
(2016) 11 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 43 of 2015

Jagdish Kothu Gajbhiye

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 1 AIRBomRCri 729 : (2017) 1 BomCR(Cri) 692 : (2016) 6 MhLJCrI 606

Hon'ble Judges : B.P. Dharmadhikari and S.B. Shukre, JJ.

Bench : Division Bench

Advocate : Smt Mayuri Deshmukh, Addl. Public Prosecutor, for the Respondent-State; Shri R.M. Daga, Advocate, for the Appellant

Final Decision : Allowed

Judgement

S.B. Shukre, J. - This is an appeal preferred against the judgment and order dated 10th September 2014 delivered in Sessions Trial No. 67 of 2012 by the Sessions Judge, Bhandara, thereby convicting and sentencing the appellant for an offence punishable under Section 302 of the Indian Penal Code.

2. The appellant has been accused of intentionally killing his wife, deceased Kantabai in the morning of 20.6.2012 in his house situated at village Bhosa, Tahsil Mohadi, District Bhandara. It is the case of the prosecution that the appellant used to reside in one house along with his wife, deceased Kantabai, married son Atul and Ashwini (Atul's wife). It appears that there were some differences between the appellant and his deceased wife Kantabai although no motive for killing of Kantabai has been specifically alleged by the prosecution. It so happened that when Atul, son of the appellant, was sleeping in one room in which his wife Ashwini, their child and deceased Kantabai were also sleeping the previous night, at about 06.00 am of 20.6.2012 heard some clinking noise which is generally generated when kitchen utensils fall on the ground. Atul immediately got up and went outside his room to see what was the cause of noise. He then

saw that his mother was lying on the floor of the kitchen with utensils lying scattered there. He also saw that his father was engaged in beating his mother. Pouncing upon his father, Atul caught the appellant by his waist and dragged him to the courtyard of the house, which was just adjacent to the kitchen. Thereafter Atul went to see his mother only to find that she had sustained several bleeding injuries and was in unconscious state. Calling his brother Jaigopal and his wife, both of whom were residing in a nearby house, he put his mother in an autorickshaw so as to take her to a hospital. However, Kantabai died on her way to hospital in the autorickshaw itself and, therefore, she was brought back to the house and her dead body was placed on the ground in the courtyard. Police were informed of the incident who took down the oral report of Atul, registering a crime against the appellant. Usual panchanamas were drawn out and statements of witnesses were recorded. Appellant was arrested from the house of Police Patil (PW 3 Uttam). After completion of the investigation, a charge-sheet was filed against the appellant. The case being triable exclusively by the Sessions Court, it was committed to the Sessions Court and the appellant was prosecuted for an offence of murder punishable under Section 302 of the Indian Penal Code.

3. On merits of the case, the learned Sessions Judge found that the death of Kantabai was homicidal in nature and it was intentionally caused by the appellant and, therefore, the learned Sessions Judge held the appellant as guilty of offence of murder punishable under Section 302 of the Indian Penal Code. The learned Sessions Judge convicted and sentenced him to suffer life imprisonment and also to pay a fine of Rs. 1000/-, with default sentence of rigorous imprisonment for a period of one month by the judgment and order dated 10th September 2014. Not being satisfied with the same, the appellant has preferred the present appeal.

4. We have heard Shri R.M. Daga, learned counsel for the appellant and Smt Mayuri Deshmukh, learned Additional Public Prosecutor for the respondent-State. We have carefully gone through the record of the case as well as impugned judgment and order.

5. It is the contention of learned counsel for the appellant that the prosecution has not proved beyond reasonable doubt its case against the appellant. It is submitted that the evidence of alleged eye witnesses PW 1 Atul and PW 6 Ashwini is of unreliable nature and that there are several inconsistencies between their depositions. It is also submitted that the appellant has brought on record a reasonable probability of somebody else fatally attacking deceased Kantabai and the prosecution evidence has not ruled out this possibility. Therefore, it is further submitted, the appellant deserves to be acquitted of the offence with which he has been charged in this case.

