

(2014) 10 BOM CK 0113
In the Bombay High Court
Case No : Criminal Appeal No. 88 of 2014

Sarphraz

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 4 BomCR(Cri) 635

Hon'ble Judges : P.V. Hardas, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : D.G. Khamkar, Advocate for the Appellant; S.D. Shinde, APP,
Advocate for the Respondent

Judgement

P.V. Hardas, J.—The Appellant who stands convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 500/- in default of which to undergo further R.I. for six months by the Additional Sessions Judge, Pune by Judgment dated 28th March 2008 in Sessions Case No.11 of 2007 by this Appeal questions the correctness of his conviction and sentence.

2. Though the Appellant was convicted by the Judgment of the trial Court dated 28th March 2008, the Appellant had chosen not to file any Appeal and ultimately an Appeal came to be filed in this Court in the year 2014. The Division Bench of this Court while allowing the Application for expeditious hearing of the Appeal by an order dated 17th April, 2014 directed that since there was a delay of nearly 6 years in filing the Appeal and since the Appellant had undergone practically 9 years of imprisonment, the Appeal be listed for Final hearing from 28th April, 2014 with liberty to the Appellant to urge for a fixed date of hearing. Consequent thereto, the Appeal though is of the year 2014 is being heard finally by us.

3. The facts as are necessary for the decision of this Appeal may briefly be stated thus :

PW 8 - PI Arvind Patil who on 25th November, 2005 was attached to police station, Pimpri, received a message from Police Head Constable Gaikwad who informed him about the body of a female lying in a pool of blood having sustained injuries near Sukhwani Park. On receiving the said message PW 8 - P.I. Arvind Patil immediately rushed to the scene of the incident and shifted the injured to YCM Hospital. A panchanama of the scene of the incident was accordingly drawn in presence of two panch witnesses at Exhibit 20. From the scene of the incident blood -stained leaves, a plastic bag containing books and notebooks, sample of ordinary mud and blood - stained mud as well as samples of blood stains which were found on adjacent wall were collected and seized. A sketch of the scene of the incident was also drawn at Exhibit 39. Meanwhile, PW 10 PSI Dattatraya Gadhave who was on patrolling duty on the day of the incident, and who also received the information and rushed to the scene of the incident had removed the injured to YMC hospital. PW 10 - PSI Dattatraya Gadhave informed PW 8 - P.I.Arvind Patil that the injured was declared dead on being examined by the Medical officer of YCM Hospital. PW 10 - Dattatraya Gadhave further informed PW 8 - P.I.Arvind Patil that PW 1 - Surjitsingh father of deceased Kamaljit Kaur had lodged his report at Exhibit 11 suspecting the involvement of the Appellant. On the basis of the report at Exhibit 11 an offence was registered and investigation was entrusted to PW 8 - P.I.Arvind Patil.

4. PW 10 - I.O. Dattatraya Gadhave searched for the Appellant and was informed by the brother of the Appellant that the Appellant had left for Ratnagiri by a bus. PW 10 - PSI Dattatraya Gadhave accordingly informed PW 8 - P.I.Arvind Patil who directed PSI Dattatraya Gadhave to proceed to Ratnagiri for apprehending the Appellant. Accordingly, PW 10 - PSI Dattatraya Gadhave along with police staff proceeded to Ratnagiri along with the brother of the Appellant. At about 6.30 a.m. they reached near Pali bus stand and noticed the Appellant sitting at the bus stand. The Appellant was identified by his brother and was then taken into custody. The clothes worn by the Appellant were found stained with blood. PW 10 PSI Gadhave accordingly submitted his report at Exhibit 42 and handed over the Appellant in the custody of police station, Pimpri.

5. The Appellant was accordingly arrested by PW 8 P.I. Arvind Patil. A separate set of clothes were brought by father of the Appellant and the clothes on the person of the Appellant were thereafter seized by giving him an opportunity to change his clothes. The clothes of the Appellant were seized under a seizure memo at Exhibit 40. The statement of the witnesses were recorded and on 28th November, 2005 during custodial interrogation, the Appellant expressed his willingness to point out the place where the knife, bicycle and a jerkin were concealed. A memorandum of the Appellant was accordingly recorded in presence of panchas at Exhibit 15. The Appellant then led the police and panch near Sukhwani park and thereafter to one isolated place where grass was over grown and produced a knife which was seized under a seizure panchanama. The knife was found to be blood -stained and was accordingly sealed after its seizure. The Appellant then led the police and the panchas to one place near Nasik Phata

and pointed out one bicycle parked in front of one shop. On the said bicycle a jerkin was found to have been kept on the carrier of the bicycle. The jerkin was found to be blood -stained and was accordingly seized under a panchanama at Exhibit 41. The clothes of deceased were seized under a seizure panchanama at Exhibit 21. The seized property thereafter was referred to the Chemical Analyser and further to the completion of the investigation, a charge sheet against the Appellant was filed.

