
(2016) 02 SC CK 0143

In the Supreme Court Of India

Case No : Criminal Appeal No. 2057 of 2010

Gajanan Dashrath Kharate

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 313

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 94 ACrC 486 : (2016) 161 AIC 209 : (2016) AIR(SCW) 1255 : (2016) 2 AIRBomRCri 24 : (2016) AIRSC 1255 : (2016) ALLMRCri 1317 : (2016) 1 AndhLDCriminal 777 : (2016) 2 ApexCourtJudgments(SC) 33 : (2016) 1 BBCJ 498 : (2016) 2 BLJud 56 : (2016) 2 BomCR(

Hon'ble Judges : T.S. Thakur, C.J.I. and R. Banumathi, J.

Bench : Division Bench

Advocate : Praveen Chaturvedi, Advocate, for the Appellant; Kunal Cheema, Yogesh K. Ahirrao and Nishant Ramakantrao Katneshwarkar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—1. This appeal arises out of the judgment of the High Court of Judicature at Bombay, Nagpur Bench dated 02.12.2009 in Criminal Appeal No. 247 of 2004 affirming the conviction of the Appellant Under Section 302 Indian Penal Code and sentence of life imprisonment imposed on him.

2. Briefly stated case of the prosecution is as under:

PW-1-Nagorao Kharate, cousin of the deceased-Dashrath was residing adjacent to the house of Dashrath and his son Appellant-accused in village Dapura. PW-1-Nagorao Kharate lodged a complaint at Police Station Boregaon Manju on the evening of 08.04.2002 stating that on the preceding night i.e. 07.04.2002 at around 08.30 p.m. he heard an altercation between Gajanan-the Appellant-accused and his father-Dashrath and Dashrath was wailing till about 10.00 p.m.

According to PW-1-Nagorao Kharate, such incidents of altercations and assault were frequent in the house of the Appellant-accused and therefore he paid no attention to the incident. On the next day morning at about 7.30 a.m., PW-1-Nagorao Kharate was informed by Madhukar Kharate-PW-4 that he had found Dashrath lying dead in a pool of blood inside his house. PW-1 rushed to the house of the Appellant and found his cousin Dashrath-father of the Appellant lying dead in a pool of blood and a stone smeared with blood lying next to his body. PW-1-Nagorao Kharate then went to the Police Station, Boregaon Manju lodged a complaint, on the basis of which, First Information Report was registered vide RC No. 40/2002 for the offence punishable Under Section 302 Indian Penal Code. Investigation was taken up by PW-7-Hanuman Rathod, who was incharge of the police station and PW-7 recorded the statement of witnesses. PW-6-Dr. Prashant Agrawal conducted autopsy on the body of deceased-Dashrath and noted number of injuries on his eyes, forehead, cheek, shoulder, elbow etc. and opined that Dashrath died due to injuries to vital organs and head injuries. Accused was arrested on 09.04.2002 and while in police custody he gave a confession statement which led to the recovery of blood stained clothes of the accused inside his house. On chemical analysis, recovered clothes of the accused found to contain "B" Group blood which is the blood group of the deceased. On completion of the investigation, police filed the chargesheet against the Appellant-Gajanan Under Section 302 Indian Penal Code and the case was committed to the Court of Sessions, Akola.

3. To substantiate the charges against the Appellant, prosecution has examined as many as seven witnesses and exhibited number of documents and material objects. The accused was questioned Under Section 313 Code of Criminal Procedure about the incriminating evidence and circumstances and the Appellant denied all of them and pleaded that false case has been foisted against him. Upon appreciation of oral evidence and the circumstances and the conduct of the Appellant-accused in not giving explanation for the homicidal death of his father, the trial court convicted the Appellant for the offence Under Section 302 Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of rupees one thousand with default clause. Being aggrieved, the Appellant preferred appeal before the High Court and by the impugned judgment, the High Court dismissed the same confirming the conviction of the Appellant and the sentence of life imprisonment imposed on him.

4. Learned Counsel for the Appellant Mr. Praveen Chaturvedi contended that PW-1-Nagorao Kharate came to know about the death of Dashrath only from PW-4-Madhukar Kharate and the High Court failed to appreciate that PW-1-Nagorao Kharate was not an eye-witness to the occurrence. It was further contended that the evidence of PWs 1 and 2 are untrustworthy and conviction of the Appellant was based on mere suspicion and the High Court erred in not appreciating the lapses in the prosecution case and therefore conviction of the Appellant is not sustainable.

5. Learned Counsel for the Respondent-State Mr. Kunal Cheema submitted that prosecution adduced direct evidence against the Appellant to prove that he committed murder of his father-Dashrath and the evidence of two eye-witnesses PWs 1 and 2 corroborates each other and the courts below rightly based the conviction upon the testimonies of PWs 1 and 2. It was further submitted that prosecution has proved presence of the Appellant at his house at the time of incident and there was no explanation from the Appellant as to how his father-Dashrath sustained injuries and the courts below rightly convicted the Appellant Under Section 302 Indian Penal Code.

6. We have carefully considered the rival contentions and perused the impugned judgment and material on record.

7. As seen from the evidence adduced by the prosecution, deceased-Dashrath, his wife-Mankarnabai and their son accused-Gajanan were residing together. PW-1-Nagorao Kharate whose house was adjacent to the house of Dashrath and was also closely related to him had deposed that the Appellant was addicted to bad habits of liquor and gambling and Appellant used to demand money frequently from his father and quarrelled with his father. In his evidence, PW-1-Nagorao Kharate stated that on 07.04.2002 at about 5.00 p.m. accused-Gajanan demanded money from his father and when his father refused to give money to the Appellant, the Appellant abused his father and thereafter left the house. PW-1 further stated that Appellant-accused returned home at about 8.30 p.m., he again started abusing his father and also assaulted him and Dashrath was wailing till about 10.00 p.m. The testimony of PW-2-Ratnaprabha-wife of PW-1 is to the same effect which amply corroborates the version of PW-1.

