

(2011) 08 BOM CK 0031
In the Bombay High Court
Case No : Criminal Appeal No. 250 of 1991

The State of Maharashtra

APPELLANT

Vs

Shivaji Maruti Wable and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2013) ALLMR(Cri) 246

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : M.M. Deshmukh, app, for the State, for the Appellant; Suvarna Joshi, instructed by Ms. Anita A. Marathe, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—The State has preferred this appeal against the order of acquittal dated 11th October, 1990 passed by the Additional Sessions Judge, Baramati, Dist. Pune in Sessions Case No. 89 of 1989. By the impugned judgment and order, the learned Additional Sessions Judge has acquitted the accused for the offences punishable under Sections 302 and 323 read with Section 34 of the Indian Penal Code (IPC). The respondent-accused were charge-sheeted for the offences punishable under Sections 302 and 323 read with Section 34 of the IPC. As per the case of the prosecution, the complainant, Hanumant Somaji Bhapkar (PW 3) was residing with his brothers, father, mother and other family members at Bhapkar vasti, Kharadewadi, Village Karkhel, Tal. Baramati, Dist. Pune. The mother of the complainant viz. Laxmibai Soma Bhapkar (deceased) was looking after the family affairs. It is further the prosecution case that accused No. 2, Kausalyabai Maruti Wable was cultivating the land of the complainant and on that basis deceased Laxmibai and other accused had friendly relations with each other. The deceased had obtained an amount of Rs. 1200/- from accused No. 2-Kausalyabai about seven years back. The entire amount was not repaid and in view of the same, Kausalyabai used to

demand the said amount from the deceased from time to time. On the aforesaid ground, quarrel used to take place between the parties. Subsequently, deceased mortgaged her one acre portion of land to one Arjun Hariba Bhapkar and obtained an amount of Rs. 6,000/- from him which was ultimately paid to Kausalyabai. Thereafter the entire amount was paid to Kausalyabai about 4 to 6 months prior to the incident. It is further the case of the prosecution that even though full amount was paid, Kausalyabai was yet demanding additional amount.

2. The prosecution case is that on 21st July, 1989, the complainant, along with his brother Dattatraya, went for removing grass at about 8 to 8.30 a.m. Thereafter they came back home for taking meals. The complainant and his brother Dattatraya took their meals together and at that time they were told by their mother Laxmibai that she was going to dispensary and accordingly she left the house at about 10.00 a.m. on 21st July, 1989. Thereafter, complainant and his brother Dattatraya went to the field for removing grass. At that time, accused No. 3-Gorakh Sadashiv Wable came to the field at about 12 Noon and told the complainant that accused No. 1-Shivaji Maruti Wable took the mother of the complainant in his house and tied her at their vasti. Thereafter he informed them that they should come along with him to the house of Shivaji Wable. The complainant and his brother decided not to go to the house of accused Shivaji Wable out of fear. Thereafter, after some time, accused Shivaji Wable and Gorakh Wable again came to the field of the complainant and accused Shivaji Wable started beating the complainant with a stick. It is the prosecution case that one Namdeo Tukaram Bhapkar came there and intervened and separated the complainant and accused. Subsequently, the complainant along with his brother Dattatraya went to Baramati and met their Advocate, one Takale and informed him about the aforesaid incident. Thereafter one application was got prepared regarding the incident and the same was submitted at about 9.00 p.m. on 21st July, 1989. Subsequently, the Complainant along with his brother and brother's wife and father went to Undewadi and subsequently came back to Baramati on the next day morning. On the next day he met his Advocate. The complainant and his maternal uncle Dnyandeo Laxman went to Supa. At that time Arun Bhapkar, cousin of the complainant, along with one Police Patil met the complainant and informed him that his mother Laxmibai had been murdered and her dead body was lying in the field of Jambhale at Supa. The complainant along with others went to Supa Outpost and thereafter went to Vadgaon Nimbalkar Police Station. The complaint was lodged at the said Police Station alleging that the accused Kausalyabai Wable along with her son Shivaji Wable committed murder of his mother Laxmibai in between 8.00 p.m. and 9.00 p.m. on 21st July, 1989 and threw her body in the field of one Jambhale. On the basis of the said complaint, the police registered a case being Crime Register No. 68/89 and investigated the matter. After completing investigation, the police submitted charge-sheet. The matter was ultimately committed to the Court of Session. The learned Sessions Judge framed charge against the accused under Sections 302 and 323 read with Section 34 of the IPC. The accused did not plead guilty to the

charge and claimed to be tried.

3. During the trial, the prosecution examined 16 witnesses. After considering the evidence on record, the learned Judge came to the conclusion that the evidence led by the prosecution hardly inspires any confidence and ultimately found that the prosecution has failed to prove its case beyond reasonable doubt that the accused have committed the aforesaid offence. The learned Judge accordingly acquitted the accused against which the State has filed this appeal.

4. The learned APP, Ms. Deshmukh submitted that no doubt this is a case based on circumstantial evidence. She submitted that from the evidence on record it could be said that the chain of circumstances was complete pointing to the guilt of the accused. She further submits that since the deceased was last seen in the company of the accused on the previous evening and since they have not stated anything about that aspect in their statement recorded u/s 313 of the Criminal Procedure Code explaining this aspect, it can be presumed that they must have committed the aforesaid offence and the prosecution has proved its case beyond reasonable doubt.

5. On behalf of the accused-respondents, it is argued that the prosecution has miserably failed to prove its case. It is submitted that the evidence of the prosecution witnesses hardly inspires any confidence. It is submitted that this being an appeal against the acquittal, this Court may not interfere with the acquittal order especially when the learned Sessions Judge has considered the evidence in its proper perspective and has reached a finding that the prosecution witnesses are not trustworthy and reliable.

6. We have heard the learned counsel for the parties at length and have gone through the evidence led by the prosecution during the trial. From the evidence on record, this Court is required to find out as to whether prosecution has established its case against the accused beyond reasonable doubt and whether it is a case where the chain of events leading to the guilt of the accused is fully established or not.

7. In order to prove the last seen theory, the prosecution has examined Chandrakant Kharade (P.W. 1). The said witness, in his examination-in-chief has stated that he is running a grocery shop at village Kharadewadi. He has stated that there is one milk dairy by the side of his grocery shop and by the side of the road. According to the said witness, he opened his shop at about 4.00 p.m. on 21st July, 1989 and at that time one Laxmibai Bhapkar came to his shop for purchasing bidi at about 7 to 7.30 p.m. on the said date. The witness has further stated that thereafter one Shivaji Wable and Kausalyabai Wable and Gorakh Wable also came and stood in front of his shop. Subsequently, all of them started quarreling with each other. The witness has further stated that Laxmibai Bhapkar, Kausalyabai Wable and Gorakh Wable went towards the "Path Side" through that road. Then one Popat Narayan Bhapