
(2014) 09 BOM CK 0254
In the Bombay High Court
Case No : Cri. Appeal No. 161 of 2001

Govinda Kashiram Wanare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2015) 3 MhLJCrI 621

Hon'ble Judges : B. R. Gavai and V. M. Deshpande, JJ.

Bench : Division Bench

Advocate : D. V. Chavan (appointed), Advocate, for the Appellant; A. K. Bangadkar, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. M. Deshpande, J.—Learned Sessions Judge, Buldana on 23rd February, 1999 framed a charge against the appellant and his father Kashiram Kanhuji Wanare in Sessions Case No. 143/1998 that on 23-9-1998 in furtherance of their common intention, they committed murder of Vandana, wife of the appellant by setting her on fire.

Both of them abjured their guilt and claimed for their trial. The prosecution in order to bring home the guilt, examined as many as eight witnesses and also relied upon the documents which were duly proved during the course of the trial.

Learned Sessions Judge, Buldana on 31st July, 1999 acquitted the original accused No. 2 i.e. father of the present appellant-Kashiram Wanare for the offence punishable under section 302 of the Indian Penal Code. However, the learned Judge of the Court below convicted the appellant for the offence punishable under section 302, Indian Penal Code and directed that he should suffer imprisonment for life and to pay a fine of Rs. 1,000/- and, in default, to suffer further rigorous imprisonment for three months.

2. It is against the said judgment and order of conviction, the appellant has approached this Court by filing the present Appeal. We have heard Shri D. V.

Chavan, Advocate who was appointed through Legal Aid Committee, in order to provide legal assistance to the appellant and Shri A. K. Bangadkar, learned Addl. Public Prosecutor for the respondent-State. With their able assistance, we have gone through the record and proceedings.

3. The prosecution witness No. 7-Sarangdhar Punjaji Turkmane was holding the charge of Borakhedi Police Station. On 23-9-1998 at about 9.30 p.m., a telephonic information was received at Police Station that at Shelapur one person has killed his wife by setting her on fire. This information was given by Police Patil to Head Constable Kale who was in-charge of Station Diary. The said information was brought to the notice of Sarangdhar Turkmane. He immediately proceeded along with his staff to village Shelapur. They reached there at about 10.00 p.m. On reaching there, the Police Patil was called and the information was confirmed. The Police Patil then showed the house where the incident occurred. When the police staff went the place of occurrence, smoke was noticed in the house and in a room dead body of one lady laying. She was already dead. He appointed a guard there as it was a night time and Panchnama could not be prepared. The appellant was held by people. Ramesh Dalvi, Constable who was at the village for Durgadevi festival bandobast was holding the appellant in front of the house of Dr. Thakur. Prosecution witness No. 7-Sarangdhar took the custody of the appellant/accused from Dalvi and came to the Police Station along with Police Patil. The Police Patil at Police Station lodged an oral report. Gajanan Bhopale was the Police Patil. The report was reduced into writing. It was Exh.20. Offence was registered vide Crime No.64/1998 against the appellant. The arrest Panchanama of the appellant (Exh.13) was prepared.

On the next day, ASI Turkmane along with father of the appellant, reached the spot of the incident with Panchas. The spot Panchnama was prepared (Exh.32). Articles were also seized. Inquest Panchanama (Exh.9) was also prepared after conducting the inquest over the dead body.

4. Shri D. V. Chavan, learned Advocate (appointed) for the appellant submitted that the prosecution has utterly failed to bring home the guilt of the appellant beyond reasonable doubt. He submitted that in absence of eye witness, the case is based on circumstantial evidence. He submitted that the chain of the circumstances is not complete. Certain couplings are missing from the chain and, therefore, it will be unsafe to record finding of guilt against the appellant.

Per contra, Mr. A. K. Bangadkar, learned Addl. Public Prosecutor has submitted that the learned trial Court has rightly believed the circumstances as are mentioned in the impugned judgment at Paragraph 9, which reads thus :

"(a) finding of the dead body of the deceased Vandana w/o accused No. 1 in the house;

(b) her condition of 100% deep burns;

(c) motive for commission of the offence;

- (d) accused being found immediately after the incident in front of the house and his extra-judicial confession;
- (e) conduct of accused when he was caught hold by the public at large and police;
- (f) non-leading of the evidence in defence;
- (g) no possibility of the death of deceased Vandana being suicidal or accidental; and
- (h) the discrepancies pointed not material."

Therefore, the learned Addl. Public Prosecutor submitted that the case against the present appellant is conclusively proved warranting no interference at the hands of this Court.

5. The unnatural death can be suicidal, accidental and homicidal. The circumstances which are appearing in the prosecution case, it is amply clear that it was not a case of suicide. The learned trial Court has reached to the conclusion that it is a homicidal death. Therefore, the question which is to be answered in the present judgment as raised by the learned counsel for the appellant is, as to whether Vandana died due to accident or whether her death was homicidal one as proposed to be proved by the prosecution?

6. From the evidence of ASI Turkmane (PW 7), it is amply clear that at the time when he along with his staff visited the spot of occurrence, he was unable to conduct Spot Panchnama. Not only that, he posted a guard at the said place. Therefore, it is absolutely clear that from the said point of time, the spot of the occurrence was in exclusive control of Police Party. Neither the appellant nor anyone of his relatives could have any ingress or egress of the said spot.

