

(2015) 04 BOM CK 0010
In the Bombay High Court
Case No : Criminal Appeal No. 167 of 1996

Suresh Shankar Chandanshive

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 307

Citation : (2015) 04 BOM CK 0010

Hon'ble Judges : Shalini Phansalkar Joshi, J

Bench : Single Bench

Advocate : Umesh Mankapure and Vinod Sangvikar, for the Appellant; H.J. Dedhia, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Dr. Shalini Phansalkar Joshi, J.—The Appellant, who stands convicted by the Additional Sessions Judge, Sangli by Judgment dated 8th February, 1996 in Sessions Case No. 105 of 1995 for the offence punishable under Section 304 Part-I of the IPC and sentenced to suffer R.I. for 8 years and to pay fine of Rs. 6,000/-, in default to undergo further R.I. for 1 1/2 years, and Section 307 of the IPC and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 4,000/-, in default to undergo further R.I. for one year, by this Appeal challenges his conviction and sentence.

2. Brief facts, as are necessary, for deciding this Appeal may be stated thus:-

Appellant is the husband of PW-6 Laxmi. Their marriage had taken place, at the time of incident, about 15 years back. They had two children out of the wedlock. However, since the Appellant was taking suspicion about his wife PW-6 Laxmi having illicit relations with deceased Namdeo, since about one year prior to the incident, she had started residing separately. Only one day prior to the incident, the Appellant had brought her to his house. Then, on the date of incident, i.e. 31st March, 1995, in the night at about 2:30 am, the Appellant saw both the

deceased Namdeo and his wife PW-6 Laxmi in compromising position. Therefore, he assaulted with an axe, both, the deceased Namdeo and his wife PW-6 Laxmi. As a result of the assault, Namdeo died instantaneously, whereas, PW-6 Laxmi sustained various injuries. She, however, managed to reach the Police Station at about 7 am to 7:30 am. However, by that time, the Appellant himself had already come to the Police Station.

3. At Kavathe-Mahankal Police Station, on that day, PW-12 Head Constable Balwant Sarvade was on PSO duty. While Appellant was narrating about the incident to him, PW-6 Laxmi also came there with bleeding injuries on her person. He thought it fit to refer her for her medical examination to hospital before recording her complaint. Accordingly, along with Yadi (Exhibit-46), he referred PW-6 Laxmi to the hospital and informed about the entire incident to PW-17 API Pandurang Patil.

4. On the receipt of this information, PW-17 API Patil rushed to Rural Hospital at Kavathe Mahankal and after verifying from the Medical Officer present there that PW-6 Laxmi was in a position to give the statement, he recorded her complaint vide Exhibit-24 in the presence of the Medical Officer.

5. On this complaint of PW-6 Laxmi, PW-17 API Patil registered C.R. No. 21 of 1995 against the Appellant for the offences punishable under Sections 302 and 307 of the IPC. On the registration of the offence, he arrested Appellant under Panchanama (Exhibit-66). By that time, the Police Patil of the Village PW-16 Basgaonda Patil had also rushed there, as he had got information of the incident from the father of the Appellant. Hence, after verifying the dead body of Namdeo lying in the house of the Appellant, he had come to the Police Station to give information. PW-17 API Patil then, along with Police Patil PW-16 Basgaonda Patil, Appellant and the Photographer came to the spot, drew the Scene of Offence Panchanama in the presence of the Panch vide Exhibit-15. From the spot, he seized the blood stained gunny bag, one pillow with blood stains thereon, the pieces of bangles and one silver Jodvi. He also collected the sample of blood stained earth and controlled earth from the spot. The photographs of the scene of offence were taken by PW-11 Sanjay @ Sunil Patil, the Photographer. They are produced at Exhibits "39" to "44". On the spot itself, the enquiry was made with the Appellant by PW-17 API Patil and in the presence of Panchas, Appellant expressed his willingness to produce the axe used in commission of the offence. The Memorandum Panchanama of his statement was made vide Exhibit-16. Then Appellant laid the Police and Panchas to the river bank and produced one blood stained axe, which was lying in the rubbish near the river bank. The said axe (Muddemal Article No. 6) was seized under Panchanama (Exhibit-17).

6. As a part of further investigation, PW-17 API Patil recorded the statements of witnesses, collected the Postmortem Report and on 2nd April, 1995, he seized underwear of the Appellant under Panchanama (Exhibit-21). On 26th April, 1995, he sent all seized muddemal property to Chemical Analyzer and the C.A. Reports are at Exhibits "51" to "53". Further to completion of investigation, he filed

Charge-Sheet in the Court against the Appellant.

