
(2015) 10 BOM CK 0028
In the Bombay High Court
Case No : Criminal Appeal No. 185 of 2014

Ravi Raghu Unawane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 498-A

Citation : (2015) 10 BOM CK 0028

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and A.S. Gadkari, J.

Bench : Division Bench

Advocate : Sonia Miskin, Advocate, for the Appellant; S.D. Shinde, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, Actg. C.J.

1. This appeal is preferred by the appellant - original accused against the judgment and order dated 25.1.2005 passed by the learned II Ad-Hoc Additional Sessions Judge, Nashik in Sessions Case Nos. 129 of 2003. By the said judgment and order, the learned Session Judge convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 1000/-, in default R.I. for six months.

2. The prosecution case briefly stated, is as under:

(a) Deceased Neeta was the daughter of PW 2 Arjun. Neeta was married to the appellant about 6-7 years prior to the incident. Neeta and the appellant had one son and one daughter. The son was PW 5 Rahul. Rahul was about 10 & 1/2 years at the time of the incident. The appellant was a scavenger by profession. He was addicted to Ganja and Bhang. Whenever the appellant was under the influence of drugs like Ganja or Bhang, he used to beat his wife Neeta. The house of the appellant and Neeta was situated at a distance of about 100 meters from the house of PW 2 Arjun.

(b) The incident occurred on 25.4.2003. At about 6 p.m., the appellant and Neeta were in the house. Their children i.e daughter Seema and son PW 5 Rahul were also in the house. At that time, the appellant started assaulting his wife Neeta. Seema and Rahul started crying. The appellant then sent Seema and Rahul outside the house. The appellant then bolted the door of the house from inside. When Rahul was outside, he heard cries of his mother from inside the house. Rahul then went to his grandparents to call them. Rahul then returned back to his house along with his grandparents i.e grandmother Fulabai and grandfather PW 2 Arjun. When they came to the house, they saw that mob had gathered in front of their house.

(c) PW 9 Arun who was the neighbour of the appellant broke open the door of the house of the appellant and went inside the house. When they went inside the house, they saw Neeta was lying dead with injuries on her person. One sickle, stone and cricket bat were lying near the dead body of Neeta. The appellant who was present in the house tried to run away. PW 2 Arjun caught hold of the appellant. The neighbours of the appellant contacted the police. The police came to the spot. Then the appellant was handed over to the police. PW 2 Arjun lodged F.I.R. Exh. 10. Thereafter investigation commenced. After completion of investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Sections 302 and 498-A of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge acquitted the appellant of the offence punishable under Section 498-A of IPC but convicted and sentenced the appellant as stated in paragraph 1 above, hence, this appeal preferred by the appellant against his conviction and sentence.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant assaulted his wife and caused her death.

5. The conviction is mainly based on the evidence of PW 5 Rahul and PW 9 Arun. Rahul was the son of the appellant and the deceased and PW 9 Arun was the neighbour of the appellant.

PW 5 Rahul has stated that on 25.4.2003 at about 6 p.m., Rahul, his sister Seema and their parents i.e the appellant and deceased Neeta were at home. At that time, the appellant started assaulting his wife Neeta. Seema and Rahul started crying. The appellant then sent Seema and Rahul outside the house. The appellant then bolted the door of the house from inside. When Rahul was outside, he heard cries of his mother from inside the house. Rahul then went to

his grandparents to call them. Rahul then returned back to his house along with his grandparents i.e grandmother Fulabai and grandfather PW 2 Arjun. When they came to the house, they saw that mob had gathered in front of their house. Somebody broke open the door, then Rahul went inside the house. He saw his mother lying on the floor with injuries on her head, face and ear. Blood had collected near the head of his mother. His father was standing beside his mother. A sickle, stone and bat were lying near his mother. His father i.e the appellant was about to run away, however, his grandfather PW 2 Arjun stopped him. Thus, it is seen that the evidence of Rahul shows that he saw his father assaulting his mother. Thereafter, his father locked the door from inside and within a short time thereafter, when Rahul came back, his mother was lying dead in the house and his father was attempting to run away.

6. PW 9 Arun was the neighbour of the appellant. He has stated that the appellant used to often beat his wife Neeta. On the day of the incident at about 6.00 to 6.30 p.m., he found that a mob had collected in front of the house of the appellant, hence, he also went there. He heard from the mob that the appellant had caused injuries to his wife. Arun then broke the door of the house of the appellant and went inside the house. He saw the appellant present in the house with sickle in his hand and Neeta was lying on the floor in a pool of blood. There was injuries on her face. When the appellant saw them, he dropped the sickle and tried to run away. PW 2 Arjun and he caught hold of the appellant. He then told Arun to keep the appellant in his custody till he brings the police. He went to the square. He found policemen there. He brought them to the house of the appellant. Then the appellant was handed over to the police. Further evidence of this witness which is reflected in paragraph 2 shows that before PW 9 Arun entered into the house, he looked through the window and he saw the appellant assaulting his wife.

