

(1993) 03 BOM CK 0043

In the Bombay High Court

Case No : Criminal Appeal No. 485 of 1980

Ananda Gavaji Valvi and others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1993) 3 BomCR 4 : (1993) CriLJ 2826

Hon'ble Judges : N.P. Chapalgaonkar, J; H.H. Kantharia, J

Bench : Division Bench

Advocate : J.V. Kenjalkar, for the Appellant; S.D. Rupwate, Assistant Public Prosecutor, for the Respondent

Judgement

H.H. Kantharia, J.—The learned Additional Sessions Judge, Dhule, in Sessions Case No. 104 of 1979, by his judgment and order dated April 9, 1980, convicted the appellants-accused for an offence of murder in furtherance of their common intention punishable u/s 302 read with Section 34 of the Indian Penal Code and sentenced each of them to suffer imprisonment for life.

2. Being aggrieved, the accused preferred the present appeal.

3. The relevant facts giving rise to the appeal are as under :

The victim of the assault, deceased Shidya Ditya Valvi, was the resident of Khatawad of Nandurbar Taluka in Dhule District. Manyabai Valvi (PW 3) was his second wife, he having married her on the death of his first wife. The appellants are the sons of the son of his paternal aunt. They are also the residents of the same village.

The incident took place on August 5, 1979 at about 8.00 p.m. Deceased Shidya along with his son Dagadu (PW 4), his wife Manyabai (PW 3), servant Rama and probably others were sitting on the ota of his house around a bon-fire. There was moon light, being the third day after the poornima day. The four appellants armed with dengaras (sticks) went there and said to the deceased that his wife

was indulging in witchcraft and sorcery and, therefore, he should desert her. The deceased declined the suggestion of the accused and firmly told them that nothing of the sort would be done. The accused got enraged. They dragged him about 50 feet away from his house in front of the house of Punjary Valvi (PW 6) and under a neem tree assaulted him with sticks. Manyabai and Dagadu as also their servant Rama intervened to rescue the deceased but in vain. In fact, they had to run away out of fear at the hands of the accused and kept themselves concealed in a nearby jungle and when everything was quiet came back home around midnight and noticed that Shidya was lying dead at the spot of the incident.

However, during the night they did nothing due to fear and it was only in the early morning, the next day, that they went to the house of the Police Patil who was not available and hence went to Dhanora police outpost where also they did not see any Police Officer and hence went to Nandurbar and lodged a complaint (Exh. 15) at the Nandurbar Police Station. Police Sub-Inspector, Prabhakar Kharote (PW 14), after recording the First Information Report, immediately went to the place of incident and carried out investigation during which the dead body was taken charge of and sent for post-mortem examination, bloodstained clothes of the deceased were taken charge of under a panchanama, the accused were arrested and at their instance some weapons of assault were recovered, the incriminating articles were sent to the Chemical Analyser and on completion of the investigation, charge-sheet was filed in the Court of the learned Judicial Magistrate, First Class, Nandurbar, on November 5, 1979, who committed the case to the Court of Session at Dhule.

4. At the trial, the defence of the appellants was one of total denial. According to them, Manyabai was not known to them at all and they had not charged her as a witch or a lady indulging in witchcraft and sorcery. Relying upon an averment in the post-mortem notes that at the time of the death the stomach and intestine of the deceased were empty, the appellants also raised a plea that the evidence of Manyabai was contradicted by the said medical evidence with regard to the time of Shidya's death. They also contended that the deceased was a drunkard and was usually getting himself entangled in quarrels and fights with others and it was quite possible that he must have been killed by someone else and they are falsely involved. They adduced no defence evidence.

5. On appreciation of the evidence adduced before him, the learned trial Judge came to the conclusion, by the impugned judgment and order, that the deceased Shidya died a homicidal death for which the present appellants were responsible and thus finding them guilty for an offence of murder, in furtherance of their common intention, he convicted them u/s 302 read with Section 34 of the Indian Penal Code and sentenced them as stated above.

6. Now, in order to bring home the guilt to the appellants, the prosecution examined as many as 15 witnesses. However, most of the witnesses including the son of the deceased Dagadu (PW 4) were hostile to the prosecution. Other

hostile witnesses were Punjary Valvi (PW 6), Rama Pradhan (PW 7), Dattu Gavit (PW 10) and Diwanji (PW 11). There are other witnesses who are formal witnesses whose evidence need not be examined in detail. They are Sheikh Sardar (PW 1) an interpreter, Madhukar Kagane (PW 2), Revenue Circle Inspector who drew the map of the scene of offence, Motiram Valvi (PW 9) in whose presence inquest panchanama was drawn, Bhatu Patil (PW 12) in whose presence bloodstained clothes of the deceased were taken charge of and three investigating officers Vinayak Sonavane (PW 13), Prabhakar Kharote (PW 14) and Shankar Gharte (PW 15). The relevant and important evidence, therefore, is that of the widow of the deceased Manyabai (PW 3), who was an eye-witness and her daughter Laxmi Valvi (PW 8) to whom, soon after the incident, facts were narrated by Manyabai, and Dr. Madhavrao Mahajan (PW 5), a medical witness who had performed post-mortem examination on the dead body of the deceased on August 7, 1979. We shall, therefore, examine their evidence.

