
(2014) 07 BOM CK 0246
In the Bombay High Court
Case No : Criminal Appeal No. 683 of 2012

Bhimrao Raghu Sonavane	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) ALLMR(Cri) 3474

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Abhijeet A. Desai, Advocate for the Appellant; A.S. Pai, A.P.P,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Gadkari, J.—The appellant, original accused, has preferred the present appeal challenging the impugned judgment and order dated 13th January 2012 passed by the District Judge-4 and Additional Sessions Judge, Sangli, in Sessions Case No. 144 of 2011, thereby convicting the appellant u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs. 5,000/-, in default of payment of fine to undergo further rigorous imprisonment for one year. The appellant has questioned the correctness of the said impugned judgment and order dated 13th January 2012.

2. The facts which can be enumerated from the record, may briefly be stated thus:

(i) PW-11 Hindurao Y. Patil was serving as police station officer at Kundal police station from 16.4.2011. That on 27.6.2011, he was on duty. At about 10 a.m. on the said day, he received the information of the incident on telephone by one person from village Kundal. PW-11 A.P.I. Shri Patil when was at police station itself. PW-1 Jitendra Sonavane came to the police station and gave information of the incident which took place at the backside of Pratinidhi High School, Kundal

where the murder of his mother was committed by his father i.e. the appellant herein. As per information given by PW-1 Jitendra, PW-11 A.P.I. Shri Patil recorded the first information report. The said first information report is at Exhibit 11. On the basis of the said first information report, C.R. No. 12 of 2011 u/s 302 of the Indian Penal Code came to be registered and the said first information report was reduced into writing in the printed format of the first information report. The same is at Exhibit 12.

(ii) PW-11 A.P.I. Shri Patil thereafter immediately went to the spot along with his staff. He prepared the inquest panchanama of the dead body in the presence of two panch-witnesses. The inquest panchanama is at Exhibit 29. The dead body of deceased Smt. Balabai Kamble was sent to the hospital for performing the postmortem examination. PW-11 A.P.I. Shri Patil prepared the spot panchanama in the presence of panch-witnesses, which is at Exhibit 16 on record. The articles i.e. one lady's chappal, one tiffin, sickle and nylon bag were found on the spot and the said articles were seized by effecting the panchanama which is at Exhibit 16. In the said process, A.P.I. Shri Patil also collected blood-stained soil from the spot. PW-11 Shri Patil thereafter recorded the statements of eyewitnesses namely Shobha Ramesh Kamble (PW-2), Neeta Ramesh Sonavane (PW-3). He also recorded statements of Vikram Kamble (PW-4) and other witnesses. PW-11 thereafter traced out the appellant at about 4 p.m.. The appellant was brought to the police station. The appellant came to be arrested after drawing the arrest panchanama, which is at Exhibit 31.

(iii) The appellant when was in the police custody, expressed his willingness to show the place where he had concealed the knife which was used in the commission of the present crime. The memorandum statement of the appellant came to be recorded which is at Exhibit 24. In pursuance of the memorandum statement, the appellant led the police to the spot wherein the knife, which was used in committing the present crime was used by the appellant, came to be discovered at his instance. The said knife was recovered after effecting a detailed panchanama which is at Exhibit 25. On 28.6.2011 PW-2 Smt. Shobha Ramesh Kamble came to the police station and produced the saree which was on her person at the time of incident. The said saree was stained with blood. The said saree was seized under panchanama which is at Exhibit 27.

(iv) During the course of investigation, PW-11 seized the clothes which were on the person of deceased Smt. Balabai. PW-11 Shri Patil got the map of the spot i.e. scene of offence prepared from the Tahsildar of the said region. The said map is at Exhibit 33. The seized articles were sent to the Chemical Analyzer for examination with a forwarding letter dated 18.7.2011. The said letter is at Exhibit 37. The Investigating Officer received the reports from the Chemical Analyzer which are at Exhibits 38 and 39. After completion of the investigation, PW-11 A.P.I. Shri Patil submitted chargesheet before the Court of competent jurisdiction.

