
(2015) 04 BOM CK 0260
In the Bombay High Court
Case No : Criminal Appeal No. 238 of 2012

Balu	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 105
Penal Code, 1860 (IPC) — Section 302, 307, 498-A, 84

Citation : (2016) ALLMR(Cri) 112

Hon'ble Judges : A.B. Chaudhari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : W.G. Paunikar, for the Appellant; S.B. Ahirkar, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.

1. Being aggrieved by the Judgment and Order dated 22nd December, 2011 passed by Sessions Judge, Chandrapur, in Sessions Case No. 64 of 2010, convicting the appellant - accused Balu Domaji Petkar and sentencing him for offences under Sections:--

"[a] 498-A, Indian Penal Code [Rigorous Imprisonment for three years and payment of fine of Rs. 1000-00, in default, further Rigorous Imprisonment for six months], and

[b] 307, Indian Penal Code [Rigorous Imprisonment for three years and fine of Rs. 1000/-, in default, Rigorous Imprisonment for six months], and

[c] 302, Indian Penal Code [Rigorous Imprisonment for Life and fine of Rs. 5000/-, in default, Rigorous Imprisonment for two years],"

the present appeal was filed by him.

2. The case of the prosecution, in brief, is that the complainant Smt. Soni wife of appellant with two sons and one daughter was residing at Mitra Nagar Ward No. 3, Chandrapur. Appellant was not doing any job, while Soni was shouldering entire burden of family by doing labour work. Added to all this, appellant used to suspect her chastity and used to assault her. A year before the incident, he had mercilessly beaten her due to his suspicion and her parents tried to convince him and as such again he started residing together.

3. On 15th April, 2010, Soni had left for labour work at about 11.00 a.m., while appellant Balu and the children were at the house. She came back to the house at about 7.00 p.m., after making purchases of green vegetables etc., from market; but she was welcomed by the appellant Balu with filthy abuses and assault on her again by suspecting her character. On 16th April, 2010 at 11.00, as usual, Soni went to Revenue Colony for cleaning utensils and clothes for earning livelihood where she met her aunt Shalu Dhanraj Dhorki and requested her to accompany Soni to her house. Accordingly, Shalu accompanied and stayed with her. Again at about 9.00 p.m., appellant picked up a quarrel with Soni and raised suspicion that Soni had mixed poison in his food. On 17th April, 2010, at about 7.00 a.m., Soni went to fetch water from hand pump while her aunt Shalu was cleaning utensils near her house. Her daughter Komal had gone to Gadchiroli two days prior to the incident. The accused was in the house with his two sons. She heard shouts of her sons and entered the house with Shalu to find that the appellant was assaulting both of his sons by means of a sickle, and Kunal, the younger son, was bleeding from neck, while Manav was also having a bleeding injury on the neck. They went to rescue the children, but the accused assaulted Soni by means of a sickle due to which, she suffered injuries on left ribs and thumb of right hand. The neighbours gathered and caught the accused.

4. In the hospital, Manav, aged about five years, was declared dead. Soni filed a report [Exh.17] with Police Station and accordingly Crime No. 110/2010 was registered at Ramnagar Police Station for offences under Sections 302, 307 and 498-A, Indian Penal Code. Investigation commenced and thereafter the Investigating Officer made seizures of weapon, clothes etc., recorded statements under Section 161, Criminal Procedure Code, and finally filed charge-sheet in the competent court.

5. Appellant-accused denied the charge and set up a plea of insanity under Section 84 of Indian Penal Code, stating that at the relevant time of incident, he was of unsound mind and was incapable of knowing what he was doing and, therefore, should be exempted. The Trial Judge heard the evidence as well as arguments and finally made the impugned Judgment and Order convicting and sentencing the appellant. Hence this appeal.

