
(2011) 03 BOM CK 0056
In the Bombay High Court
Case No : Criminal Appeal No. 644 of 1990

Smt. Sindhu Khandu Satpute

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 2 Crimes 59 : (2011) 8 RCR(Criminal) 2296

Hon'ble Judges : A.R. Joshi, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Ameeta Kuttikrishnan, for the Appellant; M.H. Mhatre, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.R. Joshi, J.—Heard rival arguments on this Appeal preferred by the Appellant/sole Accused challenging the judgment and order of conviction dated 2nd April, 1990 in Sessions Case No.277/1989 passed by the learned Vth Additional Sessions Judge, Pune.

2. The Appellant/Accused was charged for committing murder of her own child aged about four months at the early hours of 21st April, 1989. By the impugned judgment and order the Appellant/accused was convicted for the offence punishable u/s 302 of Indian Penal Code and was sentenced to suffer life imprisonment. Being aggrieved by the conviction, the Appellant/Accused preferred present Appeal.

3. Learned Advocate Ms. Ameeta Kuttikrishnan is appointed under Legal Aid Scheme to defend the Appellant in the present matter.

4. Prior to discussing the rival submissions and evidence led before the Sessions Court, the case of the prosecution and certain admitted position can be summarized as under :

4A. The Appellant/Accused, a young girl of about 20 years, was missing from her house, and as such, her parents started search and lodged Police complaint. During the relevant time, Appellant/accused was staying with her parents at village Kolwan Taluka - Mulashi, District - Pune. She was found by the Police on 16th October, 1988 and was brought back to her home, however, her relatives were reluctant to accept her, probably for the reason that she was pregnant at that time though she was not married. As Appellant was disowned by her parents and family members, she was admitted in Kusumbai Motilal Mahila Sevagram, a rescue home. Sometime on 14.1.1989 i.e. after about two months after she was found, she delivered a male child at Sasoon Hospital, Pune. After delivery, she was taken along with the new born child back to the Mahila Ashram. At Mahila Ashram, Appellant and her child were kept in Baba Section as the child was of tender age. The fateful incident occurred at the early hours of 21st April, 1989. Apparently that time the male child was about four months old. The workers/ office bearers of said Mahila Ashram who were then on duty, heard the cry of small baby at about 4:00 a.m. on 21st April, 1989 and after search it was found to be the child of present Appellant / Accused lying at some distance below the window of Baba Section of Mahila Ashram. However, no blood marks were noticed at that place. As the said child was found on the ground floor of the building and was missing from its usual place at the creedal by the side of the Appellant/Accused, enquiries were made with the Appellant as to how the child was missing from her company. To such enquiries, the Appellant is stated to have expressed her ignorance. The child was taken to Sasoon Hospital. However, he expired apparently for the injuries sustained over the head. In the postmortem, it was revealed that there was fracture of skull bones. Complaint was lodged by PW1 Smt. Vidya Patange, Deputy Superintendent of Mahila Ashram. After complaint, PW1 Vidya Patange & PW2 Saroj Tikakar then Secretary of Mahila Ashram came to Mahila Ashram and questioned the Appellant. On sustained questioning, the Appellant allegedly made extrajudicial confession that she had thrown the child from the window of Baba Section of Mahila Ashram as she wanted to avoid further responsibility of bringing up the said male child, probably for the reason that it was the outcome of her illicit relations and her pregnancy though she was not a married woman. After such alleged confession, PW1 went back to the Police Station and lodged another complaint specifically taking name of the Appellant/Accused. PSI Vinayak Tilekar (PW6) of Deccan Gymkhana Police Station registered the offence at C.R. No. 381 of 1989 u/s 302 of Indian Penal Code and took over the investigation. Scene of offence panchnama was drawn. Inquest panchnama was also prepared of the dead body of the small child. Accused was put under arrest after drawing the arrest panchnama.

5. The statements of witnesses were recorded and after completion of investigation, chargesheet was filed against the Appellant/Accused. The matter was committed to the Court of Sessions being Sessions Case No.277/1989 and after the trial the Appellant/Accused was convicted for the offence punishable u/s 302 of Indian Penal Code, as mentioned above.

6. During the trial, six prosecution witnesses were examined. PW1 & 2 are Deputy Superintendent and Secretary of Mahila Ashram, PW3 Smt. Kumudini Kokate & PW4 Bharati Birdavade are Nurse and Care Taker respectively, PW5 Dr. Sathe who conducted the postmortem, and PW6 is the Investigating Officer Mr. Tilekar.

7. Prior to analyzing the evidence in the light of the arguments advanced on behalf of rival parties, certain admitted positions can be narrated asunder :

I) A child, aged about four months, was found on the ground floor whereas the Baba Section was situated on the first floor of the Mahila Ashram and admittedly during night hours entire Mahila Ashram is under lock and key and nobody can go out without knowledge of the Nurse and the Care Taker. This was the arrangement for the security of the inmates ladies of Mahila Ashram and small children kept at Baba Section.

II) Small child was found on the ground away from the window of Baba Section and at the place where the child was found one small bed sheet (dupatta) was found. There were no blood stains on the ground where the child was found.

III) Admittedly, the child had following injuries as per the postmortem report:

- (1) Wide spread hematoma all over the scalp.
- (2) Depressed fracture over the left temporal bone measuring 2X2 cms.
- (3) Linear fracture over left parietal bone measuring 4 cms. in length.
- (4) In cranial cavity, wide spread subarachnoid hemorrhage was noticed.

IV) The entire case of prosecution was based on circumstantial evidence and there was no eye witness.

V) There is alleged extrajudicial confession given by the Appellant/Accused before PW1 & PW2.

