

(2013) 03 BOM CK 0091

In the Bombay High Court

Case No : Criminal Appeal No. 897 of 2007

Mallappa Chanappa Nidoni

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2013) 5 ABR 440

Hon'ble Judges : V.K. Tahilramani, J;P.D. Kode, J

Bench : Division Bench

Advocate : Abhaykumar Apte, for the Appellant; P.S. Hingorani, learned APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—The appellant assails the judgment and order dated 11th May, 2007, passed by the learned Additional Sessions Judge-2, Sangli, in Sessions Case No. 123 of 2005, convicting him for committing the murder of his wife - Kalavati and causing disappearance of the evidence of said murder for screening himself from legal punishment and on the first count sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs. 1000/- and in default to suffer further rigorous imprisonment for six months and on second count to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 500/-, in default, further rigorous imprisonment for a period of three months. According to the prosecution, the appellant along with wife-deceased Kalavati and children PW-1 Tukaram, PW-3 Smt. Dhannakka and Parshuram, were residing at Borial Vasti. Kalavati and other ladies were working as agricultural labours in the field of one Siddrayya Birajdar, at some distance away towards the north side of Borial Vasti. Birajdar was residing along with his family at the same place.

1.1 According to the prosecution, the dispute has arisen in between the deceased and the appellant on the count of deceased continuing to work for said Birajdar in spite of the appellant insisting not to work for him. The appellant was

threatening the deceased of punishing her in event of herself not refraining to keep illicit relations with Birajdar. As Kalavati was not paying any heed, the appellant requested grandmother Gourawwa and paternal uncle Ningappa and parents of Kalavati i.e. Bhimanna Mordi and his wife Chandrawwa to convince the deceased for not keeping such relations.

1.2 According to the prosecution, on 19th March, 2005, at about 8.00 p.m. the appellant asked deceased not to keep illicit relations with Birajdar by visiting his field. However, the deceased refused and again there occurred a quarrel in between them. The deceased took mat and went outside the house for sleeping. The appellant and his sons had a meal and after the meal, the appellant carrying an Axe came out of house for sleeping in the courtyard. He closed the door and latched it from outside. PW-3 awoken in midnight after realizing that somebody was taking bath. She saw that panati/lamp was on and the appellant was taking bath. The appellant, after the bath, washed his clothes, worn the same and hide the Axe in the chhappar (roof) and went away.

1.3 According to the prosecution, at about 6.00 a.m., Gourawwa came to the house and opened the latch of the door of the house and woke-up PW-3. PW-3 came out of the house. Gourawwa then enquired with her about her parents. She disclosed that they were sleeping in courtyard. Gourawwa told that they were not in the courtyard. PW-3 and Gourawwa went to the place at which appellant and his wife had slept. They found that there was a pool of blood and scattered broken pieces of bangles of the deceased. However, the mat was not at said place. They noticed blood stains on the foot way. By the same foot way, they came near Sankh tank and found that corpse of deceased was lying near the tank. They noticed big injury on her neck with blood stains on the face and clothes. The people including Ningappa gathered at the said place after hearing their cries.

1.4 According to the prosecution, on 20th March, 2005 at about 5.00 a.m., the appellant came to the house of his brother-in-law PW-2 Shrishail Mordi at Daribadachi. PW-2 enquired with the appellants for coming so early in the morning. The appellant told PW-2 that, in the night at about 20.30 hours, Kalavati left the place at which she was sleeping and whether she had come to his house or had gone elsewhere. PW-2 disclosed that deceased had not been to his house. At about 8.00 hrs., the appellant and PW-2 on bicycle came to Daribadachi and searched for deceased. They saw corpse of deceased near the tank. PW-2 became suspicious and went nearby the corpse. He found that there was an injury on the right side of neck with blood stains on person. PW-2 suspected that somebody had committed her murder. He enquired with the appellant as to who could be said person.

1.5 According to the prosecution, the appellant then confessed that at about 8.00 p.m. on the previous day, he asked deceased as there was Bhavki dispute and she should not go to field of Birajdar but she refused. Hence there arose quarrel in between them and at about 10.00 p.m. after taking food, their children went

to sleep inside and he along with Kalavati went outside to sleep and he had taken Axe along with him. At about 12.30 in the night, while deceased was in sleep, he had given the blow of an Axe to the right side of her neck and committed her murder and then carried her corpse and threw the same.

