
(2013) 03 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal No. 964 of 2006

Anna Manku Mane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

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

Citation : (2013) 3 ABR 1437 : (2013) ALLMR(Cri) 2707

Hon'ble Judges : V.K. Tahilramani, J;Sadhana S. Jadhav, J

Bench : Division Bench

Advocate : Arfan Sait, for the Appellant; Shilpa Gajare-Dhumal, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—The appellant-original accused has filed this appeal against Judgment and Order dated 27th January, 2006 passed by the learned IIIrd Additional District and Sessions Judge, Baramati, Dist. Pune in Sessions Case No. 20 of 2005. By the said Judgment and Order, the learned Sessions Judge convicted the appellant u/s 302 of Indian Penal Code and sentenced him to imprisonment for life and to pay fine of Rs. 1000/- in default S.I. for six months. The prosecution case briefly stated is as under:

(i) The appellant was married to Kamal. They had two children. Kamal was the daughter of P.W. 2 Sheelabai Dhotre. Sheelabai was residing at Zargadwadi, Taluka-Baramati, District-Pune. About 2 1/2 months prior to the incident the appellant and his wife Kamal i.e. daughter of Sheelabai along with children of appellant and Kamal started residing behind the house of Sheelabai. On 12/2/1991 it was Mahashivratri. In the morning quarrel took place between deceased Kamal and appellant. Kamal asked appellant to fetch something to break the fast. Hence, quarrel broke out between the two of them. Kamal then went to wash clothes. Her niece Baidabai who was residing with P.W. 2 Sheelabai accompanied her. Baidabai was sitting on the boundary of land and Kamal was washing clothes. At that time appellant came there. He started abusing Kamal.

He then took green saree among the bundle of clothes brought for washing. The saree was wet. The appellant then strangled Kamal with the said saree. Baidabai ran to the house of grand parents i.e. P.W:2 Sheelabai and informed her about the incident. Baidabai showed the parents of Kamal where the dead body was lying. They found that Kamal was strangled with the 9 yards saree. The appellant was not seen anywhere. Someone informed the police. The police lodged A.D.R. No. 2 of 1991. During enquiry they found that it is a case of murder and that Kamal had been strangled. PSI Yadav lodged FIR u/s 302 of Indian Penal Code on the very same day i.e. on 12/2/1991. Thereafter investigation commenced.

(ii) The dead body of Kamal was sent for post-mortem. P.W. 3 Dr. Deokate performed the post-mortem on the dead body of Kamal. On external examination Dr. Deokate found diffused ligature mark around the neck 34 cm. x 4 cm. Anteriorly middle 1/3 of neck and going horizontally to posterior side. The injury was ante-mortem. On internal examination, doctor found subcutaneous haemorrhage below the ligature mark. Both the lungs were congested and edematous on cut surface (swollen). Blood stained fine frothy fluid was seen. Pericardium was congested. Both chambers of heart contained dark blood. Liver, bladder, pancrea suprarenal kidneys congested. Cause of death was asphyxia due to pulmonary edema due to strangulation. Dr. Deokate opined that since ligature mark was running horizontally, hanging was ruled out. The strangulation is possible by saree article No. 1 if used in wet condition. In ordinary course such strangulation can cause death. Search was made for the appellant but he could not be found. The appellant was traced on 24/2/2005 i.e. 14 years after the incident. He came to be arrested on 24/2/2005. After completion of investigation charge-sheet came to be filed. In due course, case was committed to the Court of Sessions.

2. Charge came to be framed against the appellant u/s 302 of Indian Penal Code. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph No. 1, hence this appeal.

3. We have heard Mr. Arfan Sait, learned Advocate appointed for the appellant and Mrs. Shilpa Gajare-Dhumal, learned APP for the State. After carefully considering the arguments of both the sides, the Judgment and Order passed by the learned Sessions Judge and the evidence adduced in this case, we are of the opinion that the appellant has caused death of his wife Kamal by strangulating her by wet saree.

4. The conviction is mainly based on the evidence of P.W. 1 Baidabai who was niece of Kamal. The appellant and deceased Kamal were residing behind the house of parents of Kamal. P.W. 2 Sheelabai was the mother of Kamal. P.W. 2 Sheelabai had 4 sons i.e. Kantilal, Motiram, Shantaram and Kailas and 2 daughters i.e. Kamal and Suman. Baidabai was the daughter of Kantilal. She was

residing with her grand parents i.e. P.W. 2 Sheelabai and her husband. The appellant and the deceased Kamal had two children. P.W. 1 Baidabai had stated that at about 2 p.m. Kamal went to the field of one zargad for washing clothes. P.W. 1 Baidabai accompanied her. Kamal was washing clothes and P.W. 1 Baidabai was sitting on the boundary of the land. Baidabai saw the appellant coming there. The appellant started abusing Kamal. The appellant then picked up a wet green saree which was in the bundle of clothes brought for washing. The appellant then strangled Kamal with the saree. Baidabai ran to the house of her grand parents and informed them about the incident. Baidabai then showed the grand parents the place where Kamal was lying dead. They saw saree wrapped around the neck of Kamal. Nothing has been elicited in the cross-examination of Baidabai so as to disbelieve her evidence. Hence, we have no hesitation in relying on her testimony. It is pertinent to note that P.W. 3 Dr. Deokate who performed the post-mortem has stated that since ligature mark was running horizontally, hanging was ruled out. He has further opined that strangulation was possible by wet saree and in ordinary course such strangulation can cause death.

5. Another aspect which shows mens rea on the part of the appellant is that immediately after the incident he ran away. He came to be traced only on 24/2/2005 i.e. 14 years after the incident. Thus, immediately after the incident the appellant ran away. He did not even bother to see what had happened to his wife or to attend the funeral. This conduct of absconding on the part of the appellant also shows his guilt.

6. Mr. Sait submitted that the incident took place during a sudden quarrel and hence, the case would be covered by Exception 4 to Section 300 of Indian Penal Code. As far as this aspect is concerned, Baidabai is an eyewitness to the incident. She has not stated about any quarrel taking place between the appellant and her aunt Kamal. No doubt P.W. 2 Sheelabai the mother of Kamal has stated that a quarrel took place between appellant and Kamal. However, it is noticed that this quarrel took place in the morning of the day of incident and the incident had occurred at about 2.00 to 2.30 p.m. There was sufficient time for emotions to cool down and there is huge gap between the quarrel and the time when the incident took place. Hence, we are of the opinion that the case would not fall under Exception 4 to Section 300 of IPC i.e. act caused during sudden quarrel.

7. Mr. Sait then submitted that no independent witness has been examined. He submitted that the evidence on record shows that ladies used to come to that spot for washing clothes. Hence, some ladies must have witnessed the incidence. As far as this contention is concerned, the evidence of Baidabai who is an eye-witness to the incident shows that there was no person nearby. Baidabai stated that there was no one working in the adjacent field when the incident took place. Thus this shows that no other person was near the spot so as to witness the incident.

8. Looking to the evidence on record, we find that there is sufficient material which connects the appellant with the crime. Hence, we find no merit in the appeal. Appeal is dismissed.

9. Office to communicate this order to the Superintendent of Prison where the appellant is lodged and to the appellant-original accused. Writ of the order be expedited. At this stage, we wish to place on record our appreciation for Mr. Arfan Sait appointed from High Court Legal Services Committee, Bombay to represent the appellant. We found that he had meticulously prepared the matter and he has very ably argued the appeal. We quantify legal fees to be paid to him by the High Court Legal Services Committee at Rs. 2500/- The said fees be paid to Advocate Mr. Sait within three months from today.