
(1999) 06 BOM CK 0071

In the Bombay High Court

Case No : Criminal Appeal No. 612 of 1994

Sitaram @ Pandu Ramchandra Sawant

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 114, 133

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2000) 5 BomCR 55 : (2000) BomCR(Cri) 55

Hon'ble Judges : Vishnu Sahai, J; T. K. Chandrashekhara Das, J

Bench : Division Bench

Advocate : S. K. Shinde, for the Appellant; Ms. Usha Kejriwal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. K. Chandrashekhara Das, J.—The appellant was convicted for the offence u/s 302, Indian Penal Code and 201 read with section 34, Indian Penal Code and sentenced for R.I. for life by the impugned judgment in Sessions Case No. 7 of 1995 by the sessions Court, Sawantwadi which is challenged in this appeal. The appellant along with other three accused was charged on the allegations that between the night of 20th November, 1992 and 21st November, 1992 at village Bhiravande, Khalyantarwadi, Taluka Kankavali, District Sindhudurg had committed murder of Jayashree alias Vandana Janardhan Sawant and thereby committed an offence punishable u/s 498-A read with 34 of the Indian Penal Code and secondly the deceased was subjected to cruelty by ill-treating her and thereby committed offence u/s 498(A) read with 34 of Indian Penal Code. The deceased was the wife of Janardan, a brother of appellant. Accused No. 2 Sanjay Ramchandra Sawant is brother of appellant, accused No. 3 Lalita Ramchandra Sawant is sister of appellant and accused No. 4 is the wife of appellant.

2. According to prosecution, the appellant along with other accused subjected

deceased Jayashree to cruelty by ill-treating her. It is further alleged that in the early morning of 21st November, when Jayashree was going towards the backside of the house for easing herself, the appellant caught hold her in the backside padvi of the house near the exit-door and strangled her by throttling. Accused No. 3 used to sleep in the kitchen adjacent to the room of Jayashree and accused No. 4 used to sleep in the room adjacent to the padvi in which appellant used to sleep. On hearing noise of Jayashree, accused No. 3 came outside and she witnessed the incident. After Jayashree fell down the appellant with the help of accused No. 3 and 4 took the dead body of Jayashree to the well by the side of the house and threw dead body into well. From the morning of 21st the appellant started to pretend that Jayashree had disappeared from the house. Appellant contacted Mahadeo Sawant who is Sarpanch of the village and informed him that Jayashree had disappeared. Appellant then arranged to send messenger to village Mahalunge which is the place of parents of Jayashree to inform them of her missing. In the evening of 21st appellant again contacted Mahadeo Sarpanch and informed him that dead body of Jayashree was noticed in the well adjacent to his house. Mahadeo visited appellant to contact police Patil of the village.

3. Deceased Vandana was daughter of Balkrishna Rane resident of village Mahalunge, Taluka Deogad. She married Janardan alias Shantaram on 16-5-1991 and was renamed as Jayashree. Janardan was employed in certain company at Bombay and was not having enough accommodation to settle at Bombay with his wife. Deceased Jayashree alias Vandana used to reside with accused at village Buirvande, Khalantarwadi, Taluka Kankavli. It is further case of the prosecution that appellant and other accused ill-treated Jayashree by making taunting remarks, putting extra burden of domestic work, removed her articles from her bag and refused to give her adequate food. When Jayashree had been to parental house for Holi festival, in the year 1992, she had disclosed to the parents and brother Santosh, P.W. 1, that she was ill-treated by the accused. She also came to her parents in July, 1992 along with her husband Janardan and during that visit also she disclosed to her parents and brother regarding the ill-treatment meted out to her by the accused. Jayashree last time visited her parents house prior to Dasara Festival of 1992 and she had become very weak. During that stay she disclosed to her parents, brothers and neighbours that the accused were giving severe ill-treatment to her and were not giving adequate food. The accused Nos. 3 and 4 were also blaming her for death of mother of accused Nos. 1 to 3. The accused were suppressing letters and presents sent by her husband Janardan to Jayashree and she had expressed her grievance with Janardan. It has come out in the evidence that on 19-11-1992, P.W. 5 Ganpat Sawant received a letter from Janardan. He is maternal uncle of accused Nos. 1 to 3. By sending that letter Exh. 46, Janardan had conveyed to Ganpat Sawant that his wife was ill-treated by the accused and letters sent by him to his wife were not shown to her. He also suggested Ganpat Sawant to advise the accused and to intervene to stop ill-treatment given to her. On receipt of letter. P.W. 5

