
(2000) 04 BOM CK 0058
In the Bombay High Court
Case No : Criminal Appeal No. 333 of 1994

Kashinath Nawakhare	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2000) CriLJ 3091

Hon'ble Judges : D.G. Deshpande, J; D.D. Sinha, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; A.M. Badar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Shri Daga, learned Counsel for the appellant-accused and Shri Badar, learned Additional Public Prosecutor for the State.

2. The instant Criminal Appeal is directed against the judgment and order dated 12-7-1994 passed by the Additional Sessions Judge, Bhandara in Sessions Trial No. 8 of 1994 whereby the present appellant-accused is convicted for the offence punishable u/s 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life.

3. It will be appropriate at this stage to consider few relevant facts of the prosecution case which have given rise to the prosecution of the present appellant-accused for the offence charged.

As per the prosecution case, in the night of 13th Oct. 1993 at about 9.00 p.m. when all the family members of the deceased were at home, it is alleged that the appellant-accused started abusing womenfolk of the family of deceased Vishwanath in filthy language. Deceased Vishwanath, therefore, asked his wife Nirmala (PW 5) to go and report the matter to the police. Laxmibai as well as PW 5 - Nirmala were accompanied by Anita - the daughter of the deceased

Vishwanath. They went to the police station and lodged the report against the accused-appellant.

4. When the family members of the deceased i.e. Laxmibai, PW5 - Nirmala and daughter Anita had gone to lodge the report in the police station against the accused-appellant, deceased Vishwanath, his two small children, PW 2 Sharda (another daughter) and PW 4 - Sonabai Thote (mother) were present at the house. It is alleged that the accused came to the house of the deceased and started kicking the door of the house of Vishwanath. PW 4 - Sonabai came out and inquired with the accused as to why he was kicking the door. It is further alleged that the accused threatened PW 4 - Sonabai and told her to keep away from the door of the house. On hearing the exchange of words between the accused and Sonabai - PW 4 the deceased came towards the door of "Chapri", scolded the accused and further told him that he should not manhandle and abuse his mother i.e. PW 4 - Sonabai. No sooner the deceased came out of the door, the accused put his arms on his neck and fell him down. Deceased Vishwanath fell down on the wooden planks which were lying in the court yard. Soon after Vishwanath fell down, the accused rushed to his own house and brought "Gupti". Vishwanath was still about to get up, at that time, the accused attacked him with "Gupti" and dealt a blow on his stomach. Deceased Vishwanath cried out as "_____ " and fell down on the ground. PW 2 - Sharda (daughter of the deceased) and PW 4 - Sonabai (mother of the deceased) witnessed the incident in question.

5. It is alleged by the prosecution that the accused thereafter dragged the body of deceased Vishwanath towards the court yard of PW 3 - Sonabai Navkhare. On hearing shouts of PW 4 - Sonabai Thote for help, PW 3 - Sonabai Navkhare came out of her house and asked the accused as to why he brought the body of deceased Vishwanath towards her court yard because this may result in involving her family in the incident in question. It is further alleged that the accused thereafter twisted the arms and legs of deceased Vishwanath and also gave kick blows on his stomach. The accused had also some hot exchange with PW 3 - Sonabai. PW 3 - Sonabai had noticed injury on the stomach of deceased and blood was oozing from it.

6. PW 2 Sharda, immediately after the incident in question, had gone to the police station to lodge report. On way to police station, PW 2 - Sharda met her mother - Laxmibai, Nirmala and Anita to whom Sharda informed that her father was killed by the accused. All of them went to the police station and lodged the report against the accused .

7. The prosecution has completed the investigation in the matter. The charge sheet was filed against the accused. The matter is committed to the Sessions Court where the formal charge u/s 302 of the Indian Penal Code was framed against the accused to which the accused pleaded not guilty.

8. Shri Daga, the learned counsel for the appellant, contended that the

prosecution has examined only the interested eye-witnesses i.e. PW 2 - Sharda and PW 4 - Sonabai though the incident had taken place in the locality where independent witnesses were available to the prosecution. It is contended that Sharda (PW 2) being the daughter and Sonabai (PW 4) being the mother of the deceased are vitally interested in the prosecution of the accused and their testimony, in the circumstances, ought not have been accepted by the trial Court. It is further submitted that since there was enmity between the deceased and the accused, the prosecution ought to have examined independent witnesses. It is contended that by the learned Counsel that even if it is assumed for the sake of argument that the accused inflicted one solitary blow on the person of the deceased, even then the manner in which the incident had taken place, the conviction u/s 302 of the Indian Penal Code cannot be sustained. It is submitted that at the spur of the moment and in the fit of anger the solitary blow was given by the accused and, therefore, the conviction in the instant case for the offence charged cannot be sustained.

9. Shri Daga, the learned Counsel for the appellant-accused also criticised the medical evidence on the ground that the Medical Officer has not opined that the injury in question was sufficient in the ordinary course of nature to cause death and, therefore, it is difficult to gather the requisite intention to bring home the action of the appellant-accused within the ambit of Section 302 of the Indian Penal Code. Similarly, in the absence of description in regard to the internal damage caused by the injury in question, it is not possible to hold that the accused really intended to cause death.

10. Shri Badar, the learned Additional Public Prosecutor, supported the judgment and sentence passed by the learned Additional Sessions Judge. It is contended that there are two eye-witnesses to the incident in question i.e. PW 2 - Sharda and PW 4 Sonabai and their evidence is fully corroborated not only by the medical evidence but also by the evidence of PW 3 - Sonabai Navkhare as well as Chemical Analyser's report. It is submitted that the clothes of the accused were stained with blood of "AB," group which belong to deceased. The learned A.P.P., therefore, contended that the sentence awarded by the learned Additional Sessions Judge is just and proper.

