
(2015) 08 BOM CK 0009
In the Bombay High Court
Case No : Criminal Appeal No. 214 of 2008

Dadasaheb Balaram Jadhav	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 316, 34

Citation : (2015) 08 BOM CK 0009

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

Bench : Division Bench

Advocate : Manas N. Gavankar, I/by Sharon Patole, for the Appellant; A.S. Shitole, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Tahilramani, J—The appellant - original accused No. 1 has preferred this appeal against the judgment and order dated 14.1.2008, passed by the learned Sessions Judge, Sangli, in Session Case No. 107 of 2006. By the said judgment and order, the learned Session Judge, convicted the appellant under Sections 302, 120B and 316 read with Section 34 of the Indian Penal Code. For the offence under Section 302 read with Section 34 of IPC, the appellant was sentenced to life imprisonment and fine of Rs. 1,000/- in default rigorous imprisonment for one month. For the offence under Section 120B read with Section 34 of IPC, the appellant was sentenced to suffer life imprisonment and to pay fine of Rs.1,000/- in default rigorous imprisonment for one month and for the offence under Section 316 read with Section 34 of IPC, the appellant was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- in default rigorous imprisonment for six months. The learned Sessions Judge directed that all these substantive sentences of imprisonments shall run concurrently.

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

Deceased Jayashri was the wife of the appellant. The marriage of the appellant and deceased Jayashri took place on 26.05.2005 at village Neri near Panvel. Jayashri was the sister of P.W.7 Ramesh and P.W. 23 Umesh and she was daughter of P.W.21 Sunanda. Sunanda alongwith her husband and two sons was residing at Sangli.

After the marriage, Jayashri went to reside with the appellant at village Neri in Panvel. Village Neri was at a distance of about 8 to 10 Kms from Panvel. It is the prosecution case that the appellant had perverse sexual habits and Jayashri had complained about the same to her mother P.W.1 Sunanda. Jayashri told Sunanda about perverse behaviour of her husband appellant Dadasaheb during sexual contact. Jayashri expressed fear on account of this perverse habit of her husband. Jayashri also told her mother Sunanda that on account this conduct on the part of her husband, she wanted to avoid physical contact due to which her husband Dadasaheb was harassing her. Thereafter when Jayashri came to the house of her mother, she again complained to her mother about her husband's perverse sexual habits. In September, 2005, the appellant called Sunanda and her husband i.e. mother-in-law and father-in-law of the appellant at village Neri. Accordingly P.W.21 Sunanda and her husband went to village Neri. At that time the appellant Dadasaheb made complaint that his wife Jayashri was avoiding physical contact. P.W.21 Sunanda then told her son-in-law Dadasaheb not to act in perverse manner.

2 to 3 months prior to the incident, Jayashri was brought to her maternal house as she was pregnant and she was not keeping well. Some time thereafter Jayashri got enrolled in Computer Class. On the day prior to the incident at about 9 to 9.15 p.m. appellant called P.W.23 Umesh who was the brother of Jayashri, Jayashri then spoke to the appellant. Thereafter Jayashri told her brother Umesh that on the next day she was going to her computer class for cancellation of enrollment. On the next day i.e. on 14.12.2005, Jayashri went to her computer class. When Jayashri was in the computer class, at about 6.15 to 6.30 p.m. appellant called P.W. 4 Bansode, who was running the said computer class. The appellant told Bansode to cancel Jayashri's admission in the computer class. Meanwhile Jayashri came to the office of P.W.4 Bansode. Thereafter the appellant again called P.W.4 Bansode. Jayashri then spoke to her husband i.e. appellant. Thereafter she handed over telephone receiver to P.W. 4 Bansode. Bansode then spoke to the appellant. Appellant again told Bansode to cancel Jayashri's admission in the computer class. Then Jayashri left the office of Bansode.

P.W.3 Rani was residing at Vishram Bag, Sangli. On 14.12.2005, in between 6.30 to 7.00 p.m. she had gone to the house of her friend which was situated near Swami Samarth Park at Sangli. She saw one Santro Car parked. She saw two persons alighting from the front door and two persons alighting from rear door of the car. She also noticed two persons were dragging one lady from the rear side of the car. Out of these four persons, two were in the age group of 30 to 40 years and other two were in the age group of 20 to 22 years. She also noticed,

one out of those four persons was assaulting the lady with a cricket bat. P.W.3 Rani got frightened and went to her house. On the next day, in the morning, she read news item in the newspaper. There was one news that one lady was murdered in Swami Samarth Park. On reading the news item, P.W.3 Rani went to Vishram Bag Police Station and gave statement. Thereafter Rani was called for identification parade. In the identification parade, she has identified the appellant as the same person who was assaulting the woman with cricket bat.

Meanwhile on 14.12.2005 as Jayashri did not return home, her brother Ramesh went in search of her. Sometime thereafter, one person told Ramesh that one lady was murdered in Sphurti Chowk. On reaching the spot, he noticed dead body of his sister. He noticed injuries on her body. He then went to Vishram Bag Police Station and lodged F.I.R. wherein he stated that some unknown person had assaulted his sister with a weapon on the head and chest. After lodging of F.I.R, investigation commenced. During the course of investigation, silver colour Santro Car bearing registration No.MH-02-A-5013 came to be recovered at the instance of the appellant. Blood stains were found on the bumper of the car. The weapon of assault i.e. bat Article No. 16 which was blood stained was also recovered at the instance of the appellant. After completion of investigation, the chargesheet came to be filed.

3. Charge came to be framed against the appellant under Section 302, 120B and 316 read with Section 34 of the Indian penal Code. 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.

4. It may be stated at this stage that originally there were four accused persons. However, remaining accused persons absconded during the course of trial. Therefore, the case of the appellant came to be separated and he was tried separately. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in paragraph No. 1 above. Hence this appeal.

5. The star witness in the present case is P.W.3 Rani, who is an eye witness to the incident. P.W.3 Rani has stated that she alongwith her minor son was residing in Vishram bag, Sangli. Her husband was working at Solapur. On 14.12.2005, in between 6.30 to 7.00 p.m. she had gone to the house of her friend Snehal at Swami Samarth Park in Sangli. As Snehal was not at her residence, hence Rani was returning home. On the way, she noticed one Santro Car parked by the side of the road. Two persons got down from the front door of the car and two persons got down from the rear side door of the car. She also saw that two persons were dragging out one lady from the rear side of the car. Out of four persons, one person was assaulting the lady with cricket bat. Rani was frightened, hence she went to her house. On the next day, while she was reading newspaper "Pudhari" she noticed a news item therein that one lady was murdered near Swami Samarth Park. Hence she went to police station and gave her statement. Rani has stated that on 10th January, she was called for the

identification parade. In the identification parade, she identified all the four accused persons. Rani has identified the appellant as the very same person who was assaulting the woman with the cricket bat. She has also identified the cricket bat Article 16 as the same bat which was seen by her at the time of the incident.

6. The learned counsel for the appellant submitted that the evidence of Rani cannot be relied upon because first of all Rani has witnessed the incident in the moon light. He submitted that in such case it would not have been possible for Rani to correctly observe the appellant and due to inadequate light there could be mistake in identifying the assailant. As far as this aspect is concerned, no question was put in cross-examination to P.W.3 Rani that at that time it was so dark that she could not observe the assailant. Rani has categorically stated that she saw the appellant assaulting the lady with bat. We see no reason to disbelieve her testimony.

7. Thereafter the learned counsel for the appellant submitted that evidence of Rani cannot be believed because of her conduct. He submitted that the police station was near her house. However, she did not go to the police station. He further submitted that the house of mother of Rani was on the way to her home from Sphurti Chowk, yet Rani did not go to the house of her mother. He submitted that she did not tell anyone about the incident till the next day which raises doubt about her testimony. As far as this aspect is concerned, it is seen that Rani is a young lady. She was staying with her minor child at Vishram Bag. Her husband was working in a far away place at Solapur. Rani has further stated that on witnessing an incident she got frightened, hence she straightway went to her house. How a person will react after witnessing the incident of assault cannot be put in straight jacket format. Different persons react differently when confronted with the same type of incident. Looking to the fact that Rani was a young lady residing alone with her minor child. There was no one else in the house to whom she could disclose about the incident. Moreover, at the time of witnessing the incident, Rani only knew that the lady was being assaulted and Rani did not know that the lady would die thereafter. In such case we do not find anything odd in her behaviour that it would discredit her testimony. Rani is an independent witness. She not in any way related to the deceased or connected with deceased in any manner. Hence we see no reason to disbelieve her testimony.