6. In support of the appeal, learned counsel [appointed] for the appellant submitted that the plea of insanity has not been legally and correctly appreciated by the learned Trial Judge and Trial Court has fallen in error. Learned Trial Judge has perversely rejected the evidence of the doctor who was examined as a

defence witness for giving him benefit of exemption under Section 84 of Indian Penal Code, that the offences were committed during insanity without knowing what was right and what was wrong and, therefore, the appellant was required to be acquitted. He further submitted that the only evidence of Soni [PW 1] could not have been relied upon in view of her enmity with her husband, since it was the case of the prosecution itself that the dispute between the husband and wife was a regular feature. Finally, he submitted that the appellant could not be held guilty for the offence of murder for want of requisite intention and, therefore, the gravity of the offence should be reduced and the sentence be modified accordingly.

7. Per contra, learned Addl. Public Prosecutor supported the impugned Judgment and Order and submitted that the appellant acted brutally while murdering his own son and causing serious injuries to her son as well as Soni. Appellant is a vagabond doing no work and became the liability on the family run by Soni with her own efforts to survive. Appellant does not deserve any sympathy and looking to the nature of injuries caused to the son, namely eighteen stab injuries by means of a sickle, the offence under Section 302 only is proved. He, therefore, prayed for dismissal of the appeal.

8. We have heard learned counsel for the rival parties at length. We have perused the entire evidence, so also the reasons recorded by learned Trial Judge.

9. As stated earlier, the appellant has not disputed that he committed the offence, but he set up a plea of insanity. Nevertheless, we would like to refer to the evidence of Soni [PW 1] who saw the entire incident and we, therefore, quote paragraphs 2,3,4 5 and 7 from her evidence:--

"2. After marriage he treated me well for some days. Thereafter he started suspecting my character. He used to beat me and my children. He used to ill-treat myself and my children.

3. The incident took place on 17.4.2010. On 15.4.2010, I left house at 11.00 a.m., for labour work. The accused and my two sons were at house. My daughter Komal had been to house of my mother. Komal went to house of my mother. Komal went to house of my mother two days prior to 15.4.2010. I came back to house at evening hours at about 7.00 p.m.

4. The accused started abusing me on count of delay in arrival. On 16.4.2010, again I went to attend my work. I narrated incident to my maternal aunt namely Shalu Dhanraj Dhorki. She met at Railway colony. Shalu Dhorki came to my house with me on 16.4.2010 at evening hours to convince the accused. Shalu Dhorki gave understanding to the accused. I cooked food. At 9.00 pm, the accused did quarrel with me. He said that I added poison in food. Therefore the accused did not take food. He went to bed. My children slept without food. Shalu was at my house. Shalu stayed during night hours at my house.

5. On 17.4.2010 at morning hours, I went to fetch water. Water hand pump is at

some distance from my house. My aunt Shalu was cleaning utensils outside the house. Manav and Kunal were sleeping inside the house. I was fetching water. At that time I heard shouts of my son. I myself and Shalu rushed to house. I found that the accused had killed my son Manav by cutting his throat. At that time he was on floor on mat. The accused was beating my son Kunal by means of sickle on his neck. I went to rescue my son Kunal. The accused beat me on my ribs. He beat me on my thumb of right hand. He beat me by means of sickle. We raised shouts. Neighbourers gathered on spot. Neighbors took myself and my son in hospital. Doctor declared my son Manav as dead. I myself and my son Kunal were admitted at General Hospital.

6. At the time of death, Manav was 5 years old. My son Kunal was 7 years old. Kunal and myself were admitted in hospital for 3 days.

7. I can identify sickle which was used for crime. I can identify my clothes and clothes of my son. I can identify clothes of the accused which were on his person at the time of incident."

We have carefully gone through the cross-examination of this witness and we do not find anything worth the name damaging the prosecution case as far as the incident in question is concerned. The cross-examination of the witness is, however, made on the point of insanity. Following is the cross-examination on the point of insanity:--

"13. At Mitra Nagar, I myself and my mother-in-law used to do cleaning of utensils. At that time, the accused was not doing any work. He used to stay at house. On call only, he used to attend work. I found change in behaviour of the accused at village and at Chandrapur. It is correct to say that his suspicious nature was increased. He used to take suspicion on my character.