7. Manyabai Valvi deposed that at about 8.00 p.m., on the night of the incident, she, her husband deceased Shidya, her son Dagadya, servant Rama and maid servant Sakhu were sitting on the ota of their house and chitchatting there as fire was burning in the middle. At that time, the appellants appeared on the scene and asked her husband to desert her since, according to them, she was indulging in witchcraft and sorcery. Her husband refuted the charges and told the appellants that he was not willing to desert his wife. Immediately, appellant No. 1 and appellant No. 4 caught hold of the hands of Shidya and appellant No. 2 and appellant No. 3 caught hold of his legs and carried him away towards the neem tree. The appellants were armed with dengaras and they inflicted dengara blows on the hands and legs of the deceased and actually broke the same. She, Dagadya and Rama went to intervene and rescue Shidya but the appellants assaulted them and hence they ran away and concealed themselves in a nearby forest. She further deposed that although Shidya was shouting for help, nobody went to rescue him. Then they returned to the scene at about 12 midnight and found that Shidya was lying dead at the spot and there were injuries on his head, hands and legs. They also noticed that the hand of Shidya was fractured and one of his legs was completely smashed, resulting in exposure of bones. Thereafter, in the early morning, they went to the Police Patil of the village Kothade but not finding him there they went to the village Natavad at her daughter Laxmi's place and told her that the present appellants had killed Shidya. Thereafter, they went to the police outpost at Dhanora where, again, no policeman was seen and, therefore, they went to Nandurbar Police Station where Dagadya (PW 4) lodged First Information Report. This lady was cross-examined at length. However, what we find from her cross-examination is that the entire prosecution case is reiterated. There is absolutely nothing in her cross-examination from which an inference can be drawn that she is an unreliable witness. On the contrary, admissions are taken from her in cross-examination that no sooner did the appellants throw Shidya on the round ota of the neem tree, they started beating him with dengaras and the beating went on for such time that would have been

required for eating one bread. Therefore, from such admissions which the defence obtained in the cross-examination, it is crystal clear that the authors of the injuries caused to Shidya resulting into his death were none other than the appellants. Mr. Kenjalkar, learned advocate appearing on behalf of the appellants, drew our attention to an answer given to this witness in the cross-examination that she and her husband and servant Rama were sitting near fire after taking meals and then urged that the post-mortem examination report (Exh. 17) shows that no food articles were present in the stomach and small intestine of the deceased which means that Manyabai was not present at the time of the incident. We are unable to persuade ourselves to agree with the submission of Mr. Kenjalkar for the simple reason that the answer given by the witness in the cross-examination that she and her husband and servant Rama had sat at the fire place after taking meals does not mean that at a particular point of time they had taken meals. There is no further cross-examination eliciting an answer that at a particular point of time these persons had taken meals. A similar argument was advanced in the trial Court which was dealt with by the learned trial Judge in para 37 of the judgment and it was pointed out that the meals might have been taken by the deceased much earlier between 6.00 p.m. and 7.00 p.m. and it could not be conclusively said that Shidya had passed away exactly at 8.00 p.m. and it is quite possible that after assault being committed on him, he had died sometime at midnight. We have no hesitation in accepting the view taken by the learned trial Judge. At least, there is no evidence on record to come to the conclusion that the said finding arrived at by the learned trial Judge was wrong or perverse. Therefore, relying upon the evidence of the widow of the deceased alone, we are of the opinion that the conviction of the appellants was properly recorded by the learned trial Judge. There is no need to seek corroboration to her evidence for the simple reason that the widow of the deceased would not allow the real culprits to go scot-free and there is absolutely nothing to show that she had any reason whatsoever to depose falsely against any of the appellants.

8. There is further evidence on the record from which we can infer with certainty that the evidence of Manyabai is full of truth. Thus, Laxmi (PW 8), her daughter, deposed that on the night of the incident her brother and mother went to her at her in-law's place and told her that the present appellants had asked her father to desert Manyabai because, according to them, she was practising witchcraft which suggestion of the appellants was refuted by her father and, therefore, he was killed by the appellants. Laxmi immediately went to village Khatawad and saw the dead body of her father lying near a neem tree. In other words, soon after the incident, Manyabai had narrated the incident to this witness from which an inference is inevitable that Manyabai is a witnesses of truth.

