

**(2010) 11 BOM CK 0071**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 305 of 2005**

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|--------------------------|----|------------|
| Bhimrao Shripat Khandare | Vs | APPELLANT  |
| State of Maharashtra     |    | RESPONDENT |

**Date of Decision :** 23-11-2010

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 307, 313

**Citation :** (2010) 11 BOM CK 0071

**Hon'ble Judges :** V.K. Tahilramani, J; D.D. Sinha, J

**Bench :** Division Bench

**Advocate :** Sonia Miskin, for the Appellant; H.J. Dhedia, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.D. Sinha, J.—Heard the learned Counsel for the appellant and the learned Addl. Public Prosecutor for the State.

2. This Criminal Appeal is preferred against the Judgment and order dated 19.12.2003 passed by the Addl. Sessions Judge in Sessions Case No. 1144 of 2000 whereby the appellant came to be convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer R.I. for life and to pay a fine of Rs. 3,000/-, in default of payment of fine, to suffer further R.I. for one year. The appellant was also convicted for the offence punishable u/s 307 of the Indian Penal Code and sentenced to suffer R.I. for seven years and to pay a fine of Rs. 1,000/-, in default thereof, to suffer further R.I. for six months. Both the substantive sentences passed against the appellant were ordered to run concurrently.

3. The prosecution case in a nut-shell is as follows:

One Vijay Vishnu Maske, who was attached to Oshiwara police station lodged a complaint with D.N. Nagar police station on 11.8.2000. It was stated in the said complaint that on 11.8.2000 at about 9.25 a.m., he and his colleague P.C.

Pandurang Chimaji Darade were sitting in Swami Samarth police chowkie of beat No. 1. At about 1.30 p.m., one person came to the police chowkie, holding an axe soaked with blood, the clothes of the said person were also stained with blood. (At that time, the said person told the complainant and his colleague that he assaulted his wife and daughter with an axe). The above bracketed portion has been deleted while exhibiting the complaint being inadmissible in evidence. Hence, the complainant asked the name of that person and the place where he assaulted his wife and daughter. The said person told the complainant that (he assaulted his wife and daughter at MHADA, Four Bungalow). The above bracketed portion has been deleted while exhibiting the complaint, being inadmissible in evidence. The said person has also disclosed his name as Bhimrao Shripat Khandare and told them to accompany him to the spot of the incident.

4. It is the case of the prosecution that the complainant and his colleague took charge of the said person, closed the police out-post and proceeded towards the spot of the incident in an autorickshaw. The said person took the complainant and his colleague to bungalow No. 167 where a temporary shed of wooden plank was erected. The complainant saw a girl aged about 12 years lying outside the room in an injured condition and was screaming. The complainant also saw that one lady was lying on the floor of the room and there was no movement. There was blood scattered near the face and legs of the said lady.

5. It is the case of the prosecution that the complainant handed over the accused along with the axe to his colleague. Police constable Darade took the injured girl to the hospital in an autorickshaw. On the way to Cooper Hospital, the complainant made inquiries with the injured girl as to how she had sustained the injury. The girl disclosed her name as Rama and her mother's name as Lata and also disclosed the name of her father as Bhimrao, the appellant. The said injured girl further told the complainant that on 11.8.2000, her father i.e. the appellant had assaulted her and her mother with an axe. The complainant admitted Rama to Cooper Hospital for treatment and came back to the spot of the incident. It is the case of the prosecution that P.S.I. Alka Deshmukh (P.W.8) then attached to D.N. Nagar police station, who was present at the spot, recorded the complaint of the complainant, P.C. Maske. The complainant put his signature on the complaint. The Investigating Officer recorded the complaint, which is at exh.8. PSI Alka Deshmukh received a telephone call from the control room that in flat No. 167, Sardar Vallabhbhai Patel Nagar, MHADA, Andheri (West), one person assaulted his wife with an axe and the said lady was lying in a pool of blood. After she received the message, she along with a police constable and her Senior Police Inspector as well as other staff went to the spot. There was one room made of wooden planks, having tin door which was open. They went inside the room and saw one lady lying in a pool of blood. While they were inspecting the spot, police constable Vijay Maske (P.W.1) attached to Oshiwara police station also came there and told P.W.8 PSI Alka Deshmukh the incident which was narrated to him by the appellant. P.W. 8 recorded the complaint of P.C. Maske

(P.W.1) at the spot as per his say. At that time, police constable Darade (P.W.2) also came there along with the appellant. The complaint of the complainant i.e. exh.8 was treated as F.I.R. and on the basis of the same, the Investigating Officer P.W.8 Alka Deshmukh registered the crime under Sections 302 and 307 of the I.P.C.