14. I used to come back to house between 5.00 p.m., to 7.00 p.m. My children used to go to school. School timing of Manav was between 7.00 a.m., to 11.00 a.m., School timing of Kunal was between 11.00 am. to 5.00 p.m. It is correct to say that in my absence, the accused used to stay with my sons. It did so happen that in my absence, the accused used to beat my sons. I asked the accused why he beats children. He stated that he faced hardship in looking after the sons. He did not cause serious injuries to sons.

15. It did not so happen that while staying at Mitranagar, the accused went to Wardha for work. It is not correct to say that the accused and his mother saw me with one man in compromising position at house of Chandrapur, and at that time, hot debate took place. It is not correct to say that after said incident, the accused had attack of lunacy. It is correct to say that the accused had fear in his mind that I would kill him."

In addition, we quote para 16 and relevant portion of para 17 in that context, as follows:--

"16. It is not correct to say that behaviour of the accused was strange from last

2-3 days prior to the incident. It is not correct to say that therefore, I sent my daughter Komal to Gadchiroli. It is correct to say that the accused was saying that these children are not mine. It is not correct to say that children were going to him but he was not allowing to them. It is not correct to say that as there was no change in behaviour of the accused, I brought my aunt Shalu to my house. It is not correct to say that I brought my aunt Shalu to house to take care of children in my absence. It is not correct to say that during night prior to incident, my husband had attack of lunacy. It is not correct to say that due to attack, he said that in a food, there is poison. It is not correct to say that due to this saying of the accused, children did not take food.

17. When I went to fetch water, at that time, the accused awoke. The accused was slept in house on cot, with Kunal. It is not correct to say that due to extreme lunacy, the accused made assaults on my children."

10. Upon perusal of evidence of PW 1, we are fully convinced that her evidence is fully trustworthy and without any infirmity. We must, therefore, come to the conclusion that the appellant assaulted his son who ultimately died because of the stab injuries due to sickle numbering seventeen and two contused wounds, i.e., total nineteen injuries on the vital organ, namely neck. We, therefore, hold that it is the appellant who caused the murder of his son Manav and also injured other son as well as PW 1 Soni.

11. Having, thus, returned, the finding that the appellant committed murder of Manav, five-year-old son, next question is about the plea of insanity set up by him. We have carefully perused the evidence of Dr. Sachin Bhede [DW 1] and Dr. Imran Ali [DW 2]. We have also perused the reasons recorded by learned Trial Judge. We find that the reasons recorded by the learned Trial Judge for rejecting the plea of insanity upon discussion of the evidence of DW 2 Dr. Imran Ali are fully in consonance with the evidence and the entire background of the case. That apart, from evidence of PW 1 Soni, we find that she made a stout denial about the behaviour or rather alleged insane behaviour of the appellant and clearly proved that the appellant was very well knowing what he was doing, that his habit of not doing any work and on the contrary, suspecting the character of the wife who was earning for the family and the children and him as well. The appellant is a vagabond doing no work and became a liability on the family. Added to all this, he did not earn anything and still ran out of temper which was wholly uncalled for in killing a minor son of five years Manav and injuring other son Kunal and his wife. We quote the reasons from paras 52, 53 and 54 recorded by learned Trial Judge in the Judgment to reject the plea of insanity, as under:--

"52. D.W. 2 Dr. Imran Ali Shivji branded accused Balu Petkar as a patient of psychosis without any investigation or medical test. He did not keep the patient under observation. He did not make enquiry from the Jailer or guard of barrack where the accused was kept. During medical examination DW 2 Dr. Imran Ali Shivji did not find that cognitive faculties of the mind of the patient i.e., accused Balu Petkar were not impaired. Accused Balu Petkar was well oriented for time,

place and person. Nobody made complaint that at Jail accused was violent. Witness Dr. Imran Ali Shivji did not advise Jailer to keep accused Balu Petkar in isolation.