7. On case being committed to the Sessions Court, the Trial Court framed charge against the Appellant vide Exhibit-1. The Appellant pleaded not guilty to the charge and claimed trial.

8. In support of its case, Prosecution examined as many as 17 witnesses and on appreciation of their evidence, the Trial Court found the guilt of the Appellant to be proved for the offences punishable under Sections 304 Part-I and 307 of the IPC and convicted and sentenced him, as aforesaid.

9. In this Appeal, I have heard learned Counsel for the Appellant Mr. Umesh Mankapure and the learned A.P.P. for the Respondent-State Mr. H.J. Dedhia. In my considered opinion, in order to effectively deal with their rival submissions, it would be useful to refer to the evidence on record.

10. To prove the homicidal death of Namdeo, Prosecution has examined PW-8 Dr. Deelip Jadhav, who has conducted the postmortem examination on the dead body on 1st April, 1995 in between 2:45 pm to 4:30 pm. On external examination, he found following injuries on the dead body, which are noted in Column No. 17 of the Postmortem Report (Exhibit-28):-

(1) Cut incised wound 9 c.m. in length and 4.5 c.m. in deep extends from cricoid region to the left angle of mandible around the neck. This cut incised wound may be caused by sharp object major vessels are torn at site of injury with bleeding evidence.

(2) Cut incised wound below chin about 8 cm. extends to left sided angle of mandible (3.5 cm in deep). Major vessels are cut off with bleeding present.

(3) Cut incised wound on left maxillary region about 6.5 cm in length extending below upto lower lip (1.2 cm deep).

Above all injuries suggest the depth is variable for each injury which varies from 1.2 cm to 4.5 cm.

(4) Cricoid cartilage is cut off.

(5) Rupture of Major vessels jugular vein.

(6) Fracture of maxillary bone left sided.

(7) Rupture of trachea and main vessels.

(8) Teeth cut off left sided upper molar and pre-molar.

(9) Muscles of left cheek cut off.

11. Whereas, on internal examination, he found following injuries, which are noted in Column No. 19 of the Postmortem Report (Exhibit-28):-

Larynx cut off and trachea cut off.

Jugular left cut off (external and internal) superior vessels (left sides) cut off in neck.

Teeth are cut-off : Left sides pre-molar and molar teeth and both lips cut-off.

12. According to him, all these injuries were ante mortem in nature and possible by the assault with an axe (Muddemal Article No. 6), which was shown to him in evidence before the Court. In his opinion, the cause of death was "shock due to severe bleeding caused by rupture of major vessels in neck region like trachea and jugular veins due to cut incised wounds in neck region". The Death Certificate issued by him is at Exhibit-29 and the Postmortem Report is at Exhibit-28.

13. It is brought on record that at the time of postmortem examination, he noticed dry discharge of semen on underwear and at the tip of the penis of the dead body. He has noted these facts in Column No. 15 of the Postmortem Report (Exhibit-28). In view of these findings, he has further opined that just prior to the death, there must be discharge of the semen on account of sexual intercourse.

14. The evidence of PW-8 Dr. Deelip Jadhav, thus, proves the cause of Namdeo's death as homicidal in nature, on account of the assault by the sharp edged weapon, like, axe, (Muddemal Article No. 6) and it further proves that just before the death, deceased Namdeo had sexual intercourse.

15. At this stage, it would be relevant to refer to the evidence of PW-6 Laxmi, who is the star witness for Prosecution. As per her evidence, after marriage with Appellant about 15 years back, she was residing with him at Kolhapur. She had two children from the Appellant and thereafter she has started residing separately, as the Appellant was taking suspicion about her illicit relations with Namdeo. In evidence before the Court, she has stated that just a day before the incident, Appellant came to her at Kolhapur and asked her to accompany him to Morgaon Vasti, on the ground that he wants her assistance to dig a basement of the house. As per the directions of the Appellant, she came to Morgaon Vasti on the day of incident. At about 5 pm to 6 pm, the Appellant threatened her that she should demand money to deceased Namdeo for the construction of basement of their house. When she declined to do so, quarrel took place between her and the Appellant. Then, at about 10:30 pm, Appellant came to the house with deceased Namdeo and then she was forced to lie on the bed in between the Appellant and the deceased. Appellant then committed forcible sexual intercourse with her. Thereafter, he went outside and brought one axe. While deceased was committing sexual intercourse with her, the Appellant assaulted her and the deceased with axe. As a result, deceased Namdeo died on the spot due to the injuries, whereas, she retained her consciousness and went to the Police Station and lodged the complaint. In her cross-examination, it is brought on record that the Appellant is disabled by one leg due to Polio. It is further brought on record that the Appellant was taking suspicion on her