(v) After committal of the case, the Trial Court framed charge below Exhibit 2 u/s

302 of the Indian Penal Code. The said charge was read over and explained in vernacular language to the appellant, to which he pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial and false implication. The learned Trial Court, after recording the evidence of the witnesses and after hearing the parties to the said Case, has convicted and sentenced the appellant as stated herein above.

3. Heard Mr. Abhijeet A. Desai, learned Counsel appointed for the appellant and Mrs. A.S. Pai, learned APP for the respondent-State. Learned Counsel for the appellant submitted that there is no direct evidence in the present case, as the evidence of PW-1, PW-2 and PW-3 are self-contradictory to each other and therefore same cannot be relied upon. He has further submitted that the prosecution has failed to prove the motive and/or intention of the appellant. He therefore submitted that the appellant is entitled for benefit of doubt and prayed that the present appeal may be allowed.

Per contra, the learned A.P.P. for the respondent-State submitted that, the present case is based on direct evidence i.e. ocular evidence of PW-2 and PW-3 and the same is corroborated by recovery of the weapon at the instance of the appellant and the reports of the Chemical Analyzer. She therefore urged before us that, the present appeal may be dismissed thereby confirming the judgment and order passed by the Trial Court.

4. In order to effectively deal with the submissions advanced by Mr. Abhijeet A. Desai, the learned Counsel appointed for the appellant and Mrs. A.S. Pai, the learned APP for the respondent-State, it would be useful to refer to the evidence of the prosecution witnesses in brief.

5. PW-1 is Jitendra Bhimrao Sonavane, the son of the appellant herein. PW-1 in his evidence has stated that he resides at Beghar Vasahat in Savitribai Phule Nagar, Kundal. Deceased Balabai was his mother. The appellant is his father. PW-1 Jitendra resides along with his wife and children. That his deceased mother was residing with him. That the appellant was residing with his brother Mahesh whose house was adjacent to the house of PW-1. That his father was doing the business of collecting the skin of dead animals. PW-1 Jitendra is working in M.I.D.C., Palus. PW-1 has further stated in his testimony that his father was having habit of drinking alcohol. That his father (the appellant herein) used to raise suspicion about character of his mother and was quarreling with her. The incident in question took place on 27.6.2011. On previous day of the incident, there was quarrel between the appellant and his mother for the reason that the appellant was having suspicion about the character of his mother. PW-1 has further stated that on the day of incident i.e. on 27.6.2011 he was at his house at about 9.15 a.m. That his mother i.e. deceased Balabai, Shobha Ramesh Kamble (PW-2), Neeta Ramesh Sonavane (PW-3), and Jayashri had been to the field of one Vasant Pawar for harvesting groundnut crop. At about 9.30 a.m., his friend Vikram Kamble (PW-4) and Shobha Kamble (PW-2) came to his house and informed him that the appellant was assaulting his mother with a knife on her

neck. PW-1 immediately followed them towards the spot of incident which was at the backside of Pratinidhi High School in their village. After reaching to the spot, he saw that his mother was badly injured, was lying on the spot and profusely bleeding. There were injuries at backside of neck and left hand palm of his mother. She died on the spot. From the spot itself, he went to the police station and lodged a report. The said report is at Exhibit 11 and the printed format of the first information report is at Exhibit 12. PW-1 has stated that his deceased mother had taken articles i.e. sickle, tiffin which was kept in a nylon bag and the said articles were found on the spot. He also identified the clothes of his mother i.e. saree, petticoat and blouse which are Articles A, B and C (Sr. Nos. 9, 10 and 11). PW-1 also identified the knife which was being used by his father for doing his business for collecting the skin of dead animals. PW-1 has also identified saree of Shobha Kamble which was on her person on the day of incident.

PW-1 was cross-examined at length by the appellant. However, no material has been elicited from this witness which would help the appellant in demolishing the motive, as put forth by this witness in support of the prosecution case. As a matter of fact, an admission has been brought on record wherein this witness i.e. PW-1 reiterated that on the previous day of the incident a quarrel had taken place between the appellant and his deceased mother. It appears to us that rest of the cross-examination proceeds in usual manner i.e. by putting general suggestions to this witness and as stated earlier nothing has been brought on record which will shake the credibility of this witness.

