
(2012) 11 BOM CK 0117
In the Bombay High Court
Case No : Criminal Appeal No. 1095 of 2004

Pandurang Vinayak Deokar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Constitution of India, 1950 — Article 11
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 2 BomCR(Cri) 120

Hon'ble Judges : V.M. Kanade, J;P.D. Kode, J

Bench : Division Bench

Advocate : D.G. Khamar, for the Appellant; H.J. Dedhia -APP for the State, for the Respondent

Judgement

P.D. Kode, J.—By the present appeal, the Appellant has challenged the judgment and order dated 20th August, 2004 passed by the III Additional Sessions Judge, Solapur convicting the Appellant for committing the murder of his wife Nirmala and thus for the offence punishable u/s 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs. 500/- and, in default, to undergo S.I. for one month. The said prosecution has arisen out of a charge-sheet submitted by Tembhurni Police Station as a result of investigation of Crime No. 116 of 2003 registered with the said police station on a complaint-Exhibit-23 lodged by the mother of the deceased PW 5 Mandakini Mhaske. According to the said complainant, her daughter Nirmala had married the Appellant about 9 years prior to the date of lodging the said complaint. The said marriage was out come of love affair in between them. According to the Complainant, the Appellant came across with Nirmala while she was working as a Teacher with Kanya Prashala. Tembhurni. The Appellant had entangled her in the love.

2. According to the complainant, the Appellant met with an motorcycle accident two years after the marriage. PW-5 then incurred an expenditure of Rs. 50,000/-

to 60,000/-. The Appellant was not doing any work and developed habit of living lavishly. The Appellant after exhausting his money, started misusing the money of deceased Nirmala and used to demand money from his wife by giving her threats. The daughter of the complainant, with her funds and taking funds from the Complainant, had purchased 17 acres of land at Village Malegaon. She also borrowed money from the other persons and was refunding it from her salary. As the daughter of the Complainant was refusing to give money, the Appellant, was obtaining loan from other persons. About 5 to 6 years passed in such manner. The Appellant thereafter started harassing the daughter of the Complainant for selling the land purchased by her and giving said amount to him for refunding loans incurred by him. According to the Complainant, her daughter used to inform her on phone regarding the harassment made by the Appellant and she used to also tell that the Appellant was a dangerous person and may cause danger to her life at any time. About 15 days, prior to the lodging of the complaint, while the Complainant was proceeding to Nashik, she went to Tembhurni and at that time also the daughter informed her that she was feeling that her husband would put her life in danger and it would had been proper if she had not married him. She also told her that she was afraid as the murders were committed by engaging an hirelings, she was afraid.

3. It is the main case of the complainant that on 7th September, 2003, early in the morning after receipt of the information that her daughter was serious, she went to Barve Mala along with her relatives and learnt that her daughter was murdered. She then found injuries on the stomach, chest, neck and hands of her daughter. By narrating such matters, PW-5 lodged the complaint against the Appellant on the basis of the information received from the persons from the vicinity to the effect that the appellant harassing her daughter due to her refusal to sell the land and give money to him, had committed her murder. After effecting the necessary investigation upon the crime registered, which included drawing the inquest panchnama, spot panchnama, and seizure of the clothes of the deceased, arrest of the Appellant, sending corpse for autopsy and so also articles sized during the course of panchnama to Chemical Analyser, PW-9 PSI Kadam charge-sheeted the Appellant for commission of the offence of murder of wife.

4. The prosecution examined in all 10 witnesses at trial for establishing the various circumstances leading to the inference of the guilt of the Appellant. Needless to add that there was no eye witness to the said crime which was committed in night in between 1.30 a.m. to 2.00 a.m. The prosecution relied upon the circumstantial evidence collected during investigation. The defence of the Appellant was that of false implication. He claimed that he had been to Shevregaoon and had stayed at the said place in relevant night. He received message in the morning. He was arrested by the police on road and taken to the police station. He had no knowledge regarding the incident which had occurred in Tembhurni.

