

(2001) 07 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 339 of 1996

Indya Segal Valvi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 299, 300, 302, 400

Citation : (2001) ALLMR(Cri) 2360 : (2001) CriLJ 4804

Hon'ble Judges : Vishnu Sahai, J; A.S. Bagga, J

Bench : Division Bench

Advocate : V.N. Damle, for the Appellant; V.B. Bhatge, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Through this Appeal, the Appellant challenges the Judgment and Order dated 30th September, 1994 passed by the Additional Sessions Judge, Nandurbar, in Sessions Case No. 36 of 1994, whereby he has been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default to suffer R.I. for one month, for the offence punishable u/s 302 of the Indian Penal Code.

2. Shortly stated, the prosecution case runs as under.

The Appellant is the husband of the deceased Surtabai, who was the daughter of Fulya Kama Vasave, P.W.8. At the time of the incident, the Appellant and the deceased were staying in village Asali, taluka Akrani, district Dhule. On 6th February 1994, at about 4 p.m., they left the house of Fulya Kama Vasave, P.W.8. Some times thereafter, they passed through the road by the side of public well in the field of Rodwa Satya situated near a nursery. At that time, they were quarrelling and the Appellant was beating Surtabai by chappal and hands. Samkabai Chamarya Vasave, P.W.9, who was working along with Janya Vasave,

P.W.2, Kantabai Masha Vasave, P.W.6, and Kusumbai Kutrya Vasave, P.W.7, noticed that Surtabai was weeping. She was giving calls to Samkabai Vasave and others to come to her rescue, but before they could reach, the Appellant threw her inside the well. He thereafter ran away. The Appellant was chased. In the meantime, these witnesses noticed Kirtya Fulya Vasave, P.W.I, the brother of Surtabai, coming from the road. Janya told him about the incident. Thereafter, Kirtya also joined in the chase. Near village Salibar, they arrested the Appellant, brought him to the house of sarpanch in village Mokh, and tied him there with a rope.

3. The evidence of Kirtya Vasave, P.W.1, shows that thereafter the dead body of Surtabai was taken out from the well. Thereafter, he, sarpanch and the police patil went to the Police Station, Dhadgaon, where he lodged his F.I.R. affixing his thumb impression on it. The F.I.R. is at Exhibit 11.

4. The evidence of P.H.C. Bhanudas Ravsing More, P.W.10, shows that on 7-2-1994, he was entrusted with the investigation of the case. He went to village Mokh at about 12.30 in the noon and prepared inquest panchnama of the corpse of the deceased Surtabai, which was lying a cot, and thereafter, sent the same for autopsy. At that time, the Appellant was at the house of the village sarpanch. He arrested him and brought him to the police station. On that day, he recorded statements of Janya, Kantabai, Dhokibai and some others.

It appears that thereafter the investigation was taken over by P.S.I. Arun Laxman Janorkar, P.W.11.

The evidence of P.S.I. Janorkar, P.W.II, shows that on 8-2-1994, he visited the place of the incident and prepared a spot panchnama. He also recorded statements of some witnesses on 4-3-1994. After completion of investigation, he submitted the charge sheet.

5. Going backwards, the autopsy on the corpse of the deceased Surtabai was conducted on 7-2-1994, between 3.30 p.m. and 4.30 p.m., by Dr. Vilas Bhosale, P.W.3, who found on it a contusion on both ears. In the opinion of Dr. Bhosale, Surtabai died on account of asphyxia due to drowning.

6. The case was committed to the Court of Sessions in the usual manner, where the Appellant was charged for an offence punishable u/s 302 of the Indian Penal Code. Although in his statement u/s 313 of the Code of Criminal Procedure, the Appellant categorically denied that he had thrown the deceased in the well, but in answer to question No. 2, he admitted that on 6-2-1994 at about 3 p.m., he along with the deceased left the house of his father in law, in answer to question No. 5, he admitted that he was arrested at Salibar and in answer to question No. 5 and question No. 20, he admitted that he was arrested from the house of sarpanch.

During trial, in all the prosecution examined 11 witnesses. It is a matter of profound regret that although five out of them were examined eye witnesses, but

excepting one, namely, Samkabai Vasave, P.W.9, the remaining turned hostile. But, it needs to be pointed out that eye witness Janya Vasave, P.W.2, who had turned hostile, when confronted with portions "A" and "B" of his statement recorded u/s 161 of the Code of Criminal Procedure, wherein he had furnished ocular account, admitted having made the said portions of the statement.

The learned trial Judge primarily on the evidence of Samkabai Vasave, P.W.9, convicted and sentenced the Appellant for the offence punishable u/s 302 of the Indian Penal Code.

Hence this Appeal.

7. We have heard Mr. V.N. Damle, for the Appellant, and Mr. V.B. Ghatge, Additional Public Prosecutor for the Respondent. We have perused the depositions of the prosecution witnesses, the material exhibits tendered and proved by the prosecution, the statement of the Appellant recorded u/s 313 of the Code of Criminal Procedure and the impugned judgment. After the utmost circumspection, we are constrained to observe that we do not find any merit in this Appeal and, in our judgment, it deserves to be dismissed.

8. The involvement of the Appellant in the instant crime is squarely fixed by the evidence led by the prosecution. We have the evidence of Fulya Vasave, P.W.8, the father of the deceased and father-in-law of the Appellant, who has stated that, on the date of incident, at about 4 p.m., the deceased and the Appellant had left his house. It is pertinent to mention that the cross examination of this witness was declined.

Thereafter, we have the evidence of Janya Vasave, P.W.2, who stated that at the said time, while he was working along with Samkabai, P.W.9 and some others, in a nursery situated near the field of Rodwa Satya near a public well, he saw the Appellant and the deceased passing through the road. They were quarrelling. The Appellant was beating deceased Surtabai with a chappal.

It is pertinent to mention that in cross examination, this evidence furnished by him could not be shattered and during cross examination, when he was confronted with portions "A" and "B" of his statement wherein he had given ocular account, he admitted having made the statement contained in those portions.

Thereafter, we also have the evidence of Samkabai, P.W.9, who stated that while she was working in the nursery at the aforesaid time and place, she noticed the Appellant and the deceased quarrelling and the Appellant throwing the deceased into the public well.

It is pertinent to mention that her statement that the Appellant threw the deceased in the well is corroborated by two circumstances, viz :-

(1) The corpse of Surtabai was taken out from the well; and

(2) The autopsy surgeon, Dr. Vijay Bhosale, stated that Surtabai died on account

of asphyxia due to drowning.

It is pertinent to mention that although Samkabai was cross examined, but nothing could be extracted there from which would discredit her presence on the place of the incident. It should be borne in mind that she had no rancour or ill-will against the Appellant and, in purview, in the absence of the same, she would not have falsely implicated the Appellant. It is true that in her cross examination, she admitted that the deceased Surtabai was the daughter of her cousin brother, but that circumstance would not make us mechanically reject her evidence, but only make us to evaluate it with caution. We have examined her evidence with caution and find it credible.

9. In our judgment, the solitary statement of Samkabai, P.W.9, is itself sufficient to confirm the conviction of the Appellant for the offence u/s 302 of the Indian Penal Code.

It is a trite that evidence has to be weighed and not counted. It is on this truism that the provision contained in Section 134 of the Indian Evidence Act, which provides that no particular number of witnesses are required to prove any fact, is founded.

However, as we have seen earlier, assurance to the evidence of Samkabai is also forthcoming by the evidence of Janya Vasave, P.W.2. It may be pointed out, as mentioned earlier, that he deposes about the presence of the Appellant and the deceased on the date, time and place of the incident and has also stated that the Appellant was assaulting the deceased with a chappal which claim of his is corroborated by the medical evidence which shows the presence of a contusion on both the ears of the deceased. It is true that, with regard to the main incident, this witness turned hostile, but during cross examination by the prosecution, admitted having made portions "A" and "B" of his statement, with which he was confronted, and wherein he had furnished ocular account.

It is well-settled that the testimony of a hostile witness is not altogether useless. To the extent to which assurance to it is forthcoming from other credible evidence, it can be relied upon. In the instant case, since assurance to it is forthcoming from the credible evidence of Samkabai, it can be relied upon.

10. Another circumstance, which proves the involvement of the Appellant in the crime, is the circumstance that he was virtually arrested on the spot. The evidence shows that after throwing Surtabai in the well, the Appellant tried to run away, but he was apprehended by witnesses. It is pertinent to mention that even the hostile witness Janya Vasave in his cross examination by the prosecution admitted that the Appellant was arrested, admitted having thrown Surtabai in the well, also admitted having committed an offence and prayed that he should not be assaulted.

11. For the said reasons, in our view, there is sufficient evidence to fix the involvement of the Appellant in crime. We also make no bones in observing that

the learned trial Judge acted correctly in convicting the Appellant for the offence punishable u/s 302 of the Indian Penal Code, for, in our judgment, the act of the Appellant would fall squarely within the four corners of clauses, firstly and fourthly, of Section 300 of the Indian Penal Code, the breach of which is punishable u/s 302 of the Indian, Penal Code. The said clauses read thus :-

300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

12. A perusal of clause firstly of Section 300 of the Indian Penal Code would show that culpable homicide would be murder if the act by which the death is caused is done with the intention of causing it. The evidence of Janya Vasave, P.W.2, to which we have referred to earlier, shows that at the time of the incident, the Appellant and the deceased were quarrelling and the Appellant was beating the deceased by chappal and hands. The evidence of Samkabai Vasave, P.W.9, to which we have also referred to earlier, shows that deceased Surtabai was crying and was calling her and others to come to her rescue, but before she and others could reach, the Appellant threw Surtabai inside the well. The evidence of Samkabai, P.W.9, categorically shows that the Appellant intentionally threw Surtabai inside the well. In our view, the act of the Appellant, of not merely beating Surtabai by slippers and hands, but also throwing her in the well, shows that he had the intention to cause her death.

The question whether in a given case, there is intention to cause death is a question of fact. It is a question which has to be decided on the evidence forthcoming in a case. In the instant case, the evidence referred to above leaves not even an iota of doubt in our minds that the Appellant threw Surtabai in the well with intention to cause her death. Hence the act of the Appellant would fall within the four corners of clause firstly of Section 300 of the Indian Penal Code.

13. In our view, the act of the Appellant would also fall squarely in clause fourthly of Section 300 of the Indian Penal Code. We have extracted above the said clause and its perusal shows that an act would fall within its four corners if :-

(a) the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death; or

(b) the person committing the act causes such a bodily injury as is likely to cause death.

A perusal of the said clause also shows that it is necessary that the person who commits an act falling within (a) and (b) commits it without any excuse for incurring the risk of causing death or such injury as aforesaid.

In the instant case, in our judgment, the act of the Appellant would fall squarely within (a). It can safely be presumed that when the Appellant threw the deceased inside the public well, he knew he committed an act that was so imminently dangerous which must, in all probability, cause her death.

14. The learned Counsel for the Appellant strenuously urged that since the evidence of the father of the deceased, Fulya Vasave, P.W.8, shows that when the Appellant and the deceased left, they were happy, it appears that something happened on the spur of the moment between the Appellant and the deceased, which infuriated the Appellant to such an extent that he threw the deceased inside the well. In his contention, for the said reason, the case would not fall within the four corners of clause fourthly of Section 300 of the Indian Penal Code, but under clause thirdly of Section 299 of the Indian Penal Code, the breach of which is punishable under second part of Section 304 of the Indian Penal Code.

We have reflected on the contention canvassed by the learned Counsel for the Appellant and we are constrained to observe that we do not find any merit in it. The evidence of Janya Vasave, P.W.2, shows that not only the Appellant and the deceased were quarrelling, but the Appellant was also assaulting the deceased with chappal. This evidence is corroborated by the circumstance that the autopsy surgeon found a contusion on both ears of the deceased. The evidence of Samkabai, P.W.9, shows that the deceased was crying and was calling her and others to rush to her rescue, but in spite of that, before they could reach, the Appellant threw her in the well. The said facts, in our (sic) within the four corners of clause fourthly of Section 300 of the Indian Penal Code, the breach of which is punishable u/s 302 of the Indian Penal Code,

Hence, we do not find any merit in the said submission.

15. For the said reasons, we confirm the conviction and sentence of the Appellant for the offence u/s 302 of the Indian Penal Code and dismiss the Appeal.

The Appellant is in jail and shall serve our his sentence.

The fees of the learned appointed Advocate Mr. V.N. Damle is quantified at Rs. 2,000/-.