6. PW-2 is Smt. Shobha Ramesh Kamble and is an eye-witness to the incident. PW-2 in her evidence has stated that she resides in Beghar Vasahat, Phule Nagar since last 20 to 25 years. She knows the appellant as well as deceased Balabai as they are neighbours. That the relations between the appellant and the deceased Balabai were strained as the appellant used to take suspicion about the character of his wife Balabai. The appellant was doing the business of collecting skin of dead animals and deceased Balabai was doing labour work. The incident took place about six months back. PW-2 has further stated that on that day, she along with deceased Balabai, Jayashri and Neeta (PW-3) were going to the field of Vasant Pawar for harvesting groundnut crop at about 9.15 a.m. When they were proceeding from backside of High School of their village, the appellant came from backside. The appellant asked Balabai (deceased) to stop by giving her a call. After hearing the call given by the appellant, they all stopped. The appellant came near the person of Balabai and told her that "You are not properly thinking about me. You are not behaving properly and there is no use keeping you." The appellant thereafter took out a knife which was kept at the backside and gave its blows on the right side of the neck and backside of the ear of Balabai. That because of the said blows of knife on deceased Balabai, some blood-stains were sprinkled on her person and saree which she had worn at that time. She told the appellant not to beat Balabai. Even after her request, the appellant again gave blow of knife on the left hand palm of Balabai. That due to bleeding injuries, Balabai fell on the ground. That they were frightened and

shouted because of which the appellant went towards Tasgaon. As the said witness and other ladies frightened, they rushed towards their Beghar Vasahat. In their way, they met one Vikram (PW-4). They narrated the incident to said Vikram. PW-2 along with Vikram went to the house of son of the appellant i.e. Jitendra (PW-1) and narrated him the incident that the appellant had inflicted blows with knife to his mother and she was lying on the spot. PW-2 thereafter identified the knife which was in the hands of the appellant at the time of commission of the offence.

PW-2 was cross-examined at length by the appellant. However, no material has been elicited during the cross-examination of this witness which would create doubt about the trustworthiness of this witness in the mind of this court about her presence at the relevant time on the spot of incident.

7. PW-3 is Neeta Ramesh Sonavane. This witness is an eye-witness. PW-3 in her evidence has stated that she was also known as Seema. She resides at Beghar Vasahat since last 10 to 15 years. That she knew the appellant as well as deceased Balabai, as they were her neighbours. That the relation of the appellant with his wife Balabai was strained. That Balabai used to accompany her and PW-2 Shobha on labour work for harvesting groundnut crop. That on the day of incident, at about 9.15 a.m. PW-3 along with Shobha (PW-2), Jayashri and deceased Balabai were proceeding to the field of Vasant Pawar. That when they were on the way of backside of High School, the appellant came from backside and gave a call to Balabai as "A Bale stop". After the said call, PW-3 and other ladies stopped there. The appellant came near Balabai and told her that she is not thinking of him and not behaving properly and there is no use of keeping the relation with her. The appellant took a knife which was concealed from his backside and gave a blow on the neck of Balabai. There was profused bleeding from the neck injury and blood stains were sprinkled on the saree of PW-2 Shobha. That Shobha (PW-2) requested the appellant at that relevant time not to beat deceased Balabai. Even thereafter the appellant did not pay any attention to it and gave blow of knife on the left palm of Balabai. That because of bleeding injuries, Balabai fell down on the ground. The appellant thereafter ran away from the spot towards Karad side. As they were frightened, they started shouting and rushed towards Beghar Vasahat. That in their way they met Vikram (PW-4) and they narrated him the said incident. That Shobha (PW-2) and Vikram (PW-4) went to the house of Jitendra (PW-1), and Neeta (PW-3) went to her house. PW-3 Neeta has identified the knife which is Article "K". She also identified the clothes of the deceased Balabai.

