

(2011) 12 BOM CK 0109
In the Bombay High Court
Case No : Criminal Appeal No. 84 of 2006

Sudhakar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

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

Citation : (2011) 12 BOM CK 0109

Hon'ble Judges : P.V. Hardas, J;P.B. Varale, J

Bench : Division Bench

Advocate : Vinay Dahat, for the Appellant; R.S. Nayak, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.—The appellant, who stands convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 500/-, in default of which to undergo rigorous imprisonment for three months, by 1st Ad hoc Additional Sessions Judge, Amravati, by judgment and order dated 22-9-2005, in Sessions Trial No. 195/2004, by this appeal questions the correctness of his conviction and sentence. Facts in brief, as are necessary for the decision of this appeal, may briefly be stated thus:-

P.W. 3-PSI Madhav Dhande, who was attached to Police Station Frezarpura, Amravati, on 10-7-2004, recorded the complaint of P.W. 1-Tulsabai at Exh. 38. On the basis of the said complaint, he registered an offence vide Crime No. 138/2004. The Printed First Information Report is at Exh. 39. The appellant/accused was arrested at 1.50 a.m. and thereafter the scene of the offence panchanama was drawn in the presence of panchas at Exh. 45. The clothes of the appellant/accused came to be seized under seizure memo at Exh. 46. One Wamanrao had produced a knife, which was seized under seizure memo at Exh. 47. Clothes of deceased Balya, son of the appellant, were seized in the presence

of panchas vide seizure memo at Exh. 48. The seized property was referred to the Chemical Analyzer along with requisition. The reports of the Chemical Analyzer are at Exhs. 30, 35 and 36. The Chemical Analyzer Report at Exh. 35 indicates that the knife was stained with human blood. The clothes of the appellant were stained with blood of "A" Group. The clothes of deceased Balya were also stained with blood of "A" Group. Blood group of the appellant was determined vide Exh. 36 as "B" Group. Further to the completion of investigation a charge-sheet was filed against the appellant.

2. On committal of the case to the Court of Session, the trial Court vide Exh. 5 framed charge against the appellant for offence punishable u/s 302 of the Indian Penal Code. The appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined four witnesses. The defence of the appellant/accused is of total denial.

3. In order to effectively deal with the submissions advanced before us by the learned Counsel appointed for the appellant and learned Addl. Public Prosecutor for the respondent, it would be useful to refer to the evidence of the prosecution witnesses.

4. P.W. 1-Tulsabai states that the appellant is her husband while deceased Balya was her son. She states that on the day of the incident she was present in her house along with her husband and her son. Deceased Balya had asked the appellant to take his dinner, but the appellant had refused. Dinner was, therefore, served to deceased Balya. Deceased Balya had gone inside the house for taking his dinner. The appellant, who was sitting on the cot of the courtyard, also went inside the house. Tulsabai was standing in the door. Suddenly, she heard the screams of Balya "Mother I am dying". She, therefore, asked her son as to what had happened and deceased Balya had informed her that he had been stabbed. Tulsabai, therefore, raised cries for help and thereafter the neighbours came there. The appellant was inside the house. The neighbours took deceased Balya in an Auto-rickshaw to the hospital. Tulsabai accordingly lodged her report at Exh. 38.

5. In cross-examination, she has admitted that in case there are no rains, they usually took their dinner outside the house. She has admitted as true that on the day of the incident, it had not rained. She has also admitted that she had brought the dinner for Balya outside the house in the courtyard. She has admitted that her son Balya was under the influence of liquor and while under the influence of liquor he used to throw tantrum by throwing household articles and beating himself.

6. P.W. 2-Chandrabhan Bansod, a neighbour, states that he was watching television in the house and had heard cries of a lady and therefore, immediately rushed out of his house and had seen the appellant standing outside of his house. The door of his house was closed and therefore, he had asked the appellant as to what had happened and the appellant while holding a knife in his

hand had informed P.W. 2-Chandrabhan that he made his son sleep in one blow. P.W. 1-Tulsabai opened the door, which had been latched from inside and ran outside the house. This witness did not support the prosecution and was, therefore, declared hostile. In the cross-examination of the learned A.P.P., P.W. 2-Chandrabhan had admitted as true that the appellant was standing holding a knife in his hand. He has admitted that his son had shifted deceased Balya to the hospital.

7. Prosecution has examined P.W. 4-Dr. Patil, who had performed the postmortem examination. As per the Post-Mortem Report at Exh. 51, deceased Balya had sustained one stab wound 1 1/2 inch in length and 2 inches in depth, which is perforated up to intestine. On internal examination, abdominal wall was ruptured due to stab on right lateral part of abdominal wall. Peritoneal cavity was full of blood. The liver was found ruptured below the stab injury. The Medical Officer, therefore, opined that the probable cause of death was due to injury to vital organ like liver with internal hemorrhagic shock. In cross-examination, only one question was put to P.W. 4-Dr. Patil and it was denied by P.W. 4-Dr. Patil. It was suggested to the Medical Officer, which he has denied as true that the injury mentioned in the Post-Mortem Report could not be caused by knife of 19 cm. in length and 4 cm. in width.

8. Thus, on the basis of the evidence of P.W. 1-Tulsabai and P.W. 2-Chandrabhan, it is apparent that the appellant and deceased were alone inside the room and deceased had sustained the stab injury. The appellant was seen holding the knife by P.W. 2-Chandrabhan. The appellant has not offered any explanation in his statement u/s 313 of the Code of Criminal Procedure. Shri Dahat, learned Counsel appointed for the appellant, has urged before us that the injury sustained by deceased Balya could be a self inflicted injury. The Medical Officer, in cross-examination, was not questioned in respect of the injury being a self inflicted injury. Thus, in the absence of adequate material, it would be hazardous to infer that deceased Balya had stabbed himself. We do not see any reason as to why deceased Balya should have stabbed himself. In any event, in the face of overwhelming evidence of the prosecution, according to us, the appellant is not entitled to be given the benefit of doubt. The prosecution, according to us, has proved the offence against the appellant beyond reasonable doubt. Accordingly, there being no merit in the appeal, this appeal is dismissed confirming the conviction and sentence of the appellant.

Fees payable to the learned Counsel appointed for the appellant quantified at Rs. 5000/-.