
(2010) 04 BOM CK 0048
In the Bombay High Court
Case No : Criminal Appeal No. 760 of 2003

Sunil Anandrao Sawant

APPELLANT

Vs

Government of Maharashtra

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 28, 31, 31(1), 432, 433
Penal Code, 1860 (IPC) — Section 201, 302, 307, 323, 324

Citation : (2010) CriLJ 3579 : (2010) 2 Crimes 751 : (2011) 7 RCR(Criminal) 21

Hon'ble Judges : V.K. Tahilramani, J;Ranjana Desai, J

Bench : Division Bench

Advocate : Pranali Kakade, for the Appellant; P.H. Kantharia, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—This appeal, by the appellant/original accused is directed against the judgment and order dated 4th March, 2003 passed by learned Adhoc Additional Sessions Judge, Kolhapur in Sessions Case No. 208 of 2002. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 302 and 307 of I.P.C. For the offence u/s 302, the appellant came to be sentenced to RI for life and for the offence u/s 307, the appellant came to be sentenced RI for seven years. Learned Adhoc Additional Sessions Judge directed all the substantive sentences to run consecutively.

2. The prosecution case briefly stated is as under:

The appellant Sunil Sawant and deceased Sambhaji were real brothers. Both of them with their families resided in their ancestral house located in Chavan Galli, near Khandoba Talim in Shivaji Peth, Kolhapur. Sambhaji was residing in one room in front portion of house along with his wife PW7 Rajashri, his two sons PW6 Sumit, Rohit and a daughter. One room which was in their possession was rented out to PW3 Babita Jadhav who was residing there with her family. The room of Babita is adjacent to the room of Sambhaji. The appellant Sunil was residing in back side portion of the said house. He was in possession of four

rooms. PW7 Rajashri was recovering rent from the tenants, hence, the appellant Sunil used to often ask Rajashri and her husband Sambaji to carry out repairs to the roof and other repairs. Sometimes, on account of paucity of funds, there was delay in carrying out repairs on account of which appellant raised quarrels.

Some portion of the house on front side which was adjacent to the main road was to be acquired by the Corporation for the purpose of road widening. Prior to the incident, authorities under the Corporation had visited the house and measured the likely portion to be acquired. In this background, the appellant Sunil was asking his brother Sambhaji to partition the house between them. Sambaji used to tell the appellant that after the portion is acquired by the Corporation, they will partition the house in order to avoid double expenses of putting up walls for the purpose of partition. However, the appellant Sunil was in no mood to wait. The appellant did not want to wait and he used to raise quarrels and abuse Sambhaji and his wife. In this background on 31.05.2002 at 5.30 a.m, when PW7 Rajashri had gone to the water tap near her house to wash clothes, the appellant came out of his house. At that time, he was armed with axe. He attacked Rajashri with the axe. On hearing the noise, Sambhaji and his sons came out of the house. When Sambhaji saw the accused assaulting Rajashree, he embraced her and asked the appellant why he was assaulting Rajashri. Thereupon, the appellant started assaulting Sambhaji with the axe. Both Rajashri and Sambhaji fell down, yet the appellant continued assaulting Sambhaji. On hearing noise, PW 3 Babita came out of her house and some other persons including PW2 Shripati Wagare, PW8 Anil Otari came to the spot. Thereupon, the appellant stopped assaulting and went inside his house. Thereafter, he changed his clothes and left the place. At that time, Sambhaji was lying dead near the water tap and Rajashri was lying there in a serious condition. In the incident, Sambhaji sustained as many as 10 incised wounds and Rajashri sustained five incised wounds.

PW2 Shripati who was also a tenant of deceased Sambhaji, telephoned the police control room and informed that there was quarrel between two brothers and he gave the address to the police. The police came to the scene of offence and recorded the complaint of PW2 Shripati. In the meanwhile, PW7 Rajashri was sent to the hospital for treatment where her dying declaration came to be recorded. The body of Sambhaji was sent for postmortem. After completion of investigation, charge sheet was came to be filed.