character. Hence, she had left the house. It is also brought on record that when Appellant assaulted her, she had raised the cries. However, nobody rushed to their house. A suggestion put up to her in cross-examination that some unidentifiable person made assault on Namdeo and her, is denied by her.

16. This evidence of PW-6 Laxmi that it was Appellant who had assaulted her and the deceased Namdeo with an axe, gets complete support and corroboration from the evidence of PW-12 Police Head Constable Sarvade. According to his evidence, on 1st April, 1995, at about 7 am, first Appellant had come to the Police Station and while Appellant was narrating about the incident, PW-6 Laxmi also came there with bleeding injuries on her person. Hence, he referred her for medical examination along with Yadi Exhibit-46.

17. PW-13 Dr. Vilas Khot had examined PW-6 Laxmi at Rural Hospital, Kavathe Mahankal and on examination, he has noticed following injuries on her person:-

(1) Incised wound right wrist dorsal surface 10 x 2 cm bone deep with fracture radius.

(2) Incised wound right middle of forearm 10 x 3 cm with bone deep fracture middle of portion.

(3) Incised wound right anterior to shoulder 10 x 3 cm bone deep.

(4) Incised wound upper part of right shoulder 10 x 3 cm bone deep.

(5) Incised wound scalp left temporal region 10 x 3 cm bone deep.

(6) Incised wound left side of posterior surface of back over scapular area size 10 x 2 cm bone deep.

(7) Incised wound left lateral surface of hand size 3 x 2 cm.

(8) Incised wound left side of 2/3rd of forearm size 3 x 1 cm.

18. According to him, the age of injuries was within six hours prior to examination and these injuries were possible due to assault by an axe. He has brought the original case papers (Exhibit-57), which show that he has examined PW-6 Laxmi at 7:45 am on 1st April, 1995. In his presence, PW-17 API Patil has also recorded the complaint of Laxmi vide Exhibit-24. According to his evidence, as Laxmi required some further medical treatment, he referred her to Civil Hospital, Sangli.

19. Prosecution has then examined PW-14 Dr. Sanjay Bhawe from Civil Hospital, Sangli, who has also deposed about the injuries found on the person of PW-6 Laxmi. He has produced her case papers at Exhibit-62, in which the history given by PW-6 Laxmi of assault by axe at the hands of her husband was noted. According to his evidence, PW-6 Laxmi was admitted in the hospital on 6th May, 1995. He has opined that the injuries sustained by her were grievous in nature.

20. Thus, the ocular account, as given by PW-6 Laxmi about the cause of her

injuries, is getting complete support and corroboration from the medical evidence on record.

21. If at all any further corroboration is required to her testimony, then it is also coming from the evidence of PW-17 API Patil and the Panch PW-5 Sahadeo Gurav, in whose presence the under pant of the Appellant was seized from the person of the deceased at the time of his death under Panchanama (Exhibit-21). There is also the evidence of PW-17 API Patil and the Panch PW-3 Dadu Kolekar to prove that at the instance of the Appellant, at his behest, in pursuance of the Memorandum Panchanama, the weapon of assault, the axe, was seized under Panchanama from the spot shown by the Appellant. As already stated, the evidence of PW-12 Police Head Constable Sarvade and Police Patil PW-16 Basgaonda Patil also goes to prove that the Appellant himself had been to the Police Station to give information of the incident and as a result, he was caught and arrested immediately after the incident.

22. The evidence on record, therefore, unerringly and beyond any shadow of doubt goes to prove the Prosecution case, that of the Appellant assaulting deceased Namdeo and his wife PW-6 Laxmi, as he found both of them in compromising position in his house. The entire sequence of events, as brought on record, clearly establishes the fact of Appellant coming across adulterous intercourse between the deceased and his wife Laxmi and like any person of ordinary prudence loosing his self control for the moment and committing the assault with intent to eliminate, both, his wife and her paramour. The use of axe for the assault and the nature of injuries found on the vital part of the body of deceased and Laxmi establishes his intention to cause such bodily injury as is likely to cause death. The case of the Appellant, therefore, being squarely falling under Exception-1 to Section 300 of the IPC, the Trial Court has rightly convicted the Appellant for the offence punishable under section 304 Part-I of the IPC so far as death of the deceased and as regards the injuries caused to PW-6 Laxmi, the Trial Court has not committed any error in convicting him for the offence of attempting to commit her murder, punishable under Section 307 of the IPC.

