
(2015) 01 BOM CK 0244
In the Bombay High Court
Case No : Criminal Appeal No. 179 of 2013

Haridas Namdeo Pawar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) ALLMR(Cri) 1583

Hon'ble Judges : P.V. Hardas, J; Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : D.G. Khamkar, for the Appellant; H.J. Dedhia, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.

1. The appellant, who stands convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 500/-, in default of which to undergo further RI for three months, by the 1st Ad-hoc Additional Sessions Judge, Pandharpur, by judgment dated 27/2/2006, in Sessions Case No. 77 of 2005, by this appeal questions the correctness of his conviction and sentence. The appellant has been convicted and sentenced by judgment dated 27/2/2006. The appellant has filed the present appeal after delay of nearly seven years. In that light of the matter, this court, while deciding Criminal Application No. 136 of 2014, filed by the appellant praying for his release on bail, directed that the appeal filed by the appellant be added to the final hearing board from 17/2/2014. Accordingly, the appeal has been added to the final hearing board and at the request of learned counsel for the appellant, the appeal is heard today.

2. Facts as are necessary for the decision of this appeal may briefly be stated

thus:--

"PW 6 - 1 lead Constable Chanderi, who. on 18/7/2005, was attached to the Sangola Police Station and was on duty, recorded the report of PW 1 Murlidhar at Exh. 9. On the basis of the said report, an offence vide Crime No. 114 of 2005 was registered under Section 302 of the IPC. Further investigation was then entrusted to PW 10 - PI Muluk.

PW 10 - PI Muluk, who was also attached to the Sangola Police Station, was entrusted with the investigation of Crime No. 114 of 2005. On receiving the papers of investigation, he proceeded to the scene of the incident, which was situated at village Shirbhavi. On reaching the scene of the incident, he noticed the dead body of deceased Sindhu. An inquest panchanama of the dead body of deceased Sindhu was accordingly drawn in the presence of panchas at Exh. 10. He forwarded the dead body of deceased Sindhu for postmortem examination and then drew the scene of the incident panchanama in the presence of panchas at Exh. 22. From the scene of the incident, he seized sample of ordinary mud and blood mixed mud. Footwear, which were found at the scene of the incident, were also seized. On 18/7/2005, the appellant/accused was arrested and his clothes were seized under arrest panchanama at Exh. 30. On 19/7/2005, clothes of deceased Sindhu were seized in the presence of panchas under seizure memo at Exh. 12. Statements of witnesses were recorded. On 20/7/2005, the appellant, during custodial interrogation, expressed his willingness to point out the place where an axe had been concealed. A memorandum in the presence of panchas was accordingly drawn at Exh. 24. The appellant led the police and the panchas near a water tank and produced one axe from the bushes, which was seized under seizure memo at Exh. 25. Blood sample of the appellant was drawn when he was examined by the Medical Officer and the seized property was then referred to the Chemical Analyzer under requisition at Exh. 34. Documents relating to the property of the accused, including the 7 x 12 extract are at Exh. 36. Further to the completion of investigation, a charge-sheet against the appellant was submitted.

Postmortem on the dead body of deceased Sindhu was performed by PW 2 -Dr. Manoj Bansode, who noticed the following external injuries:--

- (i) Incised wound over the neck, centrally measuring 8 cm x 4 cm deep transverse.
- (ii) Incised wound over the neck just below the mandible, size 6 x 4 cm.
- (iii) Incised wound present over the frontal region of skull size 10 x 5 cm. deep bone with fracture.
- (iv) Cutting of trachea.
- (v) Incised wound present over the neck, laterally to the sternocleido mastoid measuring 7 x 5 cm. cutting of great vessels like carotid.

(vi) Incised wound present over below left mandible 1 x 1 cm.

According to him, the injuries were ante mortem and were grievous. According to him, the injuries were sufficient in ordinary course of nature to cause death as they were fatal.

On internal examination, he noticed the following injury:

(i) Fracture to the skull bone, frontal size 10 x 5 cm. oblique in direction. Brain hemorrhage present in intracranial cavity, brain pale appear. Large vessel cutting of trachea.

He, therefore, opined that cause of death of Sindhu was due to acute cardio-respiratory failure due to severe hemorrhagic shock and injury to brain. The postmortem report is at Exh. 16."

3. On committal of the case to Court of Sessions, trial court vide Exh. 3 framed charge against the appellant for offence punishable under Section 302 of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined 10 witnesses, while the accused in his defence examined two defence witnesses. The trial court upon appreciation of the evidence, convicted and sentenced the appellant as afore-stated.

