
(2016) 07 BOM CK 0163
In the Bombay High Court
Case No : Criminal Appeal No. 584 of 2014

Pradeep s/o Raibhan Gaikwad	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 AIRBomRCri 371 : (2016) ALLMRCri 5192

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : A.B. Moon, Advocate, for the Appellants; C. A. Lokhande, A.P.P, for the Respondent-State

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The present appeal is directed against the judgment and order of conviction passed by learned Additional Sessions Judge, Nagpur in Sessions Case No.487/2011 dated 24.04.2014 whereby the appellant is convicted for the offence punishable under Section 302 of the IPC for committing murder of Mayabai and is directed to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one year. He is also convicted for the offence punishable under Section 302 of the IPC for committing murder of Nandabai and is directed to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for one year. The appellant is also convicted for the offence punishable under Section 323 of the IPC and is directed to suffer rigorous imprisonment for one year and to pay a fine of Rs.200/-, in default to suffer rigorous imprisonment for seven days. He is also convicted for an offence punishable under Section 506 (ii) of the IPC and sentenced to suffer one year imprisonment and to pay a fine of Rs.200/ in default to suffer rigorous imprisonment for seven days. He is also convicted for an offence punishable under Section 309 of the IPC and on that count he is further directed to suffer rigorous imprisonment for one year and to pay a fine of

Rs.200 and in default to suffer rigorous imprisonment for seven days. It was further directed that the sentences shall run and commence one after another.

2. The prosecution case as it is disclosed during the course of the trial is as under:

(a) Madhukar Gite (PW13) was discharging his duties as Police Inspector at Police Station, Umred. On 05.07.2011 in the midnight, Suresh Gupta (PW2) and his son Sunil Gupta (PW8) came to Police Station for lodging the report. They informed the police offices that they were assaulted by one Dhanraj Jadhav. The police officer noticed injuries on his person and, therefore, he took them with him for medical examination to Nagpur. While proceeding to Nagpur, they went to the house of Dhanraj Jadhav at Udas. There, Dhanraj Jadhav was present in the house. Thereafter, Madhukar Gite (PW13), Suresh Gupta (PW2), Sunil Gupta (PW8) and Dhanraj Jadhav went to the house of Suresh Gupta at Udas. There he observed blood in the doorstep of the house. Madhukar Gite made enquiry with Rajni (PW7) wife of Suresh Gupta. She narrated that Pradip Gaikwad (appellant) who is residing in front of the house of Suresh, has made assault on Suresh and Sunil. Therefore, Madhukar Gite and others went to the house of the appellant. He noticed that the front door was closed. Therefore, they entered from the back door to notice that a lady was lying on a cot, blanket was placed on her person, her mouth was gagged by putting knicker inside the mouth. PI Gite also noticed an iron pipe lying there with blood stains. He called the neighbours who revealed him the identity of the lady as wife of the appellant. He also gathered information that the brother of the wife of the deceased Mayabai by name Ankush Patil (PW6) resides at the bye pass, Umred. His house was searched and he was brought to the house of Mayabai, the deceased. Thereafter search of the appellant was started.

(b) During the search at about 3.45 a.m. PI Gite received a phone call from one Police Constable that one Nandabai Bankar who resides at Ghodimar layout is murdered by the appellant. He along with Ankush (PW6) went to Ghodimar layout. There they found Nanda Bankar in dead condition on the road. One knife was also found near her body. Mother of Nandabai by name Shantabai and her daughter Shubhangi (PW5) were also present near her. Shantabai was injured. On enquiry with Shantabai and Shubhangi (PW5), it was informed to PI Gite (PW13) that at about 3.30 a.m. the appellant had been to the house of Nandabai Bankar and told them that Mayabai, the sister of Nandabai had a snake bite and she is admitted in the rural hospital. The appellant asked them to accompany to the hospital. Therefore, they proceeded towards the rural hospital, Umred. After they crossed some distance from their house, in the open place, the appellant caught Nandabai and assaulted by means of knife on her chest. When tried to intervene in the assault, he also made assault on Shantabi and gave a threat to kill Shubhangi.