6. Learned Additional Public Prosecutor for the respondent-State, however, disagrees with the contentions of learned counsel for the appellant. According to her, there is sufficient evidence brought on record by the prosecution bringing home to the appellant his guilt for an offence of murder beyond reasonable doubt. She submits that evidence of PW 1 Atul and PW 6 Ashwini cannot be

considered as being inconsistent with each other and that even Ashwini says that her mother-in-law was lying in a pool of blood in the kitchen with her father-in-law standing in the door of the kitchen. This testimony of PW 6 Ashwini is largely consistent with the testimony of PW 1 Atul when he says that he had seen his mother as lying with bleeding injuries all over her person with his father, the appellant, engaged in beating his mother. The only difference, according to learned Additional Public Prosecutor between the depositions of these two witnesses, is that PW 1 Atul saw the appellant as beating his mother while PW 6 Ashwini saw the appellant as standing in the door of the kitchen. She also submits that the appellant has not explained as to why he was just present at the place where deceased Kantabai was lying in an injured condition and as to why did he not raise alarm when it was his case that somebody might have assaulted the deceased and ran away from the house of appellant. She also points out that bloodstained clothes and bloodstained knife bearing blood stains of human origin of group "B" matching with the blood group of deceased Kantabai, have been recovered from this appellant which would further strengthen the prosecution case and, therefore, learned Additional Public Prosecutor supports the impugned judgment and order.

7. So far as homicidal nature of death of deceased Kantabai is concerned, we do not think that there is anything in the prosecution evidence to entertain any doubt about it. PW 8 Dr. Hansaraj Hedau, who conducted the postmortem examination, found seven injuries as present on the dead body of Kantabai and all of them were antemortem in nature. Out of seven injuries, there were six deep stab wounds and they were caused to vital organs of deceased Kantabai. In his opinion, these injuries were sufficient to cause death and in fact, they triggered neuro haemorrhagic shock leading to the death of Kantabai. There is nothing in his entire evidence to discard his opinion as such. Even the appellant in his defence has suggested that somebody else might have killed his wife. This evidence would be sufficient for us to conclude that death of Kantabai was homicidal in nature and the injuries which brought about her death, were caused intentionally.

8. The question, however, would be as to who did cause those injuries to deceased Kantabai ? According to the prosecution, the appellant is the culprit and the appellant in his defence would like the Court to believe that possibility of somebody else fatally attacking Kantabai and killing her, does really exist and as long as that possibility is not ruled out, no blame could be placed on the shoulders of the appellant for the death of his wife Kantabai. The answer would have to be found out by considering the evidence available on record.

9. The prosecution has placed reliance upon versions of eye witnesses viz. PW 1 Atul and PW 6 Ashwini out of whom PW 1 Atul is an eye witness to the entire incident while PW 6 Ashwini is an eye witness to only part of it.

10. PW 1 Atul has stated that on the night intervening 19.6.2012 and 20.6.2012, his mother had slept in the same room in which he himself, his wife Ashwini and

their child had slept. He has stated that at the dawn, somewhere between 05.45 am and 06.00 am of 20.6.2012, his mother got up, sat for a while on the mattress in order to get over the morning giddiness that she used to experience usually after getting up and then left the room with a view to clean utensils used for the dinner the previous night, as was her wont. Because of such activity of deceased Kantabai, he has further stated, his sleep was disturbed, but he did not get up from the bed and continued to lie on it. At that point of time, according to him, he heard wailings of his mother as well as sound of fall of the utensils. He has further stated that then he rushed to the kitchen where he saw his mother as lying on the floor and his father beating his mother. He states that he caught hold of his father by his waist and pushed him away from his mother into the nearby courtyard and then going near his mother, he called for the help of his brother Jaygopal and his wife in order to take his mother, who was profusely bleeding because of injuries sustained by her, to the hospital.

11. PW 1 Atul has stated in his examination-in-chief that he did not see by which weapon his father was assaulting his mother. He has, however, in his oral report (exhibit 13) stated that he saw his father (appellant) giving knife blows to his mother. But, in his evidence, he says that he did not tell police when his statement was taken down in writing that he had seen his father using knife for assaulting the deceased. He says that reference of knife made by police in his oral report is incorrect. So, the evidence of PW 1 Atul is only on the point of his seeing his father assaulting his mother by giving a beating to her. He does not make any reference to any weapon being used by his father in the said assault. He also does not say that his mother was assaulted by fist or kick blows or both by his father.

