
(2004) 01 BOM CK 0049
In the Bombay High Court
Case No : Criminal Appeal No. 23 of 1999

Ramchandra Ganpat Kadu	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2004) 01 BOM CK 0049

Hon'ble Judges : V.G. Palshikar, J;P.V. Kakade, J

Bench : Division Bench

Advocate : Prajakta Shinde, for the Appellant; V.R. Bhosale, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—This is a extremely saddening case where a father is being tried for the murder of his son and attempted to murder another son. Unfortunately the eye witnesses to this killing are the wife, son and daughter of the accused - mother, sister and brother of the deceased and mother, sister and brother of the injured. The learned trial Judge on appreciation of the evidence on record came to the conclusion of guilt and convicted the accused to suffer imprisonment for life for the murder of his son and for five years R.I. u/s 307 of IPC for attempting to murder his son.

It is this judgment and order of conviction passed in Sessions case No. 252 of 1996, which is challenged in the above appeal on the grounds mentioned in the memo of appeal as also verbally canvassed by the learned counsel appearing on behalf of the accused/appellant before us.

2. With the assistance of the learned counsel for the defence and the learned Prosecutor we have scrutinised the record and reappreciated the entire evidence on record. The prosecution story as revealed by the reappreciation of the evidence stated briefly is that the accused was habituated to heavy consumption

of alcohol of to go berserk under the influence of liquor and used to usually abuse his children and wife sometime with reasons and sometimes without reasons. On the date of the incident, i.e. on 7th May 1996 the accused came home drunk and while he was taking his food, was asked by his son Sunil, now deceased, as to why he should charge rent for small things like spanner etc. Even such opposition enraged the accused and he threatened the family with dire consequences. Thereafter the family slept. At about 5.60 in the morning of 8th May, P.w.1, daughter of the accused, got up hearing cries and saw her father, the present accused, giving a blow by hammer on the head of Amol, his son. She therefore started crying loudly. When she was awoke she was also given a blow. Her mother also awoke and when she went outside the room to find out and to call the other brother Sunil, she discovered his dead body. His head being hammered mercilessly. Hue and cry resulted in gathering all the neighbours who took all the injured to the hospital where they were treated. Unfortunately Sunil died on the third day. The FIR was lodged on the basis of which enquiry was conducted and on completion of the investigation, the accused was charge-sheeted u/s 302 of IPC for murdering his son Sunil and u/s 307 IPC for attempting to murder his another son Amol. The prosecution examined as many as 11 witnesses to prove its case and on appreciation of the evidence as led by these 11 witnesses the learned trial Judge came to the conclusion of guilt and sentenced the accused as aforesaid. It is this order, which is impugned in this appeal.

3. P.w.1 Archana is the daughter of the accused. P.w.2 Alka is the wife of the accused. P.w.3 Rajendra is the doctor, who treated all the three injured immediately when they were taken to the hospital. P.w.4 is Amol the injured son of the accused/appellant, who was also assaulted by the father. The injuries caused to son Amol are proved by P.w.3 Dr. Rajendra and there is no doubt that the injuries were grievous and could have resulted in the death of the victim. P.w.s. 1, 2 and 4 are the daughter, wife and son of the accused/appellant. There were persons present in the house when the assault took place. They have always being witnessed the rowdy behaviour of the accused when he was drunk which was usual. Their deposition brings about the agony in which they were deposing, and at the same time the determination to see that the guilt is penalised. Natural discrepancies which must occur while narrating the incident of such gravity do exist and they are not at all adequate to require disbelieving of these witnesses.

4. No fault can be found in the decision of the learned trial Judge. He categorically discussed the evidence and came to a definite conclusion that the prosecution has proved the guilt of the accused. We see no reason to take any different view on reappraisal of the evidence. The testimony of P.w.s. 1, 2 and 4 are clear and they do explicitly culminate the accused. There is no reason why they should state falsehood to implicate their father. There is also no reason or law in evidence that someone else in the family had committed the act of murder. We therefore see no substance in the appeal and the same is liable to be

dismissed. The appeal is accordingly dismissed.