

(2001) 10 BOM CK 0006
In the Bombay High Court
Case No : Criminal Appeal No. 265 of 1996

Bapurao Irbhan Tayade

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Evidence Act, 1872 — Section 145, 157, 21, 24, 25
Penal Code, 1860 (IPC) — Section 302

Citation : (2002) CriLJ 1280

Hon'ble Judges : S.K. shah, J; J.N. Patel, J

Bench : Division Bench

Advocate : Anil Kumar Thakkar, for the Appellant; T. Khade, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.N. Patel, J.—In Session Trial No. 156/1995, the 3rd Additional Sessions Judge, Akola, by his judgment and order dated 31-7-1996, convicted the appellant for having committed offence punishable u/s 302 of I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 100/- in default to undergo further imprisonment for two weeks. The appellant has appealed against his conviction.

2. In nutshell, the prosecution case is that on 16-6-1995, at about 3 p.m., the appellant committed murder of his wife Sau. Lalita, by means of "Gandasa" (weapon used for cutting sugarcane), in the hut where they were residing, which was situated in the field of Advocate Gattani at village Deothana within the jurisdiction of Police Station, Akot. After committing the said offence, the appellant-accused Bapurao Irbhan Tayade went to the Police Station, Akot and lodged the report Exh. 22 on the basis of which the Police registered offence u/s 302, I.P.C., vide Crime No. 157 of 1995 against the appellant-accused for having committed murder of his wife. P.S.I. Digambar Bhagat (P.W.9) was on

duty at the Police Station, when the accused lodged report Exh. 22. He entrusted the case for further investigation to P.S.I. Pralhad Rathod (P.W.10). P.S.I. Rathod visited the place of occurrence and in the presence of Panchas, he prepared inquest panchnama Exh. 9 and also drew the Panchnama of the Scene of Offence where the dead body of Lalita was lying. The dead body of Lalita was sent for post-mortem examination. Police also seized certain articles and prepared the Panchnama Exh. 15. On that day itself, the appellant-accused came to be arrested. The Police seized clothes which were on the person of the accused in the Police Station in presence of the panchas i.e. trouser (Article 5) and shirt (Article 6), under the Seizure Memo Exh. 29. On 18-6-1996, on the information given by the appellant-accused, the Police seized "Gandasa" (Article 7) vide Seizure Memo Exh. 31. In the course of investigation, the Police recorded the statement of witnesses including the statement of the parents of the deceased. Articles seized were sent to the Forensic Science Laboratory. On completion of the investigation, chargesheet was filed in the Court which was committed for trial to the Court of Sessions. The key issue in the case is whether the accused can be found guilty on the basis of the First Information Report lodged by him.

3. Mr. Thakkar, the learned Counsel appearing for the appellant-accused submitted that the learned trial Court has heavily relied upon the First Information Report lodged by the appellant in order to hold him guilty of having committed murder of his wife. It is submitted that there is no other evidence to show the complicity of the appellant-accused and as the report lodged by the appellant-accused is inculpatory in nature, it is hit by Sections 24 to 30 of the Indian Evidence Act and cannot be admitted in evidence as confession and, therefore, the appellant-accused deserves to be acquitted.

4. Mr. Thakkar further submitted that as regards the other evidence led by the prosecution to establish its case, in the form of discovery of the Gandasa, the learned trial Court has found it to be unreliable as observed in para 19 of the judgment, by referring to the evidence of Prakash Shende (P.W.3), a Panch who was called at the time the Police prepared the Spot Panchnama Exh. 15. This witness, in his cross-examination has clearly stated that one Gandasa was lying near the dead body and, therefore, even to the extent of Section 27, the F.I.R. is of no use to the prosecution. Mr. Thakkar submitted that in his examination u/s 313, Cr.P.C., the appellant-accused has explained the circumstances under which the Police obtained his thumb impression on so-called report. It is submitted that the appellant-accused is illiterate and was not aware as to the contents of the documents on which his thumb impression was obtained and, therefore, the prosecution has miserably failed to prove its case against the appellant-accused.

5. Mrs. Khade, the learned A.P.P. submitted that it is true that the inculpable part of the report lodged by the appellant-accused cannot be used against him, but that does not mean that the appellant-accused cannot be convicted on the basis of the circumstantial evidence which can be gathered from the report lodged by the appellant-accused, the conduct of the appellant-accused to have gone to the

Police Station and reported the matter pursuant to which the Police found dead body of his wife in their hut, which can be considered as evidence against the appellant-accused under Sections 8 and 21 of the Indian Evidence Act. Mrs. Khade submitted that wife of the appellant-accused was residing with him and, therefore, it was obligatory on his part to have explained as to how she suffered multiple injuries which caused her death. Another circumstance relied upon by the learned A.P.P. is that the clothes of the accused were stained with blood. It is submitted that the parents of the deceased have, in their evidence, stated that the appellant-accused used to treat Lalita with cruelty and, therefore, to get rid of her, the appellant-accused has committed murder of his wife and, hence the conviction and sentence does not call for any interference.