Ganpat contacted accused No. 1 and showed him the letter and discussed the affair. In fact, P.W. 5 advised accused No. 1 to 3 to patch up the differences. It is alleged that in the evening of 20-11-1994 there was quarrel between accused Nos. 1, 3 and 4 on the one side and Jayashree on the other, regarding the complaint made by her with Janardan and particularly in respect of the letter written by Janardan to Ganpat. In the early morning of the next day the incident had occurred.

4. it has come out in the evidence of P.W. 1 Santosh, brother of deceased that on 21-11-1992 one Suresh Rane came to him at mid night and asked him whether Vandana (Jayashree) had come to his house. He informed him that his relatives from Buirvande had come to his house brought news of missing of Jayashree. He told him that Vandana was missing since morning 5.00 a.m. and he suggested P.W. 1 to come to Buirvande. Then, in the morning P.W. 1 informed this fact to his parents. Then Suresh Rane brought his relatives to the house of P.W. 1. His father inquired relative of Suresh. He told them that in the morning he got awaked on hearing gun shot and they came to know that Vandana was not in her bed. That relative told that he got awaked due to hunts of pig. Then his father suggested P.W. 1 to go to Bhirvande. He decided to go to Bhirvande on next day along with Sarpanch and his uncle. On 23-11-1992 at about 3.00 a.m. police came to their house. Accused No. 1 was along with them. He then called his uncle who is Sarpanch of village. On his arrival police disclosed that dead body of Vandana was found in the well and dead body was brought to Kankavali. Police suggested him to accompany them. He then went to Kankavli to see the dead body. He visited Kankavli and observed the dead body of Vandana which was in the hospital. Her face had become black and tongue was protruding the mouth, redish froth was coming outside the mouth. There was black colour scar on the skin around her neck. Then the dead body was sent to the medical officer, Kankavali for post-mortem. On the same day P.W. 1 went to police station and filed complaint, Exh. 33 which was treated as FIR.

5. P.W. 14 Dr. Chandrashekhar Shankarrao Khambe who conducted the post mortem of the corpse of Vandana, he said in his evidence that he was attached to Rural Hospital, Kankavli. On 23-11-1992 while he was on duty he was called at Rural Hospital Kankavali to conduct post-mortem. Accordingly he went to Rural Hospital, Kankavali and conducted the post-mortem on the dead body of one Jayashree. The body was brought to the hospital at 8.00 p.m. It was identified by the appellant. During the post-mortem, he recorded his observations. Doctor in his evidence says that the brain was congested hemorrhage over menses. There was fracture of laryngeal cartilage. Tissue around neck was highly congested and cyanosed. Pleura was congested. Both lungs congested. There was extra vagation of blood around tissue of the neck as well as muscles of the neck. Tongue was swollen and protruding the mouth. He observed no visible external injury. However, colour of skin had changed and opined that it is due to strangulation. He opined that all these symptoms may occur if there is strangulation by throttling. He also ruled out the accident or possibility of drowning. He was

strenuously cross examined by the defence. But in his evidence he made it clear that Vandana died due to strangulation by throttling.

6. P.W. 15 Arun Rangrao Mahajan was serving as the Magistrate, Kankavali from September to March, 1993. In his evidence he says that on 4-12-1992 Kankavali Police Station produced one Lalita Ramchandra Sawant accused No. 3 in Crime No. 217 of 1992 to record her confessional statement. She was produced before him along with report. Accordingly she directed police to produce the accused before him on 5-12-1992 at 10.30 a.m. On 5-12-1992 Lalita was produced before him by the police. One lady constable was accompanied and P.W. 15 asked police constable to go out of his chamber when accused was before him alone left in the chamber. P.W. 15 also directed his peon to close the door of the chamber and to remain outside. Then he questioned Lalita as to whether she desires to give any statement. He had explained to her that it was not necessary for her to make the statement and she should make the same according to her wish. He also explained to her that the statement given by her would be used against her as piece of evidence. He also questioned her whether she had any grievance against police and whether she was intimidated or lured by police. She replied that she was not intimidated or she was not persuaded by police. He also explained to her that it is not a police station and that she is not in the police custody and she was told that he was a Magistrate and he suggested to think over the matter for two days and then come back and accordingly she was sent back. Necessary instructions were given to the police to produce her after 48 hours. P.W. 15 had recorded all questions put to her on 5-12-1992 and answers to the questions. Then obtained her signature. Exh. 66A was that statement which has been proved by the Magistrate,