3. Charge came to be framed against the appellant original accused under Sections 307 and 302 of I.P.C. The appellant pleaded not guilty to the said charge and claimed to be tried. His defence is that of total denial and false implication. After going through the evidence adduced by the prosecution, the learned Adhoc Additional Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

4. We have heard learned advocate for the appellant original accused and learned APP for the State. We have perused the evidence as well as the

judgment and order passed by learned Adhoc Additional Sessions Judge. After giving our anxious consideration to the matter and for the reasons stated herein below, we are of the opinion that the judgment and order passed by the learned Additional Sessions Judge whereby the appellant came to be convicted under Sections 302 and 307 of IPC does not call for any interference.

5. That the death of Sambhaji was homicidal in nature cannot be doubted. PW9 Dr. Harishchandra Patil conducted postmortem on dead body of Sambhaji and he found ten incised injuries which are as follows:

1. Oblique incised wound on right side of the neck on mid. portion of mandible to right side of neck below 1 inch from ear. Mandible bone exposed, muscle exposed common carotid artery and internal jugular vein cut. Sternocleidomastoid muscle, trapezius and post belly of digestic muscle cut. Bleeding from wounds. Size 3 1/2" X 1" X 2/2"

2. Oblique incised wound on right side of neck mid. portion to thyroid region. 3" X 1" X 2". Bleeding.

3. Incised wound on upper lip below nose more on right side Maxilla and nasal septum cut

Size 2 1/2" X 1/2" X 1 1/2" deep up to base.

4. Incised wound on left forearm from lower 1/3 to wrist joint ventral post. asp. with fracture end of size 4" X 2" X 1" deep

5. "C" shaped incised wound on mid. left forearm posterior aspect. Size 2" X 1 1/2" X 1/2"

6. Incised wound on left elbow posterior aspect. 1" X 1/2" X 1/2"

7. Oblique CIW on left arm below 2 cm. from deltoid 2" X 1" X 1/2"

8. Incised wound on mid. arm lateral aspect Horizontal. 1" X 1" X 1/2"

9. Incised wound on posterior aspect on next at C 4 level. 2" X 1" X 1" deep

10. Incised wound on right wrist anterior aspect oblique in nature. Size 1 1/2" X 1/2" X 1 cm. deep.

According to Dr. Patil, these injuries were sufficient in the ordinary course of nature to cause death of Sambhaji, particularly, injury No. 1 which was very deep and which had cut the vein of the neck, which in the opinion of Dr. Patil was singly sufficient to cause the death of Sambhaji. Looking to the nature of injuries and the evidence on record, the only conclusion which can be arrived at is that it was a case of homicidal death.

6. In order to prove that it was the appellant who was responsible for the death of Sambhaji, the prosecution has mainly relied on the evidence of five eye witnesses i.e PW7 Rajashri who is the wife of deceased Sambhaji, PW6 Sumit

who is the son of deceased Sambhaji, PW3 Babita who was the neighbour as well as tenant of deceased Sambhaji, PW2 Shripati and PW8 Anil Otari who were both neighbours of Sambhaji as well as the appellant.

7. PW7 Rajashri is an injured eye witness. She was examined by PW10 Dr. Arun Morale. On examination of Rajashri, following five incised injuries were found:

1. incised wound right parietal and right auditory region. Extended ear incised wound extends from 2 cm. ant. to tragus to pinna 4 cm. extending into incising to scalp perotaid glinds. size 8 cmX2 cmX4cm

2. incised wound on mid. scalp 10 X 2 X 0.5 cm fresh bleeding

3. incised wound over right wrist 3 X 4 X 0.5 cms. bleeding plus

4. incised wound right lower 1/3rd of forearm on dorsal aspect. 3 X 2 X 0.5 cms.

5. incised wound over oxipital area "L" shaped 5 X 3 X 1 X 1 cms fresh bleeding plus. there was fracture of right radius and ulna at lower 1/3rd.

Dr. Morale has stated that there were three injuries on the skull which is vital part of the body and there was fracture on the right ulna. From the evidence of PW10 Dr. Morale as well as evidence of PW7 Rajashri, it is quite clear that not only were the injuries caused by the appellant to Rajashri but that these injuries were grievous in nature. That the injuries were grievous is clear from the evidence of PW10 Dr. Morale who stated that had Rajashri not been treated medically, she would have died.