6. The post mortem on the dead body of the deceased Kamaljit Kaur was performed by Dr.Sanjay Joshi PW 7 who noticed the following external injuries:

1. "On 26.11.2005, I was attached to YCM Hospital Pimpri as Post Mortem Medical Officer. On 25.11.2005 at about 11.15 p.m. one dead body of Kamaljit Kaur Surjit Singh Sound was brought to YCM Hospital by the police person namely Shri Malunkar for its post mortem. I performed the post mortem on the said dead body on 26.11.2005 during the period between 12.05 a.m. To 1.10 a.m.

2. On external examination, I noticed oozing of blood from mouth and nose. Blood dry leaves and clay attached at different parts of the skin all over the body. I noticed following external injuries:

(i) Incised wound below chin left side oblique 6 cm x 1/4th cm x superficial. It was linier.

(ii) Incised wound over neck anterior side 6 cm below chin and 7 cm above sternum. Horizontal 13 cm x 3 cm x 3 cm deep. Shape was linier.

(iii) Incised wound over neck. Anterior side. It is extension of above wound no.2. It was oblique. 4 cm x 1/2 x skin deep. Linier.

(iv) Incised wound left side of clavicle, middle 3rd Horizontal 3 cm x ? cm x superficial Linier.

(v) Incised wound over left shoulder. Anteriorly, Horizontal 1 cm x 1/4th cm x superficial Linier.

(vi) Incised wound over right side of clavicle. Middle 3rd Horizontal 3 cm x 1/4th cm x superficial. Linier.

(vii) Incised wound over neck Right side 5 cm below Pinna Oblique 3 cm x 1/4th cm x superficial Linier

(viii) Incised wound over neck Right side 4 cm below pinna. Horizontal. 9 cm x 1 cm x skin deep. Linier

(ix) Incised wound over neck. 2 cm below right mastoid. Horizontal. 14 cm x 1 cm x 2 cm. Skin and muscle deep. Linier

(x) Incised wound neck. 9 cm below right pinna. Horizontal. 8cm x 1 cm x 2 cm. Skin muscle deep. Linier.

(xi) Incised wound on back. Interscapular region. 17 cm below. Prominence of 7th cervical spine over D -10 in centre. 3 cm x 1 cm x 3 cm. Spine deep. Elliptical.

(xii) Incised wound neck. 5 cm below left pinna of ear. 4 cm x 1/4th cm x superficial. Linier.

(xiii) Incised wound neck. 5 cm below left mastoid tip extending posteriorly, Horizontal, 14 cm x 1 cm x 2 cm muscle skin deep. Linier."

He noticed the following internal injuries:

(i) "Both side sternocleidomastoid muscle cut. Right side complete and left side partial.

(ii) Right side carotid artery transected. Retracted.

(iii) Right side internal and external jugular veins cut.

(iv) Plastysma all anterior small neck muscles cut.

(v) Trachea with part of larynx cut attached only posterior wall of trachea."

He opined that all the injuries were caused by a sharp object. He however opined that the deceased had died due to haemorrhagic shock due to multiple incised wounds over neck with right side carotid artery, right side external and internal jugular veins trachea and larynx cut. He however, opined that all the injuries were ante - mortem. The post -mortem report is at Exhibit 31.

7. The Appellant who was found to have sustained injuries was examined by PW 5 Dr.A.Patil who had noticed the following injuries:

(1) "I noticed linear abrasion over right hand thumb distal phalanx 2 cm in length and vertical.

(2) I noticed that linear abrasion over right hand index finger distal phalanx oblique 2 cm in length thick dark jelly like and dark brown collection is present."

He accordingly, issued a certificate at Exhibit 28. He has further opined that the injuries sustained by the appellant were possible to have been caused in assaulting with knife Article 19.

8. On committal of the case to the Court of Sessions, the Trial Court vide Exhibit 3 framed charge against the Appellant for the offence punishable under section 302 of the Indian Penal Code. The Appellant denied his guilt and claimed to be tried. The prosecution in support of its case examined 10 witnesses. The defence of the Appellant was of denial and of false implication. The trial Court upon appreciation of the evidence convicted and sentenced the Appellant as aforestated.

9. We have heard Mr.D.G.Khamkar learned counsel for the Appellant and the learned APP. In order to effectively deal with the submissions which have been

advanced before us, it would be useful to refer to the evidence of the prosecution witnesses.