7. Before Magistrate when Lalita produced by Lady Constable at his Chamber on 7-12-1992, at 10.45 a.m. he asked the lady constable to go away. He also asked the peon to close the door and remain outside. The windows of the chamber were closed by curtains and nothing was visible from the outside. He also ascertained that any police officer was not near his chamber. Then he questioned accused as to whether she desires to make a statement. He questioned her as to whether the span of 48 hours allotted to her to consider over was enough and whether she require more time to think over the subject. She replied that it was enough and she was desired to make statement. He again explained her that he was not police officer and he was a Magistrate and she was not in police custody. He also explained to her that it was not necessary for her to make statement and there was no compulsion and she can make statement only if she desires. He also explained to her that the statement made by her would be used against her as piece of evidence. He got satisfied that she was making statement of her own desire. Then after satisfying himself that she is making statement on her own will, he recorded her statement which is at Exh. 66/B.

8. In the confessional statement accused No. 3 has stated that on 20-11-1992 her maternal uncle Ganpat Atmaram Sawant had come to her house in

Bhirwande at 9 a.m. He asked her as to where her father was? She told him that her father had taken cattle in the field and he will return at 4 p.m. He told her that her brother Janardhan had sent him letter and about it he had to tell to her father. Ganpat told her that Jayashree was not getting the letters sent by Janardhan and Janardhan also advised Ganpat to advise the accused and intervene to stop ill-treatment being meted out to her. On receipt of the letter P.W. 5 contacted accused No. 1 and showed him the letter and disclosed the fact. Ganpat advised Accused Nos. 1 to 3 to patch up the differences. She says in her statement that on 20-11-1992 they went to bed after meals. Accused No. 2 Sanjay Ramchandra Sawant had gone for seeing T.V. in the house of Dalvi. Thereafter herself, deceased and Sunita and Accused No. 3 took meals and thereafter Jayashree and Sunita washed the utensils. Thereafter they all went to bed. At early morning, Sudhir son of appellant woke up for nature's call. They had taken him to bath room and again brought to bed. After some time Jayashree went for answering the nature's call. That time she heard her shouts. She then went outside the house and saw that Appellant caught hold the neck of Jayashree. Due to fear she went back and stayed at some distance. At that time Sunita went towards Jayashree. Appellant then asked her and Sunita accused No. 4 to catch the legs of Jayashree. Thereafter herself and Sunita caught hold her legs. They then took her near well. Appellant then pushed Jayashree into the well. Thereafter they went to house. Appellant thereafter sat in the padvi. She then went in the kitchen room and Sunita sat in the middle room. That time her younger brother Santosh was standing in the middle room. She then lighted gas for tea and woke up her father. Due to fear she told him that Jayashree was missing and that she might have gone for nature's call. She then gave tea to Santosh. Santosh then went to school. This confessional statement made by the accused No. 3 fully corroborate medical evidence.

9. P.W. 16 Sudhakar Dashrath Trambake recorded statement of the witnesses and after the investigation charge was laid before the Magistrate. Magistrate in turn committed the case to the Sessions and during the trial all the accused denied the charges. After the trial, Sessions Court found all the accused Nos. 1, 3 and 4 guilty for the offence u/s 302 I.P.C. and accused No. 2 was acquitted. Accused Nos. 3 and 4 though found guilty are released under the provisions of the Probationer's Offender Act.

