

(2014) 06 BOM CK 0150
In the Bombay High Court
Case No : Criminal Appeal No. 41 of 2012

Liladhar Latkan Sapkale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 326, 510

Citation : (2015) ALLMR(Cri) 1828 : (2014) 4 BomCR(Cri) 353

Hon'ble Judges : S.S. Shinde, J; A.I.S. Cheema, J

Bench : Division Bench

Advocate : S.S. Jadhavar, Advocate for the Appellant; K.S. Patil, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This appeal is filed by the appellant, aggrieved by the judgment and order passed by the Additional Sessions Judge, Jalgaon on 8th December, 2011, thereby convicting the appellant for the offence punishable u/s 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 5,000/-, in default, to suffer further R.I. for two months.

2. The prosecution case, in brief, is as under:-

On 29.06.2010, deceased Suresh Eknath Sapkale returned to his house in the evening after finishing his agricultural work and thereafter he had his food. At about 10.30 p.m. he was lying over a Cot in the courtyard of the house and at that time, accused Liladhar Latkan Sapkale came there in drunken condition and assaulted the deceased with a sickle. He caught hold of the sickle and at that time, his palm also got injured. Pralhad Eknath Sapkale (PW4), Vasudeo Hari Sapkale and wife of deceased PW2 Latabai came there and took the sickle from the hand of the accused and separated the victim. He was admitted in the hospital, since he was severely injured. Thereafter, at about 1.10 a.m., on 30.06.2010, PW1 ASI Vasant Chaudhari, who was attached to Jalgaon Taluka

Police Station and was on night duty, reached the hospital upon receiving the phone call from the Doctor of Civil Hospital and found that the condition of the victim was serious. He enquired with the Doctor as to whether the victim was in a position to give statement. PW7 Dr. Sandip examined and made an endorsement and thereafter he recorded the statement of the victim (Exh. 15) and the victim narrated the aforesaid incident. Initially, offence was registered under sections 326, 510 and 323 of I.P.C., however, subsequently the victim died.

Investigation was carried out by PW9 Prakash. He seized the Underpant of the victim under panchanama Exh. 18 and the Shirt of the accused under panchanama Exh. 19, Article B and C respectively, in the presence of PW3 Bandu, prepared inquest panchanama Exh. 25 and thereafter the sickle Article A was produced before him, which was also seized under panchanama Exh. 34, in the presence of PW5 Ramchandra, PW6 Shaila carried the muddemal for chemical analysis and thereafter C.A. Reports Exh. 39 and 40 were received. As per Exh. 39, the sickle, Shirt and Underwear were found stained with human blood, the group was inconclusive. The blood group of the victim could not be determined as per Exh. 40. Postmortem on the victim was conducted by PW8 Dr. Nita. Upon completion of investigation, chargesheet came to be filed. Prosecution has also relied upon the documents viz. Spot panchanama at Exh. 22, Office copy of the letter to C.A., Nashik at Exh. 27, postmortem notes of Exh. 32 and muddemal receipt at Exh. 38. Charge came to be framed against the accused on 29.12.2010, to which he pleaded not guilty. The defence of the accused is of total denial.

3. As observed in para no. 1 hereinabove, the Additional Sessions Judge, Jalgaon convicted the appellant for the offence punishable u/s 302 of the Indian Penal Code, hence this appeal.

4. The learned counsel appearing for the appellant submits that, evidence of PW-2 and PW-4, who claimed to be the eye witnesses to the incident, could not have been believed by the Sessions Court. It is submitted that, though PW-2 Latabai is the wife of the deceased and PW-4 brother of the deceased, they did not accompany Suresh to the hospital. It is submitted that, conduct of PW-2 and PW-4 in not accompanying the deceased to the hospital is most unnatural, and therefore, they are not reliable witnesses. It is submitted that, the PW-4 in his evidence stated that, he was sitting on cot just 10 Ft. away from the place of occurrence, however, he did not see actual assault, which itself creates a serious doubt about the evidence of PW-4. It is submitted that, the motive alleged by the prosecution that, the appellant was suspecting that the deceased had illicit relations with his wife, cannot be believed since one and half year before the date of incident, the wife of the appellant was divorced. It is submitted that, the appellant had no criminal antecedents and he was never involved in any commission of crime. The accused is in jail since his date of arrest, and therefore, he deserves to be acquitted. It is submitted that, none of the witnesses, who accompanied the deceased to the hospital, are examined by the

prosecution, and therefore, the entire prosecution story appears to be suspicious. It is submitted that, without admitting but assuming that, the alleged offence has been committed by the appellant, at the most the said offence would fall u/s 326 of the Indian Penal Code. It is submitted that, once offence is covered u/s 326 of the Indian Penal Code, the appellant deserves to be given benefit of provisions of Probation of Offenders Act, in as much as, he has not committed any offence prior to alleged commission of offence. Therefore, the counsel appearing for the appellant submits that, the appeal may be allowed.