8. The evidence of P.W.21 Sunanda shows motive for the appellant to commit murder of Jayashri. Sunanda was the mother of Jayashri. Sunanda has stated that Jayashri was her daughter. Her second name was also Anamica. Jayashri got married to the appellant on 26.5.2005. Some time after the marriage, Jayashri came to her house. Sunanda asked Jayashri how she was getting along at her husband's house. Thereafter Jayashri told her about the perverse attitude of her husband while establishing sexual contact. Jayashri expressed fear on account of the perverse behaviour. Jayashri also told Sunanda that on account of this conduct of the appellant, Jayashri wanted to avoid physical contact with her

husband because of which her husband was harassing her. Thereafter Jayashri went back to her husband's house for cohabitation. Thereafter Jayashri returned back to Sangli, at that time also, Jayashri complained about her husband's perverse sexual behaviour.

9. Sunanda has further stated that in September, 2005, the appellant called Sunanda and her husband to village Neri. Accordingly Sunanda and her husband i.e. parents of Jayashri went to the house of the appellant at village Neri. When they went to the house of the appellant, appellant made complaint that Jayashri was avoiding physical contact. Sunanda then told her son-in-law (appellant) not to act in perverse manner. Sunanda has stated that thereafter 2 to 3 months prior to the incident, Jayashri came to her house. She was pregnant. Her husband i.e. appellant had brought Jayashri to their house as Jayashri was not feeling well. Some 10 to 12 days thereafter Jayashri joined computer class. On 14.12.2005 at about 9 to 9.15 p.m. the appellant called on Cell phone of her son P.W.23 Umesh and told that Jayashri's admission in computer class should be cancelled. Sunanda has thereafter stated that on 14.12.2005, Jayashri went to her class at about 3 to 3.30 p.m. Normally, her daughter used to return back upto 6.00 p.m. However, on that day her daughter did not return back, her sons and husband searched for Jayashri. On the next day, she learnt about death of Jayashri. Hence the evidence of P.W.21 Sunanda shows that the appellant was upset with his wife Jayashri as she was avoiding physical contact.

10. P.W.7 Ramesh was the brother of Jayashri. Ramesh has stated that Jayashri was his younger sister. Jayashri got married to the appellant on 26.5.2005 at village Neri near Panvel. He has stated that mobile number of the appellant was 9819916125. He has further stated that appellant used to reside at village Neri which was at a distance of about 8 to 10 Kms from Panvel. After marriage his sister went to village Neri for cohabitation. Six months after the marriage, appellant and Jayashri had been to their house at Sangli on account of her pregnancy. His sister then took admission in Computer Class. Occasionally he used to bring her back from the Computer Class. On 14.12.2005, at about 3.50 p.m. Jayashri left the house to go to the computer class. Jayashri did not return home till 7.00 p.m., hence he left the house and went to her class. On reaching the class, he made enquiry with P.W. 4 Bansode Sir. Bansode Sir told him that Jayashri's husband had contacted him on telephone and told him (Bansode) to discontinue Jayashri's enrollment as student in his class. Bansode further told Ramesh that his sister also had telephonic conversation with her husband. Thereafter Ramesh came out of the class and contacted his brother Umesh and made enquiry about Jayashri. Umesh told him that he is waiting for Jayashri. Umesh told that he had telephonic conversation with "Bhauji" (appellant) and the appellant told him that she might have gone to one of her friends house. Sometime thereafter, one person told Ramesh that one lady was murdered near Sphurti chowk. He immediately went to the spot and saw the dead body of his sister with injuries on her head. He then went to Vishram Bag police station and lodged F.I.R.

