

(2017) 02 BOM CK 0215
In the Bombay High Court
Case No : 303 of 2015

Kisna

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
Indian Penal Code, 1860, Section 302,
Section 201 - Punishment for mur

Citation : (2017) 02 BOM CK 0215

Hon'ble Judges : B.R. Gavai, Kum. Indira Jain

Bench : DIVISON BENCH

Advocate : Radha M. Mishra, S.M. Ukey

Judgement

1. This appeal is preferred by appellant-accused against the judgment and order dated 5.6.2015 passed by the learned Additional Sessions Judge, Yavatmal in Sessions Trial No.95/2013. By the said judgment and order, accused is convicted of the offence punishable under sections 302 and 201 of the Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5000/- in-default to suffer rigorous imprisonment for one year for the offence punishable under section 302 of IPC and rigorous imprisonment for one year with fine of Rs.500/- in-default to suffer rigorous imprisonment for one month for the offence punishable under Section 201 of IPC.

2. For the sake of convenience, we shall refer the appellant in his original status as accused as he was referred before the trial court.

3. Prosecution case briefly stated is as under : (a) Avinash Raut (PW3) is complainant and son of deceased Kalavati. Avinash was residing at village Ladki, Tahsil-Ralegaon, District-Yavatmal with his parents, wife and two children. He was working at Dhaba of Bhalchandra Raut. His brother was residing separately with his wife. (b) Incident occurred on 21.12.2011 at 9.30 a.m. Kalavati had

been to answer nature's call. Accused went there and assaulted Kalavati with an axe. He delivered multiple blows on various parts of her body. Avinash was at Dhaba that time. His cousin Balabhau Deorao Raut informed him on phone that accused committed murder of his mother and asked him to come immediately. Avinash rushed to the spot and saw his mother lying on the ground with several injuries on her body. He went to Wadki Police Station and lodged a report. Crime No.68/2011 came to be registered. API Madansingh Rajput (PW7) took over investigation. He visited the spot and drew spot panchanama. A pair of chappal, a plastic box, a pink towel having blood stains, simple earth and earth mixed with blood were seized from the spot. Inquest panchanama was recorded. Then dead body was sent for postmortem to Rural Hospital, Ralegaon. Dr. Atul Meshram (PW9) was Medical Officer on duty. He performed postmortem and opined cause of death due to injuries to brain.

(c) Investigating officer recorded statements of several witnesses. Viscera preserved by Medical Officer at the time of performing postmortem was handed over to Police Head Constable Datta Rathod, who in turn, produced the same before Investigating Officer and it was seized in presence of panch witnesses. The clothes of deceased were also produced at the same time and seizure panchanama of clothes was accordingly drawn. Seized muddemal was sent to Forensic Science Laboratory.

(d) Accused was absconding. He was arrested on 6.3.2013. PSI Chandurkar (PW8) sent the accused for medical examination. The blood sample of accused was collected. The same was forwarded to Chemical Analyser. Circle Officer was requested to draw map of the spot. After completing investigation, charge sheet was submitted before Judicial Magistrate, First Class, Ralegaon, who in turn, committed the case for trial to the Court of Sessions.

4. Charge came to be framed against the accused under Sections 302 and 201 of IPC vide Exh.5. He pleaded not guilty to the charge and claimed to be tried. The defence of accused was of total denial and false implication. In his statement under Section 313 of Cr.P.C. accused raised specific defence that Sanjiv Mandavkar, Sarpanch of the village was not in good terms with him and at the instance of Sarpanch, witnesses deposed against him and involved him in a false case.

5. Prosecution examined in all nine witnesses to substantiate the guilt of accused. Accused did not examine himself or any other witness in support of his defence. On going through the evidence adduced by the prosecution, learned Additional Sessions Judge convicted and sentenced the appellant as stated in paragraph 1 above. Being aggrieved thereof, accused has preferred this appeal.

6. We have heard the learned counsel for appellant and learned Additional Public Prosecutor for respondent-State. Considering the facts and circumstances of the case, submissions made on behalf of parties, reasonings recorded by the trial court and evidence on record for the below mentioned reasons, we are of the

opinion that appellant is responsible for committing murder of Kalavati and he caused evidence of offence to disappear with intention to screen himself from legal punishment.