8. As far as the eye witnesses are concerned, there is no doubt that all of them are residing near the scene of offence. The incident occurred in the early hours of morning at about 5.00 am. The water supply in that area is between 4.00 a.m. to 5.30 a.m.. In that background, naturally, PW7 Rajashri would be at the tap to wash her clothes, therefore, her presence at the tap near her house is quite natural. It has also come on record that at the distance of about 22 feet from the tap, there is a street lamppost with mercury light. It was lit at that time. The incident occurred in the month of May, hence, on account of mercury light and as well as the time being around 5.30 a.m., it would not have been completely dark. Moreover, all the witnesses, the appellant as well as the victims are neighbours, hence, there is no possibility of any incorrect identification of the appellant as well as the victims. All the witnesses being immediate neighbours, it is quite natural that they came to the spot on hearing cries.

9. PW7 Rajashree who is the injured witness stated that when she was washing clothes, she heard sound of opening of door. When she turned, she saw the appellant with axe in hand. He started attacking her. On hearing the sound, her husband reached the spot and questioned the accused whereupon the appellant started assaulting her husband. Both of them were seriously injured and her husband died due to the assault.

10. PW6 Sumit @ Vinod Sawant is the son of deceased Sambhaji and PW7

Rajashri. He has also narrated in detail as to how he and his father came out of their house on hearing the cries. He has stated that his father tried to save his mother from the attack of axe, at that time, the appellant gave blows with axe to his father and caused his death.

11. PW2 Shripati resided on the first floor of the same building in which accused and deceased resided. He has stated that on hearing the cries, he came out. He saw Rajashri lying near the water tap with injuries and Sambhaji was lying by the side of Rajashri. At that time, the accused was attacking Sambhaji with axe. After seeing this incident, he went to nearby telephone booth and informed the police control room. Corroboration is found to the evidence of Shripati from the evidence of PW1 1 Head Constable Bhosale who stated that he received message on phone about this incident.

12. The next eye witness PW3 Babita Jadhav was also residing in the same building as that of the appellant as well as the deceased. Babita has stated that when she heard cries, she came out. She saw Rajashri who had sustained injuries on her head and Sambhaji who had also sustained injuries were both lying in pool of blood. She also saw the accused giving blows with axe to Sambhaji. This witness has further stated that at that time, PW2 Shripati, PW6 Sumit and eighteen persons from the locality were also present and they witnessed the incident. So, according to her, when she came out, PW2 Shripati was present, hence, her evidence corroborates presence of PW2 Shripati as well as presence of sons of deceased including PW6 Sumit.

13. The prosecution has examined one other eye witness i.e. PW8 Anil. His house is in front of the house of the appellant i.e his house is just beyond the road. He also came to the spot on hearing the cries and he saw that Sambhaji was trying to save Rajashri. At that time, the appellant gave blows with axe to Sambhaji. He has stated that thereafter, the appellant kept the axe at the spot and went inside his house, changed his clothes and went away. This witness is an independent witness. His evidence also shows the complicity of the appellant in the crime.

14. Nothing has been elicited in the crossexamination of all these eye witnesses so as to discredit their testimony in relation to assault. One of these witnesses is an injured witness i.e PW7 Rajashri. Rajashri has sustained five injuries in the incident, three of these injuries were on vital parts. It is also to be noted that the presence of the appellant at the relevant time is amply proved by his own admission. The appellant admitted that he was present at the spot but only to separate the quarrel between Rajashri and her husband. Looking to the evidence on record, his defence that he came to the spot to separate the quarrel between husband and wife, can only be disbelieved. If really the defence taken by him was true, after the incident, he being brotherinlaw of Rajashri would have been taken Rajashri to hospital as Rajashri was still alive. However, he made no such attempt and in fact, he changed his clothes and went away from the house. Thus, his conduct of running away from the scene of offence also shows his guilt and in a way, it corroborates the case of the prosecution.

Thus, looking to the evidence on record, learned Adhoc Additional Sessions Judge was right in holding that the appellant is the author of injuries to Rajashri and it was his act which caused death of Sambhaji. Hence, the appellant was rightly convicted under Sections 302 and 307 of I.P.C.

