
(2014) 06 BOM CK 0055
In the Bombay High Court
Case No : Criminal Appeal No. 646 of 2012

Rajendra Ramhari Kokane

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

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

Citation : (2014) 4 BomCR(Cri) 11

Hon'ble Judges : V.K. Tahilramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Rohini Madhav Dandekar, Advocate for the Appellant; V.R. Bhonsale, A.P.P, Advocate for the Respondent

Judgement

V.K. Tahilramani, J.—The appellant-original accused has preferred this appeal against the judgment and order dated 9.3.2012 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No. 244 of 2011. By the said judgment and order, the learned Additional Sessions Judge convicted the appellant under section 302 of IPC for causing the murder of Sangita and sentenced him to RI for life and fine of Rs. 5000/-, in default RI for 6 months. The prosecution case briefly stated, is as under:

"(i) Deceased Sangita was the wife of PW6 Sadashiv @ Prakash Raut. Sadashiv is the complainant in the present case. Sadashiv resided with his wife Sangita at village Ketur, Karmala, District-Solapur. The appellant is related to Sadashiv. The appellant was residing next to the house of Sadashiv. The wife of he appellant was dead. The incident had took place on 8th June 2011. Sometime prior to the incident, the appellant had outraged the modesty of Sangita by holding her hand and therefore Sadashiv and Sangita had complained to PW4 Bapusaheb Patil who was the Chairman of the Dispute Resolve Committee of their village. PW4 Bapusaheb Patil called the appellant and gave him warning to behave properly. The appellant prayed for apology from Sangita. However, even thereafter the

appellant used to give signals to Sangita with his eyes.

(ii) The incident has taken place on 8.6.2011. On that day the complainant Sadashiv along with his wife Sangita went to their field at 12.00 to 12.30 p.m. At 1.00 p.m. Sadashiv returned home. At that time Sangita was in the field and was cutting grass. At about 2.00 to 2.30 p.m. the appellant assaulted Sangita with the sickle. The appellant then came out of the field and left the spot. The appellant was seen leaving the field with koyata and the bloodstained clothes by PW5 Narayan Raut. Since Sangita did not return home till 6.30 p.m. therefore her husband Sadashiv went to the field. He saw Sangita lying on the Bandh of their field with injuries on her person and Sangita was dead. Sadashiv then filed FIR Exhibit 28.

(iii) After filing FIR, investigation commenced. The dead body of Sangita was sent for postmortem examination. P.W. 10 Dr. Saroj Khot conducted post-mortem on the dead body of Sangita. Doctor noticed in all 13 injuries on the body of Sangita out of which 11 injuries were incised injuries and rest were contused lacerated injuries. Doctor gave her opinion that the probable cause of death of Sangita is due to shock and haemorrhage due to severe extensive multiple injuries on face and head, and the said injuries were possible by Koyata article 10. The appellant came to be arrested. The Koyata (Article 10) and bloodstained clothes of the appellant came to be recovered at the instance of the appellant. These articles were sent to the Chemical Analyzer. After completion of investigation the chargesheet came to be filed."

2. Charge came to be framed against the appellant under section 302 of IPC. The appellant pleaded not guilty to the said charge and came to be tried. The defence of the appellant was 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 Ms. Dandekar, learned Counsel for the appellant and Smt. Bhonsale, learned APP for the respondent-State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for below mentioned reasons, we are of the opinion that there is no merit in this appeal.

4. There is no direct eye-witness in the present case and the conviction of the appellant is mainly based on the evidence of PW6 Sadashiv who is the complainant in the present case, PW5 Narayan and PW2 Hanmant Raut who is the panch witness to the recovery of bloodstained clothes and Koyata at the instance of the appellant.

5. The evidence of PW6 Sadashiv, who is the husband of deceased Sangita, shows that they were residing at village Ketur. The house of the appellant is situated next to the house of the appellant. P.W. 1 Sadashiv has stated that on 8.6.2011, he and his wife Sangita went to the field at about 12.00 to 12.30 p.m. At about 1.00 p.m., he returned home with grass. At that time his wife Sangita

was in the field. Since Sangita did not return home till 6.30 p.m., Sadashiv went to the field and saw Sangita lying on the Bandh of their field with injuries on her person and Sangita was dead. PW6 Sadashiv then filed an FIR. The important circumstance deposed by PW6 Sadashiv is the motive for the appellant to commit the crime. PW6 Sadashiv has stated that prior to the incident, the appellant outraged the modesty of his wife Sangita by holding her hand and therefore he, his wife Sangita and her maternal uncle had complained to PW4 Bapusaheb Paul who was the Chairman of Dispute Resolve committee of their village. Bapusaheb Patil called the appellant and appellant prayed for apology from Sangita. PW6 Sadashiv has further stated that even thereafter the appellant used to give signals to Sangita with his eyes.

6. The evidence of PW6 Sadashiv stands supported by the evidence of PW4 Bapusaheb Patil who was the Chairman of Dispute Resolve Committee of the village. Bapusaheb Patil knew the complaint Sadashiv as well as the appellant. He also knew Sangita, wife of Sadashiv. Bapusaheb has stated that sometime prior to the incident, Sadashiv and Sangita had complained to him that the appellant had outraged the modesty of Sangita by holding her hand. Sadashiv also complained that the appellant used to give signals to Sangita with his eyes. Therefore Bapusaheb Patil called appellant to his house and gave him warning to behave properly. The appellant then prayed for apology from Sangita. Thus the evidence of PW6 Sadashiv and PW4 Bapusaheb on the aspect of motive for the appellant to commit the crime, shows that the appellant used to give signals to Sangita and as Sangita was not amenable to the advances of the appellant the appellant caused her death.

