
(2002) 08 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 624 of 1997

Ramchandra @ Rambhau Sopan Londhe	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

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

Citation : (2003) BomCR(Cri) 526 : (2003) 105 BOMLR 136

Hon'ble Judges : G.D. Patil, Acting C.J.; V.K. Tahilramani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—Through this appeal, the appellant is challenging the judgment and order dated 20th February, 1997 passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No. 28 of 1993. By the said judgment and order, the appellant has been convicted for the offence punishable u/s 302 of the I.P.C. and sentenced to suffer life imprisonment and to pay a fine of Rs. 1000/- i.d. to suffer R.I. for one month.

2. This is a case of double murder. The appellant is convicted for the murder of Vijay Borade, a young boy of 13 years and his father Devidas Borade.

3. Briefly stated, the prosecution case is as under:-

Devidas Borade (deceased) was residing at Appapada, Ambednagar, Malad, Mumbai alongwith his family members i.e., wife Sudha Borade (P.W. 7), daughter Anita Borade (P.W. 6) and his two sons Ajay (P.W. 8) and Vijay (deceased). The appellant was the neighbour of Devidas Borade.

On 21.11.92 at about 8.30 p.m., Devidas Borade was sitting on the Opla of his house. At that time, the appellant came there and picked up quarrel with Devidas saying that how they get water while he was not getting any water for two days. He threw water on the face of Devidas. Vijay Borade, son of Devidas intervened

and questioned the appellant as to why he threw water on his father. The appellant got furious and stabbed Vijay with a knife, he took out the said knife and with the same knife, he gave repeated blows to Devidas all over his body. This incident was witnessed by P.W. 6 Anita, P.W. 7 Sudha and P.W. 8 Ajay. Both Vijay and Devidas were seriously injured and fell down in a pool of blood. P.W. 6, P.W. 7 and P.W. 8 started shouting but seeing that nobody was coming forward, P.W. 7 went to Kurar Police Chowky and informed the police about the incident. The said information was noted down in the Station Diary (Exh. 11) of Kurar Police Chowky by Police Head Constable, P.W. 1 Appasaheb Santu Chavan. Thereafter, P.W. 1 gave two Constables with P.W. 7 to go to the spot and take further steps. P.W. 1 Appasaheb Chavan then reported the matter to Dindoshi Police Station and P. W, 11 P.S.I., Badruddin Noor Mohd. Nadaf came to Kurar Police Chowky and recorded F.I.R. of P.W. 1 Appasaheb Chavan vide Exhibit 10. Thus, the offence came to be registered by Dindoshi Police Station vide C.R. No. 779/92.

In the meanwhile, P.W. 2 Police Naik Vishnu Jagtap who had accompanied Sudha P.W. 7 to the spot took injured Vijay to Bhagwati Hospital.

However, Vijay was declared dead on admission. It may be noted here that Devidas died on the spot.

4. On completion of the investigation, the charge-sheet came to be filed. Thereafter, the case was committed to the Court of Sessions in the usual manner whereby the appellant was charged for the offence punishable u/s 302 of the I.P.C. for causing the death of Vijay Devidas Borade, a minor boy of 13 years and Devidas Borade. The accused person pleaded not guilty to the said charge and claimed to be tried.

5. During the trial, the prosecution examined 13 witnesses, three of them viz. P.W. 6 Anita Borade, P.W. 7 Sudha Borade and P.W. 8 Ajay Borade were examined as eye witnesses. On the basis of their evidence and other evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant in the manner stated in para 1. Hence, this appeal.

6. We have heard the learned Counsel for the parties and perused the entire material on record. In our view, there is sufficient evidence, both direct and circumstantial which clinches the participation of the appellant in the crime.