1.6 PW-2 went to Umadi Police Station at about 15.10 hrs. and lodged complaint (Exh. 11). Thereon the offence of murder was registered against the accused as F.I.R. No. 14 of 2005. The said crime was investigated by PW-11 A.P.I. Khade. At the conclusion of investigation, he charge-sheeted the appellant for commission of offence under Sections 302 and 201 of Indian Penal Code (for short "I.P.C.").

2. The appellant pleaded not guilty to the charge for offence under Sections 302 and 201 of I.P.C. framed against him by the Court of Sessions after the case was committed to the said Court by the learned Judicial Magistrate, First Class, Jat.

3. The prosecution in addition to the above referred four witnesses additionally examined seven witnesses i.e. PW-10 Gangadhar Mordji, neighbour of the parents of deceased; panch PW-4 Kashinath for seizure panchanama of Axe produced by PW-3, seizure panchanama regarding blood stained clothes of appellant and memorandum discovery and seizure panchanama of concealed blood stained mat produced by the appellant; PW-5 Rajendra and PW-8 Smt. Mahananda panchas for inquest panchanama; PW-6 Daryappa and PW-9 Vitthal panchas for spot panchanama. The prosecution also examined PW-7 Dr. Satish Wable from Primary Health Centre, Madgayal regarding autopsy performed by him upon the corpse of the deceased and preparing postmortem Notes Exh. 28. Out of the said witnesses, PW-5, PW-6 and PW-9 having not supported the prosecution at the trial, the learned A.P.P. was required to cross-examine them. The defence of the appellant was that of total denial. He claims of being falsely implicated by the police.

4. The trial Court, after assessment of the prosecution evidence came to the conclusion that, the prosecution has proved that the deceased has met with homicidal death and the appellant has committed her murder and so also caused disappearance of evidence of said murder by throwing her corpse in the water tank at Sankh. Accordingly, the trial Court convicted and sentenced the appellant for the offences punishable under Sections 302 and 201 of I.P.C. as narrated herein above.

5. We have heard at length the learned advocate appearing for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, the arguments advanced by the rival parties, the judgment delivered by trial Court and the evidence on record, for the reasons stated below, we are of the considered opinion that the prosecution, by cogent evidence, has established the circumstances leading to the inescapable inference of the deceased having met with homicidal death, the appellant having committed her murder and thrown her body in the water tank at Sankh for destroying the evidence.

6. The prosecution through the evidence of son of the appellant and the deceased, PW-1 Tukaram, PW-3 Smt. Dhannakka and PW-10 Gangadhar Ramgounda Mordji, had established the circumstance of the appellant possessing the motive for commission of the offence in question.

7. The perusal of evidence of PW-1 duly establishes the appellant was possessing the motive as claimed by the prosecution. The core of the testimony of PW-1 in terms amongst others reveal that his mother Kalavati was doing the labour work in the field of Birajdar and the appellant was insisting her not to work with Birajdar and not to have illicit relations with him. It reveals that, in spite of that Kalavati had continued to visit the field of Birajdar. It also reveals that the appellant used to abuse and threaten her to kill. It also reveals that the appellant has instructed his family members and parents of Kalavati not to send her to the field of Birajdar. His evidence also reveals that the appellant used to keep an Axe along with him while sleeping in the courtyard. Similarly, the perusal of the evidence of PW-3 also corroborates the said evidence of PW-1. It in terms reveal that the appellant was suspicious about the illicit relations in between the deceased and Birajdar. Alike the evidence of her brother, it also reveals of there being quarrels in between the appellant and the deceased on the count of working with Birajdar and having illicit relations with him. The perusal of the evidence of PW-10 Gangadhar reveals that he was the neighbour of parents of deceased Kalavati. It also reveals that the marriage in between the appellant and Kalavati had taken place about 20 years prior to her death. It reveals that, one year prior to occurrence of an incident, the appellant had been to PW-10 Gangadhar and had disclosed him that deceased was having illicit relations with Birajdar with whom she was working and had asked PW-10 and accordingly he had warned her.

8. After careful scrutiny of the evidence of the above referred three witnesses, we find that, though cross-examined at length and being given suggestion, such as Kalavati was having relations with some other persons, nowhere the above stated core of testimony of three witnesses has been shattered during the cross-examination.