In the cross-examination, this witness has reiterated the admission which she had given in her chief that the appellant came to the spot and gave call to deceased Balabai thereby further enforcing the prosecution case about presence of the appellant on the spot of the incident on the fateful day. It appears to us that the rest of the cross-examination proceeds on general suggestions put to this witness, to which she had denied. Thus, the credibility of the evidence of this

witness has remained unshaken.

8. PW-4 is Vikram M. Kambale. PW-4 in his testimony has stated that he knew the appellant as well as the deceased Balabai and their family members who used to reside in the same vicinity. He has stated that the relation between the appellant and his wife Balabai were strained on account of habit of the appellant of drinking alcohol and raising suspicion about Balabai's character. That the incident took place on 27.6.2011 at about 9.45 a.m. When PW-4 was proceeding towards village from Beghar Vasahat on his way three ladies namely Shobha (PW-2), Neeta (PW-3) and Jayashri met him. The said ladies were frightened. The ladies told him that the father of Jitendra assaulted his mother Balabai with a knife and Balabai is lying on the spot in an injured condition and therefore PW-4 along with Shobha (PW-2) immediately rushed to the house of Jitendra. Shobha narrated the incident to Jitendra. Thereafter Jitendra (PW-1) rushed to the spot. After reaching the spot, he saw the articles as mentioned in Exhibit 16.

In the cross-examination, no material has been elicited by the appellant which would come to the aid of the appellant in discarding the evidence of this witness.

9. PW-5 is Smt. Chhaya V. Patil. PW-5 in her evidence has stated that she is M.B.B.S. graduate and she is in service since 1997. She was at Kundal Public Health Center from 2003. That she was on duty on 27.6.2011. The dead body of Balabai was brought by Police Constable Shri Jadhav of Kundal Police station. That PW-5 performed postmortem examination on the dead body. She gave her opinion in the postmortem report about the cause of death as "shock due to hemorrhage due to injuries to the vital organ and major vessels in neck region" The postmortem report which is at Exhibit 21 has been proved by this witness. This witness has further stated that as per para-17 of the postmortem notes, there were three injuries, two were on the neck region and one on the left hand thinar. She has further stated that an internal injury at right lung was also found which was mentioned in Col. No. 20 of the postmortem notes. That injury no. 1 at Column No. 17 was corresponding to injury mentioned in Column No. 20. The age of the injuries was within 3 hours. That the injuries were grievous in nature. That as per the injuries the probable weapon might be sharp and pointed edged. She has further stated that injuries were ante mortem. She has further stated that considering the nature of injuries and weapon, the death would have caused due to profused bleeding. She has further stated that in ordinary course those injuries were sufficient to cause death i.e. instant death.

In the cross-examination, an admission detrimental to the interest of the appellant has been elicited. This witness has admitted that high degree of physical force is required in case of injury no. 1. Further admission has been elicited that, in case of shock due to hemorrhage death occurred within two to three minutes on account of profused bleeding.

10. The learned Counsel for the appellant has urged before us that the witnesses instead of saving Balabai, rushed to call other persons from the village, which

itself creates doubt about their being at the scene of offence and their conduct in not saving Balabai speaks volumes. In view of the evidence adduced by PW-5 Dr. Chhaya Patil, it is clear that in ordinary course, because of the injuries inflicted by the appellant to the deceased the death caused instantaneously. It has further come in the cross-examination as stated herein above, that the death might have caused within a period of 2 to 3 minutes on account of profused bleeding. We therefore find there is no substance in the submission of the learned Counsel for the appellant.

11. PW-6 is Vikram Makote, the panch-witness to the discovery of the weapon u/s 27 at the instance of the appellant. This witness has stated that on 27.6.2011 he was called by the police at Kundal Police station. There was another panch-witness present at the police station. The appellant who was in the custody, expressed his desire to show the place where he has concealed a knife, used in the commission of the offence. Accordingly, the memorandum was reduced into writing which is at Exhibit 24. In pursuance of the said memorandum, the appellant took police and the panch-witnesses under the bridge on Karad-Tasgaon road and from under heap of grass near a construction site, the appellant discovered a knife from the said heap of grass. The said knife is having wooden grip and blood-stains on it. Accordingly, recovery panchanama came to be drawn which is at Exhibit 25.

