
(2014) 02 BOM CK 0189
In the Bombay High Court
Case No : Criminal Appeal No. 888 of 2008

Raju Waman Salve

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 299 302 304

Citation : (2014) 02 BOM CK 0189

Hon'ble Judges : P.V. Hardas, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Naima Shaikh and Abdul Wahab Khan, for the Appellant; F.R. Shaikh, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.—Appellant who stands convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs. 1000/-, in default of which to undergo further RI for 1 month, by 10th Ad-Hoc Additional Sessions Judge, Sewree, Mumbai, by judgment dated 17.7.2008 in Sessions Case No. 567 of 2007, by this appeal questions the correctness of his conviction and sentence. Facts in brief, as are necessary for the decision of this appeal, may briefly be stated thus:

(i) PW-1 ASI Shridhar Salunkhe who was attached to Cuffe Parade Police Station and who was present on 27.3.2007 in the police station, was given patrolling duty at the World Trade Centre, Sadhu T.L. Waswani Marg, near Makers Tower. At about 1.40 to 1.45 pm while he was standing at gate no. 4, he had heard the cries of some persons who were shouting as "catch catch". On hearing the cries PW-1 ASI Salunkhe went towards them and the persons assembled there had informed PW-1 ASI Salunkhe that the appellant had assaulted his wife and had injured her. Appellant was accordingly arrested. One woman was seen lying in pool of blood having sustained injuries to head and left hand. The broken pieces of flooring tiles were seen lying there. One Sudhir Pawar was asked to fetch a

taxi and injured was then taken to the hospital. On the way to the hospital, PW-1 ASI Salunkhe went to the police station. PW-13 Renuka, daughter of the appellant and deceased had also accompanied PW-1 ASI Salunkhe to the police station. Injured was thereafter taken to the G.T. Hospital where after some time, she was declared dead. Statement of PW-1 ASI Salunkhe was recorded at Exhibit 13, and on the basis of the said report of ASI Salunkhe, an offence came to be registered. Printed FIR is at Exhibit 14.

(ii) PW-14 PSI Vijay Nafade who was also attached to the Cuffe Parade Police Station had carried out investigation in crime no. 47 of 2007. On receipt of the said crime, he proceeded to the scene of the incident and thereafter proceeded to the G.T. Hospital in order to see the injured. Injured Kirti had sustained injuries to her head and hand and was under treatment. She was, however, not in a position to give her statement. Statement of PW-13 Renuka daughter of Kirti was recorded. The clothes of the deceased were seized under seizure memo at Exhibit 23. The appellant was interrogated in the police station and his clothes were seized under seizure memo at Exhibit 17. The blood stained clothes of PW-13 Renuka were seized under seizure memo at Exhibit 20.

(iii) PW-15 PI Sarjerao Thombre who was also attached to Cuffe Parade Police Station had recorded the statements of the witnesses. The seized property was then referred to the chemical analyzer under requisition at Exhibit 50. The test identification parade was conducted by the Special Executive Officer and thereafter supplementary statements of the witnesses were recorded.

(iv) PW-16 PSI Yeshwant Varang who was also attached to Cuffe Parade Police Station had collected blood stained pieces of flooring tiles, drawn blood samples from mud and other articles from the spot of the incident under the scene of incident panchnama at Exhibit 27. He recorded statements of the witnesses and further to the completion of the investigation, a chargesheet against the appellant was submitted.

(v) Deceased Kirti was initially examined by PW-8 Dr. Suhas Rajput who noticed following the following external injuries:

1. Contused lacerated wound 4 x 2 1 cm on left side of forehead.
2. C.L.W. 3 x 2 x 1 cm left temporal region.
3. C.L.W. 3 x 2 1 cm on left temporal region.
4. C.L.W. 2 x 1 cm on left temporal region.
5. C.L.W. 2 x 1 cm on right parietal region.
6. C.L.W. 4 x 3 x 1 cm over right wrist joint dorsum aspect.
7. Left eye was black alongwith C.L.W. 2 x 1 cm on left eyebrow.
8. C.L.W. 4 x 1 cm on left ear.