23. Being faced with this clinching material and overwhelming evidence on record, the learned Counsel for the Appellant has also fairly conceded that he would restrict his submissions as regards the sentence to be imposed on the Appellant. According to him, the punishment imposed by the Trial Court is excessive and needs to be substantially reduced. He has urged that this is a case where the Appellant has committed the act under the grave and sudden provocation. The cause for the same was natural for any person of ordinary prudence, when he sees his wife in illicit relations and in actually committing sexual intercourse with her paramour. The Appellant himself had, after cooling down, went to the Police Station and narrated the incident. The act of Appellant of assaulting the deceased and his wife Laxmi, according to learned Counsel for the Appellant, was as a result of the momentary loss of self control. Therefore, it was not an act of premeditation or preplanned. Appellant is also not a hardened

criminal, but a family man. He has further submitted that the Appellant is a disabled person, suffering from Polio. If all these facts, according to him, are taken into consideration, then it is a fit case where punishment already undergone by the Appellant would be the just, reasonable and would meet the ends of justice.

24. Per contra, learned A.P.P. has opposed this submission by pointing out that the offence committed by the Appellant is falling under Section 304 Part-I of the IPC, for which minimum punishment is extending upto 10 years. The Appellant is also convicted for the offence punishable under Section 307 of the IPC, for which also the minimum punishment is extending upto 10 years. The Trial Court has sentenced the Appellant only for a period of 8 years imprisonment for the offence punishable under Section 304 Part-I of the IPC and 5 years imprisonment for the offence punishable under Section 307 of the IPC. Both the substantive sentences of imprisonment are to run concurrently. Hence, according to learned A.P.P., the punishment imposed by the Trial Court being already lenient one, no interference is warranted therein.

25. In support of his submission, learned Counsel for the Appellant has relied upon the various authorities, like State of Punjab Vs. Mohinder Singh, AIR 1994 SC 113 : (1993) CriLJ 3903 , wherein the Accused was held guilty for the offence punishable under section 304 Part-II of the IPC. The facts were such that Accused tried to molest an innocent woman, who took lift in his vehicle. When woman tried to come out of the moving vehicle to escape the attempt of molestation, she was run over by truck and killed. In these peculiar facts of the case, as it was found that the Accused was throughout on bail and served only 2 1/2 months in Jail, the Apex Court held that though the sentence, as imposed by the High Court to the extent of the punishment already undergone, was grossly inadequate, but at the same time considering that the offence had taken place about 19 years prior, due to long lapse of time, it would not be just and proper to send the Accused to Jail and hence by enhancing the fine amount, he was released on the punishment already undergone by him.

26. The distinguishing features of this authority are two fold; the first, the offence proved against the Accused therein was Section 304 Part-II and, secondly, the peculiar facts of the case were that there was no intention to cause the death but only to molest the woman. It is pertinent to note that in this authority, the Apex Court has also deprecated the inadequate sentence imposed by the High Court that of imprisonment of 2 1/2 months only. Only because of the lapse of time, the Apex Court thought it fit that the Accused deserves to be released on the punishment already undergone by him. Therefore, this authority, as a matter of fact, will not help the Appellant to advance the submission on the point of sentence.

27. In the second authority relied upon by the learned Counsel for the Appellant, that of B.G. Goswami Vs. Delhi Administration, AIR 1973 SC 1457 : (1974) CriLJ 243 : (1974) 3 SCC 85 : (1973) SCC(Cri) 796 : (1974) 1 SCR 222 , the offences

proved against the Accused were punishable under the Prevention of Corruption Act. Hence, having regard to the fact that the Accused therein were not the habitual or hardened criminals and the incident had taken place 7 years prior, it was held that the sentence already undergone by them would be sufficient. Therefore, the facts of this reported authority are again distinguishable.

