
(2013) 08 BOM CK 0103
In the Bombay High Court
Case No : Criminal Appeal No. 886 of 2010

Pravin Vilas Shelar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2013) 5 ABR 713 : (2013) 3 BomCR(Cri) 807

Hon'ble Judges : V.K. Tahilramani, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : Murtaza M. Najmi, for the Appellant; V.R. Bhonsale, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—The appellant has preferred this appeal against the judgment and order dated 29.6.2010 passed by the learned additional Sessions Judge, Satara in Sessions Case No. 123 of 2009. By the said judgment and order, the learned Sessions Judge convicted the appellant u/s 302 of the Indian Penal Code and sentenced him to life imprisonment and fine of Rs. 1,000/-, i/d, S.I. for three months. The prosecution case briefly stated is as under:

The appellant was the son-in-law of PW1 Sambhaji. Sambhaji had two daughters Sarika and Sunita. The appellant was married to Sunita on 16.6.2006. After the marriage, Sunita was residing with the appellant at Rautwadi, Taluka Koregaon, District Satara. Sambhaji was residing 20 kms. away from the house of the appellant at Satosha Vasti, Gogawalewadi, Taluka Koregaon, District Satara. For about 18 to 21 months after the marriage, the matrimonial life of the appellant and his wife Sunita was peaceful. Thereafter, altercations took place between Sunita and the appellant. Sunita used to say that the appellant was impotent and hence, she was unable to conceive a child. On 21.5.2008, the appellant was ill. Hence, PW1 Sambhaji went to the house of the appellant and told him to come and stay at his house at Gogawalewadi for a few days. Hence, on 30.5.2008, the appellant and Sunita went to the house of PW1 Sambhaji to stay there for a few

days. On 6.6.2008, everyone in the house of Sambhaji including the appellant and Sunita had dinner. Thereafter, Sunita and the appellant went to sleep in the bedroom and Sambhaji and his wife slept in the kitchen. Sambhaji locked the door of the bedroom from the side of the kitchen. The house consisted of only two rooms. At about 2.30 am, Sambhaji heard some discussion between his daughter and the appellant. Hence, he and his wife woke up. They heard Sunita telling the appellant that he is impotent due to which she was not conceiving. Sambhaji opened the door which was latched from the side of the kitchen and went into the bedroom alongwith his wife. He saw the appellant was having a dagger in his hand with which he inflicted a blow on Sunita's chest and Sunita fell down. The appellant then left the dagger on the spot and ran away. Sambhaji went to Police Patil Dnyande Beble and alongwith him, Sambhaji went to the Koregaon Police station and lodged FIR (exhibit 23). Thereafter investigation commenced.

The dead body of Sunita was sent for postmortem. PW2 Dr. Kadam performed postmortem on the dead body of Sunita. Dr. Kadam found penetrating incised wound over epigastric area of abdomen measuring 4 cm in length x 1 cm in breadth x 5 cm in depth. She found that the injury was elliptical in shape having clean cut margins. The injury was directed obliquely to the liver. According to Dr. Kadam, the death was caused due to perforation of the liver and the injury was possible by a dagger with force. After completion of investigation, chargesheet came to be filed.

2. Charge came to be framed against the appellant original accused u/s. 302 of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried. The defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant, as stated in para 1 above, hence, this appeal.

3. We have heard the learned advocate for the appellant and the learned APP for the State. We have considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, we are of opinion that the appellant assaulted his wife Sunita with a dagger which led to her death.

4. The conviction is mainly based on the evidence of PW1 Sambhaji, who is the father-in-law of the appellant and father of the deceased. Sambhaji was residing at Gogawalewadi in Koregaon Taluka. The marriage of his daughter Sunita was performed with the appellant on 16.6.2006. After the marriage, Sunita went to reside with the appellant in her matrimonial home at Rautwadi, Taluka Koregaon, which is at a distance of about 20 kms. from the house of PW1 Sambhaji. For about 18 to 21 months after the marriage, the matrimonial life of the appellant and his wife Sunita was peaceful. Thereafter, altercations took place between Sunita and the appellant. Sunita used to say that the appellant was impotent and hence, she was unable to conceive a child. On 21.5.2008, the appellant was ill. Hence, PW1 Sambhaji went to the house of the appellant and told him to come

and stay at his house at Gogavalewadi for a few days. Hence, on 30.5.2008, appellant and Sunita went to the house of PW1 Sambhaji to stay there for a few days. On 6.6.2008, everyone in the house of Sambhaji including the appellant and Sunita had dinner. Thereafter, Sunita and the appellant went to sleep in the bedroom and Sambhaji and his wife slept in the kitchen. Sambhaji locked the door of the bedroom from the side of the kitchen. The house consisted of only two rooms. At about 2.30 am, Sambhaji heard a quarrel going on between his daughter and the appellant. Hence, he and his wife woke up. They heard Sunita telling the appellant that he is impotent due to which she was not conceiving. Sambhaji opened the door which was latched from the side of the kitchen and went into the bedroom alongwith his wife. He saw the appellant was having a dagger in his hand and the appellant inflicted a blow with the dagger on Sunita's chest due to which Sunita fell down. Nothing has been elicited in the cross-examination of this witness so as to disbelieve his testimony that the appellant assaulted Sunita with a dagger in the chest.

5. Evidence of PW1 Sambhaji is corroborated by the medical evidence. PW2 Dr. Kadam, who has performed the postmortem on the dead body of Sunita, has noticed penetrating incised wound over epigastric area of abdomen measuring 4 cm in length x 1 cm in breadth x 5 cm in depth. She found that the injury was elliptical in shape having clean cut margins. The injury was directed obliquely to the liver. According to Dr. Kadam, the death was caused due to perforation of the liver and the injury was possible by a dagger with force. The evidence of PW2 Dr. Kadam and the other evidence on record also establishes that the death of Sunita was homicidal in nature.

6. Mr. Nazmi submitted that even if it is to be accepted that the act of the appellant of assaulting his wife with a dagger resulted in her death, the case would not fall u/s. 302 of the Indian Penal Code but it would fall u/s. 304 Part II or at the most section 304 Part I of the Indian Penal Code. He pointed out that the evidence on record shows that quarrel was going on between the appellant and his wife Sunita which has been deposed to by PW1 Sambhaji. Mr. Nazmi pointed out that the appellant gave just one blow to Sunita, which is clear from the evidence of PW1 Sambhaji. Mr. Nazmi submitted that this shows that it was not the intention of the appellant to cause death of his wife Sunita. He submitted that if the appellant had intended to cause the death of his wife Sunita, he would not have stopped after giving just one blow to his wife but he would have continued to assault her. The fact that he did not do so shows that he did not have any intention to kill his wife Sunita. Mr. Nazmi further submitted that the assault was not premeditated or preplanned but it had happened on the spur of the moment in a fit of anger. Mr. Nazmi reiterated that the fact that the appellant stopped after giving just one blow to his wife during the course of sudden quarrel and after his wife had accused him of impotency would bring the case under Exception 4 to section 300 of the Indian Penal Code and would, thus, be covered u/s 304 part II of the Indian Penal Code.

7. It is an admitted fact that the deceased accused the appellant of impotency due to which quarrel took place between the deceased and the accused. It was during the course of this quarrel that the appellant assaulted Sunita just once on the chest with a dagger. Looking to the evidence of PW1 Sambhaji, we find much merit in the submission that the case would not fall u/s. 302 of the Indian Penal Code but it would fall under Exception 4 to Section 300 of the Indian Penal Code i.e., assault by an accused during a sudden quarrel in the heat of passion.

8. To bring a case under Exception 4 to Section 300 of IPC, all the ingredients mentioned in it must be found. It is to be noted that the word "fight" occurring in Exception 4 to Section 300 of IPC is not defined in the Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for passion to cool down. In this case, the evidence shows that both the parties had worked themselves into a fury on account of verbal altercation going on between them. However, for the application of Exception 4 to Section 300, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken any undue advantage or acted in a cruel or unusual manner. The facts of this case show that the appellant did not take any undue advantage or acted in a cruel or unusual manner. However, we are not prepared to accede to the submission of Mr. Nazmi that the case would fall u/s. 304 part II of the Indian Penal Code. In our view, the case would fall u/s. 304 part I of the Indian Penal Code because we are of the opinion that the appellant did not just have the knowledge that his act is likely to cause death, as contended by Mr. Nazmi but in fact, the appellant intended to cause death of Sunita. We say so, on the basis of the weapon used, the part of the body where injury was inflicted, the force used while assaulting and the nature of the injury which can be seen from the evidence of PW7 Dr. Kadam. Looking to all these facts, we are of the considered opinion that the case cannot fall u/s. 304 part II of the Indian Penal Code.

9. Considering the evidence on record, we are of the view that Exception 4 to Section 300 applies to the facts of the case and the proper conviction would be u/s. 304 part I of the Indian Penal Code. Hence, the conviction u/s. 302 of the Indian Penal Code is set aside. Instead, the appellant is convicted u/s. 304 part I of the Indian Penal Code. In our view, custodial sentence of seven years R.I. and a fine of Rs. 1,000/- in default, S.I. for two months would meet the ends of justice.

10. Appeal is allowed to the aforesaid extent.

11. Office to communicate this order to the Appellant and the Superintendent of jail where the appellant is lodged i.e., Kolhapur Central Prison, Kolhapur. At this stage, we must record our appreciation for the able assistance rendered by the learned advocate Mr. Nazmi who has very ably conducted the matter. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs. 2,500/-.