
(2012) 05 BOM CK 0047
In the Bombay High Court
Case No : Criminal Appeal No. 121 of 2007

Abdul Arif Abdul Karim

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-05-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 300, 302, 304

Citation : (2012) BomCR(Cri) 116 : (2012) CriLJ 3099

Hon'ble Judges : Sadhana S. Jadhav, J; A.H. Joshi, J

Bench : Division Bench

Advocate : V.M. Deshpande, for the Appellant; T.D. Khade, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Sadhana S. Jadhav, J.—The appellant herein stands convicted for offences punishable u/s 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- in-default to suffer further Rigorous Imprisonment for 3 months and Section 307 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- in-default to suffer further Rigorous Imprisonment for 3 months, by the Ad-hoc District Judge 3 and Additional Sessions Judge, Amravati, in Sessions Trial No. 69 of 2004, by his judgment and order dated 22.2.2007.

The case of the prosecution in a nutshell is as follows:

[a] On 26.2.2004, Ravikant s/o Sulabrao Dhoke, who was posted as P.S.I. at Nagpurigate Police Station, lodged a report contending therein that on 26.2.2004 at about 12.05 midnight, Farzana Parveen, resident of Jamir Colony, Amravati, was brought to the Police Station in an injured condition. She had sustained injuries on her abdomen and thighs. She was referred to the Irwin Hospital immediately.

[b] P.S.I. had recorded her statement in the hospital. She had disclosed to the

complainant that she was married to the appellant nine years prior to the incident. She had begotten sons. She had divorced her husband eight to nine months prior to the incident. On 25.2.2004 she had filed a maintenance petition against her husband. Her husband had learnt about initiation of the proceeding on the same day. She was residing with her parents.

[c] Her husband came to her matrimonial house at about 11.30 p.m. and assaulted her father and mother. He had assaulted her father on his chest. Her father namely Mohd. Abdul Mohd. Latif was brought to the hospital in an injured condition and was declared dead.

[d] On the basis of the said report, Crime No. 31 of 2004 was registered against the accused for offence punishable under Sections 302 and 307 of the Indian Penal Code.

[e] The accused was arrested on 26.2.2004. The investigation was set in motion. After completion of investigation, charge sheet was filed on 16.4.2004.

[f] The case was committed to the Court of Sessions and registered as Sessions Trial No. 69 of 2004. The prosecution examined nine witnesses to bring home the guilt of the accused.

2. The prosecution has mainly relied upon the evidence of PW 1 Farjana Parveen Abdul Arif, who is the wife of the accused, PW 3 Sadikabegum wd/o Ab. Sayeed, who is the wife of the deceased and mother of PW 1 Farjana Parveen, PW 4 Shabana Anjum Mohammad Zakir, who is the daughter-in-law of the deceased. PW 1 and PW 2 are injured witnesses.

[a] PW 1 Farjana Parveen has deposed before the court that on 25.2.2004, she has filed maintenance petition against the accused. The accused learnt about the proceeding on the same day. He visited her parental house at about 11.30 p.m. He called PW 1 Farjana Parveen from the window and insisted that he wanted to talk to her and take custody of their children.

[b] The father of PW 1 Farjana Parveen heard the whisper and, therefore, he asked the accused to come on the next day, so that they could talk to each other. The accused refused to budge from there and hence her father opened the door. On opening the door, the accused instantly attacked on her father and started stabbing him with a weapon like knife, then PW 1 Farjana Parveen raised alarm and, therefore, her mother came out of the house. At that time, the accused stabbed her mother with the same weapon.

[c] PW 1 Farjana Parveen intervened to save her parents and being annoyed with the said gesture, the accused stabbed her. At that time, her sister-in-law came out of the house and she witnessed the incident. Injured persons called Shahadat Khan Ilayat Khan who was passing by the road. Upon seeing Shahadat Khan, the accused fled away.

[d] Shahadat Khan then took PW 1 Farjana Parveen to the Police Station. The

police had then taken her and her parents to Irwin Hospital, Amravati. The witness has not been shattered in her cross examination.

[e] The main crux of the cross-examination is on the source of the light at the time of the incident. It is material to note that the relations between the parties are such that even pitch darkness would not be an impediment to identify the assailants.

[f] In fact, PW 1 Farjana Parveen is a natural witness. She is an injured witness. Although ,she had withdrawn herself from the society of her husband. No inference can be drawn that she would save the real culprit and falsely implicate her husband. Her evidence not only inspire the confidence but also it is a sterling testimony which is sufficient to arrive at a conclusion that the accused-appellant is the perpetrator of the crime.

