
(2013) 01 BOM CK 0149
In the Bombay High Court
Case No : Criminal Appeal No. 936 of 2004

Ashok Muralidhar Jagtap	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

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

Citation : (2013) 2 ABR 283 : (2013) ALLMR(Cri) 1733 : (2013) 1 BomCR(Cri) 289 : (2013) CriLJ 1329

Hon'ble Judges : Naresh H. Patil, J;A.R. Joshi, J

Bench : Division Bench

Advocate : P.R. Arjunwadkar, for the Appellant; H.J. Dedhia, Additional Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

A.R. Joshi, J.—Heard rival submissions on this criminal appeal preferred by the appellant-accused challenging the judgment and order of conviction dated 4.6.2004 passed by the learned II Ad hoc Additional Sessions Judge, Nashik in Sessions Case No. 70 of 2003. By the said impugned judgment and order the appellant-accused was convicted for the offence punishable u/s 302 of IPC and was sentenced to suffer imprisonment for life and to pay fine of Rs. 500/-, in default to suffer further RI for three months.

2. The case of the prosecution, in nut shell, is as under:-

The appellant-accused and his wife Shobha, since deceased, married with each other somewhere in the year 1983. They had two sons by names Ganesh and Gokul. Appellant-accused is an agriculturist as well as carpenter by avocation. During the relevant time of the incident he was residing along with his family. The appellant-accused is in habit of taking liquor and at times he used to quarrel with his wife Shobha.

3. According to the case of the prosecution on 5.1.2003 one Onkar, cousin

brother of Shobha, received a telephone call from Ganesh, son of the appellant. On said telephone call, Ganesh informed that his father - the appellant-accused, had assaulted his mother and she was in a serious condition, even not able to take water. This call was made at 6:30 pm. This call was followed by another call at 7:30 pm and at that time Ganesh informed that his mother Shobha had died. One Sukhdeo, another brother of Shobha was also informed about the death. Onkar and Sukhdeo came to the house of the appellant-accused. They found dead body of Shobha lying in the house. There were injuries on her head and face.

4. It is also the case of the prosecution that on the next date of the incident at early hours, the appellant-accused visited the house of the brother of police patil of the village and informed said Balasaheb Patil (PW No. 1) that he had quarrel with Shobha and Shobha has died. On this intimation received through the appellant-accused, PW No. 1 along with other persons visited the house of the appellant-accused and found dead body of Shobha. Information was given to the police. In fact, report was given by PW No. 1 mentioning that the appellant-accused revealed that he had quarrel with his wife and she had died.

5. During investigation spot panchnama was conducted. Inquest panchnama was conducted on the dead body and it was sent for postmortem. Medical Officer Dr Dipak PW No. 4 conducted the postmortem. Sukhdeo, brother of victim Shobha, lodged complaint. It was treated as FIR. Then the appellant-accused was put under arrest sometime on 23.1.2003 as till then he was absconding. Also, according to the prosecution, during investigation, the appellant-accused made a statement to produce the wooden plank by which the victim was assaulted. Said wooden plank was recovered under the panchnama. Statements of witnesses were recorded.

6. On completion of investigation, charge-sheet was filed and case was committed to the Court of Session and ended in conviction of the appellant-accused as mentioned above.

7. At the threshold, it must be mentioned that though it was initially argued by the learned Advocate Mr Arjunwadkar for the appellant-accused that the appellant is innocent and has been falsely implicated in the matter, he further submitted that if the accused is held responsible for the death of his wife, it is not an offence of murder. It is further argued that considering the peculiar circumstances of the matter, the present offence can be brought down to culpable homicide not amounting to murder, thus attracting the punishment for the offence punishable u/s 304 (Part II) of IPC. It must be mentioned that this was the only point emphasized on behalf of the appellant-accused as to the appellant-accused had not murdered his wife but had assaulted her in a fit of anger in a sudden quarrel.

8. Considering the above submission as to diluting the offence from Section 302 of IPC to Section 304 (Part II) of IPC, certain factual position, as appearing in the

case, can be narrated as under. Said acceptable circumstances are as under:-

(a) Victim Shobha died a homicidal death and suffered injuries which are contusions and abrasions and died due to intra cerebral haemorrhage due to blunt trauma over the skull. On this aspect the substantive evidence of PW No. 4 Dr Dipak who performed the postmortem on the dead body is as under:-

I found round soft tissue swelling of 4 cms in diameter over left parietal region of scalp, second injury was linear contusion having size 3 x 5 cms over right maxillary region.