9. Shri Apte, the learned counsel for the appellant, though tried to assail the evidence of PW-1 on the count of himself being a child witness, we find that the learned Sessions Judge has taken necessary care by putting initial questions to the said witness to ascertain whether he should be administered oath to PW-1. Apart from the same, considering the deposition of PW-1 as a whole and in the light of the answers given by him in the cross-examination, we do not find any embellishment exhibited by the same. His evidence also do not reveal that he has deposed due to tutoring and/or his evidence denoting the same being outcome of tutoring. The evidence of PW-1 is found duly corroborated by the evidence of his sister PW-3 and so also by the evidence of PW-10. Thus, close scrutiny of the evidence of the aforesaid three witnesses reveals that, by the same the prosecution has established the appellant possessing the motive for

commission of the crime in-question.

10. With regard to the second circumstance of deceased having met homicidal death, apart from the said fact being not challenged on behalf of the appellant, the same is found duly established from the relevant part of the evidence of PW-1, PW-3 and PW-10 regarding the place at which the corpse was found with injuries on neck and so also the marks of violence found at the place at which deceased was sleeping in the courtyard. Additionally, the evidence of Investigating Officer PW-11 who had drawn inquest panchanama (Exh. 31) considered along with the evidence of PW-7 Dr. Satish Wable, who had performed autopsy upon the corpse of Kalavati at Primary Health Centre, Umadi, on the request of police and the external injuries noted by him on neck and back of corpse as recorded in Col. 17 of postmortem Notes (Exh. 28) and the cause of death given by him, duly establishes that death of Kalavati was homicidal. Needless to add, that the place at which the corpse was found and the nature of injury sustained by Kalavati, rules out even remote possibility of her death being due to any other reason other than homicidal death. Thus, we are unable to find any fault with such finding arrived by the Trial Court.

11. Now considering the third circumstance established by the prosecution and in the said process once again reverting back to the evidence of PW-1 and PW-3, which we have found to be acceptable, we find that the evidence of PW-1 amongst others also discloses that relevant period being of a summer, they used to sleep outside the house and three days prior to the occurrence of the incident, the appellant was sharpening the blade of an Axe. It also discloses that the appellant used to sleep by taking the said Axe with him. It further discloses that, on the day of the incident, in the night, the appellant had sent them in the house for sleeping and latched the door from the outside. Significantly, it reveals that, on the said day at about 8.00 p.m., the appellant had again warned deceased not to visit field of Birajdar and thereafter the deceased had slept outside the house. It further reveals that, on the day of incident, his grandmother had opened the door and then his grandmother and sister were crying. It reveals that the deceased was lying at the distance of 30 feet away from their house and PW-2 and the appellant came at the said place. The scrutiny reveals that, except an insignificant omission of not stating police that the latch was opened by his grandmother, no other significant material affecting core of testimony of PW-1 was brought on record during the course of cross-examination.

12. Now, considering the evidence of PW-3 Dhannakka, the same amongst others reveals that, on the said day, the appellant had insisted them to sleep inside the house and latched the door and he had slept by keeping an Axe with him. PW-3 has deposed that, after hearing the noise that somebody was beaten, they had tried to open the door but it could not be opened. Her evidence discloses that, after the appellant removed the latch of the door, she came out of the house and found that blood stains on the clothes of the appellant and on the Axe. It reveals that the appellant had thereafter taken the bath, kept the Axe

inside the roof, washed the clothes and left the house. PW-1 and PW-3 identified "Article-A" being the concerned Axe. Without reciting in detail the further part of her evidence, it can be said that her evidence reveals that deceased was found dead near canal with marking of an Axe over her neck, her uncle PW-2 and appellant coming at the said place and PW-2 reporting matters to police. We also find that the trial Court after dealing in detail all answers given by her during the cross-examination had come to the conclusion that the said answers were not affecting the core of her testimony. The trial Court had also observed that the evidence of PW-1 is duly corroborated by the evidence of PW-3 and the evidence of both being cogent and inspiring confidence. After carefully considering the reasoning given by the trial Court, we do not find any error committed by the Trial Court in accepting the said part of the evidence of both the said witnesses.

13. Now, considering the evidence of PW-2, who had lodged the report, we find that the same is on the lines upon the prosecution case narrated herein above and as such in conformity with the matters narrated by him in lodging the complaint being Exh. 11. It reveals the extra-judicial confession made by the appellant about his guilt to PW-2. Now, the manner in which and the phase at which the appellant had made the said extra-judicial confession and his relationship with PW-2, we do not find any worthy reason for not accepting the said evidence of PW-2. Hence, we do not find any fault on the part of the trial Court in accepting the said evidence of PW-2.

14. Thus, we find that, by the aforesaid evidence the prosecution has also duly established that, in the relevant night -

(i) a quarrel had occurred in between the appellant and his wife Kalavati on the count of her relationship with Birajdar;

(ii) the appellant had insisted the children to sleep in the house;

(iii) the appellant and his wife were sleeping outside and then the appellant had kept an Axe with him;

(iv) PW-3 has found stains of blood on the clothes of the appellant as well as the place at which the appellant and deceased were sleeping.

(v) The appellant had taken a bath and washed his clothes and concealed the Axe in the room.

15. Now, reference to the evidence of panch witness PW-4 Kashinath and the relevant part of the evidence of PW-4 reveals that PW-3 has produced the Axe containing dried blood stains from the room and the same was seized by the police under the panchanama Exh. 17. Similarly, his evidence also reveals that, in his presence, the police had seized baniyan and red colour underwear on the person of the appellant at the time of his arrest. It further reveals that, on 21st March, 2007, as a sequel to the statement leading to the discovery of a "chatai" made by appellant, the police has drawn memorandum statement and thereafter the police had seized the "chatai" produced by the appellant from the pit-hole of

the cow dung in front of the Chappar of the appellant. The due corroboration to the said evidence of PW-4 is found from the evidence of PW-11 PI Kale who was a party to the said event. The evidence of PW-11 also reveals that he had sent deceased's mat - Article "D" to the C.A. and Exh. 34 being the C.A. Report pertaining to the same. The matters from the said C.A. duly reveals that human blood of the "B" group as that of the deceased was found upon the clothes of the appellant as well as upon the Axe.

16. The prosecution has also adduced the evidence of PW-6 and PW-9 regarding preparation of scene of offence panchanama Exh. 37 by the I.O. PI Kale. However, both of them having not supported, the prosecution had placed reliance upon the evidence of PW-11 for proving the said scene of offence panchanama and for establishing the situation prevailing at the site and particularly the attachment of the clay and clay mixed with the soil. After considering the evidence of PW-11, we do not find any reason for not accepting his said evidence. Needless to add that, his said evidence also corroborates the same evidence of PW-1, PW 3 and PW-2 regarding the situation prevailing at the relevant place.

17. After careful perusal of the reasoning given in paragraph 35 of the judgment of the trial Court, we find that all the said reasoning is based upon the evidence on record. It also reveals that, due to such evidence, the trial Court had come to the conclusion that the appellant having committed the murder of his wife Kalavati. Similarly, we find that, in paragraph 36, the trial Court has considered the extra-judicial confession made by the appellant to PW-2. We are unable to find any fault with the said reasoning given by the trial Court for accepting the evidence of PW-2 and particularly that of the appellant having made extra-judicial confession about his guilt to PW-2. Needless to add that the matters from the extra judicial confession also reveal that the appellant being guilty for both the offences i.e. the offence of murder of his wife and taking her body from the place at which he has committed the murder and throwing it in Sankh tank.

18. Thus, after re-appraisal of the entire evidence and so also considering the reasoning given by the Trial Court, we do not find any fault of the Trial Court for coming to the conclusion that the prosecution by the said evidence having established various circumstances enumerated by us in the earlier part of the judgment. We also do not find any error committed by the Trial Court for coming to the conclusion that all the said circumstances within themselves form a formidable chain leading to the sole inference of the guilt of the appellant in commission of the offences under Sections 302 and 201 of I.P.C. and we do not find any fault with the order of conviction and sentence recorded by the Trial Court.

19. Hence, we do not find any merit in the appeal and dismiss the same.

20. Registry to forward copy of this judgment to the appellant - accused through the Superintendent of Jail at which he is lodged. Recording our appreciation for

the valuable services rendered by the learned appointed Advocate Mr. Abhaykumar Apte, we quantify his fees at Rs. 2200/-. The said fees be paid to the learned appointed advocate within three months from today.