(vi) He accordingly advised for CT scan brain, ultra sound abdomen, pelvis and thorax. At about 4 pm injured Kirti was shifted to J.J. Hospital for CT scan and neuro surgery reference. The report of CT scan shows hemorrhagic contusion, fracture of left frontal bone, fracture of anterior wall of left maxillary sinus, defused cerebral edema. At 6 pm, despite best efforts, Kirti succumbed to her injuries. The medical case papers are at Exhibit 37. Postmortem on the dead body of deceased Kirti was performed by PW-9 Dr. Subhanchand Bind who noticed following external injuries:

1. C.L.W. on left wrist dorsum part 6 x 4 x 2 cm.
2. CLW on left temporal region of the skull 2 x 1 x 4 cm
3. Depressed fracture
4. CLW on frontal region 5 x 4 x 2 cm
5. CLW on right frontal region 3 x 1 x 1/2 cm
6. CLW left occipital region 3 x 1 x 1/2 cm
7. CLW on right ear pinna 1 x 1/1 x 1/2 cm 8. Left eye black 2 x 1/2 cm

He opined the cause of death was due to brain hemorrhage and extra cranial hemorrhage due to polytrauma of head (unnatural). The postmortem report is at Exhibit 39.

(vii) On committal of the case to the Court of Sessions, Trial Court vide Exhibit 2 framed charge against the appellant for offence punishable u/s 302 of the Indian Penal Code. The appellant denied his guilt and claimed to be tried.

2. The prosecution case revolves around the testimony of three eye-witnesses namely PW-6 Mrs. Ashita Tham, PW-13 Renuka and PW-10 Niwas Singh. PW-13 Renuka minor daughter of deceased Kirti and the appellant deposes that she was residing along with the appellant and the mother of the appellant. At the time of incident, she was studying in the 5th standard at Gurunanak English High School while her brother was studying in third standard. Deceased Kirti employed as maid-servant, while appellant was working as a driver. According to PW-13 Renuka on 27.3.2007 at about 8.30 am deceased Kirti had come to the house of the appellant and had requested the appellant to allow deceased Kirti to take Renuka alongwith her for attending pooja in her employer's house. The appellant refused to send PW-13 Renuka along with the deceased. The appellant took Renuka inside the house and latched the door from inside. At about 1 pm deceased Kirti had again come to the house of the appellant and took Renuka along with her for attending pooja at her employer's house. At that time, the appellant was not present in the house. At about 2 to 2.15 pm when Kirti and Renuka were returning home, the appellant came there and questioned Kirti as to how she had taken Renuka along with her. Deceased Kirti replied that since there was pooja, she had taken Renuka along with her. The appellant then started abusing deceased Kirti. Deceased Kirti further questioned the appellant

as to why she should not be allowed to take Renuka along with her as Renuka was her daughter. The appellant however picked up flooring tile from the spot and hit the deceased Kirti with the said tile. Deceased Kirti sustained bleeding injuries and thereafter appellant asked Renuka to come with him and made Renuka sit on the motorcycle. The appellant had also sat on the motorcycle. In the meanwhile, two police constables apprehended the appellant. According to Renuka she was taken by taxi to the police station and thereafter her mother was admitted in the G.T. Hospital. She has admitted that her clothes had also been seized as they were stained with blood.

3. PW-13 Renuka has been cross-examined at length and she had admitted in the cross-examination that there was acrimonious exchange of words between the appellant and the deceased Kirti which was before the incident. She has also stated that she does not remember if the appellant had told police to take Kirti to hospital and then he would come to the police station. She has further admitted that since 3 months prior to the incident, deceased Kirti was not residing with the appellant. Deceased Kirti, however, used to come sometime for meeting PW-13 Renuka. She had denied the suggestion that appellant had not assaulted deceased Kirti with flooring tile.

4. Prosecution has examined PW-10 Niwas a watchman who deposes that at about 1 pm he relieved one Yadav and therefore he came out of gate. There is a foot-path in front of Jolly Maker building and at about 1.45 pm, one woman along with a girl was coming from the opposite side of the foot-path. Another person came there and he then pulled hair of the woman and had started assaulting her with piece of tiles. He deposes that in the meanwhile PW-6 Ashita had come out of Jolly Maker building and she had asked PW-10 Niwas to rush to the rescue of the said woman. PW-6 Ashita also asked PW-10 Niwas to cry out for help. PW-10 Niwas went near the appellant that the appellant threatened him and told him not to interfere. After assaulting that lady, the appellant took little girl with him and sat on the motorcycle. When the appellant was about to flee from the scene of the incident, one police constable apprehended him and thereafter accused was taken to the police station. PW-10 Niwas had admitted that his statement was recorded in the police station. PW-10 Niwas has admitted that his statement was recorded during the investigation and has also identified the appellant as the same person who had assaulted the lady. He has admitted to have identified the appellant in the test identification parade which was held at the Arthur Road Jail.

5. In cross-examination, he has admitted that he had seen the appellant, the deceased and the little girl coming together at 1.45 pm. He has admitted that he does not know if they were quarreling with each other. He has also admitted that he had seen the appellant striking deceased Kirti with a tile. He further stated that he did not see any scuffle prior to that. He has admitted that the appellant was assaulting his wife with a tile while she had raised her hands on her head. PW-10 Niwas has admitted that he had not interfered at that stage. He has admitted that his statement was recorded on 29.3.2007.