12. Evidence of PW 1 Atul, as discussed above, has not been supported by PW 6 Ashwini, wife of PW 1 Atul although it is the contention of learned Additional Public Prosecutor that she is supporting her husband on the material aspects of the case. According to PW 6 Ashwini, after hearing the noise generated by fall of kitchen utensils on the ground, she too left the room along with her child, where she was sleeping, and went to the kitchen where she saw her mother-in-law as lying in a pool of blood and also saw the appellant as standing in the door of the kitchen. She emphasizes that upon hearing clinking noise of utensils, her husband had left the room and she had also immediately followed him. If PW 6 Ashwini had immediately followed her husband to the kitchen and if her husband had really seen the appellant as beating deceased Kantabai and had also separated him from deceased Kantabai by catching him by his waist and dragging him to nearby courtyard, almost same events would also have been seen by PW 6 Ashwini. But, this witness gives a different account of the incident. She says that she saw the appellant as standing in the door of the kitchen. There is thus a material variance, rather complete inconsistency, between the version of PW 1 Atul and that of PW 6 Ashwini in so far as the role of the appellant in assaulting deceased Kantabai is concerned.

13. These two versions of the alleged eye witnesses of the incident are irreconcilable with each other. There is no other evidence available on record with the help of which, evidence of either of these two witnesses could be relied upon. PW 6 Ashwini has also not given any explanation as to why and in what circumstances, she saw the appellant as standing in the door of the kitchen and as to why she did not see her husband catching hold of appellant by waist and dragging him to the courtyard and as to how the appellant came to the door of kitchen. In the absence of any explanation having been given by PW 6 Ashwini and for that matter, we would say, even by PW 1 Atul and there being no other evidence available on record throwing light upon the manner in which the incident took place and who was involved in it, it would have to be said that the possibility of both these witnesses having not really seen the unfolding of the material events, is very much there and that there could have been something entirely different which the investigating agency has failed to unearth and collect sufficient evidence about it. This is all the more so because there is intrinsic improbability in the evidence of PW 1 Atul. While he says that he saw his father beating his mother and even separated him in the midst of assault by pulling him away by his waist, he says he did not see by which weapon the onslaught was made. According to prosecution, it was launched by knife and if this is to be accepted, PW 1 Atul could not have failed to notice holding of knife by the appellant or could have noticed it as either being dropped or thrown away by the appellant. This would also have led to recovery of knife from the spot of incident or from a place nearby. But, such is not the case here.

14. Aforestated inference is further strengthened by the admission given by the Investigating Officer PW 9 Anil Deshmukh that there were doors to the house of the appellant in the front side as well as back side and that it was possible for anyone to make ingress to and egress out of the house. Even PW 1 Atul admits this fact. There is no evidence brought on record by the prosecution which would say with any certainty that the door to the house in its back side on that day was closed, rather, PW 1 Atul admits that he did not give any attention to the back side door in order to ascertain if it was closed or open and, therefore, he admits that he could not say if the door was open or closed.

15. PW 3 Uttam is the Police Patil from whose house the appellant was arrested by the police. In fact, the appellant had gone to his house after his wife Kantabai had sustained bleeding injuries. This witness says that at about 07.00 am of 20.6.2012, when he came outside his house, he saw the appellant as sitting in the courtyard of his house. He says that he was told by PW 1 Atul that appellant killed Kantabai. He further says that he informed the police of the incident and then asked the appellant as to what happened when the appellant told him to not say anything at that time. He says that he noticed blood stains as present on the shirt of the appellant that he was wearing at that time and that he had found one bleeding injury near the thumb of the appellant. According to learned Additional Public Prosecutor, this conduct of the appellant speaks about his guilty mind and that the appellant has not given any explanation about the same. She also

