
(2018) 02 BOM CK 0109
In the Bombay High Court
Case No : 64 of 2005

Laxman s/o. Runjaji Gaikwad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#), [Section 302](#), [Section 34](#), [Section 498](#), [Section 498-A](#) -
Punishment for murder - Punishment for murder - Acts done by several persons in
furtherance of common intention - Enticing or taking away or detaining with criminal
intent a married woman

Citation : (2018) 02 BOM CK 0109

Hon'ble Judges : R.K.Deshpande, M.G.Giratkar

Bench : Division Bench

Advocate : P.R.Agrawal, K.R.Lule

Final Decision : Allowed

Judgement

1. Appellant has assailed the Judgment of conviction in Sessions Trial No.31 of 2001 for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for three months.

2. The case of prosecution against the appellant, in short, is as under :

Deceased Sheela was married with the accused/appellant on 5.5.1999. After the marriage, appellant used to insist her to bring Rs.15,000/- from her father for starting a cloth

shop. He was beating and harassing the deceased. Whenever the deceased came to her parents, she disclosed the ill-treatment of her husband/appellant. On 12.1.2001, appellant along with his parents beat the deceased and threw her into the well. Her parents i.e. her father namely Namdeo Sadashivrao Wankhede (PW-1) and his wife namely Saraswati Namdeorao Wankhede (PW-10) came to know about the incident. They reached to the house of accused/appellant. They found the dead body of deceased Sheela in the well. Namdeo Wankhede (PW-1) lodged report in the Police Station. Crime was registered against the appellant and his parents. Dead body was sent for post mortem. Spot panchanama, inquest panchanama etc. were prepared by the Investigating Officer PSI Vishwanath Vithoba Ghuge (PW-15). After complete investigation, charge sheet was submitted to the Court of Judicial Magistrate, First Class. As usual, the case was committed for trial to the Court of Sessions at Achalpur.

3. Charge was framed at Exh.20. Same was read over and explained to the accused. Defence of the accused appears to be of total denial and accidental/suicidal death of deceased.

4. Following witnesses were examined by the prosecution :

- a. Namdeo Sadashivrao Wankhede (PW-1) (Exh.32).
- b. Ganpat Champat Wankhede (PW-2) (Exh.35).
- c. Anil Domaji Gaikwad (PW-3) (Exh.36).
- d. Naresh Shivaji Gaikwad (PW-4) (Exh.37).
- e. Tarun Badrinathji Nagle (PW-5) (Exh.38).
- f. Harish Ramprasad Sharma (PW-6) (Exh.42).
- g. Fulabai w/o. Ramprasad Sharma (Dachole) (PW-7) (Exh.,7).
- h. Nandu Pandurangji Raut (PW-8) (Exh.44).
- I. Sahadeo Sitaram Dhakade (PW-9) (Exh.45).
- j. Saraswati Namdeorao Wankhede (PW-10)(Exh.47).

k. Pundlikrao Narsaji Bhujade (PW-11) (Exh.50).

l. Suresh Gunwantrao Athwale (PW-12) (Exh.53).

m. Sukhdeo Tekra Dhakade (PW-13) (Exh.56).

n. Vinayak Ruprao Nathe (PW-14) (Exh.61).

o. Vishwanath Vithoba Ghuge (PW-15) (Exh.67).

5. Trial Court recorded statement of accused u/s.313 of Code of Criminal Procedure. He denied material incriminating evidence against him. Learned trial Court, after hearing prosecution and defence, has acquitted accused no.2 Runjaji Punjaji Gaikwad and accused no.3 Sau.Kamlabai Runjaji Gaikwad (parents of appellant) for the offences punishable under Sections 498 and 302 r/w. 34 of the Indian Penal Code and also acquitted the appellant for the offence punishable under Section 498-A of the Indian Penal Code. Trial Court convicted appellant for the offence under Section 302 of the Indian Penal Code and convicted as stated above.

6. Heard learned Counsel Mr.P.R.Agrawal for the appellant. He has submitted that the evidence of Namdeo Wankhede (PW-1) (father of deceased) and Saraswati Wankhade (PW-10) (mother of the deceased) show that there was ill-treatment. But the learned trial Court has not relied upon their evidence and has rightly acquitted the appellant and his parents of the offence punishable under Section 498-A of the Indian Penal Code.