11. P.W.23 Umesh was also the brother of Jayashri. He has stated that his cell phone No. is 9890454394 and the Cell phone No. of appellant was 9819916125. Umesh has stated that on 13.12.2005, at about 9.15 p.m. appellant contacted him on his cell phone. Thereafter his sister Jayashri spoke to her husband (appellant). After the telephone call, his sister told him that on the next day it was her husband's birthday and he was going to gift her something special. On the next day his sister went to the Computer Class at about 3 to 3.15 p.m. Normally his sister returned home at about 6.30 p.m. However, on that day, his sister did not return back upto 6.30 p.m. Hence his brother Ramesh went in search of Jayashri. Thereafter his brother informed him on telephone that their sister was murdered and he has lodged F.I.R.

12. The evidence of P.W.21 Sunanda, who is mother of Jayashri shows that on 14.12.2005, her son-in-law Dadasaheb (appellant) did not come to their house. The evidence of P.W.7 Ramesh shows that his brother Umesh had conversation on the telephone with the appellant when they could not find Jayashri and at that time, the appellant stated that she might have gone to one of her friends' house. It is pertinent to note that in the evening of 14.12.2005, the appellant was very much in Sangli, yet he kept this fact hidden from his mother-in-law P.W.21 Sunanda, as well as his brothers-in-law P.W.7 Ramesh and P.W.23 Umesh. The appellant was residing at village Neri in Panvel. He had left his wife Jayashri in the house of her parents as his wife was pregnant. However, there is evidence to show that on the day of incident, appellant had come from village Neri in Panvel to Sangli where the incident had occurred. The distance between Panvel to Sangli is more than 250 Kms. The evidence of P.W.23 Umesh, who is the brother of deceased Jayashri shows that the appellant was having a mobile with him bearing No. 9819916125. P.W.17 Sachin was working as Nodal Officer in Ideal Cellular Company since 2000. He has stated about Call Detail Records of cell phone of the appellant. The Call Detail Records of the cell phone of the appellant show that at about 10 a.m. in the morning the appellant was on the Panvel Highway, and at about 6.18 p.m. the appellant was near Civil Hospital at Sangli. Thus, at about 6.18 p.m. the appellant was very much in Sangli. However, appellant has not informed his brothers-in-law or mother-in-law that he was in Sangli on that day. This shows that he did not want to reveal to anyone that he had come to Sangli on that day. This shows mens rea on part of the appellant.

13. P.W.3 Rani who is an eye witness has clearly stated that the assailant got out of one Santro car. She has identified Santro car bearing Registration No.MH-03-K-5013 as very same car from which appellant got out. This car was recovered at the instance of appellant. P.W.8 Vitthal is the panch witness in relation to recovery of said Santro car at the instance of the appellant. Vitthal has stated that on 16.12.2005, he was called by the police. One Police Officer namely Police Inspector Jarag (P.W.26) was present in the office. The appellant was sitting in the office. The appellant made a statement. Pursuant to said statement the appellant led the police and panchas to Panvel. The appellant had pointed out one Santro car of silver colour. The number of the Santro Car was MH-03-

K-5013. They noticed blood stains on the front side bumper. Police collected blood from the bumper with a cotton swab. The evidence on record shows that cotton swab was sent to the Chemical Analyzer and as per Chemical Analyzer's report Exh.161, cotton swab was stained with blood of "B" group. The Chemical Analyzer Report Exh.161 shows that blood group of deceased Jayashri was also "B". Thus, the finding of blood of "B" group on the Santro car further corroborates the prosecution case.

14. P.W.3 Rani has stated that the appellant assaulted the deceased with a bat. This bat was recovered at the instance of the appellant. Panch witness P.W.20 Mohan has deposed about it. Mohan has stated that appellant made a statement in his presence. The appellant then led them to Panvel and from there to village Neri. The appellant took them to his house. The house was locked. The appellant then collected the keys of the house from his neighbour and opened the door. After entering the house, the appellant took out one bat and clothes which he had concealed behind the show-case. The bat as well as clothes were stained with blood. The clothes were pant and shirt. The Chemical Analyzer's report Exh.161 shows that the clothes of the appellant were stained with blood of "B" group. So also bat was stained with blood of "B" group. It may be reiterated that blood group of deceased Jayashri was "B". Thus, recovery of blood stained bat and blood stained clothes at the instance of appellant which bore the same blood group as that of the deceased is a strong incriminating circumstance against the appellant.

