

(1999) 03 BOM CK 0017

In the Bombay High Court

Case No : Criminal appeal No. 174 of 1995

Shri Ravi Somnath Chavan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 165, 235, 313

Evidence Act, 1872 — Section 3, 45, 59, 61, 8

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (1999) 5 BomCR 554 : (1999) CriLJ 4234

Hon'ble Judges : Vishnu Sahai, J; Smt. Ranjana Desai, J

Bench : Division Bench

Advocate : Mrs. Anita A. Agarwal, for the Appellant; S.R. Borulkar, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Through this appeal the appellant challenges the judgment and order dated 17th January, 1994, passed by the Additional Sessions Judge, Greater Bombay, in Sessions Case No. 734 of 1991, convicting and sentencing him to undergo imprisonment for life and to pay a fine of Rs. 100/- for the offence u/s 302 I.P.C.

2. In short the prosecution case runs as under :--

(a) The appellant resided in the hut next to that of the informant Smt. Surtabai Rathod (P.W. 1) in Indira Nagar Zhopadpatti, Old Nagnadas Cross Road, Andheri (East) Bombay-69.

(b) On 27-6-1991, at about 9.30 p.m. he came to the hut of the informant to call her younger son Raju for playing cards. At that time the informant alongwith her daughter Anusayabai had gone to the market to purchase vegetables and her younger daughter Tarabai (P.W. 2) was present in the hut. Tarabai told the appellant that Raju would not accompany him to play cards. The appellant thereupon pulled her hair. In the meantime the informant and Anusayabai returned. Anusayabai asked the appellant as to why he was assaulting Tarabai.

This infuriated the appellant, who went to his hut; came back with a knife; and with the same stabbed Anusayabai on the left side of the chest. As a result of the knife blow inflicted by the appellant on Anusayabai, blood started oozing out and some of it fell on the ground. After assaulting Anusayabai the appellant ran away.

3. Thereafter the informant Surtabai took Anusayabai to Andheri Police Station in a rickshaw and lodged a F.I.R. the same day at 10 p.m. and on its basis a case u/s 307 I.P.C. was registered against the appellant. After the F.I.R. had been lodged Surtabai took Anusayabai to Cooper Hospital where the Doctor pronounced her dead.

4. The investigation was conducted in the usual manner by P.I. Shantaram Ambre (P.W. 4). After recording the F.I.R. P.I. Ambre alongwith P.S.I. Gaikar (not examined) rushed to Cooper Hospital and did the panchnama of the corpse of the deceased. At about midnight, the same night he alongwith P.S.I. Gaikar rushed to the place of the incident, prepared spot panchnama and collected blood from the place of the incident.

On 28th June, 1991, between 11.45 a.m. and 12.05 noon on the pointing out of appellant's father Somnath Anandrao Chavan, a blood stained knife which was concealed amongst some clothes in a plastic bag was recovered from the hut of the appellant. On 28-6-91 at about 9 p.m. the appellant was arrested and the clothes which he was putting on were taken into possession by the police under a panchnama.

During investigation P.I. Ambre recorded statements of Surtabai, Tarabai and some others. On 14th August, 1991, P.I. Ambre submitted the charge sheet.

5. Going backwards the autopsy on the corpse of the deceased Anusayabai was conducted on 28th June, 1991 between 12.45 p.m. and 1.45 p.m. by Dr. Rajaram Marathe (P.W. 5), who found on it a solitary antemortem injury namely incised wound 5 c.m. x 2.5 c.m. into cavity deep on the left nipple. On internal examination he found the pericardium and the left ventricle pierced. In his opinion the deceased died on account of shock and haemorrhage due to rupture of heart.

In his statement in the trial Court Dr. Marathe stated that the antemortem injury suffered by the deceased was necessarily fatal and sufficient in the ordinary course of nature to cause death.

6. The case was committed to the Court of Sessions in the usual manner where the appellant was charged for an offence punishable u/s 302 I.P.C. to which he pleaded not guilty and claimed to be tried. His defence was that of denial.

