
(2004) 03 BOM CK 0075
In the Bombay High Court
Case No : Criminal Appeal No. 321 of 2000

Damu Baban Kharat, Yeravada Central Prison	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 2 DMC 316

Hon'ble Judges : V.G. Palshikar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : M.R. Deshpande, for the Appellant; U.V. Kejariwal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Kakade, J.—The appellant has preferred this appeal against the judgment and order dated 1.2.2000 passed by the Addl. Sessions Judge, Pune in Sessions Case No. 143 of 1999 wherein he was convicted for offence punishable u/s 302 of the I.P.C. and was sentenced to suffer life imprisonment and to pay fine of Rs. 500/- in default to suffer R.I. for one month.

2. The facts giving rise to the present case in brief, are thus -

Deceased Sunita was wife of the accused. Their marriage had taken place about six years prior to the incident. She had two daughters out of the said wedlock, namely, Sujata and Archana aged about 5 and 3 years respectively. At the time of the incident. Deceased Sunita was residing with her husband and daughter initially at village Ghatghar. However, about 3-4 months prior to the incident, deceased Sunita and accused had come in search of job to village Aavli-Fata-Otur. They were residing in the house of Sunita's grand-parents separately in the "Padvi" and were doing labour work. About one month prior to the incident her mother Shakuntala Salvi has also come to reside at Aavli-Fata to meet her parents and her daughter Sunita. On 1.6.1991 Sunita informed her mother that

when she had gone out, her husband had taken away the cash amount and six golden beads from the house without informing her. On that count on 2.6.1991 at about 11.00 p.m. when accused returned to the house, Sunita started quarrelling with him. She refused to serve him dinner until he returns her cash amount and six golden beads. Accused started abusing and threatening her. Sunita's mother and her cousin brother Bhaskar heard the scream of Sunita stating that she was about to die and therefore they rushed there. They found Sunita was lying in the house having sustained stab injuries on her forehead, near ear and eyebrows etc. The blood was oozing from those wounds. The accused was about to run away holding knife in his hand. Witness Bhaskar tried to chase and catch him but taking advantage of the darkness, the accused ran away in the direction of the stream. Thereafter, both Bhaskar and Sunita's mother made enquiry with Sunita and she told them that accused had assaulted her with knife. It was late in the night and no vehicle was available and, therefore, Sunita was taken to Primary Health Centre at Otur early in the morning at 6.00 a.m. on 3.6.1991. The doctor found her unconscious and directed to move to the Sasoon Hospital at Pune. In the meanwhile, her mother Shakuntala lodged police complaint at Otur Police Station which was registered at CR. No. 48 of 1991 against the accused.

The investigation commenced, in which course, spot panchnama was made and blood stained clothes of Sunita were seized. The accused was remained untraceable. Sunita succumbed to the injuries in Sasoon Hospital on 7.6.1991. Inquest panchnama was made and body was sent for autopsy. Evidence was converted into murder against the accused. Attempts were made to trace the accused but he remained elusive and hence chargesheet was filed against him in the Court of J.M.F.C., Junnar.

On 16.1.1999 the accused came to be arrested and the learned Magistrate committed the case to the Sessions Court at Pune.

3. The learned Sessions Judge framed charge against the accused for the impugned offence of murder to which he pleaded not guilty. Evidence of the accused was that of total denial of any criminal liability. According to the accused, his wife got injured when she fell near the stream when she had gone to fetch water and thus he had nothing to do with any, assault. The prosecution led its evidence at length on which basis the learned Trial judge came to the conclusion that the evidence on record was sufficient to bring home the guilt against the accused and proceeded to convict and sentence him in the aforesaid manner. Hence the appeal.

4. We have heard Mr. Deshpande, learned counsel for the appellant and Mrs. Kejariwal, A.P.P. for the State, at length. We have also perused the entire evidence on record.

5. As can be seen from the record, the prosecution case is based on the testimony of PW-1 Shakuntala Salvi - mother of the deceased Sunita and PW-2

cousin brother of deceased Sunita who were present on the spot and though were not eye witnesses, reached immediately after the assault to see that Sunita was lying in the pool of blood and accused was about to run away from the spot with knife in his hand. In fact he was chased by witness Bhaskar but due to darkness, escaped from the spot. It is also to be noted that though the incident had taken place at night of 2.6.1991, the accused ran away from the spot and was not traced for years together and finally was arrested on 16.1.1999 i.e. about more than 7 years after the incident.