7. As stated earlier, the prosecution has examined three eye witnesses i.e., (a) P.W. 7 Sudha i.e. the wife of deceased Devidas and the mother of deceased Vijay, (b) Anita Borade (P.W. 6) who is the daughter of deceased Devidas and sister of deceased Vijay, and (c) Ajay Borade (P.W. 8) who was the son of the deceased Devidas and brother of deceased Vijay.

8. Anita Borade has stated that on the relevant day i.e., on 21.11.92 at about 8.30 p.m., her father was sitting on the Otla outside their house. She along with her brother Vijay (deceased) and Ajay, P.W. 8 were also sitting on the Otla. Her

mother had lit a kerosene lamp which was kept on the Otila. At that time, the appellant Ramchandra had a quarrel with her father. The appellant had raised a quarrel on the issue that he was not getting drinking water since last two days and how they were getting drinking water. He threw water on the face of her father. Her brother Vijay questioned the appellant as to why he had thrown water on the face of his father. Immediately, the appellant took out a knife which looked like "Sura" and he stabbed her brother Vijay on his chest. Her brother collapsed on the ground. Thereafter, immediately the accused took out the same knife and stabbed her father repeatedly by the same knife. This witness has stated that nobody came forward to help. In the meanwhile, the appellant ran away.

9. Nothing is elicited in the cross-examination of P.W. 6 Anita to discard her testimony. From the evidence of this witness, it is established that on the night of the incident, the appellant had assaulted Vijay Borade as well as his father Devidas Borade with knife. The presence of this witness on the Otila of her house at the time of the incident was natural. Thus, we find her testimony to be totally reliable.

10. P.W. 8 Ajay Borade is the son of deceased Devidas and the brother of deceased Vijay. At the time of the incident, this witness was about 8 years old. He has stated that on 21.11.92 at about 8.30 p.m., his father (deceased), his brother Vijay (deceased), his sister Anita P.W. 6 and this witness were sitting on the Otila of their house. The evidence of this witness is similar to that of P.W. 6 and hence, we do not wish to recount the same in detail as it would only overburden the judgment. The evidence of this witness inspires confidence and we find the same to be totally trustworthy.

11. P.W. 7 Sudha Borade has stated that on the date of the incident, she had gone to bring water. She had further stated that she was out of the house and had returned at about 8.30 p.m. At that time, she saw the appellant throwing water on the face of her husband. Then, he had taken out knife like "Sura", at that time, her son had questioned the appellant as to why he had thrown water on the face of his father. Thereafter, the appellant first stabbed Vijay on the chest and then with the same knife, the appellant repeatedly stabbed her husband. The intestines of her husband had come out due to the knife blows. They all shouted for help but it was of no use. Thereafter, the appellant ran away.

12. Despite the lengthy cross-examination, nothing has come out in her cross-examination so as to disbelieve her testimony. We find her testimony to be totally reliable and trustworthy. Soon after the incident, this witness has gone to Kurar Policy Chowky and informed the police about the incident which has been noted down in the Station Diary at 10.20 p.m. Thus, she has promptly informed the police about the said incident. In the said information, she has stated the name of the appellant and the fact that the appellant stabbed her son as well as her husband. As stated earlier, we find the testimony of this witness to be totally reliable. This witness fully corroborates the testimony of P.W. 6 and P.W. 8.

13. All the three witnesses mentioned above are also corroborated by the medical evidence. Dr. Baban Shinde, P.W. 9 has performed the post-mortem on the dead body of Vijay and Devidas. In respect of Vijay Borade, the Doctor has stated that he found external injury as mentioned by him in column No. 17 i.e., stab wound 5 cm. x 1.6 cm. x cavity deep left side of chest extending from sternum at nipple level. He has stated that the cause of death of Vijay in his opinion is shock and haemorrhage due to injury to vital organ. The injuries were ante-mortem and were fatal and were sufficient to cause death in the ordinary course of nature. The injury was grievous. It is further stated that the injury is possible due to hard and sharp object like knife. According to the Doctor, the boy would not have survived even if the best treatment would have been given to him.

