

(2004) 01 BOM CK 0107
In the Bombay High Court
Case No : Criminal Appeal No. 296 of 1999

Balu Lakhu Waghmare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) CriLJ 1619

Hon'ble Judges : V.G. Palshikar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : F.R. Shaikh, App, for the Respondent

Judgement

V.G. Palshikar J.

1. This appeal is filed through jail by the original accused, present appellant, challenging the judgment and order of conviction passed on 28-12-1998 by Sessions Judge, Raigad in Sessions Case No. 202 of 1997 convicting the appellant u/s 302 of the IPC to suffer imprisonment for life.

2. When the appeal was called out for hearing the advocate appointed to represent the appellant in the appeal was absent. We therefore, with the assistance of the APP scrutinised the record and reappreciated the entire evidence with other documents etc.

3. The prosecution story stated briefly is that the accused on 7-4-1996 killed his wife by hitting her on the head by a wooden bar and was absconding. He then accosted by two villagers and they started taking him to the police when he escaped from their custody and ran away. He was not traceable for several months and ultimately he was arrested and investigation was completed by the police and he was prosecuted for committing murder of his wife.

4. The prosecution has examined seven witnesses in support of its case that it was a murder committed by the accused only. The learned trial Judge on appreciation

of the evidence has proved beyond reasonable doubt that the death was caused by her husband, the present appellant, by hitting her heavily on the head by a hard wooden bar. It is this judgment which is impugned before us at the instance of the appellant.

5. P.w.No. 1 is the doctor who conducted the post mortem on the body of deceased Seeta and he has deposed in very clear terms that the death was caused due to the blow inflicted by handle of sphere or such similar instrument. In the opinion of the doctor, the cause of death was subarchnoid haemorrhage with contusion of right lung. The injuries as described by doctor corresponds to a blow given by the wooden bar described above. The doctor therefore proves that the death of Seeta was homicidal.

6. P.w.2 Rafiq Natekar is the person in whose field the accused along with his wife were staying and working. This witness states in his deposition that at about 11.00 a.m. when the accused reported for duty, this witness asked him as to why he was late and the reply of the accused was his wife was sick. Then the accused left for watering the buffaloes. Sometime thereafter one Anant came there with another person and told this witness P.w.2 that the accused has killed his wife at village Vandeli and they had therefore come to take him to police. Immediately thereafter the accused arrived and this Anant took him to hand over to police. Then around 2.00 p.m. this Anant came back and told this witness that the accused has killed his wife in the orchard. He therefore went to the orchard and saw the hut and the body was lying there. He therefore went to the police station and lodged the FIR Exh.13, which is proved by him. The cross examination of this witness does not disclose any discrepancy. He therefore is the witness of discovery of the dead body and to the fact that the accused being taken away from his field by Anant for being handed over to the police.

7. P.w.3 is Tukaram Waghmare son of the appellant. He has deposed that he had gone to the village Vandeli and when he came back he found that his mother was lying dead with injury on her head. He therefore went along with his maternal uncle Anant to report the matter to Natekar P.w.2. The testimony of this witness is only inconsequential except for the fact that he noticed head injury on the person of his mother, the deceased.

8. P.w.4 is the panch witness to the panchanama of the dead body as also the things lying around. The scrutiny of the panchanama proves that there was a wooden rod lying there with blood stains on it. He has proved the panchanama and the panchanama of dead body. The scrutiny of this panchanama of the dead body as also the clothes attached and the spot panchanama discloses that the clothes of the deceased had blood stains in several places.

9. The wooden bar and the stone lying around was sent to Chemical Analyser and the report of the C.A. is that both the stone and the wooden bar contained the stains of human blood.

10. Then P.w.5 Anant who is the brother of the deceased has deposed the entire

incident. He states that he met the son of the deceased who told him that his mother has been killed by his father. He therefore went to the filed of P.w.2 and saw mother of Tukaram (his sister) who was lying dead in the hut. He therefore went to P.w.2 and told him the fact that the appellant has killed his wife and wanted to take the appellant to police. While he was so taking the appellant to the police, the accused i.e. the present appellant, ran away.

11. P.w.6 is the police official, who recorded the FIR and conducted the investigation into the allegations made in the FIR. P.w.7 is the police who was searching for the accused but failed to do so and he narrates his failure in his deposition. This is in all the prosecution evidence. 12. It will be seen from the evidence above that the entire evidence against the accused is circumstantial. But the circumstances in our opinion have proved beyond doubt that the accused was the killer. The prosecution has proved that the deceased has made homicidal death. It has proved that the death was caused by hard and blunt object like wooden bar. The blood stained cloth, the wooden bar were collected and sent for analysis. The report of the C.A. shows that the bar etc. had blood stains on it and the blood was of human. Tukaram son of the appellant and the deceased has stated that there used to be quarrels between his father and mother and both were addicted to liquor. Then there is a telling circumstances of the accused escaping from the hands of P.w.5 by falsely telling him that he wanted to answer the nature's call and ran away and was not traceable for few months thereafter. Ultimately he was located in Pathalganga and was arrested and produced, and tried thereafter. The very fact that he ran away without bothering for his son and never came back either to look after his son or to his work proves that he had ran away from some crime. If all the circumstances are considered cumulatively, the only irresistible conclusion that can be drawn, is that of the guilt of the accused who hit her on the head and saw that she has dead, and absconded. In our opinion therefore there is no error with the finding of the learned trial Judge in convicting the accused u/s 302 of IPC. There is therefore no substance in this appeal. The same is therefore rejected.