
(2012) 11 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 743 of 2005

Tarun @ Hanif Tarapad Muzumdar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Income Tax Act, 1961 — Section 32AB
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 2 BomCR(Cri) 635

Hon'ble Judges : Tahilramani V.K., J; Joshi A.R., J

Bench : Division Bench

Advocate : Sarojini Upadhyay, for the Appellant; S.V. Gajare-Dhumal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Joshi A.R., JJ.—Heard rival arguments on this Criminal appeal preferred by the appellant/orig. accused challenging the judgment and order of conviction dated 22nd June, 2004 passed by the IIIrd Additional Sessions Judge, Thane in Sessions Case No. 382 of 2003. By the impugned judgment and order, the appellant/accused was convicted for the offence punishable u/s 302 of IPC and was sentenced to suffer life imprisonment and also to pay fine of Rs. 500/, in default to suffer RI for one month.

2. The case of the prosecution, in nutshell, is as under:

Initially after the marriage, the marital life between appellant/accused and his wife victim Reena, was normal. Thereafter for about 3 & 1/2 years, appellant/accused left the house and went to his native place and performed second marriage. Then again he returned to the house where victim Reena i.e. his first wife was residing. She was not ready to accept him and to cohabit with him. However, the relatives convinced her that there was some settlement and as such appellant/accused and victim Reena with their children started staying together. During such stay, appellant/accused started doubting the character of

Reena. She was working as maidservant. Appellant/accused was suspecting that she had illicit relations with one Nazbul and on that count there used to be quarrels between them.

3. According to the case of prosecution on the day of incident i.e. on 14th July, 2003 on some pretext appellant/accused took his wife Reena with him out of the house. His daughter remained at the house. At night times, he returned but without Reena accompanying him. PW 3 Sapana, daughter of appellant/accused, then aged about 8 or 9 years enquired about her mother. On this, appellant/accused answered that she had gone for some work and would come later. Thereafter on the next day morning, appellant/accused left the house and did not turn up even to look after his children. Dead body of victim Reena was noticed by the Police Patil of village Belapur near railway track and reported the matter to the police. Investigation was carried out by the CBD Police. The spot where the dead body was found was visited. Initially nobody identified the dead body. Inquest panchnama was conducted. Later on, dead body was identified by one Reshma (PW-2), sister of victim. This identification was done during the inquest panchnama and that time Reshma expressed doubt against appellant/accused. Dead body of Reena was sent for post-mortem examination. Statements of witnesses were recorded. Search for the accused was conducted and he was arrested after two days i.e. on 16th July, 2003 from Mahad much away from the place of residence at Belapur, Navi Mumbai. Clothes of the accused were also seized. He was sent for medical examination and for taking his biological samples like blood, nail clippings etc..

4. During investigation, at the instance of appellant/accused a knife and blood stained clothes were recovered. Said knife was identified by one Rajiv Dande (PW-5) as belonging to him-as at his place victim Reena was working as maid-servant and appellant/accused was also visiting his house in absence of said Rajiv Dande and his wife. Seized articles were sent for chemical analysis.

5. On completion of investigation, charge-sheet was filed. The matter was committed to the Court of Sessions and was tried before the 3rd Additional Sessions Judge, Thane during which 11 prosecution witnesses were examined. The trial ended in conviction and same is challenged in present appeal.

6. Certain salient features of the case of prosecution and the material brought before the trial Court are mentioned hereunder in order to have proper perspective of the matter:

The entire case of the prosecution is based on circumstantial evidence:

Firstly, appellant/accused and victim last seen together on the earlier night at their home by PW-3 Sapna (daughter of victim and appellant/accused). PW-8 Smt. Asha Shinde also saw appellant/accused and victim together prior to finding dead body of victim.

Secondly, appellant/accused was not available from the next day morning of the

incident and even he did not bother regarding his small children at home when dead body of Reena was found by the side of railway tracks at Belapur.

Thirdly, appellant/accused was arrested after two days from far away place at Mahad, District-Raigad.

Fourthly, a knife was recovered at the instance of appellant/accused on 19th July, 2003 being Article 19.

Fifthly, blood stained shirt and pant were recovered at the instance of appellant/accused under panchnama in which PW-10 one Sharad Pawar acted as a panch witness.

7. Another salient feature of the present case is that though it is a case of custodial death i.e. the wife found dead while staying in the matrimonial house along with her husband and their children and when she was found dead away from the house and dead body found near the railway track in the vicinity of her house, there should have been some probable explanation from appellant/accused as to how his wife died. Such explanation is lacking in the present case and consequently it is a strong circumstance against the accused and definitely incriminating against him. Moreover, the conduct of appellant/accused as to absconding from his house and not bothering even for his tender age children is still another mitigating circumstance against the accused.