15. This leaves us only with one aspect which arises for our consideration i.e relating to sentences imposed on the applicant. Learned advocate for the appellant submitted that learned Sessions Judge has directed that both the substantive sentences of imprisonment to run consecutively and not concurrently. The learned advocate for the appellant prayed that both the sentences of imprisonment be directed to run concurrently.

16. Sentencing is one of the most important facets of administration of criminal justice system. Apart from statutory restrictions, an appropriate sentence is a matter for the discretion of the Judge imposing the sentence. For an offender to receive a sentence which adequately reflects the gravity of his offence, the punishment ought not to be so lenient and should not be heavier than that justified by the offence. The sentence must not be too long or excessive. A proper sentence is a composite of many factors, including the nature of the offence, the circumstances extenuating or aggravating of the offence. After considering these factors, the discretion is used whether sentences awarded should run concurrently or consecutively.

17. Section 31(1) of the Criminal Procedure Code vests a discretion in the Court to direct that the punishment shall run concurrently when a person is convicted at one trial of two or more offences. The Court may sentence the accused for such offences to the several punishments prescribed therefore which such Court is competent to inflict. Such punishments would consist of imprisonment to commence the one after the expiration of the other in such order as the Court may direct.

Section 31 of Criminal Procedure Code reads as under:

Sentence in cases of conviction of several offences at one trial (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

On plain reading of this Section 31 of Cr. P.C., it is seen that it is left to the discretion of the Court imposing the sentence as to whether the sentences should be made consecutive or concurrent. On reading Section 31, it appears that normally the substantive punishments of imprisonment shall commence one after the expiration of the other unless the Court directs that said punishments shall run concurrently. Thus, if the Court does not direct, it would be understood that the punishment shall run consecutively one after another. When the sentences of

imprisonment are to run concurrently, the Court has to specifically direct that the punishments shall run concurrently.

18. In the present case, the appellant has not only caused death of Sambhaji but he has also caused grievous injury to Rajashri. PW7 Rajashri has sustained five injuries in the incident. All the injuries were incised wounds. Three of the injuries were on the skull which is a vital part of the body. One wound on the skull was of the length of 10 cms. The second one was to the extent of 8 cms and the third one was to the extent of 5 cms. Rajashri had also sustained injuries in the incident. The evidence of PW10 Dr. Morale shows that had Rajashri not been treated medically, she would have died. The appellant has attacked Rajashri a young woman with axe and has caused grievous injuries to her. He has also mercilessly attacked her husband with axe and caused his death. One person died due to the act of the appellant and one person sustained serious and grievous injuries. In our view, if the appellant was not imposed with any separate punishment for causing injuries to Rajashri, it would be seem that the appellant has got away scot-free for causing grievous injuries to Rajashri, hence, obviously, the appellant has to be imposed some punishment which he has to actually undergo for causing injury to Rajashri.

19. Learned advocate for the appellant argued that as the death of Sambhaji and injuries to Rajashri were part of the same incident, the appellant ought not to be made to undergo separate sentences for causing injuries to Rajashri. We are of the opinion that if during the course of one incident, if there are different victims i.e acts of the accused are directed against different victims, it would not be fair to impose concurrent sentences. The situation would have been different, for example, in a case where the accused while committing robbery of person "A" also caused his death. In such case, the sentences of imprisonment for the act of robbery and for the act of murder may be made concurrent. Take another example where a person sets the house of person "A" on fire and "A" who is in the house dies in the incident, here also, the punishment for both these offences may be made concurrent. However, when the victims are different and specially in the present case, where Rajashri had sustained such grievous injuries, we do not feel it appropriate that the sentence for the offence of causing injuries to Rajashri can be made to run concurrently with the other sentence of imprisonment. Had the injuries to Rajashri been simple in nature i.e falling u/s 323 or 324 of the I.P.C., we would have been persuaded to make the punishment for that offence concurrent.