(c) During the search, appellant Pradip Gaikwad was found near the well and observing the police vehicle, he jumped into the well. He was rescued from the

well. He informed the police officers that after committing murder, he had consumed the rat poison. Therefore, the appellant was sent for medical treatment in the hospital.

(d) In the meanwhile, Ankush Patil (PW6) lodged his oral report Exh.18 and on the basis of the same, the crime was registered against the appellant vide Crime No.77/2011 on 06.07.2011 at 7 O'clock in the morning for an offence punishable under Section s 302, 307 and 309 of the IPC. The printed FIR is at Exh.19.

(e) The inquest was done on the dead body of Mayabai by PSI Mankar (PW16). The inquest panchanama is at Exh.74. The spot panchanama where the dead body of Mayabai was found was also drawn in presence of pancha witness Dinesh Gajghate (PW4). The said is at Exh.14A. In presence of pancha witness Dinesh Gajghate (PW4), the articles lying on the spot i.e. the iron rod having blood stains was also seized under seizure memo Exh.14B. Clothes of Mayabai were seized under seizure memo Exh.47.

(f) The inquest on the dead body of Nandabai was conducted by Dinesh Labde (PW15) a Police Sub Inspector working with Police Station, Umred on the directions of PI Madhukar Gite (PW13). The inquest panchanama is at Exh.88. He also seized simple as well as blood smeared soil, broken pieces of bangles, knife and other articles which were noticed on the spot under seizure memo Exh.86. Those articles were duly sealed. The appellant, who was admitted for the medical treatment was discharged on 08.07.2011 and on the said day, he was arrested. His clothes are seized. On 09.07.2011, the appellant gave his disclosure statement Exh.49 thereby he agreed to show the place where he concealed the sickle, which was used by him for making assault on Suresh and Sunil Gupta and the plastic cover of poison. Accordingly, from the place which was disclosed by the appellant, a sickle as wells a a towel was seized under the seizure memo Exh.50. All the seized articles were sent to Chemical Analyser. After completion of the entire investigation, charge-sheet was filed before the court of law. The learned Magistrate, in whose Court, the charge-sheet was presented, committed the case to the Court of Sessions since the offence was exclusively triable by the Court of Sessions.

(g) After its committal, the learned Additional Sessions Judge framed charge for an offence punishable under Section 302 of the IPC for committing murder of Mayabai and Nandabai, under Section 307 for making murderous assault on Shantabai and Suresh Gupta (PW2) and under Section 326 of the IPC for making assault on Sunil Gupta (PW8), under Section 506 (2) for extending threats to Shubhangi (PW5) and under Section 309 for attempting to commit suicide.

(h) In order to bring home the guilt of the accused, the prosecution examined in all 18 witnesses and also relied on various documents which were duly proved during the course of trial.

(i) After a full dress trial, the learned trial Judge acquitted the appellant of the offence punishable under Section 307 for making murderous assault on Suresh

(PW2) and also acquitted of the offence punishable under Section 326 of the IPC. The learned Judge found that the appellant is guilty of committing an offence under Section 323 for making an assault on Shantabai.

3. Though, the appellant is acquitted of the offence under Section 307 of the IPC, the State has not preferred any appeal.

4. We have heard Mr. A. B. Moon, learned counsel for the appellant and Mr. C. A. Lokhande, learned A.P.P. for the State in extension. The learned counsel for the appellant submitted that the prosecution has failed to prove the motive for committing murder of Mayabai and Nandabai. He also submitted that in absence of any eye witness, the appellant cannot be convicted for the offence of committing murder of his wife Mayabai. He submitted that Shubhangi (PW5) being a child witness, her evidence need not be considered and if her evidence is kept aside then there is no evidence to connect the appellant with the offence of committing murder of Mandabai. He, therefore, prayed that the appellant may be acquitted. Per contra, the learned A.P.P. for the State submitted that the prosecution is successful in establishing the guilt of the appellant. He supported the impugned judgment and prayed for dismissal of the appeal.

