
(2013) 01 BOM CK 0004
In the Bombay High Court
Case No : Criminal Appeal No. 138 of 2009

Rukhmabai and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3953

Hon'ble Judges : A.P. Lavande, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.M. Daga, for the Appellant; A.S. Sonare, Additional Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

A.B. Chaudhari, J.—The appellants/original accused Nos. 1, 3 and 5 have preferred this appeal against the judgment and order dated 31/1/2009 passed by the 9th Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial No. 45"2007 convicting accused No. 3 Keshav for the offence punishable u/s 302 of Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 2000/-, in default to undergo further imprisonment for six months, accused No. 1 Rukhamabai and accused No. 5 Kisan for the offence punishable u/s 326 read with Section 149 of Indian Penal Code and sentencing them to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1000/- each, in default to undergo further rigorous imprisonment for three months. They were also convicted for the offence punishable u/s 143 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a month and to pay a fine of Rs. 250/- each, in default to undergo further rigorous imprisonment for a month. They were also convicted for the offence punishable u/s 147 of Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/- each, in default to undergo further rigorous imprisonment for two months. They were also convicted for the offence punishable u/s 148 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a year and to pay

a fine of Rs. 750/- each, in default to undergo further rigorous imprisonment for three months. The substantive sentences of imprisonment were directed to run concurrently. The original accused No. 2 Naresh has suffered the sentence and has not preferred appeal. It is the case of the prosecution that on 23/9/2006 deceased Chakradhar was not keeping well and, therefore, was taking rest in chappri of his house. His brother P.W. 3 Girdhar and mother P.W. 12 Lahanabai were also at home. At about 4 p.m. accused No. 1 Rukhamabai came to his house and started shouting that deceased Chakradhar had practised witchery on her. Then she caught hold of his hand and dragged him out of the house for taking him towards temple. On way to the temple, they came near the house of one Niru Kangale where her husband accused No. 5 Kisan, her sons accused No. 2 Naresh, accused No. 3 Keshav, accused No. 4 Moreshwar and her another son absconding accused Uttam were standing. P.W. 3 Girdhar, P.W. 12 Lahanabai and P.W. 5 Jyoti were watching. Accused No. 2 Naresh and absconding accused Uttam caught hold of deceased Chakradhar. Accused No. 5 Kisan kicked him. Accused No. 3 Keshav started giving blows by knife on his chest and abdomen while absconding accused Uttam delivered a blow by knife on his thigh. P.W. 3 Girdhar and P.W. 12 Lahanabai went to the rescue of deceased Chakradhar. However, absconding accused Uttam gave blows on the back, thigh and hand of P.W. 3 Girdhar with stick and accused No. 3 Keshav gave a blow on the chest of P.W. 12 Lahanabai by knife. Deceased Chakradhar ran away in an injured condition to his house. Thereafter he was taken to Police Station. Bhiwapur where P.W. 3 Girdhar lodged report (Exh. 42) and P.W. 9 P.S.I. Landge registered offences punishable under Sections 147, 148 and 307 of Indian Penal Code against the accused persons.

2. P.W. 1 Dr. Reena Satpute noticed eight stab/cut wounds on the person of deceased Chakradhar. Thereafter Investigating Officer completed investigation and filed charge-sheet. Chakradhar succumbed to his injuries after 12 days, i.e. on 5/10/2006.

3. The learned trial Court appreciated the evidence and finally acquitted accused No. 1 Rukhamabai, accused No. 2 Naresh, accused No. 4 Moreshwar and accused No. 5 Kisan of the offence punishable u/s 302 of Indian Penal Code, but convicted accused No. 3 Keshav for the offence of murder punishable u/s 302 of Indian Penal Code. The trial Court convicted accused No. 1 Rukhamabai, accused No. 2 Naresh and accused No. 5 Kisan for the offence punishable u/s 326 read with Section 149 of Indian Penal Code so also on other counts. Accused No. 4 Moreshwar, however got clean acquittal on all charges.

4. In support of the appeal, Shri Daga, learned Counsel for the appellants, made the following submissions:

(i) The trial Court has convicted accused No. 1 Rukhamabai and accused No. 5 Kisan for the offence punishable u/s 326 read with Section 149 of Indian Penal Code when there is no evidence to show that these accused persons inflicted any blow on the person of deceased Chakradhar causing grievous hurt.

(ii) The learned trial Court erred in holding accused No. 1 Rukhamabai, accused No. 3 Keshav and accused No. 5 Kisan guilty of the offence punishable u/s 149 of Indian Penal Code so also under Sections 143, 147 and 148 of Indian Penal Code without recording a finding that the accused persons were having common object either at the inception or at later point of time when assault took place. In the absence of any finding about sharing of common object, no offence under Sections 143, 147, 148 and 149 of Indian Penal Code can at all be constituted and, therefore, conviction of the said accused persons on these counts is illegal.

(iii) The learned trial Court has erred in convicting accused No. 3 Keshav for the offence of murder in the absence of any satisfactory evidence of the prosecution witnesses and in the wake of several omissions and discrepancies in the evidence of alleged eye witnesses examined by the prosecution. The learned Counsel for the appellants took us through the omissions and discrepancies in the evidence of the prosecution witnesses, which, according to him, go to the root of the matter and contended that the evidence of the said eye witnesses is liable to be rejected.

(iv) In the alternative, learned Counsel for the appellants submitted that insofar as accused No. 3 Keshav is concerned, the offence of murder against him cannot be held to be proved, which is evident from the fact that deceased Chakradhar expired after twelve days of the alleged incident and he was taking treatment in the Hospital for twelve days. That clearly shows that there was no intention on the part of accused No. 3 Keshav to kill Chakradhar and, therefore, this is not a case of murder, but culpable homicide not amounting to murder. The learned Counsel argued that at the most, conviction u/s 304 Part II of Indian Penal Code could be recorded against accused No. 3 Keshav by the learned trial Court.

(v) It was then contended by the learned Counsel for the appellants that none of the injuries allegedly inflicted by accused No. 3 Keshav was caused to the vital part of the body of deceased Chakradhar and that is the reason why he survived for twelve days. Inviting our attention to the nature of injuries, which are mostly in the cavities, the learned Counsel for the appellants argued that those injuries could not be said to be serious to record conviction for murder against accused No. 3 Keshav. The learned Counsel thus finally prayed for allowing this appeal and acquitting all the accused.

5. Per contra, Shri Sonare, learned Additional Public Prosecutor supported the impugned judgment passed by the learned trial Court and took us to the evidence of the prosecution witnesses on record. The learned Additional Public Prosecutor prayed for confirmation of the impugned judgment passed by the learned trial Court recording conviction of the accused persons. The learned Additional Public Prosecutor also fairly stated that no appeal has been preferred by the State against acquittal of other accused persons for the offence punishable u/s 302 of Indian Penal Code.

6. We have gone through the evidence available on record so also the impugned

judgment passed by the learned trial Court. We have heard the learned Counsel for the rival parties at length.

7. In this case, first information report was lodged by P.W. 3 Girdhar, brother of deceased Chakradhar, on 23/9/2006 at about 17.43 hours, i.e. 5.43 p.m. in respect of the incident that took place at about 4 p.m. and the offences were registered under Sections 147, 148 and 307 of Indian Penal Code against six accused persons. In his oral report, P.W. 3 Girdhar has stated that accused No. 1 Rukhamabai caught hold of the hand of his brother Chakradhar and when they reached near the hut of Niru Kangale, accused Kisan and his four sons Naresh, Moreshwar, Keshav and Uttam came near the said hut on the road. Accused Keshav was holding knife in his hand. Accused Naresh, Uttam and Moreshwar so also their father Kisan caught hold of Chakradhar. Keshav said to Chakradhar that he played black magic on his mother and then assaulted him on chest, abdomen and back with knife, as a result he fell down. Chakradhar got up and ran towards his house in an injured condition and then they went to the Police Station, Bhiwapur. It is thus clear that the oral report does not show that except accused No. 3 Keshav, any of the other accused persons was holding any weapon. The only role attributed to accused Naresh, Uttam, Kisan and Moreshwar is that they had caught hold of Chakradhar. It is nowhere stated by P.W. 3 Girdhar that all the accused persons had come with any preparation or that they knew that accused Keshav had a knife.