8. Apart from the above, there is motive established by the prosecution during the trial. Evidence of FW-4 one Mangala indicates that there used to be quarrels between appellant/accused and victim Reena, and the accused used to suspect her character and doubting that she had illicit relations with one Nazbul. There is another substantive evidence of one PW-7 Satam with whom for some time victim and also appellant/accused were working as servants. With same witness PW-7 Satam, one driver by name Nazbul was also working. Apparently this is the driver Nazbul with whom allegedly there were illicit relations of victim Reena as doubted by appellant/accused.

9. So far as homicidal death of victim is concerned, the substantive evidence of PW-9 Dr. Bhushan Jain is of much importance. He has conducted post-mortem on the dead body. He found total 10 injuries on the dead body of the victim and all the injuries were ante mortem. For the sake of ready reference, said injuries are described hereunder:

i) Stab injury over left side of the chest medial to areola of size 2.5 X 0.8 cm cavity deep directing obliquely upwards medially.

ii) stab injury over right side of the chest in a midaxillary line at a distance of 17 cm from suprasternal notch and 19 cm lateral to midline of size 2 x 0.8 cm cavity deep directing obliquely upwards medially.

iii) stab injury seen over right side of the abdomen in a sub costal region 24 cm from suprasternal notch and 7 cm but to midline of size 2 x 1 cm. cavity deep

directing obliquely upwards medially.

iv) stab injury seen over right side of the abdomen 1 cm below and 16 cm lateral to midline of size 2 x 0.8 cm cavity deep directing obliquely upwards towards midline.

v) stab injury seen over right side of the back at a distance of 13 cms from spine (C7) and 6 cms lateral to midline of 2 x 0.8 cms, 4 cm deep directing obliquely upwards laterally.

vi) stab injury seen over right side of the back at a distance of 17 cm from C7 spine and 4 cm lateral to midline of size 2 x 0.8 cm cavity deep directing obliquely-upwards and medially.

vii) stab injury seen over right side of the back at a distance 22 cms from C7 spine and 2.5 cm lateral to midline of size 2 x 0.8 cm cavity deep, directing obliquely upwards and laterally.

viii) stab injury seen over right side of the back at a distance of 29 cm from C7 spine and 2 cm lateral to midline of size 2 x 0.8 cm directing obliquely upwards medially penetrating liver and exit through anterior abdominal wall in a epigastric region in a midline of size 1 x 0.3 cm as a exit wound situated at the distance of 27 cm from sternal notch.

ix) stab injury seen over left side of the back at a distance of 24 cms from C7 spine and 11 cm. lateral to midline of size 2 x 0.8 cm cavity deep directing obliquely upwards medially.

x) stab injury over left side of the back at a distance of 20 cm from C7 spine at 13 cm from midline of size 2 X 0.8 cms cavity deep directing obliquely upwards medially.

All the injuries are actively bleeding, margins sharp and one angle is acute and all the injuries are ante mortem in nature. All the injuries were fatal.

10. Considering the effect of the above referred material available as against appellant/accused, there was only argument advanced on behalf of appellant/accused is that the circumstance on the aspect of last seen together is not clinching and cannot link appellant/accused with the offence of murder. It is further submitted that semi-digested food was found in the stomach of the dead body and accordingly much is argued on behalf of appellant/accused that the substantive evidence of PW-3 & PW-8 that they saw victim and appellant/accused together in the evening of the earlier day, is doubtful. However, on this aspect nothing is brought before us in order to doubt the substantive evidence of PW-3 & PW-8. At the cost of repetition, it must be mentioned that PW-3 is a young daughter of victim and appellant/accused. At the relevant time, she was about 8 or 9 years of age and she had seen her father (appellant/accused) taking away her mother (victim), and appellant alone coming late at night and from next day morning absconding. Apparently from the same time the whereabouts of the

victim were not found and only on the next day morning her dead body was found in the locality having severe injuries, as detailed above. Again on this aspect, the substantive evidence of PW-8 is of much importance. Said PW-8 Asha Shinde is a social worker of the area and she was knowing the deceased Reena and appellant/accused as she used to Counsel the couple in the matter of their dispute and mainly in the matter of appellant/accused suspecting the character of his wife. On 14th July, 2003 in the evening PW-8 Asha Shinde sitting outside her house and that time she noticed at about 7:30 p.m. or so that appellant/accused and his wife Reena were passing away from the road. She did not enquire with them as there was no occasion to talk to them and on the next day morning dead body of Reena was found and appellant/accused was initially seen in front of his house at 8:00 a.m. and since then was found missing.

11. Considering the overwhelming material produced by the prosecution in order to establish the guilt of appellant/accused in the matter which is based on circumstantial evidence, we are of the considered view that there is nothing to interfere with the judgment and order of conviction, more so when there is no any probable explanation on the conduct of appellant/accused missing from his house and not giving any explanation on the cause of death of his wife. In the result, there is no merit in the present appeal and the same is accordingly dismissed. This judgment and order be communicated to the appellant who is presently lodged in jail, through concerned jail authorities.