6. It is the case of the prosecution that the Investigating Officer thereafter called one lady panch and one male panch at the spot and in their presence she drew spot as well as inquest panchanama, obtained the blood sample and seized the clothes of the deceased. The Investigating Officer also recorded the statement of P.W.2 police constable Darade at the spot.

7. It is the case of the prosecution that P.W.8 Alka Deshmukh seized the axe from P.W.2 in the presence of panchas. The seizure panchanama is at (exh.12). The Investigating Officer collected blood sample of the appellant. All the seized articles such as clothes of the deceased, appellant, injured Rama, axe and blood samples were sent to the Chemical Analyser under a forwarding letter. The C.A.'s report dated 7.8.2001 was received. P.W.9 Anil Bhise took over the investigation from P.W.8 Alka Deshmukh. P.W.9 went to Cooper Hospital where the victim Rama was admitted for treatment. The Doctor told him that he could record the statement of injured Rama. P.W.9 obtained endorsement of the Doctor that Rama was in a fit mental condition to give statement and thereafter recorded her statement as per her say. P.W.9, the Investigating Officer, on completion of the investigation submitted charge-sheet against the appellant. The charge was framed against the appellant by the Court of Sessions under Sections 302 and 307 of the Indian Penal Code which was explained and read over to the appellant in vernacular to which he pleaded not guilty and claimed to be tried. The trial Court, by the impugned Judgment, convicted the appellant for both the offences, being aggrieved by the same, the appellant filed the present Criminal Appeal.

8. The learned Counsel for the appellant has contended that though the prosecution has examined in all nine prosecution witnesses, P.W.1 police constable Vijay Maske and P.W.2 police constable Darade, P.W.8 Alka Deshmukh and P.W.8 Anil Bhise are the police personnel. P.W.3 Ms Sasikala and P.W.7 Ramesh were examined by the prosecution as panch witnesses. P.W.4 Dr. Mahesh Lade was examined by the prosecution to prove the injury certificate (exh.14) issued by him in respect of the injuries sustained by the victim Rama, and P.W.5 Dr. Manik Sangle was examined to prove the postmortem notes. The learned Counsel for the appellant has submitted that the entire prosecution case primarily is based on the evidence of P.W.6 Rama, who at the relevant time was only 12 years old. It is contended that she being a minor, the possibility of tutoring cannot be ruled out. It is contended that the appellant being the step-father, Rama has falsely implicated him in the crime in question. On the other hand, the defence taken by the appellant in his Section 313 examination is not only probable, but is also rational which renders the case of the prosecution

improbable. It is contended that the defence taken by the appellant is that he and the deceased came to their hut at about 1.00 p.m. on the date of the incident to take lunch. Since lunch was not ready, he told his wife Lata to prepare the lunch and went out of the hut. It is the defence of the appellant that when he came back after about 30 to 45 minutes, he saw his wife Lata and daughter Rama lying in a pool of blood and, therefore, he rushed to the police chowkie to inform the matter to the police. However, the police falsely implicated him in the crime in question.

9. The learned Counsel for the appellant has submitted that if the appellant would have killed his wife and was the author of the injuries sustained by Rama, in that event, he would have absconded and would not have gone to the police chowkie to report the matter. The very fact that he had gone to the police station clearly shows that the conduct of the appellant was a normal human conduct and not the conduct of a guilty man. It is, therefore, contended that the sole testimony of P.W.6 Rama is not adequate enough to prove the charge of murder and attempt to murder against the appellant beyond all reasonable doubt and, therefore, the finding of conviction recorded by the trial Court is unsustainable in law and liable to be quashed and set aside.

