

(2012) 07 BOM CK 0261

In the Bombay High Court

Case No : Criminal Appeal No. 510 of 2007

Prabhakar Shamrao Hirkane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 3 ABR 762

Hon'ble Judges : P.V. Hardas, J;M.L. Tahaliyani, J

Bench : Division Bench

Advocate : R.R. Shrivastava, for the Appellant; T.A. Mirza, Assistant Public Prosecutor, for the Respondent

Judgement

M.L. Tahaliyani, J.—The appellant had allegedly killed his wife (hereinafter referred to as "the deceased") in a room situated at Shankarashram Lodge, Main Road, Chandrapur by strangulation. The appellant was married to deceased Smt. Archana on 20th May, 1999. The appellant and the deceased were staying at Bhadrawati, District Chandrapur. The appellant was doing labour work at various sites in Maharashtra as well as at the sites situated outside Maharashtra also. The earnings of the appellant were not sufficient enough to take care of his wife and children. It is the case of prosecution that the deceased had, therefore, accepted the job in a private hospital of Dr. Mala Premchand as a Nurse about 7 to 8 months prior to the date of incident. It appears that the appellant was informed by somebody that his wife had developed extra marital relations with one Satish, who was working as driver of Dr. Mala Premchand. He got this information on telephone when he was at Sambalpur in Orissa. It is also the case of prosecution that when the appellant returned from work for celebrating Dasara at his native place, he came to know that the deceased had conceived due to illicit relations between the deceased and said Satish. He also came to know that she had gone to Chandrapur along with Satish and one Pappu for abortion. During that period, the deceased was staying with her parents. Her two sons

were also staying with her. She used to come to the place of the appellant whenever called by the appellant. The deceased herself had told the appellant that she had an affair with Satish driver and she could not leave without him. The appellant tried to convince the deceased that she should sever her relations with Satish. Believing that the deceased would not again indulge into such activity and the appellant started staying with deceased from 4th November, 2006 onwards.

2. The alleged incident had occurred on 10th November, 2006. The deceased and the appellant had come to Chandrapur on 7th November, 2006 as the deceased had to apply for Nurse Training Course. They stayed at various places during the period from 6th November, 2006 to 10th November, 2006. They had also visited the house of sister of the appellant namely Manju to attend her birthday celebration. It was on 9th November, 2006 at about 1.30 a.m. that they left Manju's place and came to Chandrapur Railway Station. They decided to go to their native place Bhadrawati. However, at about 4.30 a.m. they decided to stay at Chandrapur to collect certain documents of the deceased. Therefore, they went to Shankarashram Lodge at about 5.00 a.m. The appellant had allegedly booked a room in his own name and had recorded name of the deceased as his partner. As far as names are concerned, there does not appear to be any suppression of any name or surname and the correct names and surname were recorded in the Register. In the hotel room, the appellant again tried to convince the deceased that she should sever her relations with Satish. It is alleged that the deceased was not ready to concede and therefore, the appellant strangled her by means of a saree at about 7.30 a.m. The appellant thereafter straightway went to Ramnagar Police Station of Chandrapur and met PSI Bhusari, who was on duty.

3. It is the case of prosecution that the appellant narrated the whole story to the Police Officer. The Police Officer Bhusari took entry in the station diary at Sr. No. 14. Since the offence had taken place within the jurisdiction of City Police Station of Chandrapur, Police Officer Bhusari had taken the appellant to City Police Station. He had also carried station diary of Ramnagar Police Station with him and handed over a copy of station diary and the appellant to the duty officer API Mr. Gawai. API Mr. Gawai made station diary entry at City Police Station and proceeded to Shankarashram Lodge. On verification, it was found that the appellant and the deceased had stayed in Room No. D of the Lodge. A dead body was found in the said room. There was swelling over neck of the dead body. API Gawai, therefore, lodged report at City Police Station vide First Information Report No. 273/ 2006 for the offence punishable u/s 302 of the Indian Penal Code against the appellant. His superior officers were also informed by him regarding the incident. Thereafter he called two panchas to prepare spot panchanama. Photographer was also called. Spot panchanama was drawn and photographs of the dead body from various angles were taken. Inquest panchanama was also drawn and relatives of the deceased were informed. Body was sent for post-mortem examination. The Medical Officer reported that the

death was caused due to strangulation. Since Mr. Gawai was deputed on duty for law and order maintenance, further investigation was taken over by Police Inspector Mr. Adewar.