During trial in all the prosecution examined five witnesses. Two of them, P.W. 1 Surtabai and P.W. 2 Tarabai were examined as eye-witnesses.

In defence no witness was examined.

The learned trial Judge believed the evidence adduced by the prosecution and

convicted and sentenced the appellant in the manner stated above and hence this appeal.

7. We have heard Mrs. Anita Agarwal for the appellant and Mr. S.R. Borulkar learned A.P.P. for the State. We have also perused the deposition of the prosecution witnesses; the material exhibits rendered and proved by the prosecution; the statement of the appellant recorded u/s 313 Cr.P.C.; and the impugned judgment. We regret that we do not find any substance in this appeal.

8. The conviction of the appellant is founded on the testimony of two witnesses namely Surtabai (P.W. 1) and Tarabai (P.W. 2). From their statements it emerges that on 27-6-1991, at about 9.30 p.m. when Surtabai alongwith the deceased Anusayabai had gone to market to purchase the vegetables, the appellant came to her hut. At that time her daughter Tarabai was inside it. The appellant wanted to take Surtabai's son Raju for playing cards. Tarabai communicated to the appellant that Raju would not go with him for playing cards. This infuriated the appellant who caught hold of Tarabai's hair. At that very moment Surtabai and Anusayabai entered inside the hut. Anusayabai reprimanded the appellant for catching hold of Tarabai's hair. On this the appellant got infuriated; went to his hut; returned therefrom with a knife in his hand; and inflicted a solitary blow with the same on the left side of the chest of Anusayabai resulting in blood oozing out from the said part of her body and some of it falling on the ground.

9. The said account furnished by Surtabai and Tarabai is corroborated by medical evidence inasmuch as Dr. Marathe (P.W. 5) the autopsy surgeon, found a solitary incised wound 5 c.m. x 2.5 c.m, into cavity deep on the left side of the chest Anusayabai which according to his statement in the trial Court could be caused by Article No. 2 (the knife alleged to have been used in the incident).

Apart from medical evidence assurance is lent to the ocular account by, the circumstance that the F.I.R. of the incident was lodged within half an hour of the incident taking place. As mentioned earlier the incident took place at about 9.30 p.m. on 27th June, 1991 and the F.I.R. was lodged the same day at 10 p.m. at Andheri Police Station. In the said F.I.R. the appellant is named and the broad features of the prosecution case have been mentioned.

Criminal Courts attach great importance to the lodging of a prompt F.I.R. because the same substantially eliminates the possibility of embellishment and concoction in the prosecution case and also that of false implication of the accused named therein.

In addition to the medical evidence and prompt F.I.R. assurance is lent to the prosecution case by the circumstance that the knife recovered from the house of the appellant, on the pointing out of the appellant's father, was sent to the Chemical Analyst, who found on it human blood. The Supreme Court in the decision reported in Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, , in para 10 has held that even if the blood group is not determined, the presence of human blood on a recovered article would constitute incriminating evidence.

10. For the said reasons the evidence of both the eye witnesses inspires implicit confidence and has been rightly relied upon by the learned trial Judge.

We may mention that the appellant's defence of alibi does not inspire any confidence. He has examined no witnesses to substantiate the fact that on the date and time of the incident he was at Bhiwandi, his mere statement to that effect, in our view, is not sufficient. Had he been at Bhiwandi, both the eye witnesses who had no animus towards him would not have falsely deposed that he was the assailant of the deceased.

11. For the said reasons, in our view, the learned trial Judge acted correctly in finding the involvement of the appellant established in the incident.