Injury No. 3 : Contusion with clotted blood over lower lip.

Injury No. 4 : Superficial abrasion of 3 x 1 cms over lateral 1/3rd of right clavicle.

Injury No. 5 : Superficial abrasion over whole rights scapular region, extending up to the nap of the neck.

Injury No. 6 : Superficial abrasion having size 2x5x1 cm over left scapular region.

Injury No. 7 : Two contusions of 4x1x5 cms and 2.5x1 cms over the chin.

Injury No. 8 :- Contusions three in numbers of size 2x1 cm old dorsal spine. Clotted blood was found on the vulva. All these injuries were ante mortem in nature.

2. On opening the body I found internal injuries.

1. Two extra cranial haemotoma under the scalp having size 3x1 cm and 2x2 cm seen respectively below frontal aspect of scalp and over left lateral parietal aspect of skull.

2. Haemotoma of size 2x1 cm over frontal lobe of the brain due to intra cerebral bleed.

3. Haemotoma of size 4 x 2 cm seen over left parietal lobe of brain due to intra cerebral haemorrhage

3. In my opinion Mrs Shobha died because of intra cerebral haemorrhage, due to blunt trauma over the skull. Death was caused before about 24 hours of postmortem. I prepared the postmortem notes. Postmortem notes now shown to me is the same. It bears my signature. It is at Exh. 18. The injuries seen on the person of Shobha are possible by the blows of any hard and blunt object. The injuries were possible by blow of wooden plank Art-4.

(b) Wooden plank has been used as a weapon of offence.

(c) There was a quarrel ensued on that evening of fateful day and during which the appellant-accused assaulted his wife Shobha with the help of wooden plank.

(d) On the next day morning the appellant-accused went to the house of PW No. 1 and informed him regarding death of his wife and quarrel ensued between him

and his wife prior to her death.

9. Bearing in mind the above factual position and considering the arguments advanced on behalf of the appellant-accused so as to dilute the offence from Section 302 to 304 (part II) of IPC, in our considered view, there is substance in the said argument, inasmuch as the facts of the case are coming under Exception 4 to Section 300 of IPC. Said Exception 4 of Section 300 reads as under:-

Exception 4 to Section 300:-

Exception 4 :

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation:- It is immaterial in such cases which party offers the provocation or commits the first assault.

10. In our considered view, the matter falls under Exception 4 to Section 300 of IPC as mentioned above for various reasons, namely appellant-accused had not used any sharp edged weapon or any other deadly weapon and instead used the wooden plank which was available. In other words, it can be said that it is a fit case of sudden fight and in a heat of anger the appellant-accused assaulting his wife with available implement i.e. a wooden plank. Secondly, there was admittedly quarrel between the victim Shobha and the appellant-accused and that time he assaulted the victim with wooden plank. Thirdly, immediately on the next day he informed PW No. 1 brother of police patil of village regarding the incident and death of his wife followed by the quarrel between him and the victim. Apart from the above, it is also brought to our notice by the learned Advocate for the appellant that there was no motive brought on record by the prosecution for which the appellant was desirous of murdering his wife. It is further pointed out that the marriage between the appellant and his wife took place much earlier sometime in the year 1983 and both had apparently living happy married life with two children and there was nothing brought on record that habitually the appellant was ill-treating and assaulting his wife. By pointing out the above circumstance, it is argued that there was no intention of the appellant to kill his wife and it was in fact an unfortunate incident of assault in a heat of anger out of sudden quarrel. It is also argued that the appellant-accused had not acted in cruel manner.

11. We have carefully gone through the substantive evidence of prosecution witnesses and the substantiate evidence of PW No. 1 and also of the first informant Sukhdeo. Considering the circumstances as narrated above, it must be said that the present matter can be brought down under Exception 4 to Section 300 of IPC. Thus, we set aside the conviction for the offence u/s 302 of IPC and instead convict him for the offence punishable u/s 304 (Part II) of IPC. In the

result, the present appeal is partly allowed with the following order.

ORDER.

Appeal is partly allowed. The order of conviction and sentence passed by II Ad hoc Additional Sessions Judge, Nashik in Sessions Case No. 70 of 2003 dated 4.6.2004 u/s 302 of IPC is set aside by converting the same to offence punishable u/s 304 (Part II) of IPC. The appellant is sentenced to suffer RI for ten years and pay a fine of Rs. 500/- in default to suffer RI for three months.

Registry to intimate the Jail authorities accordingly.