6. Prosecution has also examined PW-6 Ashita who deposes that on the day of incident at about 1.45 pm when she was waiting for her car and was standing at the gate of the Jolly Maker building, she had noticed one person assaulting a woman with fist and kick. She then deposed that she had asked the said person not to assault the woman. She had also noticed girl aged 8 to 9 years old standing near the accused. The accused had also threatened PW-6 and had asked her not to intervene otherwise he would also assault her. The accused then picked up stone (tile) and hit it on the head of the woman. The said woman became unconscious and blood started oozing from her injuries. Accused then took the girl along with him and sat on the motorcycle, but in the meantime two police constables apprehended the appellant. She admits that her statement was recorded by the police and admits to have identified the accused in the test identification parade.

7. In cross-examination, she has admitted that as soon as she saw the appellant assaulting lady, she had gone near him and tried to stop him. She has also admitted that her husband had asked her not to interfere because the accused was angry and appeared to be annoyed. She then admitted that accused had picked up stones (tile) and had thrown it at the head of the woman. She has admitted that she had asked watchman to call for an ambulance as the lady was injured. She has admitted that on 14.4.2007, she had gone to the Arther Road Jail for participation in the test identification parade.

8. Perusal of the evidence of these three eye-witnesses, discloses that apart from minor variations in the testimonies of these witnesses, the prosecution has been able to establish beyond reasonable doubt that the appellant had assaulted deceased Kirti. The appellant had inflicted as many as 8 injuries and had struck deceased with the tile eight times. PW-9 Dr. Subhanchand Bind who had conducted postmortem has admitted that injuries sustained by deceased Kirti were not possible due to fall on hard surface or by fall on stones. PW-8 Dr. Rajput has admitted that except injury no. 6, all other injuries were grievous. He has further admitted in cross-examination that delay of 45 minutes in giving treatment may be the reason of death. He has admitted as correct that CT scan was not carried out due to non-availability of the said facility at the J.J. Hospital. He has then admitted in cross-examination that injuries were not possible by single blow.

9. The learned Counsel for the appellant has urged before us that since there was delay in giving the medical aid to deceased Kirti, therefore deceased Kirti had died and she had not died on account of injuries. The learned APP has supported the findings arrived at by the Trial Court. The delay in providing first aid to the victim would not amount to an offence of lesser gravity. The appellant had intentionally inflicted injuries to the deceased Kirti and deceased Kirti had died on account of the said injuries. Even if there is delay in giving medical treatment, the offence would still be culpable homicide amounting to murder. Section 299 of Indian Penal Code, particularly Explanation 2 provides that:

Explanation 2-Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

10. The learned Counsel for the appellant has then urged before us that the offence one would be one punishable u/s 304 of IPC and would not be punishable u/s 302 of IPC. The learned Counsel for the appellant has urged before us that in heat of rage the appellant had struck deceased Kirti but had no intention of causing death of the deceased. It is further urged before us that only one injury was fatal while other injuries were not serious injuries. The learned APP has urged before us for dismissal of the appeal and has urged before us that except injury no. 6, all other injuries were grievous injuries. The appellant had intentionally hit the deceased with tile despite knowing about injuries likely to be caused, which would have caused death of deceased.

11. Deceased Kirti had taken PW-13 Renuka along with her for attending pooja. It is true that PW-13 Renuka was residing with the appellant and the deceased had not taken permission of the appellant. Merely on that score, according to us rage or anger of the appellant is certainly not justified. Renuka was the daughter of the deceased and therefore deceased Kirti had every right to take Renuka along with her though her relationship with the appellant was strained and she may have been residing separately. Deceased Kirti had not offered any provocation to the appellant and the appellant in heat of anger which was not justified picked up flooring tile and repeatedly hit the deceased with the said tile. The appellant had inflicted 8 injuries and according to the Medical Officer excepting injury no. 6, all other injuries were grievous. Thus, the appellant had intentionally inflicted injuries on the head of the deceased. Seven injuries have been caused to deceased Kirti on her head by the flooring tile. Injuries were grievous in nature and the injuries sustained by deceased Kirti were sufficient in ordinary course of nature to cause her death. Deceased Kirti ultimately succumbed to the injuries sustained by her.

12. Thus, according to us by no stretch of imagination can it be said that the offence would be one punishable u/s 304 of IPC. The appellant has been rightly convicted for an offence punishable u/s 302 of IPC.

13. We thus find no merits in the present appeal and the same deserves to be dismissed. Accordingly, the Criminal Appeal No. 888 of 2008 is dismissed, confirming the conviction and sentence of the appellant.