12. This leaves us with only one question namely that of the offence. Mrs. Anita A. Agarwal, the learned Counsel for the appellant strenuously urged that since there was no enmity between the deceased Anusayabai and the appellant and in the heat of the moment a solitary knife blow was inflicted by the appellant on Anusayabai, who was not the original target of assault but an intervener, the offence would fall within the ambit of section 304 Part 11 I.P.C. On the converse Mr. S.R. Borulkar, learned Additional Public Prosecutor strenuously urged that the offence would fall squarely within the four corners of Clauses Firstly and Thirdly of section 300 I.P.C. the breach of which is punishable u/s 302 I.P.C.

Mr. Borulkar urged that it may have been a case of sudden quarrel and one wherein the deceased was an intervener, but that would make no difference because the appellant went to his hut, got a knife therefrom and with the same inflicted a solitary blow on the left side of the chest of the deceased which was 5 c.m. x 2.5 c.m. x cavity deep and involved substantial internal damage in as much as pericardium and the left ventricle were ruptured and resulted in almost instantaneous death of the deceased. In Mr. Borulkar's contention since both the eye-witnesses have categorically stated that the appellant inflicted the blow on the left side of the chest of Anusayabai he had requisite intention to cause her death in terms of Clause Firstly of section 300 I.P.C. In Mr. Borulkar's contention Clause Thirdly of section 300 I.P.C. would also be attracted because the appellant intended inflicting the injury which he inflicted and the injury which he intentionally inflicted in the opinion of the autopsy surgeon Dr. Marathe, was sufficient in the ordinary course of nature to cause death.

13. The Supreme Court in the oft,- referred decision of Virsa Singh Vs. The State of Punjab, has held that for the application of Clause Thirdly of section 300 I.P.C. it is essential that:--- (a) there should be intention to inflict the external injury inflicted; and (b) the injury inflicted should be sufficient in ordinary course of nature to cause death. In Mr. Borulkar's contention since both the eye-witnesses have stated that the appellant intentionally inflicted a knife blow on the left side of the chest it is established that he had the intension to inflict the external injury on the said part and since the autopsy surgeon categorically stated that the said injury was sufficient in ordinary course of nature to cause death Clause

Thirdly would be squarely applicable.

14. Mrs. Agarwal, learned Counsel for the appellant strenuously urged on the basis of the decision of the Supreme Court reported in AIR 1987 S.C. 284 Jawaharlal & another v. State of Punjab, that the offence would fall within the four corners of section 304 Part II of I.P.C. We regret that we cannot accede to her submission. A perusal of the said decision would show that it was arrived at on the peculiar facts involved in it, which also included the age of the accused which was 19 years. In the said decision the appellant was armed with a knife and in the heat of the moment inflicted a solitary blow with the same on the chest of the deceased. Here the appellant went to his hut and brought a knife and then inflicted a blow on her chest which was serious in nature, resulted in enormous internal damage and in almost instantaneous death of the deceased.

15. For the said reasons, in our view, the offence made out against the appellant would fall squarely within the four corners of section 302 I.P.C. and the learned trial Judge acted correctly in convicting the appellant for the said offence.

16. We would be failing in our fairness, if we do not record some contentions canvassed by Mrs. Agarwal. She urged that the ocular account which is the foundation of conviction of the appellant comprises of the testimony of two extremely interested witnesses namely Surtabai and Tarabai, who are mother and daughter sic sister of the deceased respectively, and hence is unworthy of acceptance. Way back as in 1965 in the case reported in Masalti Vs. State of U.P., , the Supreme Court held that the mere circumstances that witnesses are interested would only make the Court evaluate their evidence with caution and not mechanically reject it.

We have exercised the necessary caution in evaluating the testimony of these two witnesses and we find that it is implicitly truthful.

Mrs. Agarwal also urged that inasmuch as the Chemical Analyst has not reported about the group of the blood found on the knife, the recovery of knife from the hut of the appellant would cease to be an incriminating circumstance. We regret that in view of the decision of the Supreme Court reported in Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, the said argument is devoid of merit.

17. In the result, we find no merit in this appeal and dismiss the same. Appellant is in jail and shall undergo the sentence awarded to him.

18. Appeal dismissed.