

(2022) 12 BOM CK 0041

In the Bombay High Court

Case No : Criminal Appeal No.816 Of 2019

Govind And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 07-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 201, 302, 324

Citation : (2022) 12 BOM CK 0041

Hon'ble Judges : R.G.Avachat, J;R.M.Joshi, J

Bench : Division Bench

Advocate : N.B.Narwade, R.V.Dasalkar

Final Decision : Allowed

Judgement

R.G.Avachat, J

1. The challenge in this appeal is to the judgment and order of conviction and sentence passed by learned Addl. Sessions Judge, Ahmednagar, on 14.08.2019 in Sessions Case No.292 of 2013, whereby the appellants have been convicted for the offences punishable under Sections 302, 324 and 201 of Indian Penal Code (I.P.C.). They have been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for three months for offence under Section 302 of I.P.C.; and to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for one month for offence under Section 201 of I.P.C.

2. The facts giving rise to the present appeal are as follows:-

Vaishali (deceased) had married appellant – Govind in 2002. The couple was blessed with three children. Appellant no.2 – Sarjerao is father of appellant no.1. The family was comprised of the deceased – Vaishali, her husband and parents-in-law. The appellant – Govind and his parents, Sarjerao (appellant no.2) and Kamalbai (since acquitted), started illtreating Vaishali with a view to coerce her to fetch a sum of Rs.1,00,000/- for purchase of Indica car. As the demand could

not be met with, the appellants and mother-in-law of the deceased killed her and threw her dead body in a nearby well on 06.07.2013.

3. The appellant – Govind made a phone call to Anil, brother of the deceased (informant), and informed that Vaishali left the house by 04.00 in the morning. He was asked to come immediately to take search for her. The informant, therefore, rushed to the house of the appellants. He noticed blood stains on the floor of the house of the appellants, besides a blood stained petticoat at one corner. He suspected something amiss. The dead body of Vaishali was found in a nearby well. It was fished out. The post mortem report (Exh.64) shows that the deceased suffered head injury. She died due to “acute pulmonary edema due to organophosphorous poisoning”.

4. Meanwhile, Anil lodged the First Information Report (FIR) against the appellants and Kamalbai (mother-in-law). All of them came to be arrested. The appellant – Govind made a disclosure statement, pursuant to which a wooden log came to be seized. The blood stains on the floor of the house of the appellants were collected. The blood stained petticoat and the clothes on the person of the deceased and the appellants as well, came to be seized. All the seized articles were submitted to F.S.L. for analysis and report. On completion of the investigation, charge sheet came to be filed.

5. On committal of the case to the Court of Session, learned Addl. Sessions Judge framed Charge (Exh.25). The appellants pleaded not guilty. It is their defence that the deceased Vaishali had extra-marital relationship. The same came to the knowledge of the appellants. She, therefore, committed suicide.

6. On appreciation of the evidence in the case, the trial Court convicted the appellants and consequently, sentenced, as stated above. The mother-in-law of the deceased was acquitted. The State did not prefer appeal against acquittal.

7. Learned counsel for the appellants would submit that it is a case based on circumstantial evidence. The dead body was found in a well. The appellant – Govind had informed his in-laws no sooner he found the deceased to have been missing from his house in the wee hours. A report in that regard was also filed with the concerned police station. The deceased had a happy married life. The financial status of the appellants was better than the parents of the deceased. The deceased did not make any complaint of illtreatment against the appellants and her mother-in-law. The C.A. reports are inconclusive. Learned counsel would further submit that the circumstances on which the prosecution relies to bring home the charge, have not been fully established. He, therefore, urged for allowing the appeal.

8. Learned APP would, on the other hand, submit that the post mortem report indicates that the deceased had suffered head injury. It was ante-mortem. Blood stains were found on the floor of the house of the appellants. A wooden log came to be seized at the instance of the appellant – Govind. The C.A. report indicates that the petticoat, the clothes of the deceased and that of the appellants and

even the wooden log borne blood stains. The deceased was at her matrimonial home. It was, therefore, for the appellants to explain in what circumstance, Vaishali died. Learned APP, ultimately, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record.