4. Mr. Adewar, during the course of investigation, had recorded statements of parents of the deceased. He had recorded statement of Baban Wankhede, owner of the Lodge. He had also seized the register under Panchanama. The relevant entry in the register Article-B dated 9th November, 2006 was at page No. 89. It was at Sr. No. 3. The statements of other relatives of the deceased were also recorded. The viscera preserved by the Medical Officer was sent to Forensic Laboratory. The property seized, during the course of investigation, was also sent to Forensic Laboratory.

5. The appellant was produced before the Special Judicial Magistrate as he was willing to give his statement before the Magistrate. The Special Judicial Magistrate had recorded his statement u/s 164 of the Criminal Procedure Code. It is alleged that the appellant had confessed to the crime in his statement before the Special Judicial Magistrate. The specimen handwriting of the appellant was taken. The specimen handwriting of the appellant and the register were sent to document examiner for his opinion. The document examiner had reported that the author of the questioned entry in the register and author of the specimen handwriting was one and the same person. After completion of investigation, charge-sheet was filed in the Court of Magistrate and case was committed to the Court of Session for trial according to law.

6. A charge under Sections 498A and 302 of the Indian Penal Code was framed against the appellant by the trial Court. It was explained to the appellant. The appellant had pleaded guilty to the charge. It appears that though a separate order has not been passed by the learned trial Judge, the plea of the appellant was not accepted by the learned trial Judge considering the serious nature of the offence and therefore, the trial had proceeded further. In all sixteen witnesses were examined to substantiate the charge framed against the appellant. The appellant has been acquitted of the offence punishable u/s 498A of the Indian Penal Code. He has however been convicted of the offence punishable u/s 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life.

7. The case of the prosecution is based on circumstantial evidence and the confession of the appellant recorded by the Special Judicial Magistrate u/s 164 of the Criminal Procedure Code. The circumstances sought to be proved before the trial Court were as under:--

(1) That the deceased was working as a Nurse in the Hospital of Dr. Mala Premchand at Bhadrawati and that Satish-driver was also working with Dr. Mala Premchand.

(2) Deceased Archana and Satish had extra marital relations.

(3) The deceased was taken to Chandrapur by the appellant and they had stayed

at Shankarashram Lodge.

(4) The appellant himself had gone to Police Station to intimate the police that the deceased was dead and her dead body was lying in the room at Shankarashram Lodge.

8. Apart from these circumstances, as stated earlier, the appellant had allegedly confessed his crime before the Special Judicial Magistrate.

9. P.W. 1-Bina Kamble is the elder sister of the deceased. She has stated that the appellant used to demand money from Archana and that in the event of her failure to fulfill the demands of the appellant, the appellant used to beat her. P.W. 1-Bina had met the deceased last on 8th October, 2006. She had received the intimation of death of deceased from her brother on 10th October, 2006. It is stated by this witness that dead body of the deceased was brought to her father's house after postmortem examination.

10. P.W. 2-Sunanda Katkar was working as a Nurse in the hospital of Dr. Mala Premchand. She had not supported the prosecution case. She has denied that she had any personal knowledge of phone calls received by Archana.

11. P.W. 3 is Satish had alleged illicit relations with deceased Archana. This witness had also not supported the prosecution case before the trial Court.

12. P.W. 6-Dr. Pranita Bohara is the Medical Officer, who had examined the dead body of deceased and had opined that the deceased had died due to strangulation.

13. P.W. 8-Saraswati Gawande has stated that she was present when the inquest panchanama was drawn at Shankarashram Lodge, Chandrapur. She had seen the dead body of a female in one of the rooms of the Lodge. There was reddish mark on neck of the dead body. According to this witness, the age of the deceased female was about 26 to 28 years. The panchanama has been exhibited at Exh. 38.

14. P.W. 10-Raju Sontakke is the panch witness. This witness, according to prosecution case, was present when specimen handwriting of the appellant was taken. This witness, however, had not supported the prosecution case.

15. P.W. 11-Dattatraya Tannirwar is also a panch witness in whose presence the register maintained by Shankarashram Lodge was seized by the police. This witness has stated that he was reading newspaper in Shankarashram Lodge when the police had visited the Lodge. The register was seized under panchanama Exh. 54 and his signature was taken at page No. 92 of the register. According to this witness, there was entry in the name of Prabhakar and his wife at page No. 92 of the register. The said entry was exhibited as Exh. 55 during the course of recording of evidence of this witness. In his cross-examination, this witness has denied that the panchanama was not drawn in his presence.

16. P.W. 12-Vishweshwar Jogi had prepared sketch map of the spot. Sketch Map

is at Exh. 58. Since the description of the spot is not disputed, it is not necessary to discuss the evidence of this witness in detail.

