Evidence of PSI, D. K. Patil, the investigating officer is that he arrested the appellant who was already in custody of the police patil on 3rd October 1970 and attached Articles. 8 to 11 from the person of the appellant being the clothes of the appellant which appeared to be stained with blood. He questioned the appellant on 4th Oct. 1970 when according to him appellant made the following statement:

I have hidden the spear in the heap of grass on the southern side of my house in the field of jawar. I will produce it.

13. The Panchanama, the contemporaneous record of the case made by the witness is produced at Ext. 28. After excluding the inadmissible portion, the statement reads as under:

I give my true statement before the Panchas that that spear is kept hidden under the heap of grass which is just taken out and near the small plant of Hengal in the crop of the Jawar and towards the southern side of my dwelling house. I am willingly ready to produce the spear hence come with me.

14. Now, there is serious controversy on the translation of the relevant portion of the statement alleged to have been made by the appellant reproduced in the contemporaneous record Ext. 28. The learned Sessions Judge has reproduced the original statement in Marathi language and then translated it as under:

That spear is kept hidden under the heap of grass which is just taken out and near the small plant of Hengal in the crop of the Jawar and towards southern side of my dwelling house. I am willingly ready to produce that spear.

15. The High Court reads the statement as reproduced in its judgment as under:

I give my true statement before the Panchas that (then comes the inadmissible portion which we do not consider proper to reproduce here)...that spear I have hidden in the grass in my field of Jawar to the southern side of my house, That spear I am ready to produce.

The High Court uses the pronoun 'I' at two places. We, with the assistance of both the learned Counsel proficient in Marathi language read the original statement. The reading of the statement by the High Court appears to be far-fetched. Even the High Court is conscious of it when it observes in para 20 of the judgment that the authorship of the act of concealment of the spear would be implied and would be none other than the appellant, and then observes that this circumstance which is one of the strongest links stands duly established. The Marathi word 'Me' is to be found at the commencement of the statement followed by the wholly inadmissible portion and then there is reference to the place where the spear was hidden. The Marathi expression 'Thevalela' would more appropriately be translated has been kept and not 'I have kept' because in the case of 'Have kept it,' the Marathi word would be 'Thevala'. It may be that being not conversant with Marathi language our translation may not be appropriate but if this recovery of bloodstained spear is the only important circumstance of an incriminating character established in this case and if the authorship of concealment is not clearly borne out by cogent and incontrovertible evidence but as the High Court

observes left to be inferred by implication, we have considerable hesitation in placing implicit reliance upon it. More so when it is a confessional statement which becomes admissible under Section 27 of Evidence Act though made in the immediate presence of a Police Officer. The recovery of a bloodstained spear becomes incriminating not because of its recovery at the instance of the accused but the element of criminality tending to connect the accused with the crime lies in the authorship of concealment, namely, that the appellant who gave information leading to its discovery was the person who concealed it. And in this case Bhamta was another co-accused. The appellant may have only the knowledge of the place where it was hidden. To make such a circumstance incriminating it must be shown that the appellant himself had concealed the bloodstained spear which was the weapon of offence and on this point the language used in the contemporaneous record Ext. 28 is not free from doubt and when two constructions are possible in a criminal trial, the one beneficial to the accused Will have to be adopted. Therefore, this linchpin of the prosecution case ceases to provide any incriminating evidence against the appellant.

16. It may be recalled that the appellant was in custody of the Police Patil from 2nd Oct. 1970 and it is alleged that he had pointed out the place where the dead body was kept, evidence on which point has not been accepted by both the courts. He was formally arrested on 3rd Oct. 1970 and he is alleged to have made a statement leading to the discovery of the spear on 4th Oct. 1970. He was thus in custody for nearly 48 hours and was unceasingly questioned both by the relatives of Motibai and by the Police Patil Kutrya before the investigating Officer entered the scene. In this background it is difficult to believe that it was for the first time the appellant gave information to the PSI leading to the discovery of the spear. It is more probable to believe that the place where the dead body and the spear were lying were already known and, therefore, it is not possible to accept the suggestion that it was for the first time the appellant gave information on 4th Oct. 1970 leading to the discovery of the spear.

17. Once the evidence of discovery does not provide incriminating evidence against the appellant in the circumstances herein discussed, the fact that the spear was one which was with, the deceased when he left the house ceases to be of any consequence.

18. The last circumstance relied upon by the High Court is that Dhoti Article 11 put on by the appellant when he was arrested was stained with human blood. Evidence on this point is that there were some small stains of blood on the Dhoti of the appellant. Bloodstains on the dhoti of an agriculturist would hardly provide any incriminating evidence. Even if it is held proved that there were some small bloodstains on the dhoti of the appellant that by itself would not provide evidence of a conclusive nature against the appellant.

19. The High Court has then made a statement that the appellant has given false explanation. Unfortunately as pointed out earlier, it is a vague statement devoid of details as to on what part of established prosecution case the explanation of the appellant is false. Nor was Mr. Gokhale learned Counsel for the State able to point out any such false explanation of the appellant.

20. The prosecution had attempted to offer evidence of motive which would be valuable in a case dependent on circumstantial evidence. But both the Courts have discarded the evidence of motive as

well as the evidence bearing on the proof of extra-judicial confession alleged to have been made by the appellant and we must accept this concurrent finding of both the Courts.

21. What then remains against the appellant? The only thing said to have been established is that when the appellant was detained by the investigating officer he had put on a dhoti which had some scattered stains of human blood. Discovery of a bloodstained spear alleged to have been used in causing injuries to the deceased, on the information given by the appellant being found to be unconvincing, the only circumstance proved is one of recovery of a bloodstained dhoti of the appellant. Applying the test of circumstantial evidence this is wholly insufficient to bring home the charge.

22. Therefore, this appeal is allowed and the conviction of the appellant for an offence under Section 302, I.P.C. and sentence of imprisonment for life imposed upon him by the High Court are set aside and he is acquitted of the charge. He be set at liberty forthwith.