

(2015) 07 BOM CK 0014
In the Bombay High Court
Case No : Criminal Appeal No. 1309 of 2008

Bhaskar Keshav Kumbhare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 07 BOM CK 0014

Hon'ble Judges : V.K. Tahilramani, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Vijay Hiremath, for the Appellant; A.S. Pai, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J—This appeal is preferred by the appellant-original accused against the judgment and order dated 30.6.2008 passed by the learned Additional Sessions Judge, Palghar in Sessions Case No. 10 of 2008. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs. 2000/- i/d R.I. for one year.

2. The prosecution case, briefly stated, is as under:

(i) Deceased Meena was earlier married to Sukrya Ravte. Meena had three children from the said marriage i.e. P.W. 1 Nirmala, P.W. 2 Ajay and P.W. 3 Hastik. About five years prior to the incident, Sukrya Ravte expired. Meena used to run business of illicit liquor. The appellant used to come to the house of Meena to drink liquor. He got acquainted with Meena. Thereafter illicit relations developed between Meena and the appellant. The appellant used to stay most of the time in the house of Meena and he also used to sleep in the house of Meena. The appellant started having suspicion about the character of Meena and he thought that Meena had illicit relations with some other person. On account of

this, frequent quarrels used to take place between the appellant and Meena.

(ii) The incident occurred on the night between 2.11.2007 and 3.11.2007. At that time Nirmala was about 14 years of age, Ajay was 13 years of age and Hastik was about 7 years of age. On 2.11.2007 Meena and Nirmala were at home. The appellant came to the house of Meena. In the afternoon, the appellant, Meena and Nirmala had lunch. In the evening, the appellant went for playing cricket. He returned home at about 6.00 p.m. After some time, he left the house for consuming liquor. Thereafter the appellant came back and had dinner. Nirmala and her two brothers Ajay and Hastik went to bed in the bed room. In the bed room, there were two cots kept adjacent to each other. After sometime, the appellant and Meena came and slept besides the children. At about 3 O'clock in the morning, P.W. 3 Hastik woke up to urinate. When he went to the bath-room in the kitchen, he started shouting loudly as he saw his mother lying on the ground with injury on her head. Therefore, Nirmala and Ajay went to the kitchen. They saw injury on the head of their mother Meena. Meena was dead. A sickle was lying near their mother. It was stained with blood. Nirmala then shouted for help. She noticed that the appellant was not present in the house and the appellant had run away. Meena then went to the police station and lodged F.I.R. Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant assaulted Meena with 'koyata' (sickle) and caused her death.

5. The prosecution is mainly relying on the evidence of P.W. 1 Nirmala, P.W. 2 Ajay and P.W. 3 Hastik to show that on the night between 2.11.2007 and 3.11.2007, the appellant was in their house. On the night of 2.11.2007, the appellant, deceased Meena and Meena's three children went to bed. The door was closed from inside, however, at about 3.00 a.m. Meena was found lying dead in the kitchen with several injuries on her head and the appellant had run away leaving the door open. P.W. 1 Nirmala has stated that Meena was her mother. Meena had three children i.e. P.W. 1 Nirmala, P.W.2 Ajay and P.W. 3 Hastik. Their father had expired about five years prior to the incident. The appellant used to come to their house and her mother Meena was in love with the appellant. There

used to be frequent quarrels between her mother Meena and the appellant because the appellant used to suspect the character of her mother. Meena used to tell the appellant to go to his house as he had two children, however, the appellant refused to go to his house and used to stay in the house of Meena. On account of this, quarrels used to take place between Meena and the appellant. Nirmala has further stated that on 2.11.2007, the appellant came to their house. Then they all had lunch. In the evening, the appellant went to play cricket. The appellant returned home at about 6 p.m. Thereafter, he left the house and after sometime the appellant returned home. The appellant had dinner in the house of Meena. Thereafter Nirmala and her two brothers went to bed in their bed room. In the bed-room, two cots were kept adjacent to each other. After some time, the appellant and her mother came and slept beside them. Nirmala has further stated that at about 3.00 a.m. her younger brother Hastik woke up as he wanted to urinate. Hastik went to the bath room in the kitchen. When Ajay went to kitchen, he started shouting loudly, therefore, Nirmala went to the kitchen. They saw that their mother was lying on the ground in supine position. There was injury on her head. A blood stained sickle was lying near her. Meena was dead. Nirmala noticed that the appellant was not present in the house and the appellant had run away. Thereafter Nirmala lodged F.I.R. The further evidence of Nirmala which is reflected in paragraph 5 of her evidence, shows that the door of the house was closed from inside before going to bed.