17. P.W. 13-Dilip Kamble is also panch witness, who was present at the time of inquest panchanama. The description of the dead body and preparation of panchanama by police also does not appear to be in dispute.

18. P.W. 15-Bhaskar Sahare is also a panch witness in whose presence specimen handwriting of the appellant was obtained under panchanama Exh. 41. He has identified his signature on the panchanama Exh. 41. This witness has admitted that he has acted as a panch in several cases. There is nothing more than this in the cross-examination of this witness.

19. P.W. 4-Ramchandra Bhusari has stated in his evidence that when he was attached to Ramnagar Police Station of Chandrapur, the appellant Prabhakar Hirkane had visited the police station and had given intimation regarding death of his wife at Shankarashram Lodge. Though this witness has stated about the admission made by the appellant involving himself in the murder, that part of evidence is not admissible and therefore, cannot be considered. This witness has made station diary entry at Sr. No. 14 (Exh. 13). He thereafter forwarded the papers and the appellant to the City Police Station within whose jurisdiction Shankarashram Lodge was situated.

20. P.W. 7-Kishor Gawai has stated in his evidence that he was attached to City Police Station, Chandrapur as A.P.I. On 10th November, 2006 at about 9.30 a.m. he received a phone call from PSI Bhusari of Ramnagar Police Station regarding death of the deceased in Shankarashram Lodge. The entry was taken in that regard in the station diary. P.W. 7-Gawai immediately proceeded to Shankarashram Lodge along with one Head Constable and Police Constable. One Rasekar was present in the reception counter. The enquiry revealed that the appellant had hired a room in the said lodge. P.W. 7 visited Room No. D, which was allegedly occupied by the appellant and the deceased. Dead body of a female was found in the said room. There was swelling over neck of the dead body. He, therefore, went back to City Police Station to take further action in the matter. In the meantime, PSI Bhusari of Ramnagar Police Station and the appellant had also reached there. On the basis of papers produced before him by Mr. Bhusari, this witness had lodged First Information Report against the appellant vide F.I.R. No. 273/2006 for the offence punishable u/s 302 of the Indian Penal Code. After registration of offence, he had visited the spot. He had called two panchas namely Suresh and Dilip. He had also called a Photographer by name Baba Mogre. Spot panchanama was drawn in presence of panchas. Spot panchanama was produced before the trial Court at Exh. 36. After preparation of spot panchanama, photographs were taken by the Photographer. Inquest panchanama was drawn immediately thereafter. The said panchanama was produced in the trial Court at Exh. 38. Dead body was sent for post-mortem examination along with Police Constable Mohan. The further investigation was handed over to Mr. Adewar, Police Inspector attached to same police station.

However, it appears that the investigation was given to P.W. 7-Gawai again after law and order duty of P.W. 7 was over. P.W. 7-Gawai had taken specimen signatures of the appellant on 11th November, 2006 for comparison of the disputed entry in the register and the specimen handwriting.

21. P.W. 14-Adewar, Police Inspector, has stated that he had visited Shankarashram Lodge on 10th November, 2006 after getting papers of investigation from R.W. 7-Gawai. The "Customer Register" was seized under the panchanama Exh. 54. The register was produced in the Court at Article-B. He had recorded statement of the lodge owner namely Baban Wankhede. The relevant page of the register Article-B dated 9th November, 2006 was at page No. 89 and relevant entry was at Sr. No. 3, which indicated that the appellant and deceased had stayed in Room No. D in "D" Wing of the lodge. Page No. 89 of the register was exhibited as Exh. 63 before the trial Court. Panchanama was produced at Exh. 54. He had also visited Bhadrawati, the native place of the appellant and had recorded statements of the witnesses. The viscera preserved by the Medical Officer was sent to Forensic Laboratory. On 11th December, 2006 the Chief Judicial Magistrate was requested to record confession of the appellant u/s 164 of the Criminal Procedure Code. It appears that the Special Judicial Magistrate was requested by the C.J.M. to record confession if any. The appellant was placed before the Special Judicial Magistrate on 27th December, 2006.

