
(2019) 11 BOM CK 0084
In the Bombay High Court
Case No : Criminal Appeal No. 438 Of 1999

State Of Maharashtra

APPELLANT

Vs

Vijay Babruhan Dhankude And Ors

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302

Citation : (2019) 11 BOM CK 0084

Hon'ble Judges : S.S. Shinde, J;N.B. Suryawanshi, J

Bench : Division Bench

Advocate : S.V. Sonavane

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This Appeal is directed against the Judgment and order dated 22nd April 1999 passed by the learned Additional Sessions Judge, Pune acquitting all the Accused / Respondents herein for the offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code.

2. The prosecution case, in brief, is as under:

A. Accused No. 1 and 2 i.e. Respondent Nos. 1 - Vijay and 2 - Sunil herein are real brothers and Accused No. 3 i.e. Respondent No. 3 herein is their mother. Complainant i.e. first informant, Vanita (P.W. No. 1) is the married wife of the Accused No. 1 - Vijay. Prior to the incident accused No. 1 was running a poultry farm at Ravet and Vanita was doing household work. Said Vanita delivered female child on 23.04.1995. She was named as Ashwini. At the time of an alleged incident she was aged 5 months. According to the complainant her husband wanted to have a male child but as she delivered a female child, since then husband started beating the informant and neglecting said child Ashwini.

B. It is the prosecution case that, on 20.07.1997 at about 8 a.m accused No. 1

went to poultry farm. The accused No. 2 had gone on construction work and the informant and accused No. 3 i.e. mother in law of the informant were in the house. Accused No. 3 was sleeping in the outer room. On 21.07.1997 at about 1.00 a.m accused No. 1 came to the house. At that time accused No. 3 was sleeping in the outer room and in the inner room the informant (P.W. No. 1) was sleeping with her daughter Ashwini. When husband i.e. Accused No. 1 came P.W. no. 1 got up. Accused No. 1 asked for meal. As per the prosecution case, the informant told that the daughter is on her laps and within short time he will be served with the meal. Thereafter, the Accused No. 1 gave slap to the informant (P.W. No. 1). Daughter which was in the hands of the informant, was snatched by the accused no. 1 and was dashed on the surface of the cot, child cried, shouted and thereafter she became motionless. The informant intervened but she was also beaten and her neck was pressed by the accused no. 1. Accused No. 1 gave some medicine to Ashwini. When the cries of Ashwini were heard by Accused No. 3, she came inside the room and saw that, Ashwini was motionless and, therefore, initially she was taken to Dr. Deshpande, in his dispensary at Baner. Dr. Deshpande after examining Ashwini declared her dead, and further advise was given by him to take dead body to Sasoon Hospital. It has also come in the evidence that, Ashwini was taken to Dhanwantari Hospital of Dr. Garudkar. However, it is the prosecution case that accused stated that, it is not necessary to take deceased child to Sasoon Hospital, and the informant was warned not to tell anybody about alleged incident, else she would be finished. Instead of taking the daughter to Sasoon Hospital, she was brought to the house. The relatives of the deceased were by that time called, and funeral had taken place. Dead body was buried after performing necessary ceremonies in the burial ground at Baner which is on the bank of river.

C. Thereafter, Vanita (PW. No. 1) lodged the complaint with the police on 21.07.1997. On the basis of her complaint offence i.e. C.R. No. 185 of 1997 was registered. The informant was medically examined. She was having injuries i.e. contusion and abrasion on her body. Investigation has been done by Mr. Wakade, A.C.P. Pune. According to him he received telephonic message from Chatushringi Police station, and contents of the complainant were written down, and C.R. No. 185/1997 came to be registered. Then said police officer went to the spot of the incident. Spot was shown by the informant (P. W. No. 1). Spot panchanama was drawn. It transpired that dead body was buried on the bank of river and therefore, letter was given to Sub-divisional Magistrate for seeking permission to take out the dead body. Accused were arrested at about 4.00 p.m. Then according to the prosecution case accused no. 1 showed willingness to show the place where dead body has been buried. Accordingly, memorandum was drawn. Then the accused No. 1 led the police and panchas to that spot. When the digging was started at a depth of 3 to 4 ft. dead body covered in white cloth was found. Video shooting was done. Dead body was seized and panchanama was drawn. Dead body was sent for the post mortem. Investigation was done. Statements of the witnesses were recorded. Birth certificate of the deceased was

obtained. However, it was found that neither information about death was given to Grampanchayat, nor letter from Grampanchayat was taken. Necessary inquiry was made with Dr. Garudkar. Certificate was taken from him. It was included in the investigation papers. Thereafter, after completion of investigation charge sheet was submitted.