4. We have heard Mr. Khamkar, learned counsel for the appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

5. Prosecution has examined PW 1 - Murlidhar, brother of deceased Sidhu alias Chhaya. According to Murlidhar, deceased Sindhu was married with the appellant sometime in the year 1985. Sindhu gave birth to three daughters and two sons. Her daughters are PW 3 Roopali, PW 4 -Rani, Supriya and the names of her sons are Rahul and Ranjeet. Deceased Sindhu, along with her children, was residing with the appellant in the agricultural land. The appellant was not treating deceased Sindhu properly and used to assault her, suspecting her character. On several occasions, Murlidhar had tried to convince the appellant to treat Sindhu properly, but it was of no avail. According to Murlidhar, on the day of the incident, while he was working in the sugar factory, he had been informed on telephone about death of Sindhu. Murlidhar, along with his brother, therefore, reached the scene of the incident and had noticed deceased Sindhu lying on the ground with injuries. Roopali, who was present there, had informed him that the appellant had assaulted deceased Sindhu by an axe. Roopali had also informed him that the appellant had chased Roopali. Murlidhar, therefore, lodged his report at the Sangola Police Station at Exh. 9. Though Murlidhar has been cross-examined at length, nothing of substance has been elicited in the cross-examination. There is a clear recital in the FIR about Roopali disclosing the incident to PW 1 - Murlidhar.

6. Prosecution has examined PW 3 - Roopali. daughter of the appellant and

deceased Sindhu. Roopali deposes that on the day of the incident, the school was closed on account of a holiday and, therefore, the appellant had asked Roopali and her sisters to work in the agricultural field. According to Roopali, the appellant used to assault Sindhu suspecting the character of Sindhu. According to Roopali about one and half months prior to the incident, the appellant had assaulted Sindhu, suspecting her character. Murlidhar, therefore, had taken Sindhu to his house along with Supriya and Ranjeet. Sindhu resided at the house of Murlidhar for about eight days. Thereafter the appellant brought back Sindhu. According to Roopali, the appellant used to sleep, keeping the axe besides him.

In respect of the incident, Roopali deposes that on 18/7/2005, she and her sister and her brother had been asked to go to the agricultural field for plucking the cotton. Accordingly, she was plucking cotton. Thereafter the appellant and Sindhu came to the agricultural field and thereafter went to the house. Both of them again came to the agricultural field and at that time the appellant was armed with an axe. According to Roopali, she, along with her sister P W 4 - Rani, Supriya and her brother Rahul were plucking the cotton, while the appellant and Sindhu were in the orchard. According to Roopali, she was at a distance of about 40 ft. from the appellant and Sindhu. The appellant, at about 12 noon, began to assault the deceased. Roopali heard the cry of her mother and, therefore, rushed towards her mother and noticed the appellant assaulting Sindhu with an axe. Sindhu fell on the ground. When Roopali and her siblings rushed towards her mother, the appellant rushed towards Roopali and, therefore, Roopali began to run towards the village. The appellant chased her to the house of one Chikhale. Roopali ran inside the house and closed the door. The appellant stayed outside the door for some time and went away. The inmates of the house of Chikhale took Roopali to the agricultural field of her uncle and thereafter to her house.

7. In cross-examination, Rupli has admitted that since about one and half years, the appellant was suffering from epileptic fits. She has also admitted that during the fits, the appellant was behaving abnormally. She has admitted that she and her other family members were aware about the ailment of the appellant. She has admitted that her maternal uncle had advised the appellant to get proper treatment. She has also admitted as correct that appellant used to complain about hallucination. She has admitted that the appellant used to carry an axe with him because of the hallucination. An omission has been elicited in the cross-examination that she had not stated in her previous statement that the day of the incident was a holiday on account of Ashadhi Ekadashi. Omission is also elicited that she had not stated in her previous statement that she stood at a distance of 40 ft. from her mother.

8. The prosecution has examined PW 4 Rani, who also deposes on similar lines as that of PW 3 - Roopali. In cross-examination. Rani has denied the suggestion that she was standing at a distance of 700 to 800 ft. from her mother. She has also denied the suggestion that prior to the incident, appellant used to wonder, carrying an axe with him. She has denied the suggestion that her maternal uncle

had advised accused not to behave like a lunatic.

9. Prosecution has examined PW 5 Sangita. in whose house PW 3 - Roopali had taken succor. According to Sangita on the day of the incident. Roopali had come to their house running and had fallen on the platform. Roopali was frightened. Roopali came inside the house and closed the door of the house. The appellant then came and stood in front of the house carrying an axe with him. The appellant waited for about two minutes and then went away. After the appellant had left, PW 5 -Sangita reached Roopali near the agricultural field. In cross-examination, omission has been elicited that she had not stated in her previous statement that the appellant stood in front of the door for about two minutes.

10. Prosecution has examined PW 9 - Anil in respect of the seizure of the clothes of the appellant and has examined PW 8 - Govind, who is a panch to the discovery memorandum of the accused under Section 27 of the Evidence Act leading to the discovery of the axe. Both these panch witnesses have been supported the prosecution and despite being subjected to searching cross-examination, have emerged unscarred.