10. The learned Addl. Public Prosecutor has submitted that the evidence of P.W.6 Rama who herself is a victim of assault is cogent, trustworthy and reliable which is also corroborated by the medical evidence of Dr. Maske and Dr. Manik Sangle coupled with the Chemical Analyzer's report. It is contended that the brutality of the act of the appellant can be seen from the injuries mentioned in the post-mortem report as well as the injury certificate (exh.14) of Rama. It is, therefore, contended that the evidence adduced by the prosecution proves the charges against the appellant beyond all reasonable doubt and, therefore, the impugned Judgment is sustainable in law and the appeal is liable to be dismissed.

11. We have given anxious thoughts to the various contentions canvassed by the learned Counsel for the respective parties and considered the evidence adduced by the prosecution. It is no doubt true that the prosecution has examined in all nine prosecution witnesses, however, the case of the prosecution primarily depends upon the evidence of P.W.6 Rama, who is the injured witness and the daughter of the appellant. Before we consider the evidence of Rama, we would like to express that it is well-settled that the conviction can be based on the testimony of sole eye-witness, provided the same is cogent, reliable, trustworthy and inspires confidence and corroborated by other evidence. At the same time, the Court has to consider the evidence of the witness who is a minor with utmost care and caution and must find out whether the evidence adduced by the prosecution has ruled out the possibility of tutoring. In the back-drop of this legal position, we propose to scrutinize the evidence of P.W.6 Rama.

12. The evidence of Rama shows that before recording her evidence, the trial Court has put some preliminary questions to this witness who was about 13 years of age at the time of recording of the evidence in the trial Court. The trial

Court was satisfied that the witness was capable of giving evidence and it was only thereafter, her evidence came to be recorded by the trial Court. Rama in her examination-in-chief has specifically stated that the appellant and her mother deceased Lata came to their hut to take lunch at about 1.00 p.m. Rama had already cooked rice. The appellant told Rama that he would not eat the rice cooked by her since it was stale. Thereafter, Rama started preparing chapattis. At that time, the appellant started assaulting deceased Lata. This witness further stated in her examination-in-chief that before the appellant-accused started assaulting her mother, deceased Lata, a scuffle took place in between the appellant and her mother Lata. The appellant assaulted her mother with an axe which was in her hut. The appellant gave two to three blows by means of the axe on the person of her mother Lata. This witness has further stated that the appellant also assaulted her with the same axe on her neck. The appellant gave three blows by the axe on left side neck, left side shoulder and left arm. This witness has stated that due to the assault, her mother Lata received bleeding injury and fell down on the ground. She also sustained bleeding injury in the assault at the hand of the appellant and she also fell down on the ground.

13. It has come in the examination-in-chief of this witness that the appellant changed clothes which had blood-stains on them and ran away with the axe from the spot, leaving injured Rama and her mother, deceased Lata, on the spot. It has come in the evidence of this witness that the police along with the appellant came to the spot ten minutes thereafter and took her to Cooper Hospital for treatment in an autorickshaw. She was also admitted in the hospital for treatment. This witness has identified the appellant in the Court. She has also identified the axe in the Court and the clothes worn by the appellant at the time of committing the assault. We have carefully considered the cross-examination of this witness. It has come in her cross-examination that she could identify the axe because there was an identification mark in the form of triangle on the blade of the axe. The careful scrutiny of the cross-examination of this witness shows that the defence could not extract any material which would affect the veracity of this witness. There are no omissions or contradictions in her testimony and the omission which is brought on record in her police statement is only in respect of which portion of the neck, shoulder and arm the injury was caused by the appellant with the axe. The said omission, in our view, pertains only to the placement of the injury and not in respect of causing the injury by an axe and, therefore, is not of a material nature and does not affect the veracity of the testimony of this witness.

14. In the instant case, we cannot forget that P.W.6 Rama is the victim of the assault and the deceased Lata was her mother. There is nothing on record to show that the relations between her and the appellant, who is her step-father, were either strained or not cordial. There is absolutely nothing on record to demonstrate why this witness would allow the real culprit to go scot-free and falsely implicate her own step-father in the crime in question. It is pertinent to note that she had already lost her mother and by giving evidence against the

appellant, she knew that she also would lose the appellant, who is her step-father. The testimony of this witness, who is the victim of assault, inspires confidence in the Court about its authenticity and genuineness. The testimony of this witness which is free from contradictions and omissions, in our view, is completely trustworthy and wholly reliable.