7. Learned Counsel for the appellant has pointed out the evidence of Medical Officer Vinayak Ruprao Nathe (PW-14) and submitted that the injuries caused to the deceased were possible if anybody falls in the well. He has pointed out further cross-examination of Medical Officer and submitted that the Medical Officer has admitted that deceased was under his treatment. She was suffering from general debility and vertigo. Therefore, possibility of accidental death cannot be ruled out.

8. Heard learned A.P.P. Mr.K.R.Lule for the Respondent/State. He has supported the Judgment of trial Court and submitted that the appeal is without any merit and liable to be dismissed.

9. Except evidence of Namdeo Wankhede (PW-1) and Saraswati Wankhede (PW-10) (parents of deceased), there is no evidence against the appellant. Namdeo Wankhede (PW-1) and Saraswati Wankhede (PW-10) have stated about cruelty caused by the appellant and his parents. When Saraswati Wankhede (PW-2) came along with Namdeo Wankhede (PW-1) to the house of appellant, they found dead body of deceased lying in the well. Except this, there is no evidence by the side of prosecution. Namdeo Wankhede (PW-1), Ganpat Champat Wankhede (PW-2) and Saraswati Wankhede (PW-10) were not witnesses of the incident. Other material witnesses have not supported the prosecution. There is no evidence to show that appellant beat his wife and thrown in the well.

10. There is no dispute about death of deceased Sheela. Evidence of Vinayak Ruprao Nathe (PW-14), Medical Officer shows that the cause of death was shock due to injuries to the vital organs.

11. Medical Officer Vinayak Nathe has stated in his evidence that, on 12.1.2001, he had conducted post mortem on the dead body of deceased Sheela. He found the following injuries :

1. Abrasion on both buttock size 3 " x 2 ".
2. Lacerated wound on the left frontal region of scalp, size 1/2" x 1/2" with body deep, bleeding positive with depressed fracture of skull on the side of injury.

3. Contusion with abrasion on chin, size 2" x 2".

12. As per the opinion of Medical Officer, above injuries can

be caused by hard and blunt object. All the above injuries were ante mortem. In his opinion, cause of death was shock due to injuries to the vital organs. Accordingly, he issued Post Mortem report (Exh.62).

13. There is no dispute that the deceased died due to injuries.

But cross-examination of Medical Officer shows that Injury Nos. 1 and 3 are simple injuries. If anybody falls in well, injuries mentioned in Column No.17 (Injury Nos 1 to 3) can be caused. The Medical Officer has further admitted that the injuries shown in Column No.17 were fresh injuries. Xerox copy of Medical Certificate was shown to him. He has stated that it was issued by him and bears his signature. Deceased Sheela was suffering from general debility and vertigo.

14. Admission of Medical Officer Vinayak Nathe (PW-14)

clearly shows that the deceased was suffering from vertigo. It is the specific defence of appellant that deceased was suffering from epilepsy and under the attack of epilepsy, she fell down into the well and died. From the perusal of evidence of all the witnesses, there is no evidence to show that the appellant beat and threw the deceased (wife) into the well.

15. Defence taken by the appellant that his wife fell into the well under the attack of epilepsy appears to be probable in view of admission of Medical Officer Vinayak Nathe. As per the case of prosecution, appellant beat deceased by stick and threw her into well. That stick was seized from the appellant. It was sent for examination to the Chemical Analyser. The report of Chemical Analyser is at Exh.78. Blood was not detected on the said seized stick.

16. There is no evidence to show that appellant beat his wife and threw her into well. Prosecution has miserably failed to prove guilt of the appellant for the offence punishable under Section 302 of the Indian Penal Code. Learned trial Court has wrongly recorded its

findings and wrongly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code. Hence, we pass the following order.

// ORDER //

The Appeal is allowed.

Impugned Judgment is quashed and set aside.

Appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.

Fine amount, if paid by the appellant, be refunded to him.

Appellant is on bail. His bail bonds stand cancelled.

The record and proceedings be sent back to the trial Court.