6. P.W. 2 Ajay has stated that Nirmala is his elder sister and Hastik is his younger brother. Meena was his mother. His father was dead. Ajay has stated that he knew the appellant as his mother was having an affair with the appellant. The appellant used to come to their house. There used to be disputes between the appellant and his mother. On 2.11.2007, he returned home from school at about 12 p.m. At that time, apart from his family, the appellant was also at home. The appellant was also present for dinner. After dinner, they went to bed. The appellant and his mother after having their dinner, also came to sleep. The appellant and his mother slept on the adjacent cot. Ajay has further stated that at about 3 a.m. his brother woke up and started shouting from the kitchen, therefore, he and his sister went to kitchen. They saw that their mother was lying on the ground in a pool of blood. The appellant was not present and the door of the house was open. The evidence of Ajay further shows that his sister had closed the door before going to sleep. Ajay has categorically denied that after dinner, the appellant used to go to his house. He has clearly stated that after dinner they went to bed. The appellant and his mother came and slept on the adjacent cot. He denied that by the time his mother came to sleep, he was fast asleep.

7. P.W. 3 Hastik has stated that Nirmala is his elder sister and Ajay is his elder brother. Meena was his mother. He knew the appellant as the appellant used to come to their house. Hastik has stated that on the night of the incident, he, his sister Nirmala, his brother Ajay, his mother Meena and the appellant were sleeping in their house. He woke up to urinate at about 3 a.m. and went to bath-

room in the kitchen. At that time, he saw that his mother was lying on the ground with injuries on the back of her head. He started shouting, whereupon, his sister and brother came there. Hastik has stated that the appellant was not present in the house at that time. Thus, the evidence of P.W. 1 Nirmala, P.W. 2 Ajay and P.W. 3 Hastik shows that on the night of 2.11.2007, the appellant slept in their house. The appellant and Meena were sleeping on one cot and the children were sleeping on the other cot which was adjacent to the cot on which the appellant and Meena were sleeping. Their evidence further shows that the door was closed at night and at 3.00 a.m. Meena was found dead in the kitchen with several injuries on her person. In such case, Section 106 of the Evidence Act would come into play. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principle which underlies Section 106 of the Evidence Act can be applied in cases where certain facts are especially within the knowledge of a person. In the case of *State of Rajasthan Vs. Kashi Ram*, AIR 2007 SC 144 : (2006) 10 JT 28 : (2006) 11 SCALE 440 : (2006) 12 SCC 254 : (2006) 9 SCR 501 Supp the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

8. In the present case, the appellant has not furnished any explanation as to how and in what circumstances, Meena sustained injuries and died. Sequence of events as narrated by P.W. Nos. 1, 2 and 3 excludes the possibility of any other person entering the house of Meena and causing her death. The conduct of the appellant of running away from the spot, further underlines his mens rea.

9. The prosecution has also brought on record the motive for the appellant to commit the murder of Meena through the evidence of P.W. 1 Nirmala, P.W. 2 Ajay and P.W. 6 Gangaram. Nirmala has stated that her father had expired about five years prior to the incident. The appellant used to come to their house and her mother was in love with the appellant. She stated that as the appellant used to come to their house, disputes used to take place between her mother and the appellant because the appellant had suspicion that Meena was having illicit relation with some other person. Nirmala has further stated that her mother used to tell the appellant to go to his house as he had two children, however, the appellant used to refuse and used to stay in their house. The evidence of P.W.2 Ajay also shows that disputes used to take place between Meena and the

appellant, however, he has stated that he did not know the reason for the disputes. P.W. 6 Gangaram was the brother-in-law of Meena. He has stated that he knew the appellant because the appellant used to visit the house of Meena. Meena and the appellant had an affair. Due to this, there was talk in the village, therefore Gangaram tried to persuade the appellant to not continue the affair but the appellant did not listen to him. Gangaram has further stated that the appellant used to quarrel with Meena as he had suspicion about her character. Thus, through the evidence of these three witnesses, the prosecution has also proved the motive for the appellant to commit the murder of Meena.

10. It is the prosecution case that the appellant assaulted Meena with sickle - 'koyata'. This is supported by the medical evidence. P.W. 7 Dr. Ahire conducted post-mortem on the dead body of Meena. On external examination, he found the following injuries:

- "(1) Abrasion over right cheek 2 cms. long;
- (2) C.L.W. on left ear;
- (3) Seven CLWs. over left parietal region as under:
 - (i) Linear CLW 3 cms. x 1 cm.;
 - (ii) Linear CLW 5 cm x 1 cm with full fracture;
 - (iii) Linear CLW 2 cm x 1/2 cm.;
 - (iv) Linear CLW 2 1/2 cm x 1 1/2 cm;
 - (v) Linear CLW 5 1/2 cm x 1 cm.;
 - (vi) Linear CLW 6 1/2 cm x 1 cm.;
 - (vii) T-shaped Linear CLW measuring 4 cm x 1 cm."

According to Dr. Ahire, all these injuries were ante- mortem in nature, probably caused by hard and sharp weapons.

On internal examination, Dr. Ahire found fracture of skull on the left parietal region measuring about 5 cm. x 1 cm. and intra-cranial bleeding in the brain. Dr. Ahire concluded that the probable cause of death is 'hypovolumic shock due to head injury'. Dr. Ahire has further stated that injuries noticed by him on the person of Meena were possible due to sickles Articles 5 and 17.

11. Thus, on going through the evidence on record, we are of the opinion that there is sufficient evidence to show beyond reasonable doubt that the appellant caused the murder of Meena. Thus, we find no merit in the appeal. Appeal is dismissed.