5. Whether the prosecution is successful to prove that the nature of deaths of Mayabai and Nandabai were homicidal?

6. The dead body of Mayabai was brought at Rural Hospital, Umred on 06.07.2011 by PSI Mankar (PW16). Dr. Jayashree Petkar (PW17) was Medical Officer at Rural Hospital, Umred. She conducted postmortem over dead body of Mayabai. On examination of the dead body, she noticed following external injuries:

"1. Lacerated wound over forehead middle 3cm x 1cm x skull deep.

2. Lacerated wound near injury no.1 left side size 3 cm x 1 cm x skull deep (deep to skull).

3. Lacerated wound above injury no.2 left side 2 cm x 1 cm x skull deep.

4. Lacerated wound over scalp midline frontal region 3 cm x 1 cm x skull deep.

5. Lacerated wound behind left ear 5 cm x 5 cm x skull deep irregular margin.

6. Lacerated wound continuation with injury no.5 occipital region 10 cm x 7 cm x skull deep irregular margin.

7. Lacerated wound behind right ear continuation with injury no.6 size 5cm x 5cm x skull deep (deep to skull)

8. Incised wound left middle finger at metacarpocarpal joint 2 cm x 0.5 cm x .5 cm anterior.

9. Incised wound left middle finger at metacarpocarpal joint dorsal 1 cm x 0.5 cm x .5 cm.

10. Abrasion over right back 3 cm x 1 cm.
11. Abrasion over right waist 3 cm x 1 cm.
12. Incised wound right ear Pinna upper 2nd portion 2 cm in length."

The autopsy surgeon noted following three fractures when she opened the dead body:

"On Head: Injury under the scalp : Subdural hemorrhage. Skull:

- a) Fracture occipital region 10 cm X 2 cm.
- b) Fracture over temporal region left side 3 cm x 2 cm.
- c) Fracture over temporal right side 3 cm x 2 cm."

According to the autopsy surgeon, all the injuries were ante mortem. According to her, the cause of death was hemorrhagic shock with cerebral hemorrhage with fracture of skull. The post mortem report is at Exh.41.

7. According to Dr. Jayshree Petkar, the injuries noticed on the dead body of Mayabai were sufficient in ordinary course of nature to cause death. When the inquest over the dead body of Mayabai was conducted by PSI Mankar (PW16) in presence of pancha, several injuries were noticed including injuries on the skull. The inquest panchanama is at Exh.74.

In view of the evidence of autopsy surgeon and the injuries as referred, it is crystal clear that the death of Mayabai was homicidal in nature.

8. Insofar as Nandabai is concerned, the postmortem is also conducted by Dr. Petkar (PW17). The post mortem report in respect of Nandabai is at Exh.59. While conducting postmortem, the autopsy surgeon found following injuries.

"i) Injury around 3 cm X 1 cm X deep through inside portion on the left side of chest.

ii) 2 cm below clavicle and 2 cm lateral sternum."

According to the autopsy surgeon, this was a major injury and is caused by hard and sharp object. According to the autopsy surgeon, the cause of death was "hemorrhagic shock due to stab wound of left lung." Dr. Petkar also stated from the witness box that the aforesaid injury was ante mortem and was sufficient in the ordinary course of nature to cause death.

In view of the postmortem report Exh.59 and looking to the evidence of the autopsy surgeon, there cannot be any doubt that Nandabai met homicidal death.

9. The further question that arose for consideration is as to whether the appellant is responsible for causing deaths of these two ladies as claimed by the prosecution?

10. According to the prosecution, the appellant was nourishing a grudge in his

mind that Mayabai is having illicit relations with Suresh Gupta (PW2).

The learned counsel for the appellant pointed out that Ankush Patil (PW6), the brother of the deceased deposed that the relations in between the appellant and deceased Mayabai were cordial in nature. Therefore, from his statement, the motive is not proved.

According to the prosecution, the appellant was under impression that his wife is having illicit relations with Suresh Gupta (PW2). The house of Suresh Gupta, who is an auto driver, is situated opposite the house of the appellant. The appellant had also assaulted Suresh Gupta in the night of the date of the incident itself. His injury certificate at Exh.31 shows three incised grievous wounds over the vital part of his body. The assault was made when Suresh Gupta was sleeping in the courtyard of his house along with Sunil Gupta, his son who was also assaulted by the appellant and his injury certificate is at Exh.33.