15. It is necessary now to find out whether the evidence of P.W.6 Rama is corroborated by medical evidence as well as other evidence adduced by the prosecution. Dr. Mahesh Lade (P.W.4) examined Rama and noticed the following injuries on her person:

- (1) Contused Lacerated wound 3 cm. x 2 cm x 1 cm left cervical region.
- (2) Contused lacerated wound 5 cm x 1 cm x 1 cm on left shoulder.

According to the opinion of the Doctor, both the injuries were grievous in nature. The Doctor has issued Injury Certificate (exh.14) in this regard. It has come in the evidence of Dr. Mahesh Lade that injuries Nos. 1 and 2 mentioned in the Injury Certificate (exh.14) could be caused by article No. 1 axe. Dr. Sangle (P.W.5) who has conducted the post-mortem examination on the dead-body of Lata found the following external injuries:

- 1. Transversely placed incised wound of 6 cm. x 2 cm x Vertebra deep on nape of neck, 1.5 cm. below, external occipital protuberance.
- 2. Transversely placed incised wound of 8 cm x 3 cm x Vertebra deep on nape of neck, 1.5 cm below above mentioned injury.
- 3. Transversely placed incised penetrating wound of 2.5 cms. X 1 cm, on left neck, 3.5 cms. below angle, left mandible. On dissection carotid artery underneath clean cut blood vessels underneath clean cut.

Dr. Sangle has stated in his testimony that the external injuries suffered by the deceased were ante-mortem and opined that the cause of death was due to hemorrhagic shock due to sharp weapon injury. The Doctor has also opined that the said injuries could be caused by a sharp-edged weapon like axe (Article 1). The defence could not extract anything in the cross-examination of both these Doctors to discredit their evidence. The evidence of both these Doctors completely corroborates all the material particulars of the prosecution case disclosed by P.W.6 Rama. Deceased Lata suffered three incised wounds on the vital part of her body and as per the opinion of the Doctor, the said injuries could have been caused by an axe (art. 1). Similarly, the evidence of Dr. Mahesh Lade shows that Rama (P.W.6) has also sustained grievous injuries. The medical evidence, in our view, is wholly consistent with the material particulars of the prosecution case as disclosed by P.W.6 in her substantive evidence.

16. In the instant case, the deceased was having blood of 'A' group, P.W.6 Rama's blood group is 'O' and the appellant's blood group is 'B'. It is not in dispute that as per the Chemical Analyser's report, the blood found on the

clothes of the appellant was 'A' and 'O' groups. This again is an incriminating circumstance which connects the appellant with the crime in question and corroborates the case of the prosecution disclosed by P.W.6 Rama.

17. In the instant case, the counsel for the defence has contended that the conduct of the appellant in going to the police chowkie is consistent with the innocence and it is not the conduct of a guilty person is concerned, this aspect will have to be considered in the context of the defence taken by the appellant. The defence of the appellant is that he and his wife Lata came to the hut at 1.00 p.m. on the date of the incident to take lunch, since lunch was not ready, he told his wife Lata to prepare the same and went out of the hut. When he came back to the hut after 30 to 45 minutes, he saw his wife and Rama lying in a pool of blood and, therefore, he went to the police chowkie to report the matter. It is pertinent to note that the appellant and his wife were staying in the hut and doing labour work. There is nothing on record to show that either the appellant or the deceased Lata had enmity with anybody. The incident had taken place in broad day light at 1.00 p.m. Looking to the financial condition of the appellant and his family, it is difficult even to imagine that somebody would have come to rob them and even if it is presumed that somebody had come to commit theft, there is no reason for him to commit murder of Lata and cause grievous injuries to Rama. It is difficult to presume as to why P.W. 6 Rama would allow the real culprit to go scot-free and falsely implicate the appellant without any rhyme or reason in the crime in question. Considering these aspects in totality, the defence raised by the appellant, in our view, is improbable and does not affect the case of the prosecution.

18. For the reasons stated hereinabove, the Criminal Appeal suffers from lack of merits and the same is dismissed.