
(2014) 02 BOM CK 0209
In the Bombay High Court
Case No : Criminal Appeal No. 563 of 2011

Balaji	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302 34 498(A) 498-A
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106

Citation : (2015) ALLMR(Cri) 2786 : (2014) 4 BomCR(Cri) 372

Hon'ble Judges : V.M. Deshpande, J; S.S. Shinde, J

Bench : Division Bench

Advocate : V.N. Damale Alongwith Mr. K.K. Kulkarni, Ori. Accused, for the Appellant; S.D. Kaldate, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The present Criminal Appeal is directed against the Judgment and Order of conviction passed by the learned Additional Sessions Judge, Latur dated 20th August, 2011 in Sessions Case No. 16 Of 2010, by which the Court below convicted the appellant/accused for the offence punishable U/ Section 302 of the Indian Penal Code, 1860 (In short, the I.P. Code) and directed that the appellant should suffer imprisonment for life and to pay fine of Rs. 2000/- and in default of payment of fine, he was further directed to undergo rigorous imprisonment for five months. The facts giving rise to the prosecution case can be narrated conveniently as under:-

(i) P.W. 3 Ramkisan Waghmare is resident of village Dhor-Sangavi, Dist. Latur. His family is joint family. Ranjana was one of his sister. Marriage of Ranjana was performed with the present appellant about 3 to 4 years prior to the incident. Original accused Nos. 2 and 3 are the parents of the appellant. Original accused Nos. 4 and 5 are the brothers of the appellant. Original accused No. 6 is the sister of the appellant; where-as original accused No. 7 is the wife of original

accused No. 4 and accused No. 8 is the wife of accused No. 5.

(ii) As per the case of the prosecution, Ranjana resided happily with her husband for about two months after her marriage. Thereafter, Ranjana came to her parents house and disclosed that her husband is asking gold ring and to do , a local festival of son-in-law to be performed by the parents of the bride. Through the Ramkisan Waghmare, who was examined as PW No. 3, it is case of the prosecution that they convinced Ranjana that at present they are not in a position to fulfill the demand of the appellant/husband and such things will be performed by them later-on. On this assurance, Ranjana was sent to her matrimonial house. Case of the prosecution is that, thereafter, Ranjana was subjected to cruelty. Ranjana became pregnant and when the father of PW No. 3 had gone to bring Ranjana for delivery that time, the appellant refused to sent her. Thereafter, father-in-law and mother-in-law of Ranjana left her in the parental house. Ranjana delivered female child at the house of PW No. 3.

(iii) Thereafter, Ranjana was taken to the house of the appellant and again ill treatment started to Ranjana on the count of demand of Rs. 50,000/- for purchasing auto rickshaw. Ranjana again became pregnant. PW No. 3 went to take Ranjana to the house of the appellant for her delivery, however, the appellant refused to sent her with him.

(iv) After 15 days of the said incident, PW No. 3 received telephonic call by which, it was intimated that Ranjana fell down all of sudden and she is dead. Said telephonic call was received on 24th September, 2009. On receipt of such information, PW No. 3 and his family members rushed to the house of the appellant and found dead body of Ranjana lying in the house. PW No. 3 Ramkisan noticed injuries on the head of Ranjana and suspected killing of her at the hands of the accused. Thereafter, he went to the Police Station, Shirur Anantpal and lodged the report. Said report is at Exh. No. 32.

(v) On the basis of report lodged by PW No. 3 Ramkisan, offences punishable U/ Section/s 302, 498-A, read with 34 of the I.P. Code was registered against the appellant and in-laws of Ranjana. Investigation was handed over to Madhukar Puri, Police-Sub-Inspector. After registration of Crime, the Investigating Officer immediately started investigation and has done all the necessary things which are required to be done by the Investigating Officer.

(vi) Since the offence punishable U/Section 302 of the I.P. Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, (F.C.), Nilanga, Dist. Latur has committed the case to the Court of Sessions, for disposal according to law.

(vii) The learned Additional Sessions Judge, framed charge against all the accused. They pleaded not guilty and claimed for their trial. After full dressed trial, the learned trial court was pleased to acquit original accused Nos. 2 to 8 for the offences for which they were charged. The learned trial court also acquitted the present appellant for the offence punishable U/Section 498(A) of the I.P.

Code. However, the learned trial court found him guilty for the offence punishable U/Section 302 of the I.P. Code and sentenced him to suffer imprisonment for life and to pay fine of Rs. 2000/- and in default payment of fine, he was further directed to undergo rigorous imprisonment for five months.

2. We have heard Mr. V.N. Damale alongwith Mr. K.K. Kulkarni, Advocates for the Appellant (Ori. Accused) and Mr. S.D. Kaldate, learned A.P.P. for the State of Maharashtra.

3. We have perused the Record & Proceedings placed before us with the assistance of both the learned counsel.

4. In order to prove the guilt of accused, prosecution has examined in all nine (9) witnesses and has heavily relied upon Exh. No. 28 post-mortem report and Exh. No. 20 inquest panchnama.

5. In the present case at hand, since we are concerned with the conviction of the appellant (original accused) in respect of offence punishable U/Section 302 of the I.P. Code, we shall discuss the evidence of prosecution witnesses to that extent only.

