
(2003) 08 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 153 of 1999

Ramanna

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2003) 08 BOM CK 0005

Hon'ble Judges : R.K. Batta, J;P.S. Brahma, J

Bench : Division Bench

Advocate : M.R. Daga, for the Appellant; Mirza, APP, for the Respondent

Judgement

R.K. Batta, J.—The appellant was tried for murder of his wife and also for causing the evidence to disappear under Sections 302 and 201 of the Indian Penal Code. He was found guilty of both the charges and was sentenced to undergo life imprisonment u/s 302 of the Indian Penal Code, as also rigorous imprisonment for two years u/s 201 of the Indian Penal Code besides imposition of fine. The substantive sentences were ordered to run concurrently. The appellant challenges said conviction and sentence in this appeal.

2. Mr. M.R. Daga, the learned Advocate for the appellant, urged before us that the material circumstances upon which reliance has been placed by the trial Court in the judgment have not at all been put to the accused-appellant u/s 313 of the Code of Criminal Procedure and as such, the same cannot be used against the appellant. He has particularly pointed out that the evidence of Mojés s/o Ishwardas Josef (P. W.5), upon which conviction is based, has not at all been put to the appellant. It is also pointed out that seizure of clothes of the appellant, report of the Chemical Analyser, letter Exh.23, report Exh.23-A, letter Exh.29 and report Exh.29-A though admitted, have not at all been put to the appellant. Mr. Mirza, the learned APP submits that said facts and circumstances being material and relevant and against the appellant should have been put to the

accused-appellant. According to him, said circumstances be put to the appellant-accused by this Court and thereafter, the matter should be heard.

3. After going through the evidence, we find that many incriminating circumstances which have been used by the trial Court have not been put to the appellant-accused. It is now well settled by plethora of judgments that all the incriminating circumstances are required to be put to the appellant-accused so that he can offer explanation in respect of the same. The trial Court has relied upon the evidence of Mojes Josef (P.W.5), but no circumstance from his evidence is put to the appellant-accused. Likewise, seizure of clothes of the appellant-accused, as also report of the Chemical Analyser have not been put to the appellant-accused u/s 313 of the Code of Criminal Procedure. Letters Exhs.23 and 29 as also Medical Examination reports Exhs.23-A and 29-A though are admitted documents, have also not been put to the appellant-accused. There are also other incriminating circumstances which have come on record and which have not been put to the appellant-accused. Therefore, it is considered necessary that the matter be remanded back to the trial Court so that all the incriminating circumstances are put to the appellant-accused u/s 313 of the Code of Criminal Procedure. We fail to understand as to how the Sessions Judge Mr. R.S. Gaikaiwari has failed to put all incriminating circumstances to the appellant-accused u/s 313 of Cr.P.C. We also fail to understand as to why the Public Prosecutor conducting the trial did not point out to the Sessions Judge that all the incriminating circumstances have not been put to the appellant-accused. In our opinion, besides duty cast on the Sessions Judge, it is the duty of the Public Judge, it is the duty of the Public Prosecutor to ensure that all the incriminating circumstances are put to the appellant-accused. In case the same are not put by the trial Court, the Public Prosecutor conducting the prosecution may either make oral request or file written application for the said purpose.

4. The Apex Court in *State of Maharashtra v. Sukhdeo Singh and another*, AIR 1972 SC 2100 has observed that Section 313 of the Code of Criminal Procedure imposes a heavy duty on the court to take great care to ensure that the incriminating circumstances are put to the accused and his response is solicited.

5. In *Arvind D. Choure v. State of Maharashtra*, 2003 All M.R. (Cri.) 45 to which one of us (Batta J) was party, this aspect has been dealt with in detail.

6. It is also noticed that information in relation to witness Kusum (P.W.2) in respect of the following aspect has not been put properly:

it is not true to say that I am stating for the first time in the court that when Vidya and Ramanna came to Rajur, Ramanna used to consume liquor, abuse and assault Vidya and that I used to tell him to behave properly.

When this witness was confronted with this aspect, it is recorded that:

I cannot say as to why it is not so recorded in my statement before the police.

Mr. Mirza, the learned APP has confirmed, after going through the police

statement of Kusum (P.W.2), that these facts are very much there in the police statement and as such, there is incorrect recording. We have noticed such incorrect recordings time and again and it is a high time that the trial Courts, before marking the confrontations, should actually go through the police statements themselves and should not simply rely upon the P.P. and the defence counsel. We would also like to point out that besides the duty cast on the trial Judge, it is the duty of the Public Prosecutor as well as defence counsel to ensure that the confrontations are properly put and correctly recorded so that the recording is factually correct. We have time and again noticed that the trial courts and the Public Prosecutors who are conducting trials before the Courts, are not performing their duties properly and the recordings, especially with reference to confrontations, are not only defective but sometimes are contrary to what is stated by the witness in his police statement. We have, in fact, dealt with this issue in detail in the judgment in *Birju v. State*, Criminal Appeal No.405 of 1999 and other connected appeals and *Ibrahim Khan Pathan v. State of Maharashtra*, 2003 All MR (Cri.) 535. We have already directed that the judgment in *Birju v. State* (supra) be circulated to all the Subordinate Courts in Maharashtra and Goa. We also direct that copy of this judgment be circulated to all the Courts in Maharashtra and Goa so that such lapses do not occur repeatedly, which can at times result in failure of justice. A copy of the judgment be also sent to the Secretary. Law and judiciary and the Director of Public Prosecution, Mumbai and Goa.

7. For the aforesaid reasons, conviction and sentence of the appellant in Sessions trial No. 14 of 1998 is set aside and the matter is remanded back to the trial Court with directions to put all the incriminating circumstances appearing against the appellant to him by recording his statement u/s 313 of the Code of Criminal Procedure afresh. The appellant, in case he so desires, be given an opportunity to lead defence evidence. After recording Statement u/s 313 of Cr.P.C. and defence evidence if any, fresh arguments be heard and the matter be disposed of by fresh judgment within a period of three months of receipt of the record and proceedings by the trial Court. The Additional Registrar (Judicial) to ensure that the record and proceedings is sent back to the trial Court within a fortnight.

Steno copy of this judgment duly authenticated be given to the learned A.P.P.