
(2012) 10 BOM CK 0013
In the Bombay High Court
Case No : Criminal Appeal No. 845 of 2012

Sajjan Dhondiba Ghodake	Vs	APPELLANT
Sou. Shital Sajjan Ghodake and Another		RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) ALLMR(Cri) 76

Hon'ble Judges : Sadhana S. Jadhav, J;A.S. Oka, J

Bench : Division Bench

Advocate : Amit Sale, for the Appellant; G.N. Salunke and Mrs. M.M. Deshmukh, App, for the Respondent No. 2-State, for the Respondent

Final Decision : Dismissed

Judgement

Sadhana S. Jadhav, J.—This is an Appeal u/s 372 of the Code of Criminal Procedure, 1973. Being aggrieved by the judgment and order dated 17th December, 2011 passed by the 2nd Ad-hoc Addl. Sessions Judge, Solapur in Sessions Case No. 215 of 2008, thereby acquitting the respondent No. 1 from the charges levelled against her u/s 302 of IPC, the appellant has filed the present Appeal. We have called for the record and proceedings of Sessions Case No. 215 of 2008 and have perused the same with the assistance of the learned Counsel for the appellant. Such of the facts which are necessary for the decision of this Appeal are as follows :-

The respondent No. 1 is the wife of the present appellant. They were married on 9th May, 1999. They were residing at Pune. The respondent No. 1 had begotten a daughter, viz. Atuja. The couple was thereafter blessed with a male child viz. Vedant. The behavioural pattern of respondent No. 1 changed after the birth of Vedant. She had become short-tempered and adamant due to which a discordant note had struck between the couple. The respondent No. 1 had left her matrimonial house and had visited her maternal aunt, viz. Deepali Patil, who

happens to be a medical practitioner. Deepali informed the appellant that the respondent No. 1 needs mental treatment and, therefore, they had visited the hospital of Dr. Nagarkar at Kolhapur. Dr. Nagarkar had opined that she needs to be treated as an indoor patient and, therefore, the respondent No. 1 was treated as an indoor patient for about two months. Thereafter, she was under the treatment of Dr. Parkhi. However, it appeared from her behaviour that the treatment rendered to her had not materialised. The appellant had then sent her to reside with her parents. She had taken her son Vedant along with her as he was hardly 11/2 year old.

2. On 18th June 2006, a meeting was called at the house of the sister of the appellant at Pune. The appellant and the respondent No. 1 were present for that meeting. It was decided that the respondent No. 1 should reside in the village along with Vedant and hence they went to their village at Malegaon. On 19th June, 2006, the appellant left for Pune. On 20th June, 2006, he received a phone call from his sister who informed him that Vedant was no more. All the relatives, including the appellant, visited the Village Malegaon. They saw the dead body of Vedant. According to the appellant, the tongue of Vedant was entangled in the teeth and that there was a reddish contusion around the neck. He was informed by his mother that Vedant was sleeping with his mother. In the intervening night, Vedant had died. The mother of the appellant reported the matter to the police. Investigation was set in motion. The police had sent the viscera for chemical analysis. On 2nd February, 2007, the appellant was summoned by the police and was informed that the cause of death of Vedant is Asphyxia due to throttling. The appellant, therefore, lodged a report. The accused was granted pre-arrest bail. After completion of investigation, charge sheet was filed. The case was committed to the Court of Sessions and registered as Sessions Case No. 215 of 2008. The prosecution examined nine witnesses to bring home the guilt to the accused.

3. PW-5 Sojar Ghodke is the mother-in-law of the accused/respondent No. 1. According to her, on the day of incident, she was sleeping in the same room along with the accused and her son Vedant. On the next day in the morning, when they got up, she saw the accused sitting near her grandson. Upon enquiry, it was informed that she was thinking. She noticed that her son Vedant was dead and that his tongue was pressed between his teeth. She informed the police about the incident. She has proved her statement which is at Ex.50. It is elicited in the cross-examination that PW-5 had not disclosed to the police in her previous statement that in the morning the accused had informed that she was thinking. She had also not informed the police that she had seen the tongue of Vedant was pressed between his teeth.

4. In the present case, the evidence of the medical officer would assume importance as from the said evidence it could be determined whether Vedant had died of homicidal death. PW-7 Dr. Ganesh Gate has performed autopsy on the dead body of Vedant. He has admitted in the cross-examination that after

conducting the post-mortem, he had suspected that the death may have been caused due to poisoning and therefore, he had not given a definite opinion in respect of cause of death. However, in Exhibit 62 which is the C.A. Report, there is no evidence of poisoning. He has further admitted in the cross-examination that there were no signs of abrasion, bruises on the neck. There were no nail marks on the neck. The affected part was not cyanosed which is mostly found in cases of throttling. There was no symptom of hemorrhage to tongue. There was no hemorrhage spot noticed in the eyes. There was no fracture of hyoid which is indicative of throttling. There was no swelling around the neck. There were no symptoms of bruises on trachea and larynx. Material admission elicited in the cross-examination is that the doctor has admitted that if a child is vomiting and semisolid food enters in respiratory systems, then such symptoms which normally occur in cases of throttling may appear and therefore one may confuse the same with case of throttling in that circumstance. He has further admitted that he had not obtained Histo-pathological report. The reason assigned by him for arriving at a conclusion that it was a case of throttling. However, the child was found dead on the bed. He has further admitted that whatever symptoms which he had noticed could not be said to be determinative test or factors to opine about the cause of death on account of throttling.

5. The learned Counsel for the appellant has submitted that PW-2 Sajjan Ghodake i.e. the appellant herein has deposed before the Court that he had taken the accused along with his son Vedant and left her at her parental house on 19th June 2006 and that the accused was annoyed with him since he was returning back to Pune and therefore had started quarrelling with him. According to PW-2, Vedant was hale and hearty when the appellant parted with the company of the accused and Vedant. On 20th June, 2006, the appellant had received a telephonic message from his sister informing him that Vedant had died. PW-2 has further deposed that his mother had informed him that she was sleeping in the same room on the northern side along with the accused and her son. His mother had further informed him that in the morning when they woke up, the accused was sitting near her son, but she was in a frightened condition and then they had noticed that the child was no more.

6. The evidence of PW-2 is a hear-say evidence. He has deposed before the Court that there was a drastic change in the behavioural pattern of the accused. That she was admitted in the hospital as she was going through psychological disturbances. It is only the suspicion of PW-2 and PW-5 that the accused had eliminated her own child. However, the medical evidence does not in any manner support the said suspicion. Suspicion however strong cannot take the place of proof. It would be incumbent upon the prosecution firstly to establish that the child had died a homicidal death and secondly, that the accused is the perpetrator of the said crime. In the absence of any cogent and convincing evidence on record, it would be difficult to record conviction of the accused and, therefore, we hold that the Sessions Judge has taken the most possible and a judicial view on the basis of the evidence which was adduced by the prosecution.

7. In the above mentioned circumstances, the only inference that may be drawn is that the prosecution has failed to establish that Vedant had died a homicidal death and that the respondent No. 1 is the perpetrator of the crime. Therefore, the judgment and order of acquittal recorded by the Ad-hoc Addl. Sessions Judge, Solapur, in favour of the respondent No. 1 does not call for any interference. That was the possible view which could be taken in the present case. Hence, the acquittal of the respondent No. 1 needs to be upheld. For the aforementioned reasons, the Appeal filed by the present appellant assailing the acquittal of the respondent No. 1 deserves to be dismissed. Hence, the Appeal is dismissed.