14. In respect of Devidas Borade, the Doctor has stated that he noticed 25 external injuries on the body during the said post-mortem. He gave the details of the said injuries in the post-mortem notes. Briefly stated there were 17 stab wounds and 8 incised wounds on the body of Devidas. The Doctor has further stated that the cause of death in his opinion was shock and hemorrhage due to multiple injuries. All the injuries were ante-mortem and were sufficient to cause death in the ordinary course of nature. All the injuries were grievous injuries and Injury Nos. 2, 3, 4, 5, 6, 7, 8, 12, 23, and 24 were on vital part of the body. According to him, the cumulative effect of all these injuries will be instant death. The injuries were possible due to hard and sharp object such as knife, dagger etc., and the injuries were possible by the knife shown to him. Thus, it is clear that the medical evidence fully corroborates the evidence of the three eye witnesses.

15. We now come to the circumstantial evidence which has been adduced by the prosecution against the appellant. The prosecution has examined P.W. 10 Pareshe Kakubhai Vadera. He is a panch witness. He has deposed about the recovery of knife at the instance of the present appellant. The said knife was blood stained. The C.A. report shows that there was human blood on the said knife. The appellant has failed to explain as to how human blood came to be found on the knife. This panch witness was extensively cross-examined but nothing was elicited therefrom which could shake his evidence relating to the recovery of knife. It should be borne in mind that this witness did not have any ill will or rancour against the appellant and in our view, unless the said recovery was affected in the manner alleged by this witness, the witness would not have deposed to that effect. In our view, this clinching circumstantial evidence against the appellant also clearly incriminates him.

16. The prosecution has also led evidence relating to seizure of blood stained clothes which were on the person of the appellant at that time of his arrest. The learned Advocate for the appellant has submitted that the said panch was not an independent panch and there is material to show that he was under the thumb of the police. One defence witness i.e. P.W. 1 Prabhakar Loke has been examined on

behalf of the accused to show that this panch witness cannot be relied upon as he has some cases registered against him. It is not necessary for us to go into this aspect of the matter as, in our opinion, even excluding the circumstance of seizure of clothes, there is enough material both direct and circumstantial which clearly connects the appellant with the crime.

17. For the above reasons, in our view, there is sufficient direct and circumstantial evidence connecting the appellant to the crime. There can be no manner of doubt that the appellant committed the murder of Vijay and Devidas.

18. We would be failing in our duty if we do not refer to the submissions made by Shri Toraskar, learned Counsel for the appellant. Shri Toraskar has urged that all the eye witnesses who have been examined are relatives of the deceased and no independent witness has been examined by the prosecution. In our view, it is not necessary that in every case, independent eye witnesses should be examined. No evidence has been led that there was any other person who had witnessed the incident. Secondly, from the evidence of the eye-witnesses, it is seen that though they shouted for help, however, no one came to their help. In this connection, it would be pertinent to note that there was no previous enmity between deceased or relatives of deceased on one side and accused on the other side. In such case, evidence given by the relatives of the deceased cannot be regarded as suspect needing corroboration from independent witnesses. So also nothing has been brought on record that any of the eye-witnesses had any motive to falsely implicate the appellant and to leave out the real culprit.

19. The learned Advocate for the appellant also contended that there were 25 injuries on the body of Devidas and it is not possible that one person could have caused the said injuries and therefore, this shows that the appellant had been falsely implicated in the present case. In our view, looking to the evidence of all the three eye witnesses i.e. P. W, 6, P.W. 7 and P.W. 8, we find no merit in this submission advanced on behalf of the appellant.

