
(2004) 03 BOM CK 0043

In the Bombay High Court

Case No : Criminal Appeal No. 514 of 2000

Dashrath Balu @ Sakharam Waghe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 2 DMC 129

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

Kakade, J.—The appellant has preferred this appeal against the judgment and order dated 20.5.2000 passed by the Additional Sessions Judge, Thane, in Sessions Case No. 97 of 1999 wherein he was convicted for commission of the offence u/s 302 of the I.P.C. and was sentenced to suffer imprisonment for life and to pay fine of Rs. 200/- in default to suffer R.I. for one month.

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

Deceased Hirabai was the daughter of complainant PW-3 Ramu Belkade. She was married to one Gangaram Waghe. She did not get an issue and hence Gangaram deserted her for five years. Thereafter she resided in her parental house for about 3 years. Then she was married to the accused who is from village Bahinar. For the last two years prior to the incident Hirabai was residing with the accused. One month before the day of the incident Hirabai and the accused were residing together and they had gone to village Khaling to earn their livelihood. They erected a hut and started residing there. They both used to do labour work. They had no issue. Both used to drink liquor and quarrel inter-se. The accused used to pick up quarrels with Hirabai to extract money from her for liquor. On 27.7.1998

as usual Hirabai and the accused both did the labour work and returned to home in the evening. Both consumed liquor. At night the accused started beating Hirabai. Their neighbours PW-2 Balaram Belkade and PW-4 Madhukar Tapasone heard shouts of Hirabai and hence they both went to the house of accused and approached him to pursue from beating Hirabai, however, the accused did not pay any heed to them. Hence they returned to their own home. Thereafter the accused tied hands, legs and neck of Hirabai with her saree. At that time she was behind their hut. The accused removed a stone from the plinth of his hut and hit it on the head of Hirabai due to which her skull was fractured and she died on the spot. The accused made his escape good. On the next day morning, villagers including PW-1 Rohini Salvi, PW-2 Balram, PW-4 Madhukar and others witnessed dead body lying behind the hut and hence message was sent to her father i.e. complainant PW-3 Ramu Belkade who identified the dead body and filed police complaint at Padgha police station which was registered at C.R.No. I-63 of 1995 u/s 302 of the I.P.C. Investigation commenced in which course the inquest panchnama was made and dead body was sent for post-mortem examination. Statements of witnesses were recorded. Accused was absconding and was subsequently arrested. On receipt of the C.A. report and post-mortem notes, the investigation was completed and chargesheet was sent to the Court of law. The learned Magistrate committed the case to the Court of Sessions.

3. The learned Addl. Sessions Judge framed charge against the accused for the impugned offence to which he pleaded not guilty. The defence of the accused was that of total denial of any criminal liability. 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 and accordingly proceeded to pass the order convicting and sentencing the accused in the aforesaid manner.

4. We have heard Mrs. D.M. Shah for the appellant and Mrs. Kejariwal, learned 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, there is no direct evidence against the accused and the prosecution case rests upon the circumstantial evidence, especially that of PW-2 Balram and PW-4 Madhukar, both neighbours of accused. PW-2 Balram has stated that accused and deceased used to quarrel with each other under the influence of alcohol as they were drunkards. On the fateful night, he was sleeping in the house when he heard noise of quarrel between the accused and Hirabai. Therefore he went outside and witnessed that the accused was beating his wife. Then he went to his own house and did not pay any heed to the quarrel as it was going on in usual manner. On the next day morning, he woke up and went to his work. When he returned at about 11.00 a.m. he saw that Hirabai was dead and her body was lying near the hearth in her house. The accused was not present nearby. As against this, version of PW-4 Madhukar shows that he is also neighbour of the accused. He has stated that both, the

accused and Hirabai were heavy drunkards and had consumed liquor during the said night and were quarreling with each other. He was sleeping in his house. At about midnight he heard shouts of Hirabai and he went to her house and saw that accused was beating Hirabai. He tried to intervene but the accused did not release her. Next morning at about 8.00 a.m. he saw that Hirabai was lying behind her house and her hands and neck were tied with creeper. She had sustained head injury.

6. This is the entire version on which the prosecution has relied upon. Firstly, it must be noted that witnesses Balram and Madhukar who are neighbours of the accused have stated that they heard accused and Hirabai were quarreling with each other and, therefore, they went to intervene the quarrel. However, it is significant to note that Balram does not mention presence of Madhukar and Madhukar is silent about the presence of Balram. Even if it is assumed for a moment that they went to the place on different occasions, still their version differ on material aspects which creates doubt about their presence at the relevant time. While Balram has stated that when he woke up in the next morning, he went to his work and noted that dead body of Hirabai was lying near the hearth in her house, whereas Madhukar has stated that next morning at about 8.00 a.m. he noted that dead body of Hirabai was lying behind the hut and hands and neck were tied with creeper. No doubt, the theory that her hands and neck were tied with creeper is totally strange theory because the prosecution has come with a case, as can be seen from inquest panchnama that, hands and neck of Hirabai were found to be tied with her saree. If it was so, then the introduction by Madhukar of strange theory that hands and neck were tied with creeper brings his testimony in doubt, because he was the first person according to the prosecution and who had seen dead body lying behind the hut. As against that, the version put forth by witness Balram is totally different obviously, because he has seen the dead body after he reached back home at 11.00 a.m. on the next day. It is also pertinent to note that when either Balram or Madhukar went to intervene the quarrel between the accused and Hirabai, they did not observe that her hands or neck were tied either with saree or with creeper. Moreover, witness Balram has stated that he tried to intervene the quarrel but the accused did not pay any heed and therefore he returned home. He also did not pay any heed to the quarrel as it was going on in usual manner. Therefore, it can be safely assume that there was nothing unusual because the husband and wife, according to witness Balram, were quarreling under the influence of liquor as usual.

7. The learned Trial Judge has observed that evidence of PW-2 Balram and PW-4 Madhukar alongwith the fact that Hirabai's dead body was found next morning behind the hut, lead us to irresistible conclusion that author of the crime was the accused. In our considered view, this evidence available on record would not warrant to draw such conclusion especially in absence of any cogent evidence linking the accused person with the crime allegedly committed by him. It is well settled legal principle that, in cases resting upon circumstantial evidence, such evidence should satisfy three tests - (i) the circumstances from which an

inference of guilt was sought to be drawn, should be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and (iii) the circumstances, taken cumulatively should form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused and none else. If we apply these tests to the present set of facts, it is obvious that there are too many lacunas to hold that accused is guilty of crime of murdering his wife. No doubt that he was said to be absconding after the incident, however, his presence prior to the death of Hirabai in the hut and his ascendance would be the two circumstances which cannot form a chain so complete so as to arraign the accused person to hold him guilty for murder of his wife.

8. For the reasons recorded above, we hold that the reasons adopted and findings recorded by the learned Trial Judge are required to be set aside and accused is entitled to benefit of doubt.

9. Hence, the appeal is hereby allowed. Order of conviction and sentence passed by the Addl. Sessions Judge dated 20.5.2000 against the accused is hereby set aside. Accused is acquitted of the offences with which he was charged. He is in jail and shall be set at liberty forthwith, if not required in any other case.