10. The case against the Appellant rests on circumstantial evidence and the prosecution has alleged the following circumstances:

- (i) Discovery of a knife, bicycle and a jerkin at the behest of the Appellant under section 27 of the Indian Evidence Act;
- (ii) As per the report of the Chemical Analyser, the knife and jerkin were found stained with blood of "A" group;
- (iii) The injuries sustained by the Appellant at about the time when the incident had occurred and failure of the Appellant to offer any explanation regarding the injuries ;
- (iv) The clothes of the Appellant which were seized under Exhibit 40 were stained with blood group of "A" group;
- (v) The motive for the Appellant to have committed the crime as the Appellant was involved in a one -sided love affair with the deceased Kamaljit Kaur and had expressed his desire to marry her;

In cases resting on circumstantial evidence, the prosecution must prove each and every circumstances on which it proposes to rely. The circumstances so proved by the prosecution should be of an incriminating nature and they should have a definite tendency of implicating the Accused. The circumstances so proved should form a complete chain which should exclude every hypothesis of the innocence of the Accused and should unerringly point to the guilt of the Accused. In other words, the circumstances should be capable of only hypothesis that is that the Accused and the Accused alone has committed the crime.

11. The prosecution has examined PW 1 - Surjitsingh the father of Kamaljit. According to PW 1 - Surjitsingh, his daughter Kamaljit Kaur was studying in 12th Standard and was taking her education in Arya Samaj College at Pimpri. Kamaljit Kaur was also attending her classes which were held at Ajmera Society, Pimpri between 6.30 p.m. to 7.30 p.m. According to PW 1 - Surjitsingh, he used to reach Kamaljit Kaur to the college and also used to bring her back on his motorcycle. In the evening when it was not possible for PW 1 - Surjitsingh to go to the college for bringing Kamaljit Kaur home, Kamaljit Kaur would return home by bus. Kamaljit Kaur however, used to walk to her classes. On the day of the incident PW 1 - Surjit Singh dropped Kamaljit Kaur at her college on his motorcycle. Since he was busy in the evening, he could not go to the college for bringing her back. Kamaljit Kaur therefore, returned home by a bus. Kamaljit Kaur thereafter left her house at 6.15 p.m. for attending her classes. When PW 1 - Surjitsingh returned home at 7.30 p.m. he was informed that Kamaljit Kaur had not returned from the classes. Thereafter he and his daughter had gone for some shopping in Ajmera colony and returned home at 8 p.m. His younger daughter Talajit informed him that information was received that Kamajit Kaur had met

with an accident near Indira Gandhi garden. PW 1 - Surjitsingh therefore, immediately reached the scene of the incident and noticed that people had assembled there. He also noticed police personnel. He found his daughter lying in a pool of blood with injuries on the neck which were caused by a sharp weapon. He thereafter lodged his report at Exhibit 11.

12. According to PW 1 - Surjitsingh, the Appellant used to reside in a building about four years prior to the incident. The Appellant had attempted to commit suicide by consuming poison as Kamaljit Kaur had refused to marry him. About a year prior to the incident, the deceased Kamaljit Kaur had gone to Mumbai at the house of her sister. The Appellant had followed Kamaljit Kaur to Bhayander where the house of the sister of Kamaljit Kaur was situated. The Appellant was standing on the road and was making gestures from that place for calling Kamaljit Kaur. The sister of Kamaljit Kaur therefore, had telephoned PW 1 - Surjitsingh and appraised him about the incident, who went to Mumbai and had brought back his daughter.

13. In the cross -examination, he has admitted that he had not visited the house of the Appellant but, sometimes his daughter used to go to the house of the Appellant. An omission has been elicited that he had not stated in his report about the Appellant following Kamaljit Kaur to Mumbai. An omission is elicited that he had not referred the incident of the Appellant attempting to commit suicide. He has further agreed as correct that Kamaljit Kaur had not informed him that the Accused was following her and was causing trouble to her.

14. The prosecution has examined PW 2 - Palvinder Kaur, sister of Kamaljit Kaur, who deposed about the incident when the Appellant had followed Kamaljit Kaur to her house at Bhayander. Though Palvinder Kaur has been cross -examined apart from a bald suggestion, which was denied by PW 2 - Palvinder Kaur there is no effective cross -examination about the incident at Bhayander. The prosecution has also examined PW 3 - TaljitKaur the sister of the deceased Kamaljit Kaur who also deposes about the Appellant attempting to commit suicide for refusal of Kamaljit Kaur to marry the Appellant. PW 3 - TaljitKaur further deposes that about 7 to 8 months prior to the incident, deceased Kamaljit Kaur had disclosed to her that the Appellant was troubling her and pressurizing her to marry him. Though PW 3 - TaljitKaur has been cross examined, nothing of substance has been elicited in her cross - examination which would in any manner impel us to disregard the testimony of this witness.

The prosecution has examined PW 4 - Moiz Bootwala panch to the discovery memorandum about the disclosure of the Appellant regarding his willingness to point out the place where the knife, bicycle and a jerkin had been concealed. He has deposed about the Appellant leading them to that place and discovering the articles and the articles being seized and sealed. It is corroborated by the recitals in the panchanama at Exhibit 16.