5. The Trial Court after appreciating the prosecution evidences, came to the conclusion that the prosecution has established following circumstances stated in paragraph No. 21 of the judgment viz.

(i) The motive for the offence;

(ii) The room in which this tragic and pathetic incident took place was in exclusive possession and occupation of the accused and deceased;

(iii) The incident had occurred in night at about 1.30 a.m. to 2.00 a.m. when nobody would had ingress into the room where husband and wife were admittedly residing;

(iv) The position of the dead body lying in the room belonging to the accused;

(v) The internal and external injuries found on the dead body at the time of autopsy;

(vi) The positive opinion of Dr. Patil who conducted autopsy on the dead body of the deceased, stating that death was due to shock due to internal and external hemorrhage, due to multiple injuries mentioned in P.M. notes;

(vii) The spot panchnama was drawn in presence of two panch witnesses, which clearly shows that dead body was lying in Room No. 2 of the house belonging to accused.

6. The Trial Court came to the conclusion that the said circumstances lead to the sole inference that the Appellant has committed the offences for which he was charged, The Trial Court in consonance with such finding arrived convicted and sentenced the Appellant as narrated earlier.

7. Mr. D.G. Khamkar, the learned counsel for the Appellant by meticulously taking us through the prosecution evidence, urged that prosecution evidence does not establish all said circumstances as erroneously concluded by the Trial Court. He further urged that even taking into consideration all the circumstances, which can be said to have been established by the prosecution evidence or even otherwise, the same within themselves failed to lead to the sole inference of the case of the Appellant. He, thus contended that the judgment and order of sentence passed by the Trial Court is not legally sustainable and the same deserves to be quashed and set aside. He vehemently contended that since other view was possible upon the said circumstances, of culprit could be somebody else, the Appellant was entitled for benefit of doubt. It is one of his submissions that merely because the death had occurred in the house of the Appellant, the same would not lead to an inference as erroneously drawn by the Trial court, in absence of any evidence establishing that in the relevant time the Appellant was in the said house. He also contended that the Trial court without any cogent reason and further more, without any such evidence surfaced at the trial, by-passed the explanation given by the Appellant that in the relevant night, he was at Shevergaon and not in the house at Village Tembhurni.

8. Mr. H.J. Dedhia, the learned APP for the State, on the other hand, supported the judgment and order of conviction and sentence passed by the Trial Court. The learned APP contended that the Trial Court has rightly taken into consideration the potential of the circumstances of the offence in question having taken place in the house of the Appellant. He further urged that the Trial court has given the cogent reasons for accepting the evidence of the prosecution witnesses. He thus, contended that there is no reason for interfering with the judgment delivered by the Trial Court and as such appeal may be dismissed.

9. We have heard the submissions made by both the counsel and for ascertaining merits from the same carefully considered the record and proceeding and particularly the judgment delivered by the Trial Court.

10. At the first blush, it can be said that even on the part of the Appellant it is not disputed that wife of the Appellant viz. Nirmala had met homicidal death in night in between 1.30 a.m. to 2.00 a.m. in the house of the Appellant. Apart from no dispute being made by the Appellant regarding said facet the same is found established of the evidence of Inquest Pancha Anil Barve and Inquest Panchnama-Exh. 14, the evidence of Spot Pancha-Nagnath P. Nimbalkar and Spot Panchnama-Exh. 17 and Panch to seizure of clothes of the deceased PW-3 Mahadeo Digambar Ghadge and the relevant part of the evidence of the Investigating Officer PW-9, establishing the circumstances in which the corpse of the deceased were found in the house of the Appellant. Even on the basis of the said evidence, the finding that the Nirmala having met the homicidal death, can be arrived. Apart from the same, the prosecution has also adduced the evidence of Dr. Avinash Pandharinath Patil, PW-6 who had performed the Postmortem examination of the corpse of the Nirmala at Civil Hospital, Primary Health Central, Tembhurni, Tal. Madha, Dist. Solapur between 7.00 a.m. to 9.00 a.m. His evidence is duly corroborated by Postmortem notes Exhibit-26 prepared by him. PW-6 has given the cause of the death of Nirmala as "death due to the shock due to internal and external hemorrhage due to multiple injuries mentioned by him in Exhibit 26". He further deposed that the said injuries were possible by means of sharp and cutting weapon like Article 11 shown to him. The record does not reveal that said part of the evidence or even other evidence given by PW-6 was challenged on the part the Appellant for any meaningful purpose. Thus, considering all said evidence, it is difficult to find any fault in the finding arrived by the Trial Court that the Nirmala having met with homicidal death.