D. Charge was framed qua the accused persons. It was read over and explained to them in Marathi. Their plea was recorded. Accused denied the guilt. Their defence was that of total denial, and that they have been falsely implicated in the case.

E. After full fledged trial, the Trial Court acquitted the Respondents herein (orig. Accused). Hence, this Appeal by the State.

3. Learned APP appearing for the State invites attention of this Court to the medical evidence so also evidence of Vanita (P.W. 1) who is wife of the Accused no. 1. It is submitted that, she has categorically deposed that her husband Vijay twice dashed child on the surface of the cot and as a result she died. Learned APP invites attention of this Court to the evidence of P.W. 1 Vanita, medical evidence of Dr. Chandrakant Garudkar and evidence of Dr. Sudhir Digambar Nandedkar (P.W. 4) and submits that, if the evidence of Vanita (P.W. 1) is considered in its entirety, the same is trustworthy, reliable and can safely be relied upon to base the conviction of the accused. It is submitted that, the ocular evidence of Vanita (P.W. 1) gets corroboration from the medical evidence of Dr. Sudhir Digamber Nandedkar (P.W. 4). It is submitted that, Vnita (P.W. 1) has no reason to falsely implicate her husband Vijay in the alleged commission of offence therefore, relying upon notes of evidence of the prosecution witnesses learned APP submits that, Appeal deserves to be allowed.

4. Though respondents are served, none appears for them.

5. With the able assistance of learned APP appearing for the Appellant - State, we have carefully perused the evidence of prosecution witnesses. We have also perused the notes of evidence. The star witness of the prosecution case is Vanita (P. W. No. 1). Vanita (P.W. No. 1), who lodged the first information report. In her deposition before the Court stated that, Vijay is her husband. Sunil and Raju are brothers of her husband and Anusayabai is mother of her husband, and Sunil and Raju. Prior to the incident, herself and her husband and his brothers and her mother in law were residing jointly along with her daughter. Her husband is having poultry farm at Ravet. Sunil and Raju were also working in poultry farm. Mother in law used to remain in the house.

6. Her marriage with Accused No. 1 was solemnized on 23.04.1996 and, after marriage she gave birth to female child. She was named Ashwini. As she delivered female child her husband used to beat her, since he wanted male child. Accused No. 1 also used to beat her small daughter. On 20.07.1997 at about 10.00 a.m her husband went to poultry farm at Ravet. Vanita herself, her mother in law and her child were in the house. Both the brothers of her husband had

gone to construction work. Her husband came to the house on 21.07.1997 in the midnight at about 1.00 hours. At that time her mother in law was sleeping in outer room. Vanita (P.W. No. 1) was sleeping along with her daughter.

7. It is further stated by her that, her husband i.e. accused No. 1 asked for meal. She told him that daughter is on her laps and he will be serve food within short time. However, husband got annoyed and gave slap to her. Husband took daughter from her laps and dashed her on the surface of the cot. She intervened. However, she was beaten and her neck was pressed, and again husband dashed daughter on the surface of the cot. Her daughter was motionless. However, it is relevant to mention here that, in her examination in chief she admitted that, husband gave medicine to daughter (Ashwini). Then mother in law came there and thereafter, daughter (Ashwini) was taken to the Dr. Deshpande whose hospital is situated at Baner. It is stated by her that, her husband came later on in the Hospital, doctor examined her daughter and told that she is not alive and declared her dead, and further advised them to take her to Sasoon Hospital, Pune. But she was not taken to the Sasoon Hospital. She was brought to the house.