8. In his evidence before the trial Court, P.W. 3 Girdhar has stated that accused No. 1 Rukhamabai dragged his brother Chakradhar out of the house in the lane upto the house of Niru Kangale. In the meantime, accused Keshav, Naresh, Moreshwar, Kisan and Uttam arrived there. Accused Keshav had a knife. Accused Naresh and Uttam caught hold of Chakradhar and accused Keshav dealt 7-8 blows of knife on his brother Chakradhar. Accused Naresh and Uttam were having blade of spear and stick respectively in their hands. He does not state that accused Naresh and Uttam had assaulted his brother Chakradhar. He has only stated that accused Keshav dealt blows of knife to deceased Chakradhar. Looking to the evidence of this witness, if accused Naresh and Uttam had caught hold of deceased Chakradhar and Keshav had given blows, the prosecution could have well argued that accused Naresh and Uttam could have been convicted along with accused Keshav for committing murder of Chakradhar with the common intention with the aid of Section 34 of Indian Penal Code. However, before us, there is no appeal preferred by the State against their acquittal for the charge of murder. Looked in this background and in the wake of the fact that there is no evidence to show that accused Kisan had assaulted deceased Chakradhar so also accused Rukhamabai, who was said only to have caught hold of deceased Chakradhar and nothing more, we wonder as to how the learned trial Court has convicted them for the offence punishable u/s 326 read with Section 149 of Indian Penal Code.

9. P.W. 4 Bandu stated in his evidence that there was quarrel going on in

between deceased Chakradhar and accused Keshav. Moreshwar and their parents. He saw accused Keshav, Uttam. Moreshwar, Naresh, Kisan and Rukhamabai assaulting deceased Chakradhar. Accused Keshav was armed with knife and was assaulting deceased Chakradhar by knife. Thereafter accused persons escaped from the spot. In cross-examination, he stated that his statement was recorded for the first time on 29/9/2006, i.e. after six days of the incident though Police party was moving in the village prior to the said date. He was in the courtyard of his house when he saw the incident and spot of incident was not visible from the door of his house. He then admitted that only after hearing commotion of family members of deceased Chakradhar, he came out of the house and then learnt that deceased Chakradhar had received bleeding injuries. He also admitted that it was true that as family members of deceased Chakradhar expressed suspicion on the accused persons, he was deposing against the accused persons. Thus, the evidence of this witness is of no avail to the prosecution.

10. P.W. 5 Jyoti is daughter of P.W. 4 Bandu. She also stated that she was standing in the courtyard of the house, i.e. house of P.W. 4 Bandu and as stated by P.W. 4 Bandu, nothing was visible from the courtyard. She deposed in her evidence that accused Kisan and Naresh arrived on the spot later on. Accused Uttam caught hold of collar of deceased Chakradhar. Accused Keshav dealt a blow of knife on deceased Chakradhar and accused Naresh gave a blow of blade of spear to deceased Chakradhar. She admitted that there was omission that accused Naresh attacked deceased Chakradhar by blade of spear. Thus, the evidence about blows of knife given by accused Keshav is consistent and does not suffer from any discrepancy. However, she does not attribute any role to accused Kisan, Naresh and Rukhamabai in the incident of assault. Her evidence only in relation to the assault by accused Keshav is believable. As earlier stated, Uttam is an absconding accused and insofar as accused Naresh is concerned, there is a material omission about attack by spear by him.

11. The next evidence is dying declaration (Exh. 68) recorded on 24/9/2006 at about 11.35 A.M. P.W. 7 Sunil Rawanhate has been examined to prove the dying declaration. In the dying declaration, deceased Chakradhar stated that he was going with Rukhamabai and after crossing some distance, Naresh caught hold of his collar at the neck, Kisan Meshram hit him with kicks while Keshav Meshram took out a dagger and inflicted blows on his abdomen. Thereafter Uttam delivered blow of knife on his thigh and then he ran away. It is thus clear that there is a discrepancy in relation to the person, who caught collar of deceased Chakradhar since in the evidence, other witnesses have stated that it was Uttam, who caught hold of collar of deceased Chakradhar and not Naresh. It is nowhere the evidence that accused Kisan had hit deceased Chakradhar with kicks.

12. Taking overall view of the above evidence led by the prosecution, we find that it was only accused Keshav, who had inflicted several blows of knife on the chest and abdomen of deceased Chakradhar. Considering the acts of accused

Rukhamabai, there is no evidence to show that there was any common object or intention on her part along with other accused persons to bring deceased Chakradhar out of house and then kill him. The only evidence available on record appears to be that she wanted to take deceased Chakradhar to temple because she had suspicion that he had played black magic on her and perhaps she wanted that he should take oath in the temple, if he had really not done black magic on her. There is no evidence of accused Rukhamabai assaulting him or instigating his children or husband to assault him. We further find that there is nothing on record to show that any of the accused persons, who came near the house of Niru Kangale, had shared common object to commit murder of Chakradhar. Since there were shouts and accused Rukhamabai was taking away deceased Chakradhar towards temple, her children and husband gathered near the house of Niru Kangale. The evidence is that accused Naresh and Uttam caught hold of deceased Chakradhar and accused Keshav dealt blows of knife on the person of deceased Chakradhar. But then the learned trial Court has recorded a finding that accused Naresh, Rukhamabai and all other accused persons including her husband Kisan were not guilty of offence of murder. There is no finding of the learned trial Court that they had shared common object for committing murder of Chakradhar. There is no appeal preferred before us by the State against their acquittal for the offence of murder. There is no evidence on record to show that accused Kisan or Rukhamabai had assaulted deceased Chakradhar by any weapon. The evidence available on record about infliction of injuries is only against accused No. 3 Keshav. We are, therefore, not at all convinced in the absence of any appeal against acquittal of these accused persons of the offence u/s 302 of Indian Penal Code that they could be convicted even for the offence u/s 326 read with Section 149 of Indian Penal Code. Accused Rukhamabai and Kisan have been convicted for causing grievous hurt when they did not at all play any role of assaulting deceased Chakradhar.

13. To conclude, according to us, the conviction of accused No. 1 Rukhamabai and accused No. 5 Kisan for the offence punishable u/s 326 read with Section 149 of Indian Penal Code is liable to be set aside. Insofar as accused No. 3 Keshav is concerned, we find that the evidence of the prosecution witnesses, discussed by us above, is consistent in that accused No. 3 Keshav had inflicted several blows of knife on the person of deceased Chakradhar. The dying declaration also shows that it was accused No. 3 Keshav, who had inflicted blows of knife on the abdomen of deceased Chakradhar. We have no doubt in our mind that it was accused No. 3 Keshav, who had inflicted several blows of knife on the person of deceased Chakradhar.

14. The next question is what offence is made out by the prosecution?

The submission that Chakradhar died after twelve days from the date of assault in the Hospital and, therefore, that should be taken as a circumstance to hold that there was no clear intention of accused No. 3 Keshav to commit his murder does not appeal to us. At the outset, we must make it clear that mere survival of

deceased Chakradhar for twelve days does not impress us to hold that accused No. 3 Keshav would be guilty of lesser offence than the one of murder. That is not necessarily so. On the contrary, we find that accused No. 3 Keshav inflicted the following injuries on the abdomen and chest of deceased Chakradhar:

On dissection, injury Nos. 1, 2, 4 to 6, 8, 10 and 12 of column No. 17 appear to be stab wound. The tract of these injuries are as follows:

Injury No. 1 : The stab is directed posteriorly, downward and laterally, starting from skin, traversing in chest, muscle, pleura, middle lobe and lower lobe of right lung.

Injury No. 2 : The stab is directed posteriorly, laterally and downward, starting from skin, traversing in chest, muscle, pleura and ending in left lower lobe.

Injury No. 4: The stab is directed downward, posteriorly and medially, starting from skin piercing the lower chest muscle found right traversing just inferior to costal cartilage piercing the diaphragm, enters the abdominal cavity and injuring jejunum.

Injury No. 5 : The stab is directed posteriorly and straight, starting from skin, traversing in abdominal muscle and cavity and injuring jejunum.

Injury No. 6 : The stab is directed posteriorly and medially, starting from skin, traversing in abdomen and cavity and injuring jejunum.

Injury No. 8. The stab is directed posteriorly and straight starting from skin traversing in abdominal wall and terminating in the cavity.

Injury No. 10: The stab is directed posteriorly downward and medially, starting from skin, traversing in abdominal wall and terminating in the cavity.

Injury No. 12 : The stab is directed anteriorly and straight, ending in posterior abdomen muscle.

All these injuries were ante mortem.

Internal Injuries:

1) Walls, ribs, cartilages - Evidence of extravasation of blood in anterior chest muscles present, stab wound present in right 5th inter-costal space corresponding with injury No. 1 of column No. 17 present. Stab wound present in left 4th inter-costal space corresponding with injury No. 2 of column No. 17 present. Therapeutic slab for drain present in respective space corresponding with injury No. 3 of column 17 present.

Pleura - Stab wound present on right side corresponding with injury No. 1, left side corresponding with injury No. 2 and on both sides corresponding with injury No. 3 of column No. 17.

Right lung - Partially collapsed with signs of consolidation with a stab present in

middle lobe and traversing it and terminating in lower lobe.

Left lung - Partially collapsed, with signs of consolidation with stab present in lower lobe traversing laterally and ending in parenchyma.

Abdomen - Wall and peritoneum - Evidence of extravasation of blood in muscles with therapeutic laprotomy wound and stab for drain present corresponding with injury Nos. 7 and 9 of column No. 17. Stab wounds present in abdomen and peritoneum corresponding with injury Nos. 4 to 6, 8 and 10 of column No. 17. Peritoneum shows signs of peritonitis.

Small intestine - Evidence of jejunal resection and anastomosis at one place with suturing of jejunum at 2 places with suturing of mesentery with evidence of haemorrhage in mesentery proper with signs of peritonitis with no leakage from anastomosis.

Right Kidney - Perinephric hematoma present.

Diaphragm - Evidence of penetrating injury to diaphragm corresponding with injury No. 4 of column No. 17 with stitch place in situ with repair.

15. Perusal of the above external and internal injuries shows that accused No. 3 Keshav stabbed all over chest and abdomen of deceased Chakradhar at twelve places. Inflicting injuries on chest and abdomen at twelve places is certainly an act, which can be presumed to have been within the knowledge of accused No. 3 Keshav that by such injuries, death of person would be caused. That being so, we are not prepared to accept the submission of the learned Counsel for the appellants that merely because Chakradhar died in the Hospital after twelve days, the benefit of bringing down the offence u/s 304 Part I or Part II of Indian Penal Code should be given to accused No. 3 Keshav. A look at the external and internal injuries shows that accused No. 3 Keshav had chosen chest and abdomen of deceased Chakradhar, which region contains vital organs and in fact, both the right and left lungs had collapsed so also small intestine, right kidney and diaphragm. We are, therefore, of the firm opinion that accused No. 3 Keshav has rightly been convicted for the offence of murder punishable u/s 302 of Indian Penal Code and no interference by this Court is required in his case. In the result, we make the following order:

ORDER

i) Criminal Appeal No. 138/2009 is partly allowed.

ii) The judgment and order dated 31/1/2009 passed by the 9th Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial No. 45/2007 convicting and sentencing original accused No. 3 Keshav S/o. Kisan Meshram for imprisonment for life for the offence punishable u/s 302 of Indian Penal Code is confirmed.

iii) The judgment and order dated 31/1/2009 passed by the 9th Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial No. 45/2007 convicting original accused No. 1 Rukhamabai W/o. Kisan Meshram and original accused No.

5 Kisan S/o. Kawadu Meshram for the offence punishable u/s 326 read with Section 149 of Indian Penal Code is set aside.

iv) The judgment and order dated 31/1/2009 passed by the 9th Ad hoc Additional Sessions Judge, Nagpur in Sessions Trial No. 45/2007 convicting original accused No. 1 Rukhamabai W/o. Kisan Meshram, original accused No. 3 Keshav S/o. Kisan Meshram and original accused No. 5 Kisan S/o. Kawadu Meshram for the offences punishable under Sections 143, 147 and 148 of Indian Penal Code is set aside.

v) The bail bonds of original accused No. 1 Rukhamabai W/o. Kisan Meshram and original accused No. 5 Kisan S/o. Kawadu Meshram shall stand cancelled.