7. The evidence of PW5 Narayan Raut shows that his house is situated adjacent to the house of Sadashiv (PW6) as well as the appellant. PW5 Narayan was related to the complainant Sadashiv as well to the appellant. PW5 Narayan has stated that on 8.6.2011, he was going to his field at about 2.00 to 2.30 p.m. At that time he saw deceased Sangita was removing the grass and the appellant was collecting the same. After some time, he saw the appellant coming out of the field with Koyata in frightened condition. He saw Koyata was stained with blood and there were blood stains on the shirt of the appellant. On the next day, he came to know that Sangita has expired. Thus, the evidence of this witness shows the conduct of the appellant at the approximate time of the incident that is he was in frightened condition at about 2 to 2.30 p.m. and the clothes on his person were stained with blood. This conduct of the appellant also speaks volume about his mens rea. The evidence of PW5 Narayan establishes the presence of the appellant and Sangita together in the field at the time of incident. Thus deceased Sangita was last seen alive in the company of the appellant.

8. The evidence on record shows that the appellant and the deceased were in the field at around the time of the incident. In such case, the accused has to explain how the deceased sustained injuries and died. In this connection, we may refer to section 106 of the Evidence Act. Section 106 of the Evidence Act provides that

when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principles which underlies section 106 of the Evidence Act can be applied in cases of "last seen". In the case of State of Rajasthan Vs. Kashi Ram, , the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specifically within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an addition link which completes the chain.

9. It is the prosecution case that the appellant committed murder of Sangita by assaulting her with Koyata. This is completely corroborated by the medical evidence which is deposed by P.W. 10 Dr. Saroj Khot who performed post-mortem on the dead body of deceased Sangita. On external examination Dr. Khot noticed the following injuries:

- "1. Incised injury, size 15 cm x 3 cm x upto bone deep on frontal region.
2. Incised injury 8 cm x 2 cm upto bone deep on right side of parietal region upto right ear. Laceration of right eye.
3. Contused Lacerated wound of size 6 cm x 2 cm x upto bone deep on right side of forehead transversely.
4. Contused Lacerated wound of size 6 cm x 1 cm x 1/2 cm on back of right ear obliquely.
5. Incised injury of size 5 cm x 1 cm on left side of forehead.
6. Incised injury of size 4 cm x 1 cm x 1/5 cm on right side of forehead.
7. Incised injury of size 7 cm x 2 cm x 1/2 cm from right ear to right eye.
8. Incised injury of size 7 cm x 2 cm x 1/2 cm from right obliquely.
9. Incised injury of size 14 cm x 2 cm x bone deep on front of intra parietal region
10. Incised injury of size 13 cm x 2 cm x 1/2 cm on back of left ear to occipital region obliquely.
11. Incised injury of size 13 cm x 2 cm x 1/2 cm from left temporal region to central dental region.
12. Incised injury of size 7 cm x 1 cm x 1/2 cm obliquely from below left eye to right side of nose.

13. Incised injury of size 6 cm x 1 cm x 1/2 cm on right wrist joint."

According to Doctor Khot all the above injuries are ante mortem. On internal examination, Doctor Khot found following injuries:

"1. Multiple incised injuries on forehead, frontal region, parietal region.

2. Elevated fracture at frontal bone. Fracture of frontal bone. Inter parietal region, compound depressed fracture artery side of skull, thin film of haemorrhage, extradural Haemorrhage at frontal and parietal region of brain."

10. In the opinion of Dr. Khot, the probable cause of death of Sangita Raut is due to shock and haemorrhage due to severe extensive multiple injuries on face and head and the injuries are possible by Koyata (Art. No. 10). Doctor Khot has further stated that the injuries are sufficient in ordinary course of nature to cause death.

11. In addition to above evidence, the prosecution has relied on the recovery of bloodstained sickle and blood stained clothes at the instance of the appellant. PW2 Hanmant Raut is the panch-witness who has deposed on this aspect. PW2 Hanmant has stated that on 10.6.2011 he was called to the Police Station. In the Police Station the appellant made statement that he had concealed the articles below one stone near the well of Tanaji Khanke. The appellant led the police and panchas to the spot and from the spot he took out one shirt, pant, banian and one Koyata. All articles were stained with blood. Police seized all the articles and sealed the same on the spot. These articles were sent to the CA. As per CA report Exhibit 37, the Koyata was found stained with blood of "AB" group. Pant and shirt of the appellant were found stained with human blood. It is pertinent to that bloodstained clothes of deceased Sangita were also sent to CA. These clothes were found to be stained with blood of "AB" group. This shows that the blood group of deceased Sangita was found on sickle recovered at the instance of the appellant. This is strong incriminating circumstance which goes against the appellant. The pant and shirt of the appellant recovered at his instance were found stained with human blood. In this connection, we may usefully refer to the decision of the Supreme Court in the case Gura Singh Vs. The State of Rajasthan, wherein it has been observed as under:

"In view of the authoritative pronouncement of this Court in State of Rajasthan Vs. Teja Ram and Others, we do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the "origin of the blood, the trial Court could not have convicted the accused. The Serologist & Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant."

12. On carefully going through the record in this case, we find that there is sufficient evidence to show that the appellant committed the murder of Sangita by assaulting her with Koyata. Thus, we find no merit in the appeal. The appeal is dismissed.

13. At this stage, we must record our appreciation for Advocate Ms. Rohini Dandekar who is on the High Court Legal Services Committee and who was appointed to represent the appellant in this appeal. We found that she had meticulously prepared the matter and she has very ably argued the appeal. We quantify total legal fees to be paid to her in this appeal by the High Court Legal Services Committee at Rs. 5000/-. Copy of this order be communicated to the appellant who is undergoing his sentence in Yerwada Central Prison, Pune.