7. In this backdrop, it would be useful to reproduce hereunder the vernacular portion of the spot Panchnama (Exh. 32) :

"----- izsrkps MkO;k ik;kiklwu if"pe dksiU;kr 7 QqVkoj ,d frUik=~;kpk ikWap fyVj {kerspk jkWdsypk Mck vlwu iapk le{k m?kMwu ikgrk R;kr vankts 1@2 fyVj jkWdsy vkgs0"

Thus, it is absolutely clear that the can containing half a litre kerosene was corked one. Normally, if the kerosene is poured from the can, it will be hard to believe that the culprit will then cork the said can again and will keep in such a condition.

8. Tukaram Ingle (PW 6) was the Panch to the spot Panchnama. According to him, the spot Panchnama was prepared on 24-9-1998 between 9.00 and 10.00 a.m. His evidence would reveal which, in our view, is one of the important aspects to answer the question which is posed before us. The same is reproduced hereunder :

"----- ?kjke;/s danhy iMysyk gksrk0 lnj danhy okdkyiklwu vankts nhM nksu

QqVkoj iMysyk gksrk0 rks mHkk uOgrk] okdMk iMyk gksrk0 gs Eg.k.ks [kjs vkgs fd R;k dafnykrwu jkWdsy ckgsj fu?kkysys gksrs0"

The aforesaid portion as appearing in the evidence of Panch in whose presence the spot Panchnama was prepared, does not rule out the possibility of accident.

9. A circumstance which is pressed into service against the appellant before this Court is the extra-judicial confession of the appellant to Gajanan Bhopale, Police Patil (PW 2). Though it is strenuously urged by the learned Addl P. P. that the said extra-judicial confession made by appellant to Gajanan immediately after the incident in front of the house, we are afraid that such extrajudicial confession as made by appellant to PW 2 Gajanan can be used against the appellant. In one of the recent decisions reported in 2012(4) Mh.L.J. (Cri.) (S.C.) 1 = (2012) 6 SCC 403, Sahadevan and another v. State of Tamil Nadu, the Apex Court has reiterated the principle in respect of extra-judicial confession that it is a weak piece of evidence. The Hon'ble Apex Court has also expressed that in case of circumstantial evidence, the onus lies upon the prosecution to prove complete chain of events which must undoubtedly point towards guilt of the accused and when the prosecution relies upon an extra-judicial confession, the Court has to examine the same with greater degree of care and caution.

Further, in 2013(3) Mh.L.J. (Cri.) 277 = 2013 All MR (Cri) 2750, Ishwar s/o Pandurang Masram v. State of Maharashtra, this Court has observed that the extra-judicial confession should be made voluntarily and should be truthful. Looking to the prelude of extra-judicial confession of the appellant, it is clear that it was not voluntary, however, it was solicited. Therefore, it cannot be an extrajudicial confession in a strict sense and has to be kept aside from the consideration.

10. It is to be noted that prosecution has examined one Bhagwan Nimbolkar as its witness No. 3. He is also resident of Shelapur. The name of his wife is Kamal. The house of the appellant is situated about 120 feet. His evidence would reveal that on the day of the incident, Shantabai, mother of the appellant, gave a call to Kamal. Therefore, Kamal went to the house of the appellant and also that time Bhagwan (PW 3) reached there. His evidence in vernacular reads as under :

"ek>h iRuh iq<+s xsyh0 eh ekxs xsyks0 "kkarkckbZ vkf.k dk"khjkecqok R;kP;k ? kjkleksj clysjs gksrs0 dk"khjkecqok us eyk rqEgh dke d"kkdfjrk djrk vls fopkjys0 eh R;k;k iksVkdjrk dke djrks vls EgVys0 R;kosGh vkjksihP;k ?kjr tkykpk HkMdk >kyk0 vkjksih xksfoank R;kP;k ?kjP;k ckgsjP;k njoktk toG mHkk gksrk0 tsOgk eh rsFks vkyks rsOgk xksfoank rsFks gksrk0"

From the aforesaid version, there cannot be doubt in the mind that when ablaze took place in the house that time appellant-Govinda was standing outside and was not inside. His presence at the time when fire took place outside the house also tends to create the doubt about the homicidal death of deceased.

11. Learned trial Court has heavily relied on the fact that though the appellant

was present at the time of the incident, he has not requested the people to take his wife to the hospital or he has not stated that he is not guilty. Different persons may react differently to same situation. Merely because the appellant has not reacted in a particular way or fashion that by itself will not be a factor which should weigh in the mind of the Court to reach to the conclusion that such a person is guilty of an offence for which he is charged.

12. Insofar as the motive part is concerned, the appellant was admittedly acquitted by the competent Court for the offence punishable under section 498-A, Indian Penal Code On the earlier occasion. Not only that thereafter the deceased was residing with the appellant. It is not the case of the prosecution, at least there is no evidence available on record to show that thereafter in the intervening period, the deceased was subjected to cruelty and/or beating at the hands of the appellant. Therefore, merely because there was earlier criminal case, it will be unsafe to reach to the conclusion that it can provide as an motive for the commission of the offence.

13. We are, therefore, of the view that in the present case, there is a serious doubt in respect of the nature of the incident. The prosecution has utterly failed to rule out the theory of accident. Hence the benefit of doubt has to be extended in favour of the appellant. Consequently, we allow this Appeal by quashing and setting aside the judgment and order of conviction passed by the Sessions Judge, Buldana dated 31-7-1999 in Sessions Trial No. 143/1998. The appellant is acquitted for the offence punishable under section 302 of the Indian Penal Code. The bail bonds of the appellant stand cancelled. Fine amount if any paid, be refunded to the appellant.

14. Fees of the learned counsel for the appellant is quantified at Rs. 5,000/- (rupees five thousand). Mr. Chavan, learned counsel for the appellant, graciously states that he does not want fees and the same be paid to the High Court Bar Library. Registry is directed to pay Rs. 5,000/- to the High Court Bar Library.