7. Conviction of accused is mainly based on ocular evidence of two child witnesses i.e. PW5 Mayuri Vijayrao Raut and PW6 Mahesh Rangraoji Parchake. In this regard, learned counsel for appellant submitted that evidence of child witnesses should be accepted with great care and caution and general principle is that testimony of such a witness is to be corroborated by independent witness. According to learned counsel, both the witnesses Mayuri and Mahesh are not coming with true facts, as their evidence would reveal that their school was in the morning at 10.00 am. He submits that their school was located away from the place of incident and, therefore, presence of both the witnesses at the relevant time itself appears to be doubtful. It is submitted that no independent witness has been examined and in the absence of independent corroboration, it was not proper for the trial court to rely upon the evidence of child witnesses.

8. Per contra, learned Additional Public Prosecutor states that there is no inherent defect in the evidence of both the child witnesses. Nothing could be brought on record to indicate any possibility of child witnesses being tutored. He strongly supports the judgment and order of conviction passed by the trial court and urged to dismiss the appeal.

9. So far as law on appreciation of evidence of child witness is concerned, it is an established principle that child witnesses are risky as they are liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of evidence of child witness the Court comes to a conclusion that it is truthful and believable, totally free from tutoring then there is no obstacle in anyway not to rely upon the evidence of child witness.

10. In the case on hand before recording evidence of PW5 Mayuri and PW6 Mahesh, learned Additional Sessions Judge ascertained that witnesses understand the significance of oath and thereupon administered oath to each of them. It appears from the evidence of Mayuri that she was knowing the accused. She stated that accused is father of Vishal Keram. She was studying in 3rd Standard. Her evidence was recorded in the court on 8.1.2015. That time she stated her age as 11 years. Means at the time of incident in 2011 she was around 7 years of age. It can be seen from her evidence that in the morning at about 9-9.15 am, Deorao Parchake was going with the cattle. She and Mahesh followed him. Deorao drove the cattle beyond bank of Nala and she and Mahesh were returning home. She states that at that time she saw accused assaulting Kalavati with an axe in "Bayanchi Godri" (women's easing place). After seeing her and Mahesh, accused fled away towards the field with an axe. She and Mahesh came home. She narrated the incident to her mother and told her not to go to Godri as father of Vishal was assaulting Kalavati in Godri. She states that Kalavati died on the spot as accused assaulted her with an axe.

11. The evidence of PW6 Mahesh is on the same line. He was studying in 4th Standard. His evidence was recorded in the court on 17.3.2015. He stated his age before the court as 12 years. Means he was 8 years old at the time of incident in 2011. He states that his grandfather Deorao was taking cattle beyond nala. He and Mayuri were walking behind. While Mahesh and Mayuri were returning home, they saw accused assaulting Kalavati with an axe in womens" easing place "Godri". He states that after seeing them, accused proceeded towards the field with an axe. They came home. He informed about the incident to his mother. He and Mayuri also narrated the incident to police.

12. On meticulous scrutiny of evidence of PW5 Mayuri and PW6 Mahesh, we find no material improvements, contradictions or omissions. On manner of incident, evidence of both the child witnesses is throughout consistent. Nothing substantial could be elicited in their cross-examination to disbelieve their testimonies. They have no reason to grind an axe against the accused. In these circumstances, we are of the view that conviction of the accused on the evidence of child witnesses is sustainable.

13. Insofar as factum of homicidal death is concerned, prosecution examined PW9 Dr. Atul Meshram. He performed postmortem on 21.12.2011. At the time of postmortem examination, five chop wounds and fracture of skull underneath injuries to parietal region were noticed by him. Multiple injuries were found to brain and other parts of the body. Doctor opined cause of death as injury to brain. Postmortem report (Exh.66) is not seriously assailed by the defence. Considering the evidence of Medical Officer, postmortem report (Exh.66) and the evidence of child witnesses PW5 Mayuri and PW6 Mahesh, conclusion is inevitable that the death of Kalavati in question was homicidal death and accused is responsible for causing her death.

14. In the above premise and on going through the record, we hold that there is sufficient evidence to prove beyond reasonable doubt that appellant eliminated life of an innocent lady and he has been rightly convicted and sentenced by the trial court. We find no merit in the appeal. Hence, appeal is dismissed. No costs. Fees of the learned counsel appointed on behalf of appellant are quantified at Rs.5,000/-.