28. In the third authority relied upon by the learned Counsel for the Appellant that of Baldev Singh and another Vs. State of Punjab, AIR 1996 SC 372 : AIR 1995 SC 372 : (1995) 4 Crimes 244 : (1995) 7 JT 286 : (1995) 5 SCALE 703 : (1995) 6 SCC 593 : (1995) 4 SCR 301 Supp , as the Appellant and the victims were members of the same family, considering the nature of crime and mitigating circumstances, after enhancing the fine amount to Rs. 35,000/- each, the Apex Court reduced the punishment to the sentence of two years imprisonment, which they had already undergone.

29. As against it, in the present case, the Appellant had undergone only 5 months of imprisonment and it is submitted at the Bar by the learned Counsel for the Appellant that his financial position is also not sound to pay the enhanced fine amount as compensation to the family of deceased Namdeo.

30. In the fourth authority relied upon by the learned Counsel for the Appellant that of State of M.P. Vs. Shyamsunder Trivedi and Others, (1995) 4 JT 445 : (1995) 3 SCALE 343 : (1995) 4 SCC 262 : (1995) 1 SCR 44 Supp , again the facts were different. The Accused therein were held guilty for the offence punishable under Section 304 Part-II of the IPC and hence the Apex Court held the punishment already undergone by them, which was of one year, as sufficient, and enhanced the fine amount.

31. As regards the last authority of Ghasiram Lakra Vs. State of Orissa, (1997) CriLJ 939 , the Accused was held guilty for the offence punishable under Section 304 Part-I of the IPC and was found to be in custody since the date of his arrest. The incident had taken place on 29th April, 1992. Therefore, as on the date of Judgment of the High Court in the year 1997, he was in Jail for a period of about 5 years and, therefore, it was held that the punishment already undergone by him was sufficient.

32. Thus, all these five authorities, on which the learned Counsel for the Appellant has placed reliance, cannot be made applicable to the facts of the present case, as the facts of these authorities are totally different and in those peculiar facts of the case, the discretion was exercised to impose the punishment which was already undergone.

33. In the instant case, the record discloses that the Appellant was in Jail during the pendency of the trial only for 88 days, whereas, in the course of Appeal, he was in Jail for hardly 2 months. Thus, the total period undergone by the Appellant in Jail is only 5 months. Needless to state, that even accepting all the submissions advanced by the learned Counsel for the Appellant; that Appellant is a disabled person and at present Appellant and PW-6 Laxmi are residing together

happily, even then, considering the gravity of the offence, in which one person was dead and one person was severely injured, the period of punishment undergone by the Appellant, that of 5 months, is very meager. The punishment after all has to be commensurate with the seriousness of the offence. It can neither be excessive or on higher side, nor on lower side or too lenient. The Court has to strike a just balance between the same. In the instant case, as stated above, the charge proved against the Appellant is of 304 Part-I of the IPC, for which minimum punishment is extending upto 10 years. The same is the case with Section 307 of the IPC also. In such a situation, to release the Appellant, by reducing the punishment to already undergone by him, which is of only 5 months, will be the travesty of justice.

34. At the same time, this Court also cannot loose the sight of the peculiar facts of the case, in which the entire incident has happened. The cause of the incident was the adulterous act between PW-6 Laxmi and deceased Namdeo. The benefit, therefore, of Exception-1 to Section 300 of the IPC is extended to the Appellant. At the same time, the incident had also taken place in the year 1995 i.e. about 20 years back. At this stage, to pass the order of arrest of the Appellant and to send him to Jail to undergo the punishment of 8 years, as imposed by the Trial Court, would be definitely harsh one. But then this Court has to pass the order of punishment according to law. Hence, while keeping in context all the facts, submissions and law, this Court can strike a just balance by reducing the punishment, which is imposed by the Trial Court, from imprisonment of 8 years to imprisonment of 3 years. To that extent, this Appeal deserves to be allowed.

35. Consequently, this Criminal Appeal is allowed partly. The conviction of the Appellant for the offence punishable under Section 304 Part-I and Section 307 of the IPC is maintained and confirmed. However, the sentence of imprisonment imposed for the offence punishable under Section 304 Part-I and Section 307 of the IPC is reduced to R.I. for 3 years, each. Both the substantive sentences of imprisonment to run concurrently. Appellant is also entitled to set off for the period already undergone in Jail. The order of the Trial Court as to payment of fine amount, with default clause of imprisonment, is confirmed. As Appellant is on bail, his bail bonds stand cancelled. Appellant to surrender to Jail within six weeks from today.