
(2012) 12 BOM CK 0119
In the Bombay High Court
Case No : Criminal Appeal No. 386 of 2005

Dilip Babruwan Manjare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 12 BOM CK 0119

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Vaibhav Sukhadare, for the Appellant; D.P. Adsule, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

Smt. V.K. Tahilramani, J.—This Appeal has been directed by the Appellant/ Original Accused against the Judgment and order dated 10th June, 2004, passed by the 3rd Extra Joint Sessions Judge, Pune in Criminal Case No. 268 of 2001. By the said Judgment and order, the learned Sessions Judge convicted the Appellant u/s 302 of the Indian Penal Code (IPC) and sentenced him to suffer life imprisonment and pay fine of Rs. 1,000/- in default to suffer R.I. for one month. The prosecution case, briefly stated, is as under:

At the time of the incident, the complainant P.W.No. 1 Bhagwan was residing at Dalvinagar slum area, Chinchwad, Pune. Srimantabai was his real sister. She was married to Rudrappa Kamble. Srimantabai and Rudrappa had two daughters, one daughter was Pushpa. Thus, Pushpa was niece of P.W. No. 1 Bhagwan. The house of P.W.No. 1 Bhagwan was adjoining the house of Rudrappa. Pushpa was married to the Appellant about 10 years prior to the incident. Pushpa had four children out of the said wedlock, one of them being P.W.No. 2 Monica, who was about 8 years old, at the time of the incident. The Appellant used to ill treat his wife Pushpa. He used to abuse her and doubt her character. The Appellant was not doing any work. Pushpa delivered a female child Pratiksha about six months prior

to the incident. After delivery, Pushpa was residing with her parents. Pushpa's father Rudrappa was maintaining Pushpa and her four children. At the time of the incident, the Appellant was residing in the house of Rudrappa. On 7th March, 2001 at about 12.00 to 12.30 p.m., Pushpa was breast-feeding her infant child Pratiksha. P.W.No. 2 Monica was in the house, at that time. The Appellant told Pushpa not to breast-feed the child. He, then gave fist blows on the eyes of Pushpa. Pushpa put her hands across her eyes and she fell down. The Appellant then lifted grinding stone and dealt blow with it on Pushpa. P.W.No. 2 Monica witnessed the incident. She then went to call P.W.No. 1 Bhagwan, who was residing adjoining to their house. She informed him about the incident. Bhagwan then came to the house. He saw Pushpa was lying on the ground with bleeding injury on the head. When he touched her body, he found that Pushpa had expired. He then looked for the Appellant. But the appellant could not be found. Thereafter, the First Information Report (FIR) of P.W.No. 1 Bhagwan came to be recorded. The body of Pushpa was sent for post-mortem. P.W. No. 6 Dr. Sapkale conducted the post-mortem on the dead body of Pushpa. Dr. Sapkale noticed following external injuries on the dead body of Pushpa:-

- 1) Swelling and blackening of both eye lid.
- 2) Contusion 4 x 4 cms. on right side of face in front of ear.
- 3) Contusion 4 x 2 cms. on right pinna.
- 4) Deformity of chin on left side.
- 5) Contusion 4 x 3 cm. in left parotid region.
- 6) Contusion 3 x 2 cms. over left mandible midway between left mandibular angle and chin with 3 deep abrasions of 1 x 1/4 cm. in it.
- 7) On palpation there was fracture of ramus of mandible below mandibular angle and chin.
- 8) CLW 3 x 2 1/2 cm. behind right ear, red and oblique in direction.
- 9) Contusion 4 x 2 x 1 cm. behind left ear lobe near angle of left mandible.
- 10) CLW 2 1/2 x 2 x 1 cm. behind left ear and 4 cm. away from it, anterior posterior direction.
- 11) CLW 4 x 3 x 4 cm. 3 1/2 cm. away from injury No. 10 and 10 cm. away from left ear.

According to the Doctor, all the injuries were caused by hard and blunt object and are sufficient to cause death in normal course of nature. He noticed following internal injuries:-

- 1) Contusion on whole of the left temporo parietal region.
- 2) Contusion 6 x 5 cm. in left parietal region near vertex.

3) There was fracture to left temporal and parietal bone. Fracture was 6 cm. long and out of 4 cm. is parietal and 2 cm. is in temporal bone.

There was depressed fracture of 4 x 2 cm. of temporal bone penetrating brain.

There was multiple crack fractures at the base of skull near pituitary region. There was massive bleeding in left side of brain. Membranes congested.

In the opinion of Dr. Sapkale, the cause of death was intra cranial bleeding, with fracture skull due to head injury. According to the Doctor, the internal and external injuries were collectively sufficient in ordinary course of nature to cause death. These injuries could have been caused by hard and blunt object like grinding stone (PATA) (Article No. 7). According to him, all injuries were antemortem injuries. After completion of investigation, charge-sheet came to be filed.

2. Charge came to be framed against the Appellant-Original Accused u/s 302 of the Indian Penal Code. He pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. 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.

3. We have heard Mr. Vaibhav Sukhadare, learned Advocate appointed to represent the Appellant and Mr. Adsule, learned A.P.P. for the Respondent-State. After going through the evidence in detail and after considering the matter carefully, we are of the opinion that the learned Sessions Judge has rightly convicted and sentenced the Appellant.