8. PW-1-Nagorao Kharate stated that he and his wife PW-2-Ratnaprabha and grand-daughter have witnessed the occurrence but due to fear of the Appellant they did not intervene in the occurrence on the night of 07.04.2002. On the next day, they were informed by PW-4-Madhukar Kharate that deceased-Dashrath was lying dead in a pool of blood. PW-1 in his evidence stated that on 08.04.2002 at about 7.00-7.30 a.m. he learnt about death of his cousin through PW-4-Madhukar Kharate and when he went to the house of Dashrath, he saw him dead lying in a pool of blood. Assailing trustworthiness of PW-1, it was submitted that PW-1 came to know about the death of Dashrath only from PW-4-Madhukar Kharate and PW-1 could not have witnessed the occurrence. Evidence of PWs 1 and 2 is assailed contending that had they witnessed the occurrence, they would have certainly tried to intervene in the quarrel to pacify the Appellant and the deceased and the conduct of PWs 1 and 2 in not trying to intervene is unnatural and the courts below ought to have disbelieved their version.

9. On the night of 07.04.2002 after witnessing the incident, PWs 1 and 2 retired to bed. PWs 1 and 2 did not try to intervene in the quarrel between the Appellant and the deceased as they assumed that it was a routine and usual quarrel between father and son. On the next day morning, when they were in their house, they came to know about the death of Dashrath-deceased through PW-4-

Madhukar Kharate. At the time of incident, as the Appellant was in a drunken state, as noted by the courts below, PW-1 did not try to intervene in their dispute. Further PWs 1 and 2 are persons of advance age. Trial court noticed that PW-1-Nagorao Kharate was of 71 years and PW-2-Ratnaprabha was of 65 years and therefore it was quite natural on their part to keep themselves away from the Appellant; more so, when the Appellant was in a drunken state. Credibility of PWs 1 and 2 cannot be doubted on the ground that they did not try to intervene in the incident.

10. On behalf of the Appellant, it was submitted that delay in registration of first information report creates serious doubts about the prosecution case and the prosecution has not satisfactorily explained the delay. PW-1-Nagorao Kharate lodged the complaint at Boregaon Manju Police Station on 08.04.2002 at about 5.00 p.m. In his evidence, PW-1-Nagorao Kharate stated that Boregaon Manju Police Station is about eight miles from their village and that they had to go to Boregaon Manju Police Station via Akola. PW-1 further stated that he went to Akola at 3.00 p.m. and from Akola he went to Boregaon Manju Police Station at about 5.00 p.m., as no vehicle was available at that time. PW-1 further stated that it takes two to three hours by walk to reach Boregaon Manju Police Station from his village. Delay in setting the law into motion by lodging of complaint and registration of first information report is normally viewed by courts with suspicion because there is possibility of concoction and embellishment of the occurrence. So it becomes necessary for the prosecution to satisfactorily explain the delay. The object of insisting upon a prompt lodging of the report is to obtain early information not only regarding the assailants but also about the part played by the accused, the nature of the incident and the names of witnesses. In the case at hand, prosecution has satisfactorily explained the delay in lodging the complaint. When the prosecution has explained the delay in lodging the complaint, prosecution case cannot be doubted on the small delay between the time of occurrence and in registration of first information report.

11. Apart from the oral evidence, case of prosecution is also strengthened by recovery of blood stained clothes of the Appellant. During chemical analysis, it was found that the shirt of the Appellant contained "B" Group blood which is the blood group of deceased-Dashrath. The Appellant has not offered any explanation as to presence of "B" Group blood in his clothes, which is yet another incriminating circumstance against the Appellant.

12. As seen from the evidence, Appellant-Gajanan and his father-Dashrath and mother-Mankarnabai were living together. On 07.04.2002, mother of the Appellant-accused had gone to another village-Dahigaon. Prosecution has proved presence of the Appellant at his home on the night of 07.04.2002. Therefore, the Appellant is duty bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the

inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of occurrence, when accused and his father Dashrath were in the house and when the father of the accused was found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime.

13. In *Trimukh Maroti Kirkan v. State of Maharashtra* , (2006) 10 SCC 681, it was held as under:

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* , (1972) 2 SCC 80 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* , (1992) 3 SCC 106 the Appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the Appellant is under an obligation to give a plausible explanation for the cause of her death in his statement Under Section 313 Code of Criminal Procedure. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the Appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* , (1992) 3 SCC 300 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him Under Section 302 Indian Penal Code. In *State of T.N. v. Rajendran* , (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen

together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

Same view was reiterated by this Court in *State of Rajasthan v. Parthu* , (2007) 12 SCC 754.

14. Upon appreciation of oral evidence and the circumstance of the recovery of blood stained clothes of the accused and the conduct of the accused in not offering any explanation for the homicidal death of his father, by concurrent findings, the trial court and the High Court rightly convicted the Appellant-accused Under Section 302 Indian Penal Code and we do not find any reason to interfere with the impugned judgment.

15. In the result, the conviction of the Appellant Under Section 302 Indian Penal Code and the sentence of life imprisonment imposed on him is confirmed and this appeal is dismissed. The Appellant is on bail and his bail bonds are cancelled. The Appellant be taken to custody to serve out the remaining sentence.