11. The appellant is acquitted of the charge for the offence punishable under Section 307 of the IPC for making the murderous assault on Gupta father and son. Perusal of judgment of the Court below shows that the learned Judge of the Court below has given benefit of doubt for acquitting the appellant from the said charge.

12. The testimony of Suresh Gupta shows that the appellant used to suspect that he is having illicit relations with his wife. This fact was made known to one Bhaurao Bhoyar by Suresh Gupta. Be that as it may. There was no reason for the appellant to make a murderous assault on Suresh if he was not having any suspicion about illicit relations. In view of the evidence of Suresh Gupta that the appellant was suspecting the fidelity of his wife qua Suresh, in our view, the prosecution has proved the motive for committing murder of Mayabai.

13. The dead body of Mayabai was found inside the house of appellant situated at Udasia Haveli road. The spot panchanama is duly proved by the pancha witness Dinesh Gajghate (PW4). During the course of investigation, the Investigating Officer Madhukar Gite (PW13) obtained information from the Secretary of Gram Panchayat, Udasia through a letter dated 20.09.2011, Exh.70 that the appellant used to reside with Mayabai, the deceased in the house no.357.

14. When API Ajay Mankar (PW16) was drawing the spot panchanama where the dead body of Mayabai was found, he noticed that an iron pipe was lying near the dead body. The said was seized in presence of pancha witness Dinesh Gajghate (PW4) by drawing the detailed panchanama Exh.14B.

The iron pipe was sent to Dr. Petkar (PW17) under requisition vide Exh.95. Dr. Petkar states from the witness box that when she examined the said weapon, she noticed dry blood stains. According to her, the injuries mentioned in the postmortem report of Mayabai could be caused by the object sent to her. Accordingly, she issued her query report Exh.42. The iron pipe was handed over in a sealed condition to the police.

15. The evidence as brought on record shows that the dead body of Mayabai was lying in the residential house which is a normal place of residence of the appellant. Unless otherwise proved, his presence in the house in the night hours cannot be disputed. There is nothing available on record to show that the appellant was not present in his house with Mayabai on the date and time of incident. On the contrary, the scrutiny of evidence of Shubhangi (PW6) shows that the appellant had been to the house of Nandabai and called them on the pretext that Mayabai is admitted in the hospital for snake bite.

No explanation is offered whatsoever in any nature by the appellant in respect of the injuries appearing on the body of Mayabai when she was in his custody in his house. In that view of the matter, the provisions of Section 106 of the Indian Evidence Act has its effect in the present case.

16. In view of the aforesaid evaluation of the prosecution evidence, it is clear that as per the Chemical Analyser's report Exh.63, the blood group of the deceased Mayabai was "B". The seized articles namely clothes of the appellant as well as the iron pipe was sent to the Chemical Analyser. The Chemical Analyser's report in that behalf is at Exh.61. It shows that the iron pipe was having blood group "B" whereas on the clothes of the appellant, human blood was noticed and for that no explanation is offered.

Thus, there is no doubt in our mind that the appellant is the author of the injuries, which resulted into death of Mayabai. Therefore, the finding reached by the learned Judge of the Court below are confirmed.

17. Insofar as Nandabai is concerned, she was assaulted in presence of Shantabai and Shubhangi. Shantabai was mother of Nandabai whereas Shubhangi is daughter of Nandabai. Due to demise of Shantabai, the prosecution could not examine her.

18. Shubhangi (PW5) is examined by the prosecution as its witness. Her evidence shows that deceased Nandabai was her mother. She used to reside with her mother and grandmother Shantabai at Ghodimare layout, Umred. Exh.18, oral report lodged by Ankush Patil (PW6) which set the criminal law into motion shows that his sister Nandabai and mother Shantabai used to reside in a house near Bhivapur naka since the husband of Nandabai left her.