11. In order to consider the contentions raised by the respective counsel, it will be appropriate to consider the evidence of eye witnesses - PW 2 Sharda and PW 4 - Sonabai. While going through the evidence of PW 2 - Sharda, we find that this witness, in her examination in chief, has stated that while she herself, her father (deceased Vishwanath) and grand mother Sonabai (PW 4) were at home, the accused came to their house and started kicking the door of the house. PW 4 - Sonabai went towards the door and scolded the accused. At that time the accused started abusing her and also manhandled her. Her father (deceased Vishwanath) came towards the rare side door and told the accused not to abuse or manhandle his mother Sonabai (PW 4). The accused pushed Vishwanath in the Court yard. Vishwanath fell down. In the meanwhile, the accused went to his

house and brought "Gupti" from his house and gave a blow by the same on the stomach of Vishwanath. Vishwanath shouted as "_____". The accused thereafter pulled Vishwanath towards the courtyard of PW 3 - Sonabai Navkhare and at that time the accused gave kicks on the stomach of Vishwanath. PW 3 Sonabai came in her court yard and also witnessed that the accused was dragging the body of Vishwanath towards her court yard. It has come in her evidence that the accused threatened PW 3 Sonabai. This witness PW 2 Sharda, after seeing the incident in question, immediately went to the police station and lodged the report.

12. While going through the cross examination of this witness, nothing has been brought by the defence on record in order to discard her testimony particularly in regard to the material particulars of the prosecution case stated by her in the First Information Report as well as in her examination in chief. There are no omissions or contradictions in her testimony. The cross examination is primarily directed in order to bring on record the character of the deceased as well as some enmity between the families of the deceased as well as the accused. This witness, in her straight forward manner, admitted that her father i.e. deceased Vishwanath was bootlegger and was doing the business of selling liquor. The accused, also according to her, was a bootlegger. She has admitted in her cross examination that her family was engaged in selling liquor and there was some conflict between her family and the family of the accused. On the basis of the tenor of the cross examination, we feel that this witness has frankly admitted the above referred facts, suggested by the defence which lends credibility to the version of this witness.

13. We cannot lose sight of the fact that PW 2 - Sharda being the daughter of the deceased, at the relevant time, was present in the house and, therefore, is the most natural witness to the incident in question. The First Information Report in the instant case assumes importance since the same was lodged without lapse of time almost immediately after the incident in question in which all the material particulars of the prosecution case have been specifically stated by this witnesses, which in our opinion, completely corroborates the testimony of this witness.

14. The evidence of this witness, therefore, is consistent which inspires confidence and cannot be rejected merely because this witness is a daughter of the deceased.

15. As far as the evidence of other eye witness - Sonabai (PW 4) is concerned, we find that she has corroborated the testimony of PW 2 - Sharda. It is, however, true that there are some omissions in the evidence of PW 4 - Sonabai brought on record by the defence. However, in our opinion, those omissions are not material in nature and does not affect either her own testimony before the Court or material particulars of the prosecution case. Sonabai (PW. 4) being the mother of the deceased was present in the house at the relevant time and, therefore, was also a most natural witness to the incident in question and her testimony also

cannot be disregarded on the ground that she is an interested witness. Enmity is a double edged weapon and in the instant case the assailant being only one person i.e. the accused-appellant, it is very difficult for us even to imagine that both these eye-witnesses i.e. the daughter and mother of the deceased would allow the main culprit to go scot free and falsely involve appellant-accused in the crime in question. The contention of Mr. Daga, the learned Counsel for the accused-appellant, in this regard, therefore, cannot be accepted.

16. The medical evidence in the instant case completely corroborates the testimony of the above referred eye-witnesses. PW 1 - Dr. Padamawar conducted post mortem examination and noticed one incised wound in the left second intercostals space of chest, just lateral to lateral border of sternum of size 1/2" x 1/4" Cavity (Stab). Probe could be inserted for about 3" in thoracic cavity. In the examination in chief, Dr. Padamawar has specifically stated that in internal examination it is found that there was full blood in left thoracic cage. Left pleura pierced. Left lung was pierced at about second intercostals space. This injury in the lung was related to the internal injury. Left pulmonary artery cut. It is opined by the Doctor that the cause of death was hypovolaemic shock, due to injury to left pulmonary vessel. The defence has conducted a cryptic cross examination of this witness which does not affect the testimony of this witness.

17. While considering the medical evidence in the instant case, coupled with the testimony of the eye-witnesses and the other circumstances on record, it is clear that the weapon used by the accused is "Gupti". The placement of the injury is on the vital part of the body. Taking into consideration the internal damage caused by such injury followed by the instantaneous death on the spot, the intention of the accused is evident i.e. to commit murder of deceased Vishwanath. Taking into consideration the facts and circumstances referred to hereinabove, the non disclosure by the Doctor in respect of the injury as to whether in the ordinary course of nature the same is sufficient to cause death, does not assume importance.

18. In the instant case the theory of giving blow by the accused at the spur of the moment in the fit of anger as suggested by the learned Counsel for the accused-appellant also cannot be accepted. In the instant case, the accused had gone back to his house and brought "Gupti" from his house and gave blow by the same on the vital part of the body of the deceased. For the reasons stated hereinabove, the contention raised by one learned Counsel for the appellant-accused in this regard cannot be accepted and in our opinion the case would fall within the ambit of Section 302 of the Indian Penal Code.

19. In this view of the matter and in the facts and circumstances referred to above, the appreciation of evidence by the trial Court is just and proper which does not require any interference at the hands of this Court and, therefore, the judgment of conviction and sentence passed by the trial Court is hereby confirmed.