

(1993) 08 BOM CK 0001
In the Bombay High Court
Case No : Criminal Appeal No. 196 of 1991

The State of Maharashtra

APPELLANT

Vs

Jagannath Atmaram Patil

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 392, 397, 411

Citation : (1994) 3 BomCR 218

Hon'ble Judges : S.P. Kurdukar, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : S.B. Patil, P.P, for the Appellant; Rajiv Patil, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—The facts of this case are both gory and gruesome. A six year old girl belonging to village Dhavde appears to have been given in marriage by her parents in a typical child marriage ceremony about a year prior to the incident at which time silver anklets and wristlets were made for her apart from two golden ear rings. These items of jewellery were valued approximately at Rs. 2400/- which is princely amount having regard to the fact that the village itself is a little hamlet situated in a remote and relatively backward area. On the night of 3.5.1990 the girl Jijabai who was then aged about six years and who was sleeping on the ota alongwith other members of the family, disappeared and efforts made by the members of the house hold to locate her were fruitless. Around sun-rise P.W. 4 Sumanbai Patil who is a neighbour informed the girl's father that her mutilated body was lying in a field close-by. On rushing there, the family members came up on a horrifying sight of Jeejabai's body minus her hands and feet both of which had been chopped off in addition to which parts of the right thigh, buttocks etc. had been eaten up by some animals. The body was brought to the house and her father P.W. 1 Dasrath Patil went to Dhondaicha Police Station and lodged a complaint. The Police immediately came to the village, sent the body for post mortem and commenced the investigations. The

prosecution alleges that the name of the accused who also happens to be a labourer and resident of that village, surfaced in the course of investigation. PS I Shinde went to the house of the accused on the evening of that day and it is alleged that the accused was not traceable. A reddish coloured chaddar was seized by the police under a panchanama because it is the contention advanced by the prosecution that the brother of the deceased Jijabai P.W. 2, 12 year old Dhanraj Patil, had disclosed to his parents that the accused had lifted up Jijabai and run away with her at night and that while doing so, he had covered himself with a reddish chaddar and that he had bumped against the cot on which Dhanraj was sleeping. According to the PSI he saw the accused in the village on the evening of 6.5.1990, took him to the Police Station and arrested him under a panchanama. The arrest panchanama alleges that the dhoti of the accused appeared to be stained with blood and seemed to have been washed.

2. It is the prosecution case that while he was in custody, the accused made a statement in the presence of panchas which was recorded in the form of a memorandum pursuant to which he led the police party and panchas to a heap of fodder in one of the fields from where he produced an axe which was attached under a panchanama, the axe being apparently blood stained. The accused further took the party to a small rivulet on the side of which he removed a stone, excavated the earth and produced all the four silver ornaments that were missing from the wrist and ankles of the deceased Jijabai. Thereafter the accused is alleged to have led the party back to his house and to have dug a small hole near the cattle shed and after removing the earth took out the golden ear rings which are alleged to have been removed from the person of the deceased Jijabai. After completing the investigation the accused was placed on trial before the learned Sessions Judge, Dhule and was charged with having committed offences, under sections 302, 392 read with 397 of Indian Penal Code. The learned Trial Judge after assessing the evidence on record acquitted the accused of all the three charges but he however held him guilty of an offence punishable u/s 411 of Indian Penal Code in so far as it has emerged in the course of the trial that the prosecution had conclusively established that the ornaments of the deceased Jijabai had been recovered at the instance of the accused. He was accordingly awarded a sentence of three years rigorous imprisonment and a fine in the sum of Rs. 1000/- in default to suffer rigorous imprisonment for six months. Apparently, the accused did not prefer any appeal against this conviction. The State of Maharashtra however has preferred the present appeal whereby the order of acquittal on the major charges has been assailed. In view of the fact that the accused happens to be from an extremely poor strata Mr. Rajiv Patil has been appointed State counsel to appear on his behalf.