20. Learned advocate for the appellant submitted that the appellant would be undergoing sentence of life imprisonment for causing death of Sambhaji, hence, he would remain in jail for his lifetime, in such case it would serve no purpose if the applicant is made to undergo further sentence of imprisonment thereafter for causing injury to Rajashri. When life imprisonment is imposed on a convict, it does not mean that a person remains in prison till the end of his life. Every State including the State of Maharashtra has rules framed u/s 433 of Cr. P.C. wherein

the appropriate Government may, without the consent of the person sentenced commute a sentence of life imprisonment for a term of imprisonment not exceeding fourteen years or for fine. Various categories have been framed under these Rules and persons falling under those categories have to undergo various periods of imprisonment ranging from 18 to 30 years including remission. By way of remission approximately almost 1/3 of the sentence of imprisonment is reduced. Thus, if any convict is to undergo imprisonment for 21 years, under the Rules, the actual imprisonment he would have to undergo is about 14 years. Thus, it would be fallacious to state that if a person is sentenced to life imprisonment, he would remain in a prison till the end of his life.

21. In *Kamalanantha and Others Vs. State of Tamil Nadu*, , the appellants were convicted for various offences. Some of them were convicted for life imprisonment for two to three offences separately. The trial court had resorted to Section 31 of the Code and ordered the sentences to run consecutively, subject to proviso (a) of the said section. It was argued before the Supreme Court that the word "imprisonment" found in Section 31 of the Code does not include imprisonment for life. The Supreme Court rejected the submission. The Supreme Court observed that Section 31 of the Code falls under Chapter III of the Code which deals with power of courts. Section 28 of the Code empowers the High Court to pass any sentence authorized by law. Similarly, the Sessions Judge and Additional Sessions Judge may pass any sentence authorized by law, except the sentence of death which shall be subject to confirmation by the High Court. The Supreme Court concluded that the term "imprisonment" would include the sentence of imprisonment for life. The Supreme Court maintained the Trial Court's order that any remission of sentence or amnesty or any special occasions announced or to be announced either by the Central Government or the State Government shall not apply to the sentence and imprisonment imposed on all the accused looking to the gravity of the offence. Thus, Section 31 confers vast discretion on the court to be appropriately used according to the circumstances of a case. Mrs. Kakade's argument must therefore be rejected.

22. Section 433A states that notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment. This section has introduced "the 14 years rule". After the accused completes 14 years of actual imprisonment, he is put in categories carved out by the State and has to undergo the sentence provided for that category. This explains why in some cases the Supreme Court has made certain sentences run consecutively after the life sentence runs its course.

23. There are other instances apart from *Kamalnatha* where in gruesome crimes, the Supreme Court has refused to exercise discretion in favour of the accused

and sentence for a term has been made to run consecutively after expiration of life sentence.

24. In the case of Ronny @ Ronald James Alwaris Etc. Vs. State Of Maharashtra, , the accused persons had committed gang rape on a lady and murder during the course of the same incident. In this case, the Supreme Court felt it appropriate that the sentence u/s 376(2)(g) of I.P.C. for gang rape shall run consecutively after serving the sentence for offence of murder i.e the Supreme Court directed that the sentence u/s 376(2)(g) of the I.P.C. of 10 years RI shall be served after the sentence of life imprisonment is over. So also, in the case of Ravindra Trimbak Chouthmal Vs. State of Maharashtra, , the Supreme Court directed that the sentence of seven years RI for the offence u/s 201 of the I.P.C. be directed to run consecutively after the sentence of life imprisonment had run its course. In the case of Ravindra Chouthmal, the accused had murdered his wife and thereafter to cause the evidence of the crime to disappear, he had cut the body and thrown it away.

In both these judgments, the Supreme Court directed that after the sentence of life imprisonment had been served, the accused persons shall undergo the sentence for the other offences i.e the sentences of imprisonment were directed to run consecutively. In the present case, looking to the injuries inflicted by the appellant on Rajashri, we are of the opinion that the appellant has to undergo some sentence of actual imprisonment separately. However, looking to the fact that the appellant has young children, we are inclined to reduce the period of actual imprisonment for the offence u/s 307 from 7 years RI to 3 years RI. This sentence shall run consecutively after serving the sentence for offence of murder of Sambhaji. Rest of the order of conviction and sentence are maintained.

25. Appeal is partly allowed.