22. P.W. 5-Vijay Ambare has stated that he was working as Special Judicial Magistrate from 17th July, 2006. The appellant was produced before him at 9.45 a.m. on 27th December, 2006. The appellant was asked as to whether he was willing to make a confession. He was warned that the confession made by him would be used against him as evidence. Despite the warning, the appellant was ready to give his confession. However, he was given 24 hours time for introspection. The appellant was sent to judicial custody on 27th December, 2006 and it was directed that he should be produced on 28th December, 2006. The appellant was again produced before P.W. 5 on 28th December, 2006. All the police officers were directed to go out of the room. The appellant was in the room of P.W. 5 alone. He was asked whether 24 hours was sufficient for him to introspect or he required more time. The appellant was ready and willing to give the statement. The record of proceedings dated 27th and 28th December, 2006 was prepared and same was produced before the trial Court when P.W. 5 had appeared as a witness. It was stated by P.W. 5 that after preparing record in Form in Part-I and Part-II as per the prescribed proforma of Criminal Manual, the confession of the appellant was recorded. This witness has stated that the appellant had admitted before him that he had committed murder of his wife by means of saree in a room situated at Shankarashram Lodge, Chandrapur. on 10th November, 2006. It was further stated by the appellant that he had killed his wife because she had illicit relations with one driver. After completion of confession of the appellant, P.W. 5-Vijay Ambare had certified that the confession was recorded as per the statement given by the appellant and it was true and correct record of the narration. It was read over to the appellant and was signed

by him. The statement of the appellant was running into eight pages. Part-I dated 27th December, 2006 was produced in the Court at Exh. 20. Part-II dated 28th December, 2006 was produced at Exh. 21. The confession of the appellant admitting his guilt was part of Exh. 21.

23. P.W. 16-Ravindra Gole is Assistant State Examiner of documents who has stated that he had received document Exh. 63 containing questioned handwriting which is Exh. Q-1. He had also received specimen handwriting Exh. S-1. The questioned handwriting and specimen handwriting were examined by him and he had opined that red encircled signature marked as Exh. Q-1 was written by the writer of Exh. S-1. The opinion was produced in the Court at Exh. 85. In this regard, it may be noted here that Exh. S-1 is the specimen handwriting of the appellant and Exh. Q-1 is the handwriting in the register at page No. 89 Exh. 63.

24. As already stated, there was no sufficient material against the appellant to support the charge u/s 498-A of the Indian Penal Code. The appellant was, therefore, acquitted of the said charge. As far as charge u/s 302 of the Indian Penal Code is concerned, there is no eye-witness to the incident. One thing we have noted is that the prosecution had not examined any employee or manager of the Lodge to prove that they had seen the appellant and the deceased entering the lodge and staying in Room No. D. The prosecution has mainly relied upon the entry in the register and the opinion of handwriting expert to establish that the appellant had stayed in hotel room along with his wife.

25. The trial Court has rightly come to the conclusion that the appellant had stayed in the hotel room on the basis of the opinion of handwriting expert, the evidence of Police Officer and panch witness and the confession given by the appellant before the Special Judicial Magistrate. The appellant, even in his statement u/s 313 of the Criminal Procedure Code, has admitted that he had confessed his crime before the Special Judicial Magistrate. The appellant has admitted in his statement u/s 313 of the Criminal Procedure Code that his statement was correctly recorded by the Special Judicial Magistrate. The appellant in his confession had stated that he had stayed in Shankarashram Lodge along with the deceased and he had strangled her and had caused her death.

26. We have gone through the evidence of P.W. 5-Vijay Ambare and the record of proceedings held before him on 27th and 28th December, 2006. The evidence of P.W. 5 has remained intact despite the cross-examination on behalf of learned Advocate for the appellant appointed by the Court. We do not find any infirmity in the record dated 27th and 28th December, 2006, which is produced before the trial Court at Exh. 20 and 21. It need not be stated here that the conviction can be based upon confession without there being any corroboration if it inspires full confidence of the Court. In the present case, we do not find any infirmity in the evidence of P.W. 5 as well as in the record of 27th and 28th December, 2006. We find that the appellant was given sufficient opportunity to introspect. The appellant had no grievance against the police at all of any nature when he was

produced before the Special Judicial Magistrate. In our opinion, the evidence of P.W. 5 clinches the whole issue. In addition to the evidence of P.W. 5, the prosecution has also produced the evidence of Assistant State Examiner of Documents to prove the handwriting of the appellant in the register. The appellant himself has admitted before the trial Court that he had stayed in the said room. Furthermore, there is evidence in the nature of conduct of the appellant immediately after the incident. Though the statement made before P.W. 4-Bhusari, PSI of Ramnagar Police Station is not admissible in evidence, the conduct of the appellant would be admissible u/s 8 of the Evidence Act. As such we find that the prosecution evidence was flawless and there was no scope to doubt any part of the evidence adduced before the trial Court. The trial Court has rightly convicted the appellant of the offence punishable u/s 302 of the Indian Penal Code. There is no merit in the appeal. It deserves to be dismissed and is accordingly dismissed.

Fees payable to the learned counsel (appointed) for the appellant are quantified at Rs. 5,000-00/- (rupees five thousands only).