5. The learned Additional Public Prosecutor appearing for the State submitted that, there is evidence of PW-2, PW-4 and also the Dying Declaration and Medical Evidence, which would clearly suggest that, it is only appellant, who was responsible for the death of the deceased, therefore, this Court may not interfere in the impugned judgment and order.

6. We have given anxious consideration to the rival contentions. With the able assistance of the learned counsel for the appellant and the learned Additional Public Prosecutor for the State, we have carefully perused the entire evidence and also the other material placed on record. Since this is appeal, we would like to re-appreciate the entire evidence brought on record by the prosecution.

7. PW-1, who was working as A.S.I. at Jalgaon on 30th June, 2010, received phone call from the doctor from Civil Hospital, Jalgaon. He went to the hospital. He recorded the statement after the doctor examined Suresh Eknath Sapkale and gave endorsement that, he is conscious and able to give statement. Accordingly, the statement of Suresh was recorded. The doctor made endorsement on the dying declaration. The PW-1 identified his signature and also the signature and endorsement of doctor.

PW-1 specifically stated in his deposition that, the victim stated before him that, Liladar Latkan Sapkale i.e. appellant had assaulted him on stomach with a sickle. He also stated that, Liladhar had consumed liquor and for no reason, Liladar assaulted the deceased. Nothing has been brought on record in defence evidence in cross examination of PW-1 so as to disbelieve his evidence.

8. Dr. Sandip Balkrishna Bable is examined as PW-7 before the Court. In his deposition he stated that, in the night between 29th June, 2010 and 30th June, 2010, he was attached to Civil Hospital, Jalgaon as medical officer. His duty hours were from 9 p.m. to 8 a.m. At about 12.00 in the mid night one Suresh Eknath Sapkale was admitted in the hospital. He had injuries on his stomach and left palm between index finger and thumb. He started emergency treatment and called for the Surgeon. He informed the Police since it was medico legal case. The Police came there. Thereafter, he examined the victim. He was conscious and in a position to give statement. His blood pressure was stable. He made an endorsement in that regard. He identified his endorsement and also his signature. Though he was cross examined by the defence, nothing useful to the defence has been brought on record.

9. P.M. Notes at Exhibit-32 shows following injuries suffered by the victim, which are as under:-

External Injuries:-

- (1) Upper midline incision sutured (12 sutures) about 10 cm present over abdomen.
- (2) Sutures present in between left thumb (index finger about 2 cm).
- (3) Surgical drainage present in the right pelvic region.

Internal injury:-

"L" form suture with cut gut about 1 cm right lobe of lacerated liver.

10. Upon reading the contents of dying declaration and evidence of PW-1 and PW-7 coupled with injuries mentioned in the postmortem notes, the prosecution has established beyond reasonable doubt that, the appellant-accused has committed offence.

11. Apart from the dying declaration, the evidence of PW-1, PW-7 and the injuries sustained by the victim, PW-2 Latabai, wife of the deceased Suresh in her evidence before the Court stated that, on the date of incident at about 10.00 to 10.30 p.m. after having dinner, her husband slept on the cot outside the house. She heard the shouts from outside. She herself, her brother-in-law Pralhad and Vasudeo immediately came out. Accused Liladhar was standing near her husband. He was having sickle with his hand. Sickle was stained with blood. The wife and other persons gathered there, took sickle from his hand. Her husband was assaulted on chest and left palm was also injured and he was taken to the Civil Hospital, Jalgaon. In her cross examination she stated that, since 3-4 years, she knew the accused. 3-4 years back accused divorced his wife. Divorce took place 1 and 1 1/2 years before incident. Divorce took place because of drinking habit of accused. His evidence is that within a second of learning shout of his brother he reached there.

Therefore, the evidence of PW-2 to the extent that, the accused Liladhar was standing near her husband, he was having sickle in his hand and sickle was stained with blood and her husband was assaulted by the accused has been rightly believed by the Sessions Court.

12. PW-4 in his evidence stated that, the incident took place on 29th June, 2010 at about 10.00 to 10.30 p.m. His brother was sleeping on the cot. He was sitting on the cot outside his house. His brother shouted. He went there. Latabai and Vasudeo also came there. Accused assaulted his brother with sickle on his chest. They took sickle from his hand. His brother sustained injury on his palm and below the chest in middle portion.

Therefore, there is evidence of PW-2 and PW-4, which fully supports the case of the prosecution. The Investigating Officer was also examined. He proved the

panchanamas and also stated about the C.A. Report.

13. Therefore, upon considering the evidence brought on record by the prosecution in its entirety, in our considered opinion, the appellant-accused is rightly convicted by the trial Court for the offence punishable u/s 302 of the Indian Penal Code. Therefore, no interference is warranted in the impugned judgment and order. Hence appeal sans merits, stands dismissed.

14. We appreciate the sincere efforts of Advocate Mr. S.S. Jadhavar (appointed) and we quantify Rs. 9,000/- (Rs. Nine Thousand) towards his fees and expenses.