
(2012) 10 BOM CK 0247
In the Bombay High Court
Case No : Criminal Appeal No. 294 of 2006

Sultan Noor Mohammad Rana	Vs	APPELLANT
State of Maharashtra and Another		RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 313

Citation : (2013) 2 ABR 404

Hon'ble Judges : V.M. Kanade, J;P.D. Kode, J

Bench : Division Bench

Advocate : Ganesh Gole, for the Appellant; V.R. Bhosale, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—By the present appeal, the appellant has assailed the judgment and order of conviction passed by learned 1st ad hoc Additional Sessions Judge, Sewree, Mumbai. By the said judgment and order the appellant was convicted for commission of offence punishable u/s 302 of Indian Penal Code and was sentenced to suffer R.I. for life and to pay fine of Rs. 1,000/-. The said prosecution has emerged out of charge-sheet filed by Dharavi police station as a result of investigation of Crime No. 541 of 1999 registered with said police station. The said crime was registered upon first information lodged by P.W. 1 - Zakia Abdul Rehman Ansari, sister of victim Razia, who was wife of the appellant. According to the prosecution, about ten years back prior to the incident which had occurred in between night of 18th and 19th October, 1999; Razia had married the appellant and was residing with him at Gopinath Colony, Dharavi, Mumbai. The said couple had three children out of the said wedlock. According to the prosecution Razia was residing with P.W. 1 along with kids as there was no source of income for the appellant. According to the prosecution the appellant was tailor and for certain period he had been to Saudi Arabia and returned back to India sometime before occurrence of alleged incident. He had developed habit

of gambling. There were quarrels in between the couple on count of said habit of the appellant.

2. According to the prosecution marriage of one Mansoor Alam Ansari, cousin of P.W. 1 was to be held on 16th October, 1999 at house of P.W. 1. Razia had been to house of P.W. 1 since 10th October, 1999. The appellant used to daily visit house of complainant during said period. The appellant stayed in said house on 16th October, 1999. After marriage which was effected on 18.10.1999 the appellant was insisting Razia to return to the house. However, she was reluctant to return due to gathering of several relatives at house of her sister. According to the prosecution ultimately due to insistence of the appellant, Razia left the said house at about 9 a.m. and at that time she was wearing ear rings, gold chain and gold ring belonging to her mother. On 19th October, 1999 at about 9 a.m. brother of the appellant informed on telephone that Razia was serious and due to the same P.W. 1 along with her mother went to house of the appellant. They found that Razia was lying naked on a carpet and she was dead. There was swelling on her face particularly on the left eye, with tongue out of the lips, blood in her eyes, red and white liquid was oozing from her mouth and nose and electric wire was also found lying below head of Razia. P.W. 1 made inquiry regarding the appellant, however, nobody was knowing about him. P.W. 1 suspected of the appellant having committed murder of Razia for gold ornaments and hence lodged complaint Exhibit-10 narrating the aforesaid matters. The said complaint was recorded by P.W. 10 - PSI Minakshi Patil. The investigation was carried out by P.W. 8 Sr. PI Madhukar Chavan. During the course of investigation, post-mortem revealed that cause of death of victim was "Asphyxia as a result of strangulation". The investigating agency was not able to nab the accused for several years, ultimately, the accused came to be arrested on 21.4.2004. According to the prosecution the appellant after his arrest made statement leading to discovery and as sequel to said statement he led Investigation Officer to jeweller P.W.6 - Ramesh Jain at whose shop he had sold gold ring on 20th August, 1999. After completion of investigation the accused was charge-sheeted as narrated above and was tried by the Court of Sessions at Sewree.

3. The prosecution at the trial adduced oral evidence of all examined ten witnesses and so also relied upon documentary evidence. The entire prosecution rested upon circumstantial evidence. The defence of the accused was that of total denial. Significantly enough the accused during his examination u/s 313 claimed that on 17th October, 1999 some quarrel had occurred at place of marriage and he had tried to patch up the matter. He claimed being at said place on 17th October, 1999 and alone having returned home on 18th October, 1999. He claimed that at about 8 p.m. he had been to Bombay Central police station and purchased tickets of Frontier Mail to go to Meerut and left by Frontier Mail at 9.10 p.m. and reached Meerut. He claimed that he returned to Bombay after about three years and was arrested by the police in a false case. He claim that he had not committed murder of his wife. He claimed that his brother Furkhan Ahmed informed him on phone that Razia was dead.