PW-1 Shakuntala has stated in her testimony that, in the morning of 1.6.1991 Sunita had told her that her husband i.e. the accused had taken away cash amount and six golden beads kept in the house. Thereafter on the next day when accused returned to the house, Sunita started demanding her cash amount and golden beads, however, the accused was insisting that he should be served with dinner. Sunita refused to serve the meals which gave rise to the quarrel in which course the accused abused and threatened her to kill. Shakuntala was sleeping in the courtyard of the house and heard shouts of Sunita that she died. Hence, herself with her nephew Bhaskar rushed there and found that accused was standing with knife in his hand and Sunita was lying there and had sustained two stab injuries on left eyebrow and left ear and also on her hand. Then witness Bhaskar tried to catch hold of accused but he ran away to the direction of the stream. Then she made enquiry with Sunita and Sunita told her that her husband i.e. the accused had assaulted her with knife. Sunita then became unconscious. There was no vehicle available and, therefore, she could not be taken to the hospital. Early next day she was taken to Primary Health Centre at Otur and thereafter she was taken to Sasoon Hospital at Pune. She expired 3-4 days after the incident. In the meantime, on 3.6.1991, Shakuntala filed complaint at Otur Police Station, which is Exh. 14.

The testimony of Bhaskar PW-2 is on the same lines that of witness Shakuntala (PW-1). He has stated that he tried to chase the accused person immediately after the assault but accused ran away taking advantage of darkness. It is significant to note that deceased Sunita made oral dying declaration to her mother Shakuntala that it was the accused person who assaulted her with knife. It is to be noted that this oral dying declaration has not been shaken in any manner whatsoever in the course of the cross-examination of both witnesses and, therefore, we accept it as a true.

6. If any corroboration is required to this evidences it is provided by the F.I.R. which was promptly lodged by Shakuntala early in the morning of 3.6.1991. It is obvious that Sunita was taken to Primary Health Centre at Otur at about 6.00 a.m. in the morning and Shakuntala lodged complaint at about 7.00 a.m. at Otur Police Station without loss of any time. Witness Shakuntala has given all the details of the incident and has named the accused person to be author of the crime. The learned counsel for the appellant vehemently urged that Shakuntala as well as Bhaskar were interested persons and, therefore, their testimonies

should not be accepted as a Gospel's truth. However, we must note that their testimonies are also quite natural because their presence on the spot is found to be natural. Moreover, both witnesses have no animosity against the accused so as to implicate him falsely in the case of murder. No doubt that the testimonies of witnesses related to the deceased are required to be accepted cautiously. While in the present case, the F.I.R. promptly filed against the accused has given assurance of truthfulness of the witnesses and, therefore, we have no hesitation to accept both the testimonies as truthful and sufficient to inspire confidence.

7. The medical evidence on record of Dr. Shitole (PW-3) as well as Dr. Wable (PW-5) supported by the post-mortem reports attracted further corroboration to the fact that Sunita suffered homicidal death at the relevant time and place. It is true that the weapon of offence i.e. knife was not traced, but it would not render the prosecution case weak especially when it is evident that the accused was absconding for more than 7 years and was arrested only in the year 1999. In fact, the factum of ascendance of the accused lends strength to the prosecution case against the accused especially when no explanation whatsoever has come from the defence as to whereabouts of the accused during the said period.

The defence witness is examined on behalf of the accused to establish the defence theory to the effect that Sunita fell accidentally and got injured when she had gone to the stream to fetch water. The defence witness is none else than daughter of the accused. Evidently, she was 5-6 years old when the incident occurred and has entered witness box in the year 2000 to give evidence in support of the defence theory. In our considered view, the testimony of defence witness Sujata cannot be given any serious consideration especially when she admits in her cross-examination that she does not remember anything from her childhood and has come to the Court with only wish that her father should be acquitted from the case. Be that as it may. The fact remains that a child witness is not expected to remember the incident which has taken place when she was 5-6 years old and about 9 years ago. In view of this position, we are not inclined to accept the defence theory as probable and, therefore, discard the same.

8. For the reasons recorded above, we hold that the author of the crime in this case is the accused person who is guilty of murder of his wife Sunita. Therefore, the reasoning adopted and findings recorded by the Learned Trial Judge are just, proper and legal and, therefore, would brook no interference.

In the result, the appeal stands dismissed.