6. The fact that Lalita died a homicidal death is not in dispute. The prosecution has examined Dr. Mahendra Mohite (P.W.8) who conducted the autopsy on the dead body of Lalita on 17-6-1995 and found following injuries :

1. Incised wound on neck anteriorly of the size of 4" x 1" x 2". Cut section of trachea was present. Age of the wound was clean cut.
2. Incised wound on neck below first wound. Size 6" x 1" x 1/2".
3. Incised wound on neck extending over left side of mandible above the first wound. Size 2" x 1" x 1/2".
4. Incised wound 1/2" just above manubrium sterni. Size 2" x 1" x 1/2".
5. Incised wound on mandible aspect of left hand. Size 2" x 1/2" x 1/2".
6. Injuries on major vessels of neck were present at the level of first bone.

All the injuries were ante-mortem.

In the opinion of Dr. Mohite, the cause of death was due to acute haemorrhagic shock due to injury to major vessels of the neck and all the injuries were sufficient in the ordinary course to cause death. Dr. has also confirmed that such injuries are possible by Gandasa (Article 7). The post-mortem report is placed on record Exh. 20. There is also no dispute about the fact that the Police visited the scene of offence, conducted inquest panchnama (Exh. 9) and the Spot Panchnama. Therefore, the fact that deceased Lalita was murdered in the hut situated in the field of Advocate Gattani, also stands proved.

7. If we examine the evidence given by the parents of the deceased Lalita namely her father Ramrao (P.W.6) and mother Sau. Vimal (P.W.7), except for stating that the appellant-accused used to quarrel with her, there is nothing to show that the appellant-accused had any motive to do away with his wife Lalita.

8. The prosecution case rests on the evidence of P.S.I. Bhagat (P.W.9) who had lodged the oral report given by the appellant-accused and A.P.I. Rathod (P.W.10). The learned trial Court has arrived at the finding that the appellant-accused has caused death of his wife in his hut at Deothana and relied upon the report which

cannot be accepted as substantive evidence. The law is well settled in various decisions of the Supreme Court on the point. In the decision rendered in the case of Aghnoo Nagesia Vs. State of Bihar, , the Supreme Court, while examining the value and use of the First Information Report given by the accused containing confession, held-,

The first information report recorded u/s 154, Criminal P.C. as such is not substantive evidence, but may be used to corroborate the informant u/s 157 of the Evidence Act or to contradict him u/s 145 of the Act, if the informant is called as a witness. Where the accused himself gives the first information, the fact of his giving the first information is admissible against him as evidence or his conduct u/s 8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission u/s 21 of the Evidence Act and is relevant. But a confessional first information report by the accused to a Police Officer cannot be made against him in view of Section 25 of the Evidence Act.

Where the first information report is given by the accused to a Police Officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.

The test of severability namely, that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence, is misleading and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

9. In our judgment, as there is no evidence led by the prosecution to show the complicity of the appellant-accused in the crime on the basis of which one can arrive at a finding that the appellant-accused is guilty of having committed murder of his wife except for the First Information Report lodged by the accused, the conviction and sentences imposed by the trial Court cannot be sustained. The conduct of the appellant-accused in informing the Police that his wife is lying dead in their hut, cannot be considered as a circumstance against the appellant to arrive at a conclusion that the appellant is guilty of having committed murder of his wife. As regards the other corroborative evidence in the form of recovery of Gandasa at the instance of the appellant-accused, the trial Court has rightly disbelieved the prosecution case. As A.P.I. Rathod, in order to collect evidence against the appellant-accused, has undertaken this exercise of recording his statement u/s 27 of the Evidence Act to show that it is at the instance of the appellant-accused that the Gandasa (Article 7) came to be seized vide exh. 31. The Panch who was present at the time when the Police recorded the Inquest Panchnama and Spot Panchnama clearly admitted that the Gandasa stained with blood was lying near the dead body.

10. For these reasons, without any hesitation we have come to the conclusion that the appellant-accused cannot be found guilty of having committed murder of his wife. Therefore, we quash and set aside the judgment and order of the trial Court. The appellant-accused is acquitted of the charge of having committed murder of his wife. The appellant-accused be set at liberty forthwith if not required in any other case. The appeal is, thus allowed.