3. We have heard Mr. S.B. Patil, learned A.P.P. at considerable length in this case because the facts are so distressing that it was essential for us to minutely scrutinise the entire record in order to ascertain as to whether the material in fact does connect the present accused with the major offence and secondly as to whether the caliber of the evidence adduced by the prosecution is strong enough

to sustain a conviction under sections 302, 392 and 397 of the Indian Penal Code, all of which are extremely serious charges.

4. Mr. Patil, the learned A.P.P. has taken us through the evidence of P.W. 1 Dasrath Patil the father of the deceased girl who on the night in question was sleeping some distance away with some other persons on the threshing floor. It is the evidence of P.W. 3 Rukhmabai who is the mother, that she woke up at about 3.00 a.m. and was alarmed by the fact that her daughter who was sleeping on the ota had disappeared. It was because of this commotion that they sent for the father P.W. 1 and they tried to locate as to where the girl could have gone. Alongwith these two witnesses, Mr. Patil has taken us through the deposition of P.W. 2 Dhanraj Patil who is the 12 year old son and brother of the deceased. He is a child witness and it is his contention that it was the accused who had covered himself with a red chaddar who lifted up Jijabai and took her away. Dhanraj alleges that in the process he had dashed against the cot on which Dhanraj was sleeping and that this was what woke him up. According to Dhanraj , he saw the accused and identified him but did not react in any manner out of fear. Mr. Patil has, apart from making his submissions with regard to the evidence of these three witnesses, pointed out to us that even though the father and mother do not, in any manner, implicate the accused, that P.W. 2 Dhanraj has wrongly been disbelieved by the learned Trial Judge. Mr. Patil submits that it is nothing unusual for a 12 year old boy to have been very frightened at the sight of somebody picking up his sister and running away and this fear manifested in his reaction in not raising an alarm or doing anything else. He further contends that this is the explanation for Dhanraj being virtually tongue tied for a considerable period of time right upto about 9.00 a.m. in the morning when he is alleged to have disclosed what he had seen at night to the mother. This explains why there is no reference to the name of the accused in the first complaint or F.I.R. of P.W. 1 Dasrath and the reference to the accused in the supplementary statement recorded by the Police Officer after he and Dasrath returned to the village.

5. The learned Trial Judge has very carefully analysed this head of evidence and has observed that the family members which necessarily include P.W. 2 Dhanraj, were obviously alarmed and gravely concerned with the disappearance of the young girl and that their immediate and most urgent reaction would have been to find where she had gone and to locate her. At that point of time, the culprit had already left the place, the mother and father were around and the learned Judge observes that there is no explanation from Dhanraj for not having disclosed to them that it was the accused who had taken the deceased Jijabai away, if at all he had seen this happening. Whereas it is his contention that he informed the parents in the morning. The mother states that he informed them at 3.00 a.m. and the learned Judge, and perhaps, rightly, observed that if this was the case, the parents would have not only rushed to the house of the accused but they would have raised a huge commotion and brought all the villagers there and gone in search of the accused if he was not traceable. The

sum total of these anomalies left the learned Trial Judge with no option except to conclude that the boy Dhanraj could not have seen the incident at all. This is obviously because if one were to recreate what happened on that night even if the boy was awakened, the possibility of his being able to identify the culprit would have been quite remote but had he done so because we are unaware about the manner in which Jijabai was removed, we have no manner of doubt that even if he initially remained quite, he would have not only screamed but rushed to his mother and alerted her immediately thereafter. It is for this reason that the learned Trial Judge has discarded not only Dhanraj's evidence but also the supportive evidence relied upon by the prosecution to the effect that the seizure of the red chaddar from the residence of the accused though in his absence, is an incriminating circumstance. The prosecution has sought to bolster up this case through the evidence of P.W. 9 Reshmabai Patil who contends that on the previous night she had seen the accused hovering around the house of Dasrath wrapped in the red chaddar. Had the earlier evidence been acceptable this piece of evidence would have assisted the prosecution but in the light of the earlier evidence being extremely weak and untrustworthy, this piece of evidence would not bolster up the prosecution any further.