15. P.W.5 Sunil Pawar is a carpenter by profession. He used to make mainly cricket bats and stumps. His evidence shows that on 14.12.2005, two persons came to his shop in Santro car to purchase a bat. P.W. 5 Sunil showed some bats to them and the appellant purchased one of the bats. P.W.5 Sunil has stated that the appellant is very same person, who purchased cricket bat from him. He has also identified cricket bat Article 16 as very same bat sold by him.

Mr. Gavankar, learned counsel for the appellant submitted the evidence of P.W.5 Sunil shows that he sold new bat to the appellant whereas; the evidence of P.W.20 panch witness Mohan shows that the bat recovered at the instance of the appellant was a used bat. He submitted that in such case, it cannot be said that the bat sold by P.W.5 Sunil was the very same bat recovered at the instance of the appellant. He submitted that the fact that P.W.5 Sunil states about new bat being sold to the appellant and evidence of P.W.20 panch witness Mohan shows that it was used bat, this shows that the bat recovered at the instance of the appellant has been planted by the Investigating Agency on the appellant. As far as this contention is concerned no doubt P.W.5 Sunil sold a new bat to the appellant, but it is noticed that the appellant assaulted Jayashri a number of times with bat which is seen from the postmortem report. The postmortem report shows 33 injuries were sustained by Jayashri on account of continuous assault by the appellant. Most of the injuries are on the head of Jayashri which would cause a new bat to look used. Thus, we do not find much merit in this

submission of the learned counsel for the appellant.

16. As stated earlier the appellant was resident of village Neri which is about 8 to 10 Kms from Panvel. Panvel is situated far away from Sangli. Judicial Note can be taken of the fact that the distance between Panvel and Sangli is more than 250 Kms. The Call Detail Records which have been brought on record through the evidence of P.W.17 Sachin Shinde, who is the Nodal Officer of Idea Cellular, shows that the appellant was very much present near the scene of offence. However, appellant has not disclosed to anyone that he came to Sangli on that day which is seen from the evidence of P.W.7 Ramesh who is the brother of Jayashri. The evidence of P.W.21 Sunanda the mother of Jayashri also shows that the appellant did not come to their house on 14.12.2005. In ordinary course, if the appellant had come to Sangli, he would have definitely visited the house of his in-laws. However, he has not done so. Moreover, he kept the fact that he had come to Sangli hidden. The evidence of P.W. 23 Umesh, who is brother of Jayashri also shows that the appellant was in fact representing that he was in Mumbai on the day of incident which further raises suspicion about the appellant.

17. The evidence of P.W.12 Rajkumar shows that Santro car bearing No. 5013 had crossed Ashta Sangli Road Toll Plaza at about 5.18 p.m on 14.12.2005 and thereafter it went back by crossing toll plaza at about 7.44 p.m. on the same day. This is supported by Exh.108 and 109 which are the letters written by the Investigating agency to the toll plaza, the reply of Manager of toll plaza to the investigating agency which is supported by the evidence of P.W.12 Rajkumar.

18. It is the prosecution case that the appellant assaulted his wife Jayashri with bat which led to her death. The fact that human blood stains of "B" group were found on the bat further corroborates the prosecution case. The evidence of P.W.15 Dr. Mulla shows that number of injuries were found on the dead body of Jayashri. The postmortem report show that 33 injuries were found on the body of Jayashri. According to Dr. Mulla injury Nos. 30 and 31 are independently sufficient to cause death. The description of the injury No. 30 and 31 are as under :-

"Injury No. 30 CLW on right temporal region 4.5 cm x 1 cm x bone deep, edges irregular.

Injury No. 31 - C.L.W. right parietal region 5 cm x 2 cm x bone deep, edges irregular.