8. In her cross-examination she admitted that, baby was delivered at the place of her parents. She also admitted that about 15 days prior to the incident, she had come from her parents house to reside with her husband. She also admitted that prior to the incident her daughter Ashwini was suffering from fever. At that time she was given homely medicines. It is specifically admitted by her that she herself and her husband had taken Ashwini to the Dr. Deshpande about 2 days prior to the incident. The treatment of Dr. Deshpande was going on. The medicine which was tried to be administered to her daughter was homely medicine. It is stated by her that, though she complained to the police about conduct of the Accused no. 1 however, she does not remember date and time of giving such complaint. She also stated that, she also gave complaint in writing to the police, that she gave birth to the daughter and husband wanted son, and on that count husband used to beat her. However, nothing is produced on record by the prosecution to support the aforesaid contention. She has specifically admitted that, Dr. Deshpande asked her, what had happened to her daughter. However, she does not remember, whether she has told to Dr. Deshpande about actual incident. She has also admitted in the cross-examination that one Mr. Pandurang Thorwe and his father came to her house at 3.00 a.m. Pandurang Thorwe went and brought her father and mother to her house. When her parents came that time her daughter was in Dhanvantari Hospital at Baner, and from said hospital thereafter she was brought to the house. She specifically admitted that her contention that husband used to beat her and her daughter was not stated before the police. She also admitted that she did not state in the complaint that, after burial accused gave threat to her not to speak about incident to third person. She admitted that, it is not mentioned in her complaint that accused no. 3 also gone for burial. Suggestion was given to her that during scuffle between herself and her husband, by mistake she gave dash to daughter, and she fell

down from cot on the floor. She specifically admitted that, the attempts were made to give treatment to Ashwini by her husband, Accused No. 1 and she was taken by both of them to the doctor.

9. If the evidence of Vanita (P.W. 1) is considered in its entirety, it does not inspire confidence so as to reverse the order of acquittal passed by the Trial Court. Her contention that accused Nos. 2 and 3 tried to cause disappearance of evidence is falsified by her version in the cross-examination. She admitted in cross-examination that, her relatives and parents came prior to cremation of daughter. There is no question of attributing to the accused that, in order to destroy the evidence, they secretly went and buried the body of small daughter on the bank of river. There are also vital admissions given by P.W. No. 1 that, daughter was not well prior to alleged incident, and husband used to take her to the hospital. She also stated that even after the incident husband gave medicine to the daughter.

10. The prosecution also examined Dr. Chandrakant Garudkar. In examination in chief he stated that on 21st July 1997 at about 01.15 a.m. accused no. 1, 2 and 3 along with Vanita and daughter of Vanita had been to his hospital. Vijay Dhankude told that the daughter had fallen down from the cot and she has become unconscious. He examined the patient. It was a child of four months. At the time of examination it was found that child is already dead. He told the accused to inform the police about death of child. They told him that they have informed the police. Police did not come immediately in his hospital. As the cause of death was not known he gave letter and asked them to go to Sasoon Hospital for post mortem. Upto 4.00 a.m. they were in his hospital. He made an inquiry with Vanita but she told nothing about the alleged incident. Other relatives including accused no. 2 and 3 were present there, but accused no. 1 went away without taking dead body of daughter.

11. In his cross-examination he specifically stated that, he made inquiry from all the persons who brought child, about injuries sustained by said child. All of them told that, since 2-3 days she was having fever and the treatment of Dr. Deshpande is going on. They also told that the child had fallen down from the cot. All of them unanimously told that child has fallen down from the cot and sustained the injuries. He has no reason to make further inquiry. He stated that no external injuries were seen by him. There was only one contusion. Such type of injury can be caused if the child falls down from the cot on the floor. He also stated that upto 4.00 a.m. all the persons were in the hospital and other relatives were also coming. They were also making inquiry. He stated the history to the relatives of the patient. He also stated that he has learnt that, on said night quarrel had taken place between accused and his wife, and in that quarrel child had fallen down from the cot. He asked accused and relatives to take child for post mortem to the Sasoon hospital however, he did not know whether child was really taken for post mortem or not.

12. It is also relevant to mention that, one Mr. Nimbalkar who was examined by

the prosecution in his evidence stated that, on the said cot there was mattress, and if Aswhini is dashed on the said mattress, it cannot be said that, she was dashed on hard and blunt object. The trial Court has considered in detail, the evidence of the prosecution witnesses and disbelieved the evidence of Vanita (P.W. No. 1). On an independent scrutiny of the evidence of the prosecution witnesses and in particular evidence of the informant Vanita (P.W. No. 1), we are of the considered opinion that, the view taken by the Trial Court is plausible. The findings recorded appear to be in consonance with the evidence on record. Even a moment it is assumed that, another view is possible on the basis of evidence on record, in view of the exposition of law by the Supreme Court and various High Courts in various authoritative pronouncements though another view is possible, is no ground to interfere in the order of acquittal, if plausible view has been taken.

13. In that view of the matter following order is passed:

ORDER

- a) Criminal Appeal stands dismissed.
- b) The impugned judgment and order dated 22th April 1997 passed by the learned Additional Sessions Judge, Pune is hereby confirmed.
- c) The bail bonds of the Respondents, if any, shall stands cancelled.