11. The appellant in his defence has examined DW 1 - Vitthal, a friend of the appellant, who claims that he had taken the appellant for medical treatment to the hospital of Dr. Bhosale sometime in June 2005. According to DW 1 - Vitthal, Dr. Bhosale had opined that the appellant was mentally disturbed and mentally ill and had prescribed certain treatment. Dr. Bhosale had further advised that the appellant be examined by a psychiatrist. According to Vitthal, he could not take the appellant to a psychiatrist because of his stringent financial condition. In cross-examination, he has admitted that the appellant has two brothers by name Baban and Navnath. The mother of the appellant is also alive. He has also admitted as correct that the appellant has other close relatives.

12. The appellant has examined DW 2 - Dr. Bhosale, who deposes that he has a dispensary at Shirbhavi and used to visit his dispensary everyday between 6 p.m. to 8 p.m. He has admitted that he knows the appellant and DW 1 -Vitthal. According to him, he had examined the appellant, who was brought by DW 1 - Vitthal and had noticed that the appellant was mentally disturbed. He had, therefore, prescribed certain treatment for the appellant and had asked that the appellant be examined by a psychiatrist. He has admitted that he had issued a letter in the name of a psychiatrist. In cross-examination, he has admitted as true that he was Bachelor of Ayurvedic Medicine and Surgery. He has also admitted as correct that under the Rules of the Indian Medical Council, he is required to maintain register of the patients examined by him, lie has also admitted as correct that he is required to maintain the record of examination of the patients and the diagnosis made and the treatment prescribed. He has admitted as correct that he had not produced the said record. He has then admitted as correct that mental disturbance would be due to pressure of heavy work and such type of mental disturbance disappears in a case after rest to the patient.

13. Mr. Khamkar, learned counsel for the appellant has urged before us that no reliance can be placed on the testimony of PW 3 - Roopali and PW 4 - Rani as the said witnesses are antagonistic to the appellant. It is further urged before us that the appellant has established his plea of insanity and, therefore, is entitled to be given the benefit of doubt. The learned APP, on the other hand, has submitted before us that the prosecution has proved the offence against the appellant beyond reasonable doubt and the two eye witnesses have emerged as reliable witnesses. The learned APP has further urged before us that the appellant has utterly failed in establishing his plea of insanity.

14. The two eye witnesses, namely, PW 3 Roopali and PW 4 -- Rani, daughters of the appellant and of deceased Sindhu, deposed about appellant assaulting deceased Sindhu with an axe. Both these witnesses have been subjected to searching cross-examination and despite the cross-examination have emerged as truthful witnesses. We, therefore, find that implicit reliance can be placed on the testimony of these two witnesses as no dent is made in their testimony on account of the searching cross-examination. The evidence of the two eye witnesses stands corroborated, though it is not necessary, by the findings of blood of "O" group on the clothes of the appellant and on the axe produced at his behest. Thus, the offence against the appellant has been proved beyond reasonable doubt by the prosecution.

15. It is true that PW 3-Roopali has admitted that the appellant was suffering from epileptic fits and whenever the appellant had the epileptic fit, he was behaving in an abnormal manner. Roopali has also deposed about some hallucination of the appellant and the appellant carrying an axe. Curiously, the appellant in his statement under Section 313 of Cr.P.C. has not taken such a defence. The appellant has examined DW 2 - Dr. Bhosale, who has not produced the documents in respect of the symptoms of the appellant nor has he produced any document regarding his diagnosis. DW 2 - Dr. Bhosale also does not depose that the appellant was suffering from any epileptic fit or was subjected to any hallucination. In fact, Dr. Bhosale has admitted that he found that the appellant was mentally disturbed and the mental disturbance could be on account of pressure of work. If that be the case, we find that stray admissions made by Dr. Bhosale would not amount to proof of the insanity, which the appellant ought to prove. No circumstances have been brought on record which would even remotely indicate that the appellant was suffering from any mental ailment and was thus incapable of understanding the nature of the act which he was doing. The behavior of the appellant also does not appear to be abnormal either before the incident, at the time of incident or after the incident. We thus find that the appellant has not been able to substantiate his plea of insanity when he had examined DW 2 - Dr. Bhosale. In our opinion, no reliance whatsoever can be placed on the evidence of Dr. Bhosale in respect of the mental ailment of the appellant. The appellant has thus, in our opinion, failed in establishing his plea of insanity.

16. Thus, after considering the evidence on record and the submissions of the learned counsel for the parties, in our opinion, the prosecution has proved, the offence against the appellant beyond reasonable doubt. There is no merit in the appeal and the appeal, therefore, deserves to be dismissed. Accordingly, Criminal Appeal No. 179 of 2013 is dismissed, confirming the conviction and sentence of the appellant.