9. That apart, the medical evidence adduced by the prosecution through Dr. Madhavarao Mahajan (PW 15) is also quite consistent with the oral testimony of Manyabai. Dr. Mahajan's evidence shows that he had carried out post-mortem examination on the dead body of Shidya between 11.15 a.m. and 12.45 p.m. on August 7, 1979 when he had noticed the following external injuries on the dead

body :

"1) C.L.W. grievous on the right leg on the middle 1/3rd anteriorly about (6" x 1") and (3/4") up to bone deep, intervening muscles and vessels contused and lacerated, gags of muscles seen.

2) C.L.W. on the right leg on the lower 1/3rd anterior on the right leg on the lower 1/3rd anterior absent (1 1/4" x 1/3"), skin deep anteriorly.

3) C.L.W. on the lower lip on the left side about (1/2" x 1/4") simple.

4) C.L.W. on the left zygomatic region, single oblique about (1/3" x 1/4") by skin deep.

5) Punctured wound on the face below lower lip about (1/4") diameter leading mouth cavity.

6) Simple C.L.W. on the chin obliquely about (1/3" x 1/4") x skin deep.

7) Minor abrasion on the left clavicle region, about (1 1/4" x 3/4").

8) Fracture of the lower 1/3rd of the both right radius and ulna.

9) Fracture of the lower 1/3rd of the both left radius and ulna.

10) Fracture of the upper 1/3rd of the left tibia.

11) Diffused contusion on the left calf about (3 1/2" x 2 1/2").

All the above injuries were ante mortem and were caused by hard and blunt objects like dengaras (Articles 6, 7, 8 and 4), according to Dr. Mahajan. He further deposed that injury No. 5 could be caused by a pointed weapon and it was also possible by a splinter of dengara (Article 4).

Internal examination of the dead body revealed that there was extra cranial haemorrhage under the scalp over the right parietal occipital region about (3" x 2 1/2"). The brain had started liquifying. These internal injuries were likely to be caused by hard and blunt objects although no corresponding injuries were seen. External injuries Nos. 1 and 8 were sufficient in the ordinary course of nature to cause death, opined Dr. Mahajan. He further opined that collectively all the injuries were likely to cause death in the ordinary course of nature and since the deceased was 50 years old he must have died instantaneously. Dr. Mahajan certified the cause of death as shock due to multiple injuries and haemorrhage on account of the injuries on the right leg. He accordingly prepared the post-mortem notes (Exh. 17) a perusal of which fully corroborates his oral testimony. In the cross-examination he stated that injury No. 1 was sufficient to cause death and it all depended upon the resistance put up by the patient to survive. He also stated that injury No. 1 was possible by a single blow and further that injury No. 8 was not sufficient in the ordinary course to cause death. There was otherwise no effective cross-examination of this medical man by the defence to demolish his testimony.

10. Mr. Kenjalkar urged that this could not be a case of murder as the appellants had not inflicted any injury on the vital part of the body of the deceased. The submission of the learned advocate is that had the appellants an intention to kill Shidya, they would have used their dengaras on the vital portions such as head. We are not able to persuade ourselves to agree with the submission of the learned advocate for the simple reason that on identical facts and in similar circumstances obtaining in a case before the Supreme Court in State of Andhra Pradesh Vs. Rayavarapu Punnayya and Another, , the Supreme Court had come to the conclusion that it would be a case of murder and not one of culpable homicide not amounting to murder punishable under S. 304 Part II of the Indian Penal Code. It is pertinent and important to note here that a similar argument was advanced in the trial Court and in para 45 of his judgment, the learned trial Judge had also dealt with this point very well relying upon the Supreme Court Judgment in case of State of Andhra Pradesh v. Rayavarapu Punnayya (supra) and had correctly concluded that this is a case of murder.

11. In this view of the matter, we find no substance in this appeal. The appeal, therefore, fails and the same stands dismissed. We confirm the trial Court's judgment and order convicting the appellants for an offence of murder in furtherance of their common intention punishable under S. 302 read with S. 34 of the Indian Penal Code and sentence of life imprisonment inflicted on them.

12. The appeal is accordingly dismissed. The appellants are on bail. They are granted one week's time to surrender to bail to serve out the sentence inflicted on them by the learned trial Judge and confirmed by this Court failing which the learned trial Judge shall issue warrants for their arrest and commit them to jail.

13. Appeal dismissed.