53. During cross-examination of D.W.2 Dr. Imran Ali Shivji, it is brought on record that after arrest of any person in serious crime, he may make drama of insanity in some cases. The possibility is that due to arrest of accused Balu Petkar in serious crime, or due to brutal murder of his son Manav, the accused might be disturbed. Because of disturbance he could not sleep at night. Therefore he was muttering and roaming in barrack. It is our common knowledge that a guard is appointed in a barrack for safety of prisoners and to guard them. Guard of the prison did not observe abnormal or violent behaviour of the accused during stay of the accused at Jail. Generally the guard or Jailer takes the prisoners for medical treatment, in case of trouble or ailment. Said job is not vested with co-prisoner. It is somewhat strange that other prisoners from the same barrack took the accused for medical treatment before D.W. 2 Dr. Imran Ali Shivji. Dr. Imran Ali Shivji is not in a position to tell name of the prisoners from said barrack, who brought the accused for medical examination. The observation of Dr. Imran Ali Shivji that Balu Petkar was sleepless during night, he was muttering, he was roaming and he had headache are not sufficient to hold that at the relevant time the accused was patient of unsoundness of mind. Symptoms observed by Dr. Imran Ali Shivji are not sufficient to hold that at the time of commission of offence the accused was incapable of knowing the nature of the act, or he did not know either that the act was wrong or it was contrary to law. I cannot shut my eyes to the fact that at the time of examination of accused Balu Petkar, he was well oriented for time, place and person. He was not at all violent. It is clear that the accused was not suffering from any medical symptoms which can interfere with his capability of making his defence. Accused failed to examine his mother, or any other family member, or relative to prove his previous conduct due to unsoundness of mind. The plea of insanity has not been proved and the burden of proof cast upon the accused under Section 105 of the Indian Evidence Act, remained undischarged. Mere fact that the accused had assaulted his wife and children was not ipso facto suggestive of his being an insane person.

54. So also the fact that accused had not escaped from the place of occurrence was no reason by itself to declare him to be a person of unsound mind incapable of understanding the nature of the acts committed by him. Experience has shown that different individuals react differently to same or similar situations. Some may escape from the scene of occurrence, others may not while some may even walk to the police station to surrender and report about what they have done. Such post event conduct may be relevant to determine the culpability of the offender in the light of other evidence on record, but the conduct of not fleeing from the spot would not in itself show that the person concerned was insane at the time of the commission of the offence."

c. can identify sickle which was used for crime. I can identify my clothes and

clothes of my son. I can identify clothes of the accused which were on his person at the time of incident."

12. Upon perusal of the above reasons, we are satisfied that the reasons recorded by the learned Trial Judge are correct, legal and without any infirmity, whatsoever.

13. The question raised by the learned counsel for the appellant about the reduction of culpability is considered by us and we find, looking to seventeen stab injuries and two contusion wounds to deceased Manav, so also injuries to Kunal and wife Soni, that the offence of murder was clearly proved by the prosecution. We, therefore, reject the alternate submission made by learned counsel for the appellant.

14. However, we find that the learned Judge convicted the appellant for the offence under Section 498-A, Indian Penal Code. From the evidence quoted by us and discussed by us above, we find that the prosecution did not at all prove the offence under Section 498-A, Indian Penal Code. Learned Trial Judge has also not given any reasons why she convicted the appellant for the offence under Section 498-A, Indian Penal Code. We, must, therefore, hold that the prosecution failed to prove offence under Section 498-A, IPC. In the result, we make the following order:--

ORDER

"[a] Criminal Appeal No. 238 of 2012 is dismissed.

[b] The conviction and sentence awarded to the appellant for the offence punishable under Section 498-A, Indian Penal Code, is set aside.

[c] The conviction and sentence of the appellant for the offences punishable under Sections 307 and 302, Indian Penal Code, is maintained.

[d] Rest of the Order of the Trial Judge is confirmed.

[e] The fees payable to the learned Counsel appointed for the appellant are quantified at Rs. 5,000-00 [rupees five thousand only]."