11. Now considering the evidence of PW-5, Mandakini, mother of the deceased, perusal of her evidence reveals that she had given evidence in consonance with the matter narrated by her while lodging the complaint Exhibit 26. The perusal of the cross examination of PW 5 reveals that no civil or criminal dispute was pending between them, or there was exchange of any notices between them and children of Nirmala were aged about 7 and 6 years and they were residing with Nirmala on the date of incident. PW 5, during her cross-examination further

admitted that due to the accident, the Appellant became physically handicapped. Thus considering the evidence of PW 5 as a whole, it is clear that strained relationship between the said couple as deposed by her has remained unshattered. In view of the same, we are unable to find any fault in the finding arrived by the Trial Court that the Appellant was having the motive for commission of the offence.

12. Now carefully considering the circumstances, pointed out by the Trial Court, as recorded hereinabove, the same relates only aspect that the Appellant having motive for commission of the offence and incident in question had taken place in a room which was exclusive in possession and occupation of the Appellant and the deceased having met with homicidal death. In addition to the same, the Trial Court also concluded that nobody else had an ingress in the room where the husband and wife were residing.

13. In the light of the discussions made hereinabove, except the said last facet, all the other circumstances are apparently established by the prosecution through the evidence of witnesses examined by the prosecution. However, we are unable to agree with the finding arrived by the Trial Court that nobody else could had ingress to the said room. As a matter of fact, even after the careful scrutiny of the entire evidence of record, we are unable to find any evidence driving to the such a conclusion, and as such the finding of such a fact recorded by the Trial Court being not based upon evidence surfaced, cannot be legally sustained.

14. Now considering the prosecution evidence as a whole, i.e. of PW 1 the same is confined to the point of drawing inquest panchnama and an additional fact that the Appellant was residing in the said room. Similarly the evidence of PW 2- Panch of spot panchanama, PW-3 regarding the Panch to the seizure panchanama of clothes of deceased and that of mother PW 5 discussed hereinabove, and of PW-9 Bhujang Dattatray Kadam, Investigating Officer and PW-10 Police Constable who had carried muddemal articles to the Chemical Analyser being confined to such aspect only, we do not find the said evidence being useful to the prosecution for establishing the nexus of the Appellant with the incident which had occurred in the said night in the said room. Such a conclusion is inevitable as none of these witnesses had thrown any light upon the aspect of the Appellant being in the said room in the relevant night. PW 5 admittedly was not residing in the said room and had arrived after the crime was committed; her evidence is also not useful to the prosecution to establish the said offence.

15. After careful perusal of the impugned judgment and more particularly the reasoning recorded by the Trial Court, we find that the Trial Court has inferred the nexus of the Appellant with the crime in question, only on the basis of the said room being in the occupation of the Appellant and the deceased, since the same was their matrimonial house.

16. In the said context, we find that the Appellant during his examination u/s 313 of the Code of Criminal Procedure had taken a positive stand that at the relevant time he was at Shevregaon and not at the place where the incident had occurred. After careful perusal of the evidence of all the prosecution witnesses, we do not find any evidence surfaced negating the said stand taken by the Appellant. As a matter of fact, none of the witnesses had thrown any light upon the said aspect or upon any aspect of connecting Appellant with the incident.

