
(2015) 09 BOM CK 0213
In the Bombay High Court
Case No : Criminal Appeal No. 368 of 2012

Kishor Narsingrao Deshmukh	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Evidence Act, 1872 — Section 101, 106
Penal Code, 1860 (IPC) — Section 302, 304-B, 34, 498-A

Citation : (2015) 09 BOM CK 0213

Hon'ble Judges : A.B. Chaudhari and I.K. Jain, JJ.

Bench : Division Bench

Advocate : Satyajit S. Bora, Advocate, for the Appellant; A.S. Shinde, APP, for the Respondent

Final Decision : Dismissed

Judgement

I.K. Jain, J.—This appeal is preferred by Appellant -Accused No. 1 against the judgment and order dated 20th April, 2012, passed by the learned Additional Sessions Judge, Hingoli, in Sessions Case No. 22 of 2009. By the said judgment and order, the learned Additional Sessions Judge convicted the Appellant under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life and fine of Rs. 500/-, in default, rigorous imprisonment for six months. Accused No. 1 was however acquitted of the offences punishable under Sections 498-A , 304-B and 34 of the Indian Penal Code.

2. As appears from record case was committed in all against five accused. Accused Nos. 2 to 5 relatives of Accused No. 1 were acquitted of the offence punishable under Sections 498-A , 302 and 304-B read with Section 34 of the Indian Penal Code.

3. For the sake of convenience, we shall refer the Appellant in his original status as Accused as he was referred before the Trial Court.

4. In nutshell prosecution case is as under:

i. PW-8 Punjabrao Nanarao Sirnaik was resident of Shelgaon (Jahangir), Taluka Chikhli, District Buldhana. Deceased Pooja was his daughter. Pooja was married to Accused Kishor on 23rd March, 2008. At the time of marriage, it was agreed to give cash of Rs. 1,25,000/-. Complainant Punjabrao gave Rs. 1,00,000/- cash and 80 gms gold ornaments in marriage and assured to give remaining cash of Rs. 25,000/- later.

ii. It is the prosecution case that after marriage, Pooja went to reside at her in-laws at village Kandli. On 27th June, 2008 on the occasion of Akhadi, she came to her parents house and stayed there for 12-13 days. During her stay, she disclosed to her parents and others in family that she was being harassed by her husband and in-laws for non-fulfillment of demand of Rs. 25,000/-. After Akhadi festival Kishor came to fetch Pooja. Her father assured Kishor that he would pay Rs. 25,000/- at the time of Diwali and asked him not to ill-treat his daughter.

iii. Despite assurance Accused did not mend his ways and continued to ill-treat Pooja for non-fulfillment of demand of Rs. 25,000/-.

iv. On 24th August, 2008, Punjabrao received telephonic message from Kallyan, brother in-law of Pooja informing him that Pooja committed suicide by hanging herself. On receiving message, father of Pooja alongwith his wife, brother in-law and other relatives rushed to village Kandli. They saw dead body of Pooja and noticed blackish scars on the neck and nail marks on the body. Punjabrao then went to Akhada Balapur, Police Station and lodged report on 24th August, 2008.

v. Before lodging report, Kallyan, brother in-law of Pooja had given intimation of death to Akhada Balapur, Police Station. On receiving intimation, AD was registered. During inquiry of AD, inquest panchanama was drawn. Dead body was sent for postmortem.

vi. On 24th August, 2008, after report was lodged by Punjabrao, PW-11 P.S.I. Ramsingh Deelip Singh Chiragiya, registered the crime and took over investigation. Accused were arrested. Statements of witnesses were recorded. Accused Kishor while in custody gave memorandum to show spot of the incident. At his instance scene of occurrence panchanama was recorded. One cable wire of about 17 feet in length lying on the spot was seized. Investigating Officer got sketch of the spot prepared through revenue inspector. The clothes of deceased were seized under seizure panchanama. Seized Muddemal was sent to CA. On completing investigation charge-sheet was filed before the learned Judicial Magistrate First Class, Kalamnuri, who in turn committed the case for trial to the Court of Sessions.

5. Charge came to be framed against Appellant and others at Exhibit 30. Accused pleaded not guilty to the charge and claimed to be tried. Factum of inter-se relationship is not disputed. Regarding alleged commission of offence Accused submitted that as he was mentally disturbed Pooja committed suicide. Rest of the defence was of total denial and false implication.

6. Prosecution examined in all 11 witnesses. After going through the evidence learned Additional Sessions Judge convicted and sentenced the Accused as stated in paragraph No. 1 above. Being aggrieved, Appellant has preferred this appeal.

7. We have heard the learned counsel for Appellant and learned APP for State. Considering the facts and circumstances of the case, submissions made on behalf of Appellant and Respondent, reasonings recorded by the Trial Court and evidence on record, for the below mentioned reasons we are of the opinion that prosecution has succeeded in proving the guilt of Accused under Section 302 of the Indian Penal Code against the Accused and no interference is warranted in the present appeal.