4. The trial Court accepted evidence of prosecution witnesses and came to conclusion that the prosecution having established various circumstances and chain leading to sole inference of guilt of the appellant. The trial Court amongst other also came to the conclusion that defence/explanation given by the appellant was false and was belied by evidence of P.W.6 to whom he had sold ring on 20th August. In consonance with the finding of guilt of the appellant arrived at, the trial Court convicted and sentenced the appellant as" stated above.

5. Mr. Ganesh Gole, learned appointed advocate for the appellant assailed the judgment of the trial Court by urging that though the appellant has not disputed Razia having met with homicidal death the other evidence adduced by the prosecution miserably fail to establish the circumstances as urged by prosecution. It was urged that in light of fact of Razia having returned to house of the appellant, said fact itself denotes that the appellant had no motive to commit murder of his wife. It was urged that merely because there were quarrel in between Razia and the appellant, it would not be sufficient enough for leading to inference of the appellant possessing motive to commit murder of his wife. It was urged that there exists long gap in between the appellant being in company of Razia and time at which she was found to be murdered. It was urged that said gap clearly leads to conclusion that there were several possibilities of crime in question being committed by somebody else. Learned counsel for the appellant by meticulously taking through evidence of P.W.6 urged that evidence of said witness does not inspire confidence and as a matter of fact the trial Court ought to have rejected the same. Learned counsel thus urged that after taking into consideration all circumstances relied by prosecution it does not form formidable chain leading to inference as wrongly arrived at by the trial Court. He vehemently contended that the prosecution has not adduced evidence of any witness of the appellant being nearby the place of offence. It was urged that since possibility of the crime in question being committed by somebody else cannot be ruled out, the appellant is entitled for acquittal or atleast benefit of doubt.

6. Smt. Bhosale, learned A.P.P. on the contrary supported the judgment of the trial Court by contending that the trial Court has correctly assessed the evidence adduced by the prosecution and came to the conclusion that the prosecution have established that the appellant had motive to commit the. crime in question, had an opportunity to commit the same, Razia was last seen alive in company of the appellant and the conduct of the appellant being indicative of himself being perpetrator of crime. Learned A.P.P. contended that through evidence of P.W.6 the prosecution has duly established the nexus of the appellant with the crime in question. It was urged that considering evidence of P.W.6 in proper perspective the said evidence also belies so called explanation tried to be canvassed by the appellant.

7. We have given thoughtful consideration to the submissions advanced by both

the parties and carefully considered record to appreciate the same. Since there was no eye-witness to the crime in question and the prosecution solely relied upon circumstantial evidence it would be necessary to ascertain whether the circumstances relied by the trial Court were found to be duly established by the prosecution. Before taking said process it will not be out of place to state that apart from the appellant having not disputed Razia having met with homicidal death by admitting post-mortem report at Exhibit-36 revealing cause of death as narrated earlier even other documentary evidence adduced by the prosecution in the shape of scene of offence panchnama Exhibit-41 inquest panchnama Exhibit-31 considered in the light of evidence of P.W.6 in proper perspective also leads to the conclusion of victim having met with homicidal death due to herself being strangled.

8. Now considering the first circumstance of motive and second circumstance of the appellant having an opportunity to commit the crime, the glance at the evidence of P.W.5 who had firstly seen dead body of the victim reveals that he was working in factory of brother of the appellant i.e. Furkhan. He deposed of the appellant residing by the side of factory and knowing the appellant as well as victim. The material part of his evidence reveals that during the days of Dasara festival and at about 9 a.m. after fetching water he had been to house of the appellant. He found that son of the appellant was standing at the door and was weeping and after entering the house he had seen Razia lying on the bed. He had asked her to get up, when he touched her body he found that the body was cold. After removing the bed sheet he saw Razia was naked. He thereafter rushed to Furkhan and informed him about such condition of Razia and Furkhan informed about death of Razia to her mother PW.1. The said evidence duly establishes that death of Razia had occurred in house of the appellant and thereafter after receipt of information from Furkhan, P.W. 1 has set law in motion.