6. In the present case there are no eye witnesses. The deceased, wife of the appellant was throughout in the home of the appellant, and the appellant was present in his house. It appears that, PW No. 1 Somnath was called by his uncle Maruti, who is original accused No. 2. Accordingly, he went to his house. Ranjana was put into one auto rickshaw and was taken to the hospital of Dr. Bhalekar at village Talegaon. Doctor examined Ranjana and declared her dead. Thereafter, her dead body was brought to the village.

7. Dr. Ranidevi Kadam (P.W. No. 2) performed autopsy on the dead body of Ranjana. Post mortem report is at Exh. No. 28. Dr. Ranidevi Kadam found following injuries on the dead body of Ranjana:-

(i) contusion below Rt. ear, size 2 x 1 c.m.

(ii) Contusion on Lt. lateral side of neck, size 5 x 1 c.m.

(iii) Fracture of hyoid bone.

According to the Doctor, injuries were anti mortem and in the opinion of the Doctor, probable cause of death was asphyxia due to throttling. In very categorical words, PW No. 2 Dr. Ranidevi Kadam deposed before the court that, injuries mentioned in the post mortem report are not possible by self throttling.

On the said aspect it will be very useful to quote a passage from the Medical Jurisprudence and Toxicology, authored by Modi in its latest edition, which reads as under:-

It is not possible for anyone to continue a firm grasp of the throat after unconsciousness supervenes, hence throttling by the fingers cannot possibly be suicidal.

8. Thus, it is abundantly clear that, death of Ranjana was not natural. From the evidence of Dr. Ranidevi Kadam (P.W. No. 2), it is very clear that, fracture of hyoid bone and injuries around the neck cannot be self inflicted. In that view of the matter, it is absolutely clear that, Ranjana died homicidal death.

9. On examining the post mortem report Exh. No. 28 a very disturbing fact appears at column No. 21 of the said post mortem report under the head "Organs of generation": E/o female fetus in uterus as at 28-36 weeks. Further in the same head under sub head mucus Cavity, teeth, tongue and pharynx: Blood stained froth present. Thus it clearly shows that at the time of death, deceased Ranjana was carrying pregnancy of 28-36 weeks and the said fetus was of female fetus. It has come in the evidence of PW 3 Ramkisan, brother of deceased Ranjana that her first issue was female child.

10. Now question is whether the appellant is the author of the same or not.?. Since there are no eye witness to the incident the case of the prosecution is solely based on circumstantial evidence. From the evidence, it is clear that, dead body of Ranjana was carried to the hospital for post mortem from her matrimonial home. Even there is no dispute that, Ranjana was found dead in her matrimonial home. From the entire evidence available on record, it is not defence version that, prior to Ranjana being found dead in the house of the appellant/accused, she was not available in his house. There is nothing available on record that, Ranjana was not in company with the appellant. On the contrary, the appellant, being her husband, Ranjana, in the company of the appellant in the night, is most natural. In such situation, it was for the appellant to point out and/or even suggest that the deceased was not in his company. No doubt true, burden to prove the guilt against the accused is firmly rests on the prosecution however, it was open for the accused to prove either by attending circumstances available on record or through the examination of the prosecution witnesses about the fact that Ranjana was not in his company.

11. Interestingly, the appellant/accused in his statement recorded U/Section 313 of the Code of Criminal Procedure, 1973 has not explained anything about the company of Ranjana with him and/or has not given any explanation as to how injuries appeared on the person of deceased Ranjana. Therefore, his silence, when the custody of deceased was with him is established on record, it is only the appellant can be held responsible for causing the death of Ranjana. In that behalf, through the evidence of Dr. Ranidevi Kadam (P.W. No. 2) it has been brought on record that, hyoid bone may be fractured due to external pressure. Therefore, it is only the appellant, who can be held guilty of causing death of Ranjana.

12. In the light of the provisions of section 106 of Indian Evidence Act, it was for the appellant to give plausible explanation about the injuries appearing on the person of Ranjana. Onus in cases where facts which are proved by evidence give rise to the reasonable inference of guilt unless the same is rebutted and such inference can be negated by proof of some facts which in its nature can be

negatived by proof of some fact which in its nature can only be within the special knowledge of the accused that the burden of proving the fact is on the accused.

13. In the light of the fact that, Ranjana was having female child and at the time of her death, she was carrying pregnancy of 28 - 36 weeks and she was carrying female fetus, will be one of the circumstance in the case of the prosecution to point out finger of guilt towards the appellant. Moreso, blood stained froth is present in the mucal Cavity, teeth, tongue and pharynx clearly shows that, she must have received hard hitting somewhere on the vital part of her body. In that view of the matter, we find no infirmity in the Judgment and Order of conviction passed by the learned court below. Consequently, we dismiss the present Criminal Appeal and confirm the Judgment and Order of conviction passed by the learned Additional Sessions Judge, Latur dated 20th August, 2011 in Sessions Case No. 16 Of 2010 convicting the appellant for the offence punishable U/ Section 302 of the I.P. Code and sentencing him to suffer imprisonment for life and to pay fine of Rs. 2000/- and in default payment of fine, to undergo rigorous imprisonment for five months. Criminal Appeal dismissed.