10. We need not restate the requirements for conviction based on circumstantial evidence. Admittedly, the deceased had married appellant – Govind in 2002. The couple was blessed with three children. The case of the prosecution is that the appellants and the mother-in-law would ill-treat the deceased with a view to coerce her to fetch a sum of Rs.1,00,000/-. The demand of money is said to be the motive for the crime in question. In support of its case as to motive, the prosecution examined the PW 1- Anil (informant), PW 8 – Bhaskar, father of the deceased and PW 3 – Bhanudas and PW 4 – Machhindra, uncles of deceased. All these three witnesses testified in one voice that the deceased was being illtreated by the appellants and mother-in-law of the deceased. It has, however, come during their cross-examination that the financial status of the appellants was better than the parents of the deceased. During eleven years of the matrimonial life of the deceased, no complaint was lodged to the police, alleging illtreatment at the hands of the appellants or the mother-in-law of the deceased. The marriage was settled after having verified the financial status of the appellants. Based on the same, even the mother-in-law of the deceased has been acquitted. It is reiterated that the State has not preferred appeal against acquittal. On appreciation of the evidence, we found the prosecution to have failed to make out the motive for the crime in question.

11. The informant, on having reached the house of the appellants, noticed blood stains on the floor of the house. He also noticed a blood stained petticoat. The Investigating Officer had collected those blood stains. He also seized the blood stained petticoat and the blood stained clothes on the person of the appellants. The panchnama of seizure of these articles have been duly proved in view of the evidence of the Investigating Officer (PW 10 – Parmar) and panch witness (PW 5 – Subhash).

12. Moreover, the appellant – Govind made a disclosure statement, pursuant to which the wooden log came to be seized from the place nearby his residence. The wooden log borne blood stains. All these articles were submitted to F.S.L. for analysis and report. The blood sample of the deceased was also forwarded for grouping. The C.A. reports (Exhs.83 and 84) indicate that the result of analysis of all those articles was inconclusive. As such, the C.A. reports did not further the prosecution case.

13. The dead body of the deceased – Vaishali was found floating in a nearby well. The villagers fished it out. In the process of fishing it out, it once fell in the well. The appellants proposed to suggest that the head injury of the deceased was result of fall of her dead body in the well in the process of fishing it out. The Medical Officer – Dr.Rajendra Vairagar conducted post mortem examination. He

noticed following two injuries on her person:-

1. CLW over occipital region left side, size 1 inch x ¼ inch, edges ragged with congestion internally.
2. Infected wound on the left knee size ½ inch x ½ inch.

According to him, the first injury was ante mortem. No water was found in the dead body. He opined that the deceased died due to "acute pulmonary edema due to organophosphorous poisoning".

14. Admittedly, an empty tin of Endosulfan was found at the bank of the well. From the post mortem report, it can only be inferred that the deceased died of poisoning and thereafter, her dead body was dropped in the well. The appellant – Govind had admittedly made a phone call to the informant (brother of the deceased) in the wee hours, informing Vaishali to have been missing from the house. One Ambadas Harde had also lodged a report (Exh.87), stating therein that the deceased Vaishali was awake until 3. 00 a.m. He was informed by appellant – Govind at 05.00 in the morning, that while he gave call to the deceased Vaishali to milk cow, she was found to have not been in her bed. A search was, therefore, made for her.

15. There is nothing to suggest that the appellants had ever been in possession of a tin of Endosulfan. There is also nothing to suggest that they had an opportunity to forcibly administer the same to the deceased. The dead body of the deceased was found in a well. The C.A. reports as regards all the seized articles, are inconclusive. The conduct of the appellant – Govind in informing his brother-in-law (informant) and others, that the deceased went missing from the house, could not be termed to be inconsistent with his innocence. As such, none of the factors, on which the prosecution proposed to rely to bring home the charge, gets conclusively established. It may, at the most, be a case of suspicion.

16. Based on the similar evidence, the mother-in-law of the deceased, Kamalbai, has been acquitted. The appellant – Sarjerao, father-in-law of the deceased, deserve similar treatment. The only additional evidence as against appellant – Govind is seizure of blood stained log, pursuant to the disclosure statement made by him. It is reiterated that the C.A. report thereof is inconclusive. The deceased did not die of head injury.

17. On appreciation of the evidence in the case, we are of the view that benefit of doubt deserves to be extended to the both the appellants herein. The trial Court ought not to have convicted the appellants based on such evidence. Interference with the impugned order of conviction and consequential sentence, is, therefore, warranted.

18. In the result, the appeal succeeds. Hence, the following order:-

(i) The appeal is allowed.

(ii) The impugned judgment of conviction and order of sentence dated

14.08.2019 in Sessions Case No.292 of 2013 passed by learned Addl. Sessions Judge, Ahmednagar, is set aside.

(iii) The appellants are acquitted of the offences punishable under Sections 302, 324 and 201 of Indian Penal Code.

(iv) They be released forthwith, if not required in any other case.

(v) Fine amount deposited by the appellants, if any, be refunded to them.