submits that appellant has not given any explanation about the blood stains on his full pant as well as knife recovered at his instance which, as per the Chemical Analyser's Report, were of human origin of blood group "B", the same blood group as of deceased Kantabai. Of course, the appellant has not given any specific explanation about these circumstances and his sole explanation is that there was possibility of somebody entering his house from the other door and assaulting his wife. It must be noted here that if the appellant was obliged to give an explanation regarding all these circumstances including his conduct, he being the occupant of the house in which Kantabai was killed, equally PW 1 Atul and PW 6 Ashwini owed an explanation about their conduct, they also being the occupants of the same house. PW 1 Atul and PW 6 Ashwini gave their explanation and the explanation is in the nature of a blame squarely put on the head of the appellant for killing of Kantabai. But, this explanation, as discussed earlier, has been found to be of such a nature as not evoking any trust in it and hence, not worthy of credit. The fact that this explanation given by both the said witnesses possibly being motivated against the appellant, can also not be ignored. This would be evident from the testimony of PW 7 Jaygopal, the other son of the appellant, which gives some insight into the undercurrents passing through the inter se relations between Kantabai, PW 1 Atul and PW 6 Ashwini on the one hand and the appellant, PW 7 Jaydeo and his wife, on the other. PW 7 Jaydeo says that appellant, though residing in the same house as inhabited by Atul, Ashwini and Kantabai, was not taking any meals from that house and that he was being provided with the same by PW 7 Jaygopal. The evidence of PW 1 Atul also discloses that the mother, son and daughter-in-law used to sleep in one and the same room while the father (appellant) used to sleep in the courtyard. These facts and circumstances could possibly have made PW 1 Atul as well as PW 6 Ashwini see something with prejudged notions resulting in making different interpretation of presence of appellant near the spot of incident. This also explains why PW 1 Atul did not see knife in the hands of the appellant and why the knife was not recovered from the spot of the incident or nearby. In these circumstances, the defence of the appellant that there was a possibility of somebody else killing his wife has to be taken as something which is reasonably probable and, therefore, it cannot be said that there is no reasonable explanation given by the appellant with regard to the circumstances which are said to be adverse to him. It has also to be considered that the appellant is 75 years old man who has been isolated in his own house and, therefore, his not raising any alarm can be seen in the context of his old age making him too flabbergasted and too perplexed to respond with any alacrity. Even if he had raised any alarm, it would not have been of any significance so far as the other family members, such as PW 1 Atul and PW 6 Ashwini were concerned. Therefore, we find that the conduct of the appellant in this case would not point towards his involvement in the alleged offence in any way.

16. So far as the recovery of bloodstained clothes, particularly the full-pant having blood stains of human origin of blood group "B" is concerned, we find that

there is also some doubt about the same. PW 1 Atul has identified the bloodstained full-pant shown to him during the course of his examination-in-chief as a witness before the Court to be the one which was having cut marks at several places while the panchanama seizing the full-pant vide exhibit 28 shows that the full-pant did not have any cut marks. Similarly, the knife having been seized from a place situated at some distance of the scene of crime, though at the instance of the appellant, in the circumstances as noted earlier, becomes of doubtful nature. Even otherwise, in the absence of any other reliable evidence showing the appellant being involved in the assault, recovery of bloodstained clothes and bloodstained knife from the appellant by itself would not be sufficient to bring home to the appellant his guilt for an offence of murder, punishable under Section 302 of the Indian Penal Code.

17. In the circumstances, we find that this is a fit case for giving benefit of doubt to the appellant by holding that the prosecution has failed to prove beyond reasonable doubt the charge of murder of Kantabai against the appellant. The learned Sessions Judge has not considered the aforestated aspects which are of material nature, in their proper perspective and thus, has committed errors of fact and law in reaching his conclusion. The impugned judgment and order cannot be sustained in the eye of law. The appeal deserves to be allowed.

18. Criminal Appeal is allowed. Appellant Jagdish Kothu Gajbhiye, is given benefit of doubt and judgment and order dated 10.9.2014 delivered by the Sessions Judge, Bhandara in Sessions Trial No. 67 of 2012 finding him guilty under Section 302 of the Indian Penal Code is quashed and set aside. He be set at liberty if not required in any other matter. Muddemal property be dealt with as directed by the Trial Court, after appeal period is over.