According to the evidence of Shubhangi, in the intervening night of 05.06.2011 and 06.06.2011 at about 3.00 a.m., the appellant who is her maternal uncle came to their house and knocked the door. He asked Nandabai to open the door. They all woke up. On enquiry by her mother, the appellant replied that Mayabai had a snake bite and she is taken to the hospital for treatment and requested them to accompany him to see her. According to the evidence of Shubhangi, thereafter she, deceased Nandabai and her grandmother proceeded along with the appellant. After going for some distance on a kaccha road, all of a sudden, the appellant assaulted Nandabai by means of knife in his hand. Shantabai tried to intervene. That time, he gave a knife blow on Shantabai also and asked

Shubhangi to go away else he will kill her. It is further deposed by Shubhangi that she and her grandmother frightened.

It is further the evidence of Shubhangi that thereafter she went to the house of her maternal uncle Vikas Hadge (PW14). He also corroborates the version of Shubhangi that Shubhangi came to him and informed that her mother is assaulted. Therefore, he along with Shubhangi went to the spot. There he noticed that Shantabai was sitting near Nandabai and one knife was lying near the body of Nandabai.

According to the evidence of Shubhangi, thereafter, her mother Shantabai went near the house of one Waghmare and informed the incident, who made a phone call to police and thereafter the police reached to the spot. The evidence of Shubhangi remained unshaken during her cross examination.

19. According to the learned counsel for the appellant, Shubhangi is the only eye witness to the incident and she being interested one, reliance should not be kept on her testimony in absence of any independent eye witness count.

20. The incident has occurred on 06.07.2011 in the morning. That time, one cannot expect the presence of any independent person. The presence of Shubhangi on the spot was there since she was accompanying Nandabai to go to the hospital as the appellant informed them that Mayabai had a snake bite and she is hospitalised. Further, Shantabai who could not be examined during trial due to her demise, was also injured. She was referred to the rural hospital Umred and she was examined by Dr. Omprakash Gudalwar (PW11). He issued injury certificate, which is at Exh.35. The injury certificate shows the evidence of following injuries:

- "(i) incised wound on right hand 2 cm x ? cm,
- (ii) incised wound on right index finger 1? cm x 4 cm.
- (iii) incised wound on left scapular region 3 cm x ? cm,
- (iv) incised wound on left arm 1 cm x 1? cm., and
- (v) abrasion over left iliac crest."

The injury certificate of Shantabai gives credence to the evidence of Shubhangi that when Shantabai tried to intervene at the time of assault on Nandabai, she was also assaulted by means of knife by the appellant. Further, the testimony of Shubhangi is free from omissions. Her evidence inspires confidence. In our view, she is witness to the truth. There is no reason for this girl to depose against the appellant. Further, she has immediately disclosed the fact of assault on her mother by appellant to Vilas Hadge (PW14).

The immediate disclosure on the part of Shubhangi also to be weighed in her favour for accepting her version. There is nothing available to show that Shubhangi is tutored one.

21. Dr. Jayshree Petkar (PW17) has also examined the knife, the weapon under requisition letter. She noticed that the knife was having length of 29 cm, handle of 11 cm and breadth in the middle 1 inch, pointed end with blood stains. After examination of the knife, she gave her opinion that the injury noticed in the post mortem report of Nandabai can be caused by the said object. Accordingly, she gave her query report Exh.52. The knife when examined by the Chemical Analyser, was found to be blood stained. The Chemical Analyser's report Exh.61 shows that the knife was having human blood though the group could not be proved.

22. Thus, the prosecution has successfully proved its case against the appellant that he has caused death of Nandabai through direct evidence of Shubhangi (PW5).

In our view, the learned Judge of the Court below has rightly convicted the appellant for causing injuries to Shantabai also.

23. The upshot of the aforesaid discussion leads us to pass the following order.

24. Criminal Appeal No.584/2014 is dismissed. However, the operative part of the impugned judgment directing that the sentences awarded to the appellant shall run and commence one after another is modified.

25. It is hereby directed that all the sentences awarded to the appellant by the learned Sessions Judge shall run concurrently.

26. Rest of the order is maintained as it is.