VI) As mentioned in the scene of offence panchnama, the window of the Baba Section had seven iron bars horizontally placed and gap or opening between the bars is only 5 inches. The distance from window upto the place, where the child was found on the ground, was about 18 ft. in height.

8. Bearing in mind the above factual position, the argument advanced on behalf of the rival parties can be summarized. Admittedly, the case of the prosecution is depending on the circumstantial evidence and such circumstances are :

A) The child was found on the ground floor away from the window of Baba Section which was situated on the first floor of Mahila Ashram building.

B) Appellant/accused made alleged extrajudicial confession before PW1 & PW2 of having thrown the child from the window of Baba Section in order to get rid of the said child so as to avoid future responsibility of bringing up the child when

the Appellant/Accused was unmarried girl and rather a destitute, not accepted by her parents and other family members.

9. Pointing out the above position, learned Advocate Ms. Ameeta Kuttikrishnan for the Appellant argued that the circumstances as put forth by the prosecution are not so clinching to rule out any other hypothesis than the guilt of the Appellant/Accused for the offence of murder. It is further submitted that the main circumstance as to extra judicial confession cannot be accepted to record finding of guilt against the appellant for the offence of murder, especially in absence of any other corroboration, and mainly considering the admitted factual position as to window of the Baba Section having horizontal iron bars with opening between the two consecutive bars of five inches. It is further brought to our notice on behalf of the Appellant that there is nothing on record either by way of substantive evidence of Dr. Sathe (PW5) or by the evidence of any of the witnesses that there was possibility of the small child of four months old, passing through the gap of only five inches in between the iron bars fixed to the window of Baba Section. It is further argued that whatever might be the strong suspicion against the Appellant to do away with the child on account of her condition being destitute and dejected by her own relations, such strong suspicion cannot take the place of proof, more so when the case is based on circumstantial evidence and there is no direct evidence in order to link the present Appellant with the offence of murder.

10. We are in agreement with this argument advanced on behalf of the Appellant as it is almost an accepted position that whatever strong suspicion appearing against the accused under the given set of circumstances, it cannot take place of proof, considering the factual position of the present case.

11. It appears that the learned Sessions Judge placed much reliance on the alleged extrajudicial confession given by the Appellant/Accused before PW1 & PW2 and he had given much weight to the circumstances under which the Appellant/Accused was compelled to stay in Mahila Ashram in dejected condition. However, in our considered view, the learned Sessions Judge had fallen in an error in accepting the circumstance of alleged extrajudicial confession and ignoring the factual position that it was highly improbable that a child of four months old can be thrown out of the window having horizontal iron bars having opening of only five inches from each other.

12. It must also be said that the learned Sessions Judge had over looked the factual position that on the spot where the child was found on the ground floor, there was no blood marks and infact the child was crying when found by the witnesses and succumbed to the injuries only after taken to Sasoon Hospital. In our considered view, it is for the prosecution to establish beyond reasonable doubt that the child was thrown by the Appellant/Accused from the window of Baba Section from the height of 18 ft. as admittedly it is the only mode by which the child could go out of the Baba Section and found at the ground floor.

13. Again, it must not be lost sight of the fact that according to PW1 & PW2 when they insisted on the Appellant/Accused to disclose as to what had happened and only after sustained questioning she disclosed of having thrown the child out of the window. It is possible that the appellant must have owned the responsibility out of distress. In our view, without there being any independent corroboration and possibility beyond reasonable doubt that the child could be thrown out of the window of Baba Section, the alleged extrajudicial confession would be of no avail. In other words, it must be said that the Sessions Judge had fallen in an error in recording finding of guilt essentially because of the said extrajudicial confession.

14. It is also argued on behalf of the Appellant that the defence raised on behalf of the Appellant/Accused that one Jaya Thakkar had quarrel with her and said Jaya Thakkar might have done away with the child, is probable on preponderance of probabilities, more so when said Jaya Thakkar had not been examined by the prosecution. Though, this is the defence raised on behalf of the Appellant, we have not lost sight of the fact that probably this defence was taken at the belated stage of the trial. No such defence is infact taken during recording of the statement of the accused u/s 313 of Criminal Procedure Code. In spite of this, the Investigating Officer ought to have taken steps to rule out this remote possibility of Jaya Thakkar doing away with the child, by recording her statement and examining her at the later stage of the trial. All the same, considering the burden on the accused in order to establish the defence by preponderance of probabilities, it must be said that reasonable doubt is created as to whether only the accused and none else was responsible for the death of the small child. In other words, when the case is based on circumstantial evidence and when the alleged extrajudicial confession is belied due to the topography of the scene of the offence and the condition of the window of the Baba Section, benefit of doubt should have been given in favour of the accused by the learned Sessions Judge.

15. In view of the above observations, we hold that the impugned judgment and order cannot be sustained. Further, it must be said that the prosecution has failed to establish that the Appellant / Accused was responsible for the death of her child in the manner alleged by the prosecution. Thus, the prosecution has failed to prove the offence punishable u/s 302 of Indian Penal Code beyond reasonable doubt. Consequently, benefit of doubt must go in favour of the Appellant / Accused. Hence, the order :::

ORDER

i. Criminal Appeal No.644 of 1990 is allowed.

ii. Impugned judgment and order of conviction dated 2nd April, 1990 in Sessions Case No.277/1989 passed by the learned Vth Additional Sessions Judge, Pune is quashed and set aside and the appellant is acquitted of the charges for which she was tried in the said case. Appellant/Accused shall be forthwith released from the jail custody, if not required in any other matter.

- iii. Fine amount if already paid, shall be refunded to appellant/accused.
- iv. Copy of this judgment and order be forthwith forwarded to the appellant who is in jail, for information.
- v. The Court expresses a word of gratitude to the learned amicus curiae Ms. Ameeta Kuttikrishnan for her able assistance for espousing the cause of the Appellant.