3. The testimony of PW 3 is as follows:

[a] PW 3 Sadikabegum is the wife of deceased Abdul Sayeed and mother of PW1 Farjana Parveen. She was inside the house at the relevant time. She has deposed before the court that her husband had asked the accused to come on the next day, as it was night time, and then immediately the accused clung to her husband and started stabbing him with a weapon like knife.

[b] PW 3 Sadikabegum heard the cries of PW1 Farjana Parveen and, therefore, intervened and at that juncture the accused stabbed her in her back and also assaulted her daughter.

[c] PW 3 Sadikabegum was cross-examined at length. The omission elicited in the cross-examinations in respect of the presence of her daughter-in-law in the house. PW 3 Sadikabegum has admitted that Arif and Farjana was having a dialogue through the window and her husband i.e. deceased had heard the noise and, therefore, from his bed itself, he asked the accused to go away.

[d] In spite of it, the accused remained at the door-step and, therefore, her husband was constrained to open the door and upon opening the door, the accused had stabbed him. The description of the weapon is disputed and the witnesses have been cross-examined on the said lines. However, they have stated that it was a weapon like knife, it cannot be expected of the witnesses to see the weapon and observe it in such minute details when the incident had occurred suddenly.

4. PW 4 Shabana Anjum Mohammad Zakir, is the sister-in-law of PW 1 Farjana Parveen. She has deposed before the court that she was in the house and that she saw the accused causing injuries to her father-in-law, mother-in-law and her sister-in-law. The only variance in the evidence of PW 3 and PW 4 is that PW 4 has stated that her father-in-law had come out of the house and then the accused to leave. She has admitted that the situation was so awful that she simply could not react and ,therefore, did not intervene to save her in-laws. She was also questioned about the description of the weapon.

5. The accused has raised the defence that the witnesses could not identify the assailant, as it was dark. The recitals of the spot panchanama would clearly show that there were two electric poles just next to the gate of the house of the injured. The pool of blood was just outside the house of the deceased and PW 2.

6. The deceased had sustained two stab wounds, two incised wounds on the chest and left thigh. The ribs below the said injuries were fractured. The cause of death was haemorrhagic shock due to injury to vital organ lungs.

7. PW 9 Dr. Vidhyakiran Wathodkar was attached to General Hospital, Amravati. He had performed autopsy on the dead body of Mohd. Abdul Sayeed Mohd. Latif. He had examined Farjana Parveen and Sadikabano on 6.3.2004 and they were indoor patients from 26.2.2004 to 6.3.2004. He has proved the injuries certificate of the injured witnesses, which is at Exh.71 and 72 respectively.

The medical case record of PW 1 Farjana Parveen would show that she was admitted in the hospital with multiple injuries with history of assault. Her condition was serious. Similar is the medical case record of PW 3 Sadikabegum. There is no material on record to interfere with the findings of the trial court.

8. The learned counsel appearing on behalf of the accused has pleaded before us that the accused is erroneously convicted u/s 302 of the Indian Penal Code and that act committed by him would be an offence punishable u/s 304I of the Indian Penal Code.

9. The learned counsel has placed reliance upon the judgment delivered by the Apex Court in the case of Thangaiya Vs. State of Tamil Nadu, , the judgment of the Apex Court in the case of Rajinder Vs. State of Haryana, and the judgment of the Apex Court in the case of Vadla Chandraiah. vrs. State of A.P., reported in (2007) 3 Supreme Court Cases (Cri) 709.

10. The facts of the said cases are at variance with the facts of the case at hand. In the present case, the act of the appellant does not fall under any of the exception to Section 300 of the Indian Penal Code. The very fact that the accused had been to visit his wife along with a sharp edged weapon is sufficient to hold that it was a premeditated act.

11. The intention of the appellant was writ large and it cannot be said that the incident had occurred on the spur of moment or was a result of grave and sudden provocation to the accused and that there was no time for the passions to cool. In the given circumstances, we hold that the appellant has committed the offence of murder of Mohd. Abdul Sayeed punishable u/s 302 of the Indian Penal Code and attempt to murder of Farzana Parveen u/s 307 of I.P.C. The findings recorded by the trial court do not warrant any interference. The conviction of the appellant on both the counts is upheld. The appeal is dismissed.