9. Now considering the evidence of PW.1 we find that she has deposed more so in consonance with the prosecution tale described in earlier part of the judgment i.e. as per the matters recorded in the first information report Exhibit-10. Without unnecessarily enlisting all matters from her evidence, we find that by said evidence the prosecution has duly established the fact of Razia coming to the house of P.W. 1, having returned along with the appellant due to insistence of the appellant, the appellant being jobless, himself addicted to gambling, the appellant insisting Razia for bringing money from mother of P.W. 1, the appellant quarrelling with Razia, Razia living under tension. Significantly enough his evidence also discloses of Razia having moved the court and initiated divorce proceedings against the appellant. The evidence of PW.1 also reveals that at the time of leaving house, Razia was wearing earring, chain etc. Further part of her evidence unfolds reason and manner in which she along with her mother went at the house of the appellant after receipt of information and matters noticed by them.

10. After carefully considering the answers given during cross-examination of

PW.1 we do not find that any material is surfaced on the record shattering evidence of P.W. 1 on any of vital aspects referred by us in preceding paragraphs. Though certain omissions regarding the appellant asking Razia to bring money from mother of P.W. 1 etc. were brought on record from the complaint lodged by PW.1 we are unable to give any undue importance to the same due to reason of first information report being not expected to be encyclopedia containing details of every matter.

11. In the light of aforesaid features from evidence of P.W.1, so also similar evidence of mother of Razia, P.W.2 Shahaj and sister P.W.4 - Nabida we are unable to agree with the submissions of learned counsel for the appellant that the said evidence is not sufficient to come to conclusion that the appellant was possessing/having adequate motive for committing murder of Razia. Though it is true that there use to always occur quarrels in between the husband and wife and as such evidence, pertaining to quarrel by itself may not be always sufficient to afford motive for the husband for committing heinous offence like murder still after considering the evidence of P.W.1, P.W.2 and P.W.3 the reason and nature of quarrel in between husband and wife we are unable to accept the said submission canvassed by learned counsel for the appellant. As a matter of fact, as said evidence also discloses that Razia had moved the Court for obtaining divorce against the appellant. Having regard to said aspect and having due regard to the fact that such aspect would afford sufficient motive we do not find any substance in the submission canvassed on behalf of the appellant.

12. Having considered the evidence of P.W.2, mother of Razia and so also evidence of P.W.4 another sister of Razia, we find that the evidence of said witnesses is also on similar lines. Even after close scrutiny of both the said witnesses we do not find any infirmity in not accepting the said matters deposed by them. Thus considering evidence of P.W. 1 to P.W. 3 it can be safely said that the prosecution has established relevant circumstance of Razia having last seen alive in company of the appellant when she had left house of P.W.2, the appellant was possessing motive and the appellant having opportunity to commit the crime.

13. Now considering the evidence of P.W.6, by the same the prosecution has established the fact of the appellant had been to shop of P.W.6 on 20th October, 1999 and he had sold gold ornaments weighing 9.150 grams for price of Rs. 4,700/-. P.W.6 has also deposed that police had been to his shop along with the appellant on 21.4.2003 and the appellant had been to his shop about three to four years prior to said date. P.W.6 at time of his evidence brought memo book maintained in his shop in the year 1990. After looking to item at serial No. 85 he deposed the date on which the appellant had been to his shop and the transaction in question had taken place. He has also produced xerox copies Exhibit-35 of the said memo book. He has also vouched for his signature and signature of the appellant upon the said memo.

14. Learned counsel for the appellant while referring the answers given by P.W.6 during cross-examination, urged that his evidence is not at all convincing and he

is got up witness. In the said context it was pointed out that the book produced was not containing other transaction for the month of October 1999 and it was also pointed out that said answers indicate that said book was not bearing date of commencement since which transactions were entered in the said book. In the same context learned counsel for the appellant also drew our attention to the answers given by the appellant during his examination u/s 313 that police had obtained his signature upon the said memo by using carbon paper. It was also contended that entire prosecution evidence regarding occurrence of such events that the appellant leading police to shop of P.W.6 rests upon evidence of P.W.6 and the Investigating Officer - P.W.10. It was urged that no independent witness was examined by the prosecution in support of the said evidence. The said submissions were rightly refuted by learned A.P.P. by pointing out that the prosecution was not able to examine first panch due to himself being dead and second panch due to himself being not traceable.