17. Apart from the said witnesses not having deposed about the presence of the Appellant, even the evidence of PW 4 Panch to arrest panchanama of the Appellant is not of much assistance to the prosecution, in view of the said witness having not supported the prosecution. The reference to the evidence of PW 9, in said respect runs as under:

I along with PSI Pawar went to spot of incident. On the spot of incident outside the room Pandurang Deokar was standing. He told me that dacoits came to his house and committed murder of his wife. We tried to take search whether really dacoits came on the spot....

Thus, the said evidence also reveals that the Appellant in addition to the earlier defence taken by him, had taken a stand that he was not perpetrator of the crime and the crime had occurred at the hands of the dacoits. Support to the said version is also found from the evidence of the PW 7, who deposed in paragraph 2 as under:

On the date of incident I was present in my house. On that day the owner of the building came and told us that thieves came in the building. The landlord also told us that the thieves assaulted wife of Pandurang Deokar. We went there and saw the dead body by outside. There were injuries on her person I had not entered the room.

It is true that the said witness was declared hostile by the prosecution. However, after carefully going through the answer given in the cross examination, we are unable to find that said part of testimony of PW-7 was shaken or discredited in any manner by the prosecution through cross-examination effected.

18. In the context of the nexus of the Appellant with the incident occurred in the said room, the learned APP by inviting our attention to the relevant part of the evidence of the I.O.-PW 9-PSI Kadam, and PW 10-Mohammad Naikwadi, who had taken the relevant articles to the C.A., and the C.A. Reports Exhibit 42, 43, 44 received regarding the said articles, urged that the evidence of Investigating Officer reveals that as the sequel to the statement leading to memorandum statement made by the Appellant on 9.9.2003 and his further leading to agricultural land adjacent to the house, a knife and underwear were recovered under recovery and memorandum panchnama Exhibits 36 and 37. It was urged that CA report reveals that blood group upon said articles matched with the blood group of the deceased. It was contended that the presence of blood similar to that of deceased upon the banian of the Appellant, and so also upon the

weapon connects the Appellant with the crime in question. Though the said submission is apparently attractive, do not stand to the said reason because the said entire evidence is that of an Investigating Officer and no support and/or corroboration to the same is found from the evidence of panch witness since they have not supported to the prosecution. Apart from the same, considering the place from which the said recovery is said to have been made i.e. an open place, it is difficult to give any much value to the same. Furthermore, the Appellant having returned to his house, merely because blood stains of his wife were found on his banian, cannot be said to be a circumstance of grave incriminating nature, establishing his presence in the room in question.

19. As a net result of the aforesaid discussions, it is crystal clear that hardly any evidence has surfaced on record for establishing the presence of the Appellant in the room at the relevant time. Having regard to the same, the remaining circumstances which can be said to have been established by the prosecution witnesses, cannot be said to be leading to the sole inference of the Appellant being perpetrator of the said crime. Needless to state that in the absence of such evidence regarding the presence of the Appellant in the said room in the night, takes away potential, if any, in the circumstances of the incident occurred in the room of the Appellant. Since finding of guilt it is based on the circumstantial evidence, the circumstances established by the prosecution must form of chain of circumstances leading to sole inference of guilt of the Appellant i.e. thereby excluding every reasonable possibility of the perpetrator of crime being somebody else. Since, such chain of circumstances in the instant case is not established by the prosecution evidence, we are unable to sustain the finding of guilt arrived by the Trial Court. In the premises aforesaid, we quash and set aside the order of conviction and sentence imposed by the Trial Court by allowing this appeal. Hence, the following order.

ORDER

Appeal is allowed.

(i) The Judgment and order of the trial Court is set aside and Appellant/Accused is acquitted of the offence punishable u/s 302 of the Indian Penal Code. The fine amount, if paid, be refunded to the Appellant/Accused.

(ii) Appellant/Accused be released forth with, unless he is required in any other case.

Appeal is disposed of in the aforesaid terms.