8. Prosecution case exclusively rests on circumstantial evidence. In this connection learned counsel for Accused submitted that prosecution has failed to establish homicidal death and the circumstances to prove complicity of Appellant. On the law relating to circumstantial evidence learned counsel for Appellant vehemently placed reliance on -

(i) Subramaniam Vs. State of Tamil Nadu and Another, and

(ii) Sambhaji s/o. Chindhuji Pachare Vs. State of Maharashtra 2013 (0) BCI 234.

9. We have gone through the authorities referred by the learned counsel for Appellant. It has been consistently laid down by the Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. A legal trend would further show that for a conviction in murder case on circumstantial evidence, following conditions must be fulfilled :

i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is, they should not be explainable on any other hypothesis except that the accused is guilty.

iii) The circumstances should be of a conclusive nature and tendency.

iv) They should exclude every possible hypothesis except the one to be proved.

v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probability, the act must have been done by the accused and the accused alone.

10. Keeping in view the ratio laid down by the Supreme Court, we shall examine the circumstantial evidence on which reliance is placed by the prosecution.

11. As Accused has disputed mode of death as homicidal death, burden lies on

the prosecution to establish that Pooja met with homicidal death. In this connection, evidence of PW-3 Dr. Rajeshwar Katruwar is important. Dr. Katruwar was attached to Akhada Balapur Primary Health Center as Medical Officer. He stated that on 24th August, 2008, dead body of Pooja was brought to PHC through Police Constable of Akhada Balapur, Police Station. He and Dr. Santosh Sadashivrao Bondhare have performed postmortem. On examination, they noticed-

"Ligature mark around neck encircling neck completely, breadth of the mark about 1 1/2 cms. This mark was just below the chin.

Another mark seen 2 1/2 cms below the above ligature mark, at the level of thyroid cartilage and was horizontal

The ligature mark was dry, hard and brown in colour. Abrasion was seen underneath the skin at ligature mark. Abrasion seen at medical end of right clavicle 1 1/2 x 1/2 cms, brown in colour. Subcutaneous tissue underneath ligature mark was economised, muscles of the neck were edematous, congestion of neck vasculature, laryngeal cartilages and tracheal ring were injured. The total neck circumference found about 34 cms. All the injuries were ante-mortem."

12. On internal examination, Medical Officers found 6-8 weeks fetus showing that deceased was pregnant at the relevant time. PW-3 Dr. Katruwar opined cause of death as asphyxia due to strangulation. He proved postmortem report at Exhibit 62. According to Dr. Katruwar, injuries noticed on the dead body was possible with cable wire seized from the spot.

13. Commenting upon the evidence of PW-3 Dr. Katruwar, the learned counsel for Appellant strenuously submitted that there is no positive evidence showing that ligature marks were encircling the neck and it was a case in which no extraneous force was applied. Dr. Katruwar has stated in cross-examination that upper ligature mark was completely encircled and another ligature mark below it in front side was not completely encircled. Though this admission is elicited in cross-examination of Dr. Katruwar, it is not helpful to Accused as evidence of PW-3 Dr. Katruwar is consistent throughout showing that cause of death was asphyxia due to strangulation and injuries found at the time of postmortem.

14. It is pertinent to note that spot of incident was the house of Accused. Spot panchanama is proved through PW-1 Gorakhnath Chandrakant Panpatte. One cable wire was seized from the spot. Spot was shown by Accused when he was in Police custody. Dead body was found on the cot. It was not in hanging position. Had it been suicidal death, the dead body would not have been found on the cot in the bedroom of Accused and Pooja. Accused has not given any explanation to this clinching circumstance, which completely overrules the possibility of suicidal death.

15. Another significant factor, which needs serious consideration is that Pooja was married to Accused just before 5 months of her death. She was carrying

pregnancy of 6-8 weeks. All the ornaments on her person were found intact. These are the strong circumstances clearly showing that Pooja had not committed suicide. There was no reason for her to commit suicide. The defence of mental illness raised by Accused is not at all established. The circumstances in totality point out that mode of death of Pooja was homicidal and homicidal alone overruling the possibility of suicidal, accidental and natural death.

16. It is a rare case in which surprisingly father, brother and uncle of deceased did not support the prosecution and they were hostile. Accused came to be acquitted of the offence punishable under Sections 498-A and 304-B of the Indian Penal Code. It is pertinent to note from the cross-examination of father of Pooja, PW-8 Punjabrao that when they reached village Kandli on receiving information of death of Pooja, they saw marks on front and back of the neck and nail marks on the neck of the deceased.

17. Under Section 106 of the Evidence Act, it is obligatory on Accused to explain the facts, which are well within his knowledge. Needless to state that Section 106 of the Evidence Act is an exception to Section 101, which states that it is for a person who asserts, has to prove the facts. Accused was staying in the house with deceased is not disputed. The death of Pooja occurred in the bedroom of Accused and deceased is established. Therefore, the facts were within the knowledge of Accused and it was for him to explain in what circumstances Pooja died.

18. As mentioned above, theory of suicidal death is completely overruled by the strong circumstances established against Accused. In the absence of probable and plausible explanation and considering the incriminating circumstances brought on record, we are of the opinion that prosecution has succeeded in proving the complicity of Accused in causing death of Pooja. Thus we find no merit in the appeal. Hence, the following order:

Criminal Appeal No. 368 of 2012, is dismissed.