10. The learned counsel for the Appellant has contended that Sessions Court judgment solely relied upon the confessional statement made by accused No. 3 which was retracted. He submits that retracted confessional statement cannot be relied upon for convicting the accused. As we noted earlier, P.W. 15, Magistrate on following the detailed procedure recorded the confessional statement of accused No. 3. That statement has directly implicated appellant for the offence. That statement also disclosed that there is strained relationship between the deceased on the one side and the accused on the other side. The letters proved in this case is also sufficiently establish that all is not going well with the relationship of deceased and accused. These circumstances have been spoken to

by the accused No. 3 in her confessional statement. The confessional statement can be relied upon for conviction if it is well corroborated with other material. The Supreme Court in *Subramania Goundan Vs. The State of Madras*, , has laid down principle and the parameters as to how far the confessional statement can be based for the conviction. In para 14 it is observed by the Supreme Court:

"A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the Court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It was laid down in certain cases one such being *In Re: Kesava Pillai and Another*, , that if the reasons given by an accused person for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this Court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated one of the latest cases being *Balbir Singh Vs. State of Punjab*, , but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession. In this connection it would be profitable to contrast a retracted confession with the evidence of an approver or an accomplice. Though u/s 133 of the Evidence Act a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, illustration (b) to section 114 lays down that a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when there is a retraction whether the earlier statement, which was the result of remorse, repentance and contrition, was voluntary and true or not and it is with that object that corroboration is sought for. Not infrequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and therefore, it is advisable to clearly understand the distinction between the two. The standards corroboration in the

two are quite different. In the case of the person confessions who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the Court must feel that the reasons given for the retraction in the case of a confession are untrue."

11. Supreme Court in the aforesaid observations has held that confession statement in normal case, is the best evidence which can form a valid foundation for conviction. Apex Court has however, cautioned about founding a construction on retracted confessional statement and a confession made by accomplice. Supreme Court held that in the former case a general corroboration is sufficient which was in the latter case. Confession must be corroborated in material particulars. But in our case, these contingencies do not arise. Accused No. 3 cannot be treated as an accomplice. She herself implicated herself in the commission of the offence. Therefore, statements require no corroboration in material particulars, as laid down by the Supreme Court. She retracted her statement only after the trial, that too, at the time of recording the statement u/s 313 of Code of Criminal Procedure. According to us no value could be attached to such belated retracted statements made at fag end of the trial. Assuming that she has retracted her confession was fully corroborated by the oral evidence and other circumstantial evidence in this case.

12. Further, in Abdul Rajak Murtaja Dafedar Vs. State of Maharashtra, , it has been held in Para 9 that if the confession is not extracted out of coercion or inducement then such confession can be made as foundation for the conviction. In this case no such coercion or inducement were proved to be employed. The confession was made voluntarily and out of free will.

13. In this case, we find in spite of strenuous cross examination on behalf of the defence, the evidence adduced by the Magistrate could not be controverted. It has come in the evidence that the statement has been made by the accused No. 3 is voluntary and sufficient time has been given to her by the Magistrate to ponder over. No presence of police was there while making the statement. She was properly cautioned by the Magistrate that she need not make such confession and if confession is made, it will be used against her. Therefore, we find no illegality in the judgment of the Court below in relying on the confessional statement made by accused No. 3 which strongly corroborates medical or other evidence in this case.

14. The learned counsel for the appellant has tried to argue that the letters produced in this case has not been properly proved. We cannot agree with the submission. The letters have been proved by a person who in the ordinary course to have authority to keep these letters is in proper custody. The custody of the letter is properly explained. No infirmity therefore, can be attached in proving these letters. The letters has further corroborated the strange relationship existed between the deceased and the appellants. P.W. 5 in his evidence has made it clear that writing letter by the deceased to her husband about missing

letters was not of the liking of the appellant. In these circumstances, it is clear that those letters speaks of hostile relationship between deceased and the appellant. Therefore, as rightly held by the trial Court, motive has been proved for the committing of offence and the confessional statement corroborated by the other evidence has conclusively proved the guilt of the appellants beyond all reasonable doubt.

15. For the reasons, stated above, we find no case is made out to interfere with the judgment of the trial Court. The conviction and sentence rendered by the trial Court against appellant u/s 302, Indian Penal Code is confirmed. The appeal is dismissed. Appellant is in jail. He has to serve out the entire period of sentence.