20. Thereafter, the learned Advocate for the appellant submitted that the case would not fall u/s 302 but it may at the most fall u/s 304 (II) of the I.P.C. He has submitted that there was a sudden quarrel and during the course of the quarrel, the appellant had inflicted blows on Vijay and Devidas. He has stated that cause of the quarrel was that the appellant had not received drinking water for 2 days. However, in our view, the case of the present appellant would not fall under any of the exceptions to Section 300. In the present case, the reason for the quarrel was not such that it would fall under the category of grave and sudden provocation. Moreover, even if there was a sudden fight during which the appellant attacked Vijay and Devidas, it cannot be said that he acted without taking undue advantage, in fact he has acted in a cruel and unusual manner. In the present case, the accused caused 25 injuries with a knife to Devidas which resulted in 17 stab wounds and 8 incised wounds, in such case, it would have to be said that the appellant by attacking two unarmed and defenceless persons one of whom was barely 13 years of age, took undue advantage of the situation

and the fact that he gave 25 blows to Devidas shows that he acted in a cruel and unusual manner. Thus, we do not feel that the case of the appellant would not fall under any of the exceptions to Section 300.

21. The learned Advocate for the appellant has also submitted that there is delay in lodging the F.I.R. Thus, the case is a false and concocted one and the appellant has been falsely implicated in this case. In this connection, he has stated that the Incident in the present case had occurred at 8.30 p.m. and the F.I.R. was registered at 23.35 hours. Thus, according to him, there is delay of 3 hours in lodging the F.I.R. In this connection, it is pertinent to note the evidence of P.W. 7, P.W. 1 and P.W. 11. P.W. 7 Sudha who is the widow of Devidas has stated that when she returned home at 8.30 p.m., she saw the appellant throwing water on the face of her husband. According to her, the incident was over in about 15 minutes. Immediately, they called for help, however, nobody came to their help. Hence, she told her children that she is going to the Police Station. Thereafter, she went to Kurar Police Chowky and narrated the incident to the policeman on duty. P.W. 1 Police Constable, Mr. Chavan was on duty at Kurar Police Chowky at that time. He stated that at about 10.15 p.m., one woman by name Sudha reported about the quarrel between accused Ramchandra Sopan Londhe and her husband Devidas. She reported that there was a quarrel regarding drinking water. She stated that the accused had caused injuries to her husband and son Vijay, aged about 13 years. They were both lying in an injured condition. She also stated that they were stabbed by means of knife. P.W. 1 Chavan has immediately entered the said information given by her in the Station Diary (Exh. 11) maintained by Kurar Police Chowky and he informed this information on telephone to Dindoshi Police Station to P.S.I. Nadaf who was on the duty at Dindoshi Police Station. He gave two Constables with the woman to take further steps of carrying injured to the hospital. Thereafter, P.S.I. Nadaf (P.W. 11) came to the Kurar Police Chowky and he recorded the statement of P.W. 1 as per his narration which has been treated as F.I.R. in the present case. Looking to the fact that Sudha Borade who is a young lady of hardly 35 years of age, who has seen her husband as well as her young son of 13 years being assaulted by knife and both of them lying seriously injured, it is obvious that it was not thought fit to make her wait at the Police Station in order to record her detailed statement but she was sent back with some Police Constables. The information given by Sudha Borade has been recorded in the Station Diary of Kurar Police Chowky which is Exhibit 11. The said entry is has been made at 10.20 p.m. Thus, looking to the fact that the incident had occurred between 8.30 p.m. to about 8.45 p.m. and thereafter, Sudha Borade had walked to the police chowky and given the information to the police by 10.20 p.m. and thereafter, the F.I.R. came to be registered at 11.35 p.m. on the say of P.W. 1, we do not feel in the facts and circumstances of this case that there is any delay in recording of the F.I.R. In fact, we are of the opinion that the F.I.R. has been promptly lodged. Hence, this submission of the learned Advocate for the appellant also fails.

22. In the result, we confirm the conviction and sentence of the appellant for the

offence punishable u/s 302 for causing the death of Vijay Borade and Devidas Borade and we dismiss this appeal.

The appellant is in jail and shall serve out his sentence.

Appeal is dismissed.