15. The prosecution has examined PW 5 - Dr.Arvind Patil who had examined the

Appellant. In his cross -examination, he has admitted that if a person assaults by holding the grip of the knife Article 19 the injuries as were found on the Appellant were not possible. He further volunteered that if a thumb and index finger of the assailant is moved from of the grip of Article No.19, the injuries which were found on the person of the Accused are quite probable.

16. Mr.Khamkar, learned counsel for the Appellant has admitted before us that the knife, bicycle and the jerkin were recovered from a open place and therefore, the seizure of those articles cannot be said to be within the meaning of section 27 of the Indian Evidence Act. The discovery of the Articles not only encompasses the place but, the knowledge of the Accused regarding the articles to be found at that particular place. Though the knife was found at a public place, yet the knife was not visible to the passerby as it was concealed in the overgrown grass. The Accused had the exclusive knowledge about the place where the knife had been concealed. Thus, in our opinion, the discovery of the knife was well within section 27 of the Indian Evidence Act. Similarly though the jerkin was found on the bicycle which had been parked in front of a shop apart from the Appellant, no other person had any knowledge about the place where the bicycle was parked or of a jerkin being kept on the bicycle. The knife as well as the jerkin were found stained with blood of "A" group as per Exhibit 26. The blood group of the Appellant was determined as per Exhibit 26 as "that of B" group. Thus the blood which was found on the knife and on the jerkin was not on account of the injuries sustained by the Appellant. The clothes of deceased were stained with blood of "A" group and therefore, the blood group of the deceased was determined as "A" group.

17. The Appellant had sustained injuries which have been described by PW 5 - Dr.Arvind Patil. The Appellant has not offered any explanation as to how he had sustained injuries. According to PW 5 - Dr.Arvind Patil the Appellant could have sustained injuries while inflicting injuries to the deceased. The deceased had sustained about 13 stab injuries and therefore, opinion of the Medical Officer that the Appellant had sustained injuries while assaulting someone is corroborative of the fact that the Appellant had assaulted the deceased. The Appellant as pointed out by us above, has not explained as to how he had sustained injuries.

18. It is true that the seizure memo of the clothes of the Appellant at Exhibit 40 does not indicate that the clothes on their seizure were sealed. In the absence of any evidence regarding sealing of the clothes, no reliance can be placed on the report of the Chemical Analyser that clothes of the Appellant were stained with blood of "A" group. That circumstance therefore, will have to be left out of consideration.

19. The other circumstance against the Appellant is the circumstance of motive. The witnesses examined by the prosecution have unerringly deposed about the Appellant expressing his love and his desire to marry the deceased Kamaljit Kaur. It is obvious to us that it was a one -sided love affair without there being any response from Kamaljit Kaur to the overtures of the Appellant. In fact prior to the

incident, the Appellant had attempted to commit suicide on Kamaljit Kaur refusing to marry him. The Appellant had even followed Kamaljit Kaur to Mumbai where Kamaljit Kaur had gone for visiting her sister. PW 1 - Surjitsingh had to bring back Kamaljit Kaur as the Appellant was found standing in front of the building making gestures. The evidence of PW 3 - TaljitKaur indicates that the deceased Kamaljit Kaur had informed PW 3 - TaljitKaur that the Appellant was harassing her and pressurising her to marry him. This incident had occurred about 7 to 8 months prior to the death of Kamaljit Kaur. It is therefore, apparent that the deceased Kamaljit Kaur had declined to marry the Appellant and the Appellant in order to teach a lesson to Kamaljit Kaur had stabbed the deceased Kamaljit Kaur. The prosecution has examined PW 6 - Popat Rajpure owner of the general store from whom the Appellant had purchased the knife. PW 6 - Popat Rajpure has identified the Appellant as the same person who had purchased the knife. Thus, purchase of the knife prior to the incident would certainly indicate that the deceased Kamaljit Kaur was not assaulted on the spur of the moment. Even otherwise the assault on the deceased Kamaljit Kaur was a brutal assault as nearly as 13 stab injuries had been inflicted on deceased Kamaljit Kaur who died instantaneously and at least was found dead when examined by the police.

20. In our opinion, therefore the prosecution has completed the chain of circumstances against the Appellant and the chain of circumstances is so complete as to exclude every hypothesis of the innocence of the Accused. Apart from the Accused, no one else had any motive for committing the murder of the deceased Kamaljit Kaur. Kamaljit Kaur was not ravished as is indicated in the Chemical Analyst Report and consequently it was the Appellant and the Appellant alone who had committed the murder of the deceased Kamaljit Kaur. In our opinion therefore, the prosecution has proved the offence beyond reasonable doubt.

21. The Appeal therefore, filed by the Appellant being sans merit is dismissed confirming his conviction and sentence.