The internal injury caused due to external injury Nos. 30 and 31 are as under:-

Fracture extending from right auditory canal to coronal sutures (separation of coronal suture right side) and extending over right parietal bone. Diffuse extradural haematoma (whole brain covered with haematoma). Evidence of brain laceration at right temporal region. Evidence of sub-arachnoid and subdural haematoma.

According to Dr. Mulla injury Nos. 25, 26 and 32 were also grievous injuries. The

description of these three injuries is as under:-

"Injury No. 25A Multiple tiny abrasions on left pre-auricular region and left cheek with graze abrasion on maxilla cheek and on left zygomatic arch 10 cm x 5 cm".

Injury No. 25B - CLW at left maxilla, extending from left angle of left eye to left infra orbital region. 4 cm x 3 cm x 2 cm, irregular in edge and soiled with mud.
Injury No. 26 Left black eye with sub conjunctival haemorrhage.

Injury No. 32 - Abrasion right mandibular region 1 cm x 0.5 cm with palpable fracture of mandible (right side).

Dr. Mulla has stated that the cause of death was due to cranio cerebral injuries and the injuries must have been caused by hard and blunt object like cricket bat. This further corroborates the prosecution case.

19. The evidence of P.W.21 Sunanda who was the mother of Jayashri shows that Jayashri was pregnant at the time of incident. The evidence of P.W.7 Ramesh also shows that six months after the marriage appellant had sent Jayashri to their house at Sangli on account of her pregnancy. The evidence of P.W.15 Dr. Mulla also shows that Jayashri was pregnant at the time of death and she was carrying pregnancy of 18 to 20 weeks and foetus was the female foetus. When the appellant assaulted Jayashri, her death was caused and due to this, death of the foetus was also caused. Thus, case is also made out under Section 316 of IPC.

20. Mr. Gavankar, thereafter placed reliance on the decision of this Court in case of Ishwarbhai Narayan Makwana Vs. State of Maharashtra, (2013) 1 ABR 555 : (2013) ALLMR(Cri) 988 : (2013) BomCR(Cri) 10 . He pointed out that in the said case there was recovery of blood stained shirt and pant at the instance of appellant. In the said case it was held that this circumstance though it leads to grave suspicion against accused, it does not point out only to the accused and none-else so far as murder of victim is concerned. Mr. Gavankar pointed out that after observing this, the accused in the case of Makwana (supra) came to be acquitted. However, in the present case, the prosecution is not relying only on the circumstance of recovery of car, bat and blood stained clothes, but in addition, the prosecution is relying on the circumstance of motive as well as evidence of P.W.3 Rani, who is an eye witness in the present case. Hence this decision cannot be made applicable to the facts of the present case.

21. The second decision on which the learned counsel has placed reliance is Sitaram Dada Lakade and anr. -vs- State of Maharashtra 2007 ALL MR (Cri)3335. The said case was a case of circumstantial evidence and the prosecution was relying on the circumstance of "last seen and recovery". Mr. Gavankar pointed out that in the said case the accused came to be acquitted. As stated earlier, in the present case the prosecution is mainly relying on the evidence of P.W.3 Rani, who is an eye witness to the incident. This is not a case of only recovery and last seen, thus this decision cannot be made applicable to the facts of the present

case.

22. The appellant has caused death of his wife Jayashri by assaulting her with bat. However, as Jayashri was pregnant and the death of her unborn child was also caused on account of her death, in such case, Section 316 of IPC is also attracted. However, the appellant has also been convicted for the offence under Section 120B read with 34 of IPC. As far as this charge of criminal conspiracy is concerned, prosecution is relying on Call Detail Records of cell phones between four accused, to show that there was a conspiracy between them. However, there is no transcript of the calls made by the accused persons to each other. Just on the basis of fact that calls were made by these accused to each other it cannot be said beyond reasonable doubt that criminal conspiracy existed between the appellant the other accused. In such case charge under Section 120B of IPC, would have to be set aside. In the result, the following order is passed.

23. The conviction and sentence of appellant under Section 302 and 316 read with Section 34 of IPC is maintained. The conviction of the appellant under Section 120B read with Section 34 of IPC is set aside. The appellant is acquitted of the said charge. The appeal is partly allowed in above terms.