

(2016) 02 BOM CK 0132
In the Bombay High Court
Case No : Criminal Appeal No. 576 of 2014

Shivaji Tippianna Kamble

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 84

Citation : (2016) 3 AIRBomRCri 222 : (2016) ALLMRCri 1256 : (2016) 3 BomCR(Cri) 468

Hon'ble Judges : V.K. Tahilramani, Actg. C.J. and Dr. Shalini Phansalkar Joshi, J.

Bench : Division Bench

Advocate : Rohini M. Dandekar, Advocate, for the Appellant; A.S. Shitole, 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 13.01.2014 passed by the learned Additional Sessions Judge, Jaysingpur in Sessions Case No. 5 of 2012. 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 one year.

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

(a) The appellant along with wife Anita (deceased) and sons Pramod and Vinod (PW 5) were residing together at Village Arjunwad, District Kolhapur. The appellant used to always quarrel with his wife Anita. The appellant also used to assault his wife Anita, however, she used to keep quiet and not react.

(b) The incident occurred on 14.12.2011. At about 12.45 p.m., PW 1 Sachin whose house was situated near the house of the appellant heard the noise of one

lady from the house of the appellant. Sachin was the Police Patil of the village. At that time, PW 4 Reshma and one Deepali were present in front of house of PW 1 Sachin. Deepali and Reshma were talking to each other. Sachin asked those ladies to see what had happened. The ladies rushed towards the house of the appellant. They peeped into the house of the appellant through the window. Thereafter, Reshma and Deepali started shouting. Sachin also went and peeped through the window of the house of the appellant. He noticed that part of the hand of Anita was separated from her body and Anita was lying in a pool of blood. Sachin noticed that the door of the house of the appellant was closed. The appellant then opened the door and came outside the house and ran away. Sachin entered the house of the appellant and noticed injuries on the body of Anita. He also noticed that Anita had expired. PW 1 Sachin telephoned the police. Sachin then lodged the F.I.R. Exh.23. Thereafter, investigation commenced.

(c) The dead body of Anita was sent for post-mortem. 10 injuries were found on her person. Out of 10 injuries, four incised wounds were found on the head, one incised wound was found on the neck and one incised wound was found on the cheek. In addition, it was seen that the left forearm was amputated and left ear was cut. Some other injuries were also found on the dead body of Anita.

(d) The appellant was arrested on 17.12.2011. At the time of arrest, the banian and the pant of the appellant was found to be stained with blood, hence, these clothes came to be seized under panchnama Exh. 27. 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 Section 302 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 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 has caused the death of his wife Anita by assaulting her with a sickle.

5. This case is based totally on circumstantial evidence, however, in our opinion, the circumstantial evidence is such that it establishes the guilt of the appellant. The prosecution has mainly relied on the evidence of PW 1 Sachin and PW 4 Reshma to prove that the appellant committed the murder of his wife Anita. PW 1 Sachin was the Police Patil of the village at the relevant time. Sachin has stated that he was residing at Baudh Vasahat in Village Arjunwad. The appellant was residing near his house. On the day of the incident, the appellant, his wife Anita

and their two sons Pramod and Vinod were residing jointly. Sachin has further stated that on 14.12.2011, he heard the noise of one lady from the house of the appellant. One Deepali and Reshma (PW 4) were present in front of the house of Sachin. Those ladies were talking to each other. Sachin asked those ladies to see what had happened in the house of the appellant. The ladies then rushed to the house of the appellant and they peeped inside through the window of the house of the appellant. Both the ladies then started shouting, hence, Sachin went to the house of the appellant and peeped through the window. Sachin saw that the hand of Anita was separated from her body and Anita was lying in a pool of blood. Sachin noticed the door of the house of the appellant was closed. The appellant then opened the door and came outside. The appellant then ran away. Sachin then entered the house of the appellant and noticed assault marks on chest, hands, neck etc. of Anita. Sachin noticed that Anita had expired. Sachin then lodged FIR.

6. PW 4 Reshma was also residing in Village Arjunwad. She has stated that she knew the appellant as he resided behind her house. The appellant, his wife Anita and two sons were residing jointly. Reshma has stated that the appellant was her relative. Reshma has stated that there used to be quarrels between the appellant and his wife, at that time, the appellant used to abuse and assault his wife. Reshma has further stated that on 14.12.2011 at noon, she and her neighbour Deepali were talking near her house. The house of Police Patil is situated in front of Reshma's house. Reshma heard noise. Then Police Patil asked Reshma and her friend to see what had happened. Reshma and her friend then rushed towards the house of the appellant. On looking through the window of the house of the appellant, Reshma saw that Anita had expired. They also noticed that the left hand of Anita was cut off and there were marks of injury on other parts of the body of Anita. Nothing has been elicited in cross-examination of PW 1 Sachin or PW 4 Reshma which would cause us to disbelieve their evidence.