4. The conviction is based mainly on the evidence of P.W.No. 2 Monica. Monica was the daughter of the appellant and the deceased. Monica has stated that she along with her brothers and sisters were residing at Dalvinagar at the house of her grandmother. Her father i.e. the Appellant used to abuse and beat her mother. On the day of incident i.e. on 7th March, 2001 at about 12.00 to 12.30 p.m., her mother Pushpa was breast-feeding her infant child Pratiksha. P.W.No. 2 Monica was in the house, at that time. The Appellant told Puspha not to breast-feed the child. He, then gave fist blows on the eyes of Pushpa. Pushpa put her hands across her eyes and she fell down. The Appellant then lifted the grinding stone and dealt blow of the stone to Pushpa. P.W. No. 2 Monica witnessed the incident. She then went to call P.W.No. 1 Bhagwan her relative whose house was adjacent to their house. She informed him about the incident. Bhagwan then came to the house. He saw Pushpa was lying on the ground with bleeding injury on her head. This witness has identified the Appellant as well as the grinding stone before the Court. Nothing has been elicited in the cross-examination of this witness so as to disbelieve her testimony.

5. The evidence of P.W. No. 2 Monica is supported by the evidence of P.W.No. 1 Bhagwan. Bhagwan was the maternal uncle of Pushpa that is maternal uncle of

mother of Monica. House of Bhagwan was adjoining the house of Rudrappa i.e. the father of Pushpa where Pushpa and her children were residing at the time of the incident. Bhagwan has stated that on the day of incident i.e. on 7th March, 2001, he was sitting in front of his house at about 12.00 to 12.30 p.m. At that time, Monica, daughter of Pushpa came to him. Monica was crying. This witness inquired with Monica why she was crying. Monica told him that her father i.e. the Appellant assaulted her mother by stone. Then he went to the house of Rudrappa. He saw Pushpa lying in the house with bleeding injuries. This witness then lodged the First Information Report (FIR). The evidence of P.W. No. 1 Bhagwan also brings out the motive for the Appellant to commit the crime. Bhagwan has stated that Pushpa told him that the appellant was ill-treating her, abusing her and doubting her character. This furnishes the motive for the appellant to commit the crime.

6. Mr. Vaibhav Sukhadare, the learned Advocate for the Appellant submitted that the evidence of P.W.No. 2 Monica cannot be relied upon because she is a child witness. He pointed out that Monica was eight years old, at the time of the incident. He further submitted that Monica is a tutored witness and her testimony cannot be relied upon. He supported this contention by submitting that none of the other siblings of Monica have been examined and only Monica has been examined because she was capable of being tutored. As far as the aspect of siblings of Monica being examined is concerned, there is no evidence on record to show that they were in the house, at the time of the incident. In fact the evidence shows that besides the appellant and the deceased, only Monica and Pratiksha were in the house and Pratiksha was only six months old at the time of the incident. So there was no question of examining Pratiksha. In such case, non-examination of the other siblings of Monica would not affect the prosecution case. In relation to the contention that Monica is a tutored witness, we have already adverted to above that in her cross-examination nothing has been brought on record to discredit her testimony or to show that she was a tutored witness. Thereafter, Mr. Vaibhav Sukhadare has relied upon the decision of the Supreme Court in the case of Bhagwan Singh and Others Vs. State of M.P., . He relied on the observation in paragraph Nos. 19 and 22 of the Judgment, wherein it is observed as under:-

19. The law recognises the child the child as a competent witness but a child particularly at such tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the Court to be a witness whose sole testimony can be relied upon without other corroborative evidence. The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the Court look for adequate corroboration from other evidence to his testimony.

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22. It is hazardous to rely on the sole testimony of the child witness as it is not available immediately after the occurrence of the incident and before there were

any possibility of coaching and tutoring him.

7. In the present case, the witness was about eight years, at the time of the incident. At the time of her testimony, she was about 10 years of age. The law recognizes a child witness to be competent witness. However, the evidence of such witness has to be scrutinized with care and caution, which we have done in the present case. However, we are not relying on the sole testimony of Monica but, we find that her evidence is very much corroborated by other evidence. The evidence of P.W.No. 1 Bhagwan corroborates the evidence of P.W.No. 2 Monica that the Appellant murdered his wife by hitting her on the head with the grinding stone. Her evidence is also corroborated by the medical evidence. P.W. No. 6 Dr. Sapkale has deposed on this aspect.

8. Another circumstance which corroborates the testimony of Monica is that the Appellant was arrested on the very same day. His clothes were found to have blood stains. They came to be seized under panchnama Exhibit-34. P.W.No. 7 Ghadge and P.W. No. 8 Dalvi have deposed on this aspect. His clothes were sent to C.A. and as per the C.A. report Exhibit-52, his clothes were found to have blood stains of "B" Group which is the same Group with which the grinding stone as well as the clothes of the deceased were blood stained. Thus, this is an additional circumstance which corroborates the evidence of P.W.No. 2 Monica. Mr. Vaibhav Sukhadare submitted that the blood group of the Appellant is also "B". Hence, the blood stains on his clothes would be that of the Appellant. As far as this aspect is concerned, it is noticed that at the time of arrest, the Appellant did not have injuries on his person so as to find his blood stains on his clothes. Moreover, the Appellant has not given any explanation for the blood stains on his clothes. Thus we find no merit in this contention.

9. Looking to the evidence on record, we find that there is sufficient evidence to connect the Appellant with the crime hence, we find no merit in the Appeal, Appeal is dismissed.

10. At this stage, we wish to place on record our appreciation for the way in which the learned appointed Advocate Mr. Vaibhav Sukhadare conducted this Appeal. He was thoroughly prepared with the matter and he has very ably argued the matter. So also, the learned A.P.P. Mr. Adsule has very ably assisted the Court.

11. The High Court Legal Services Committee, Bombay has appointed Advocate Mr. Vaibhav Sukhadare to represent the Appellant in this Appeal. He be paid fees as per Rules by the High Court Legal Services Committee, Bombay. The said fees to be paid to the learned Advocate Mr. Vaibhav Sukhdare within two months from today.

12. Writ of the order be expedited. Office to communicate this order to the Appellant who is in jail.