In the cross-examination of this witness, nothing has been elicited which would help the appellant and or which would create doubt about the truthfulness of this witness.

12. PW-7 is Sachin Hattekar, the panch-witness of the seizure of the saree of PW-2 Shobha which PW-2 produced having bloodstains of deceased Balabai. The evidence of this witness is of formal in nature. This witness has proved the said seizure panchanama which is at Exhibit 27.

13. PW-8 is Smt. Balutai S. Bansode is the panch-witness to the inquest panchanama of the deceased Balabai. This witness has proved the inquest panchanama which is at Exhibit 29. The evidence of this witness is of formal in nature.

14. PW-9 is Rajaram B. Jadhav. PW-9 is the panch-witness to the seizure of the clothes of the appellant. PW-9 in his evidence stated that on 27.6.2011 he was called by the police at police station where another panch-witness was also present. That in his presence the police seized the clothes of the appellant which were a white colour pant and greenish colour shirt. That the said clothes were stained with blood. The evidence of this witness according to us is also of formal nature.

15. PW-10 is Hanmantrao Patil. He is Circle Officer of the village Kundal, Taluka-Palus, Dist. Sangli. It appears from his evidence that the police got the map of the scene of offence drawn from this witness. Therefore, the evidence of this witness is formal in nature. The map of scene of offence is at Exhibit 33 and the

said document has been proved at the instance of the said witness.

16. PW-11 is Hindurao Patil, Assistant Police Inspector and Investigating Officer of the present crime. The various steps taken by him i.e. lodgment of the first information report till submission of the chargesheet/final report before a Court of competent jurisdiction have been mentioned in the foregoing paragraph nos. 2(i) to (iv) above, and for the sake brevity the repetition of the said facts are avoided here.

17. Thus after going through the entire evidence on record, it is clear that the present case is based on ocular evidence of PW-2 Smt. Shobha Kamble and PW-3 Smt. Neeta Sonavane. The motive behind the crime has been proved by PW-1 Jitendra Sonavane who is the son of the appellant and deceased Balabai. The discovery of the weapon which is knife at the instance of the appellant as contemplated u/s 27 of the Indian Evidence Act has been proved by PW-6 Vishal Mokate. The evidence of PW-9 Rajaram Jadhav discloses that at the time of seizure of clothes of the appellant, the blood stains were found on the same. Thus, the bloodstains were found in all, on three articles i.e. the knife, the shirt and pant of the appellant. The Chemical Analyzer's reports which is at Exhibit 38 (page 125 and 128 of the compilation) discloses that the item nos. 10, 11 and 13 i.e. Pajama/pant, full shirt and suri were found stained with human blood of "B" blood group. It is further clear from the record that the Saree of PW-2 Shobha which was seized during the course of investigation and which was having bloodstains of deceased Balabai was found to be stained with human blood having "B" blood group. Therefore, a safe inference can be drawn that the blood group of deceased was "B" blood group. It is to be noted here that the blood sample of the appellant was taken by the Investigating Agency, however, it appears that the blood group of the appellant could not be determined as the same resulted as were inconclusive.

18. After scrutinizing the entire evidence available on record minutely which is based on ocular evidence of PW-2 and PW-3 corroborated by the medical evidence and the evidence of Forensic Science Laboratory, we have no doubt in our mind that the appellant is the only person who has committed the present crime. Therefore we are of the considered opinion that there are no merits in the present appeal at all. Accordingly, the present Appeal is dismissed. A copy of this order be communicated to the appellant who is undergoing his sentence in jail.

19. Before parting with this judgment, we must record our appreciation for Advocate Mr. Abhijeet A. Desai who was appointed by the Legal Services Committee to represent the appellant in this appeal. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 5000/-.