6. This leaves us with the evidence relating to the recovery of ornaments. Mr. Patil the learned APP has taken us through the evidence of P.W. 8 Komalsing Giraso who is the panch as also the evidence of PSI Shinde and the memorandum and the relative panchanamas. This evidence fully and conclusively establishes that it was at the instance of the accused that the silver ornaments and the gold jewellery were recovered. This evidence has been accepted by the learned Trial Judge who, to our mind, very rightly did so. It was on the basis of this material that the accused was convicted u/s 411 of Indian Penal Code and the learned Trial Judge has, while doing so, discussed the law at some considerable length on the question as to whether it would be permissible for him on the basis of this material alone to hold that it establishes the participation of the accused in the main offence of murder and robbery. We need at this juncture to record that we have meticulously scrutinised all the material before us and that the C.A. Report very clearly indicates that the dhoti of the accused and axe both of which appears to have been blood stained when the police seized them, were on analysis found to be free from any blood stain whatsoever. Again an argument was advanced that the accused was absconding from the morning on the 4th until the 6th when he was arrested as is apparent from the evidence of the PSI and this is alleged as a circumstance of guilty conduct. There is hardly any cross examination on this head but unfortunately we find that the evidence of the PSI himself is rather patchy. Under the circumstances, we are not inclined to attach any undue significance to the charge that the accused was absconding because the time frame is relatively short and there is no definite indication before us that all efforts were made to trace the accused and that he was in fact staying away from the police. We do find some stray reference in the statement of the Police Officer but to our mind it is not conclusive and we must take note of

the position in law that if as happens in these situations the accused had been suspected, that there was every possibility of his having run away for some time out of fear.

7. We are, therefore, left with the position that the evidence of recovery of ornaments which is undisputedly proved, is the only material to connect the accused with the main offences. All the rest of the prosecution evidence is not only weak but is unacceptable. In our considered view, having regard to the law relating to circumstantial evidence which is well crystalised, it would be unsafe, improper and impermissible to base a conviction only on this material. In this view of the matter we can only reiterate what has been stated by the learned Trial Judge that even though the facts of the case are horrifying, that the material would not justify a conviction against the accused under sections 302, 392 and 397 of Indian Penal Code. The appeal, therefore, fails and stands dismissed.

8. The record of this case indicates that the accused was undergoing a sentence of three years rigorous imprisonment that the Trial Court had imposed upon him at the stage when the State presented this appeal in respect of the major charges. It appears that since the accused could not furnish bail that he is continuing in custody after the admission of the present appeal. It is, therefore, clarified that the present appeal having failed that the accused, if he has already undergone the sentence imposed upon him u/s 411 of the Indian Penal Code by the Trial Judge and if he is not required in connection with any other offence, that he be set at liberty forthwith.

9. We consider it very necessary to observe with a degree of distress that the single most important factor that contributed to this gory and horrifying murder was the archaic custom of child marriage. This ritual, though banned by law, is still observed in many areas on grounds of custom or religious sanction and in the present instance, young Jeejabai, a child of 6, was put through the ceremony which involved the ornamentation of her person. Her hands and feet were brutally chopped off and her earlobes wrenched open for the sake of these ornaments and we do find it necessary to observe in the strongest of terms that this was a direct fall-out of the downright illegal customs of child marriage. Dealing with a similar situation, Krishna Iyer, J., had occasion to observe in (Parasram's) 1, case reported in 1981 S.C.C. (Cri) 516 as follows:

"Secular India speaking through the Court, must administer shock thereby to such anti-social piety, when the manifestation is in terms of inhuman and criminal violence. When the disease is social, deterrence through Court sentence must, perforce, operate through the individual culprit coming up before the Court. Social justice has many facets and Judges have a sensitive, secular and civilising role in suppressing grievous injustice to humanist values by inflicting condign punishment on dangerous deviants."

It is in this context, that we not only deprecate the continuance of the unholy

custom of child marriage but more importantly refuse to entertain any pleas for clemency even though the accused comes from the poorest of the poor strata. It is a matter of propriety when it comes to certain classes of offences, particularly atrocities against women, and even more so, against very young women, that the Courts cannot and will not show any misplaced sympathy. Had the State of Maharashtra filed an application for enhancement of sentence, this is one case in which we would have unhesitatingly stopped up the punishment.