15. After carefully considering evidence of P.W.1 and P.W.6 and considering the evidence in entirety we do not find any other circumstance surfaced on record for doubting said evidence. Having regard to the same and evidence of Investigating Officer - P.W.10 being not liable to be rejected only on ground of himself being Investigating Officer and the said evidence is duly corroborated by evidence of P.W.6 we are unable to agree that P.W.6 is got up witness as tried to be canvassed. Indeed, it is true that P.W.6 during the cross-examination admitted that he was knowing the complainant. On the basis of said admission, mountain was tried to be made out of mole by stating that due to said reason he has given false evidence against the appellant. We are unable to accept said submission, On the contrary acceptance of the said fact on the part of P.W.6, gives ring of truth to his evidence. Needless to add that due to acquaintance of P.W.1 with P.W.6, we feel the appellant having approached P.W.6 for selling said ring does not appear to be unusual feature as tried to be canvassed. Needless to add that goldsmiths would be reluctant to purchase items from unknown customer.

16. In the context of evidence of P.W.6 we also find force in the submission of learned A.P.P. that same belies explanation given by the appellant of himself having left Bombay by Frontier Mai 1 on 18.10.1999. At the cost of repetition it can be added that as observed earlier evidence of P.W.6 reveals that he has not given said date by memory but on the basis of memorandum of transaction prepared by him i.e. transaction entered in Exhibit-35. The said memo also militates against stand of the appellant that he had left Bombay on 18.10.1999.

17. Thus, we do not find any infirmity in assessment made by the trial Court regarding the prosecution evidence and having come to conclusion by the same, the prosecution having established above referred circumstance that Razia was last seen alive in the company of the appellant when she had left the house of P.W.2, Razia had met with homicidal death due to strangulation in the matrimonial house, the appellant was possessing motive for commission of the crime, the appellant had an opportunity to commit the crime the appellant was

missing from his house soon after commission of the crime the appellant has sold ornaments on the person to P.W.6. The appellant was missing and thus absconded for many years. Needless to add in our opinion such circumstances established to form a formidable chain leading to sole inference of the guilt of the appellant in committing murder of his wife.

18. Now before taking up last submission canvassed regarding potential of circumstance either alone or in conjunction with other circumstance leading to sole inference of the guilt of accused it will not be out of place to make reference to observations of the Apex Court regarding appreciation of circumstantial evidence in paragraph No. 9 in the decision in the case of State of U.P. Vs. Ashok Kumar Srivastava, the effect:

9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise...

The aforesaid observation are self eloquent to repel the submission canvassed on behalf of learned counsel for the applicant that there exists other possibility of Razia being murdered by somebody else other than the appellant. In the light of peculiar facts and circumstance of the present case such hypothesis clearly appears to be fanciful, on the contrary considering the events which had occurred on the relevant day we find no fault committed by the trial Court in arriving at conclusion that the said circumstance lead to reasonable hypothesis of the appellant being culprit or preparator of the crime.

19. In the context of the circumstance Razia being lastly seen in company of the appellant it will be necessary to say that in order to give necessary weightage to the said circumstance there must be proximity in time in between the period at which the concerned accused was found in company of the deceased and occurrence on the date. It is true that in the instant case prosecution has not precisely determined time of death of Razia, however, considering evidence of P.W. 1 that the appellant had been to her house for bringing cap of his son in the afternoon on 18th October and dead body was noticed in morning of 19th October it is reasonably clear that said death must have occurred in between night of 18th and 19th October. Thus, taking into consideration the reason for which Razia has returned from house of P.W. 1, we are unable to accept that

there was no proximity in between two events occurred. With regard to other possibilities tried to suggested, the learned counsel for the appellant has not at all pointed out any circumstance spelling out other possibilities. On the contrary, selling of ornaments of the appellant without any reason and rhyme, not remaining in the house not only for the couple of days but for couple of years taking into consideration together leads to only probable hypothesis of the appellant being perpetrator of the said crime. In the premises aforesaid we do not find any merit in the present appeal and as such dismiss the same.