7. PW 2 Arjun was the father of Neeta. He has stated that the marriage of the appellant and Neeta took place about 6-7 years prior to the incident. The appellant was a scavenger by profession and he was employed in Nashik Municipal Corporation. The appellant developed the habit of taking Ganja and Bhang and when he was under the influence of these drugs, he used to assault his wife Neeta. On the day of the incident at about 6.00 p.m., he was informed that the appellant committed the murder of his wife Neeta. He then proceeded to the house of the appellant. He saw that a mob had collected in front of the house of the appellant. The door of the house of the appellant was bolted from inside. The people who had gathered in front of the house of the appellant, broke open the door. When they went inside, he saw that Neeta was lying dead in a pool of blood. She had injuries on her person. One sickle, stone and bat were found lying near the dead body of Neeta. The appellant who was present in the house tried to run away. Arjun caught hold of him. The neighbour of the appellant (PW 9 Arun) contacted the police. The police came to the spot. The appellant was then handed over to the police. Arjun then lodged F.I.R.

8. Thus, the evidence on record shows that at about 6.00 p.m., the appellant was assaulting his wife. On seeing this, the children of the appellant including PW 5 Rahul started crying. The appellant then sent them outside the house and bolted the door from inside. From outside, the children of the appellant heard cries of Neeta who was inside the house. When the door of the house of the appellant was broke open, Neeta was found dead with injuries on her person and the appellant was trying to run away. The sequence of the events as seen from the evidence of PW 5 Rahul, PW 9 Arun and PW 2 Arjun excludes the possibility of any other person committing the murder of Neeta.

9. It is the prosecution case that the appellant assaulted Neeta with a sickle and bat which led to her death. This is supported by the medical evidence. PW 1 Dr. Kute conducted the postmortem on the dead body of Neeta. On external examination, he found the following injuries:-

- (i) Contused lacerated wound over left parieto occipital region having size 8 x 5 x bone deep, brain matter protruding out from the injury;
- (ii) Contused lacerated wound over right parieto region having size 10 x 4 cm x bone deep;
- (iii) Left ear was found missing;
- (iv) Left nostril was cut, having size 2 cm;
- (v) Upper lip was incised from right side of the nostril upto left angle of mouth having size 6 cm x 0.5 cm x bone deep;
- (vi) CLW over left side cheek over mandible, having size 4 cm x 0.5 cm by bone deep;
- (vii) Two incise wound over left side forehead having size 5 cm x 0.5 cm x bone deep mid-forehead and 4 cm x 0.5 cm bone deep left eye brow;
- (viii) Incise wound over left zygomatic region having size 6 cm x 1 cm by bone deep;
- (ix) Incise wound over left side cheek having size 2 cm x 0.5 cm x 0.5 cm;
- (x) Abrasion over right cheek having size 8 cm x 0.5 cm;
- (xi) Multiple incise wounds over left wrist posterior aspect and left hand;
- (x) Multiple incise wound over right forearm and right wrist and hand;

There was a fracture of left side of mandible.

On internal examination, Dr. Kute found that under the scalp, there was generalize haematoma, skull bone was fractured on left parieto occipito mastoid region with brain matter protruding out. In the opinion of Dr. Kute, the lady died because of cardio respiratory arrest due to shock due to head injury. Dr. Kute opined that injury on parieto occipital region mentioned above is a fatal injury.

The injury is possible by blow of hard and blunt object. Injury is possible by stone Article 3 or by bat Article 1. Incise injuries are possible by a sickle Article 2. The injuries appear to have been caused because of repeated blows of weapons.

10. The defence of the appellant is that his wife Neeta dashed her head against the wall which led to the injuries which caused her death. This defence is falsified by the evidence of PW 1 Dr. Kute. Dr. Kute has stated that injury Nos (i) and (ii) are not possible if a woman tried to dash her head against a stone / wall or any other hard substance. Moreover, it is seen that 7 of the injuries out of 12 are incised wounds which could not have been caused by the deceased dashing her head against the wall. Moreover, it is found that the left ear was missing. This injury certainly could not have been caused by Neeta dashing her head against the wall.

11. The appellant was apprehended on the spot. The clothes on his person were found blood stained. These clothes came to be seized which is seen from the evidence of PW 8 Gavane. These clothes were sent to C.A. As per C.A. report Exh. 16, the shirt and the pant of the appellant were found stained with blood of "A" group. The clothes of the deceased i.e blouse, saree and petticoat were also found stained with blood of "A" group. Moreover, the C.A. report Exh. 17 shows that the blood group of the deceased was "A" group. Thus, the presence of blood of "A" group on the clothes of the appellant is a strong incriminating circumstance against the appellant. The appellant has not furnished any explanation for the presence of blood of "A" group on his clothes.

12. On going through the record, we are of the opinion that the prosecution has proved beyond reasonable doubt that the appellant committed the murder of his wife Neeta with a sickle, bat and stone which led to her death. Thus, we find no merit in the appeal. The appeal is dismissed.

13. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Mrs. Sonia Miskin at Rs. 5000/-.