7. PW 5 Vinod is the son of the appellant and deceased Anita. He has stated that his father (appellant) was adamant person and he was very arrogant. The appellant used to always quarrel with his mother Anita. The appellant used to assault his wife Anita, however, Anita used to keep mum and not react. Vinod has stated that on the day of the incident, he had gone for work. At about 12 noon, he received a phone call from Police Patil Sachin Kamble (PW 1) that his mother was not feeling well and hence, he should come immediately. Vinod then rushed to his house. As soon as he entered the house, he noticed that the left hand of his mother was cut off. He also noticed that his mother was lying in a pool of blood and she had expired. On seeing this, Vinod became unconscious. He was then taken to the hospital where he regained consciousness.

8. Though, there is no eye witness in the present case, the sequence of events as narrated by PW 1 Sachin and PW 4 Reshma shows that only the appellant and the deceased were in the house. The door of the house was closed. Anita was heard shouting and on looking inside the house, the hand of Anita was found cut

off and Anita was lying dead in a pool of blood. The appellant then opened the door and ran away. This sequence of events establishes that it is the appellant and none else who committed the murder of Anita by assaulting her with a sickle. At this stage, it may be stated that a sickle was found at the spot. This sickle was sent for chemical analysis and the C.A. report Exh. 44/C shows that the sickle was stained with blood of "AB" group. The C.A. report Exh. 45/C shows that the blood group of Anita was "AB". Thus, finding of blood of AB group on the sickle which was found in the house of the appellant also further corroborates the prosecution case.

9. The appellant was arrested on 17.12.2011. At the time of arrest, the banian and the pant which were on the person of the appellant were found stained with blood. These clothes came to be seized. This has been deposed by panch witness PW 3 Bapu. These clothes were sent to C.A. As per C.A. report Exh. 44/C, the pant and the banian of the appellant were found stained with blood of AB group. We have stated earlier that the blood group of the deceased as per C.A. report Exh. 45/C was found to be of AB group. Thus, finding of blood of AB group on the clothes of the appellant is another circumstance which strongly corroborates the prosecution case.

10. The prosecution case is further supported by the medical evidence. PW 8 Dr. Madhuri Jadhav conducted the post mortem on the dead body of Anita. On external examination, she found 10 injuries which are as under:-

- (1) Two incised wounds over junction of left occipito frontal region junction. (a) 3 cm x 1 cm (b) 4 cm x 1 cm skull bone seen;
- (2) Incised wound over forehead above left eyebrow 4 cm x 1 cm bone exposed;
- (3) Incised wound over left temporal region 6 cm x 3 cm skull bone outer table;
- (4) Left ear cut near pinna;
- (5) Lacerated wound over face from nose to left side of cheek extending to neck 9" x 4" x 5". Muscles and deep structures cut and exposed about 1 1/2" deep;
- (6) Incised wound over nape of neck 5" x 1 1/2" about 3" deep, Trachea and great vessels out through;
- (7) Incised wound over right side of cheek 3" x 1/2" muscle deep;
- (8) Left forearm amputated at U 2/3rd and L 1/3rd. Amputated hand shows incised wound over dorsum cutting metacarpals;
- (9) 1" x 1/2" CLW over right forearm muscles cut;
- (10) CLW over right forearm 2 1/2" x 3" muscle deep.

According to Dr. Jadhav, the injuries were possible due to sickle.

11. Ms. Dandekar, learned Advocate for the appellant submitted that the

appellant was suffering from mental illness at the time of the incident and hence, he should be given benefit of Section 84 of IPC. To support her contention, she placed reliance on the neighbour of the appellant who stated that the appellant was taking treatment from one psychiatric. However, it is noticed that PW 5 Vinod who is the son of the appellant has not stated that his father was suffering from any mental illness and in fact, he has denied that his father was taking treatment of any Doctor. It is not every type of mental illness which would give benefit to the accused. A person may be of unsound mind but he would get benefit of Section 84 only if at the time of the incident, by reason of unsoundness of mind, the accused was incapable of knowing the nature of the act or he is doing what is either wrong or contrary to law. There is nothing to show that at the time of the incident, the appellant by reason of unsoundness of mind was incapable of knowing the nature of the act or he is doing what is either wrong or contrary to law. Moreover, the appellant has not even examined any defence witness to support his claim that he was suffering from unsoundness of mind at the time of the incident. The appellant's own son denied that the appellant was taking any treatment. The appellant's own son does not state that the appellant was suffering from any unsoundness of mind and in fact, the son of the appellant has categorically denied that the appellant was taking any treatment from any Doctor. It may also be stated that when people gathered at the house of the appellant, he opened the door and ran away. This also shows that the appellant knew the nature of the act he had committed and that what he was doing was wrong, otherwise, there was no reason for the appellant to run away. In this view of the matter, we are not inclined to accept the defence raised by the learned Advocate for the appellant.

12. On going through the evidence on record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed the murder of his wife Anita, hence, we find no merit in the appeal and the appeal is dismissed.

13. Office to communicate this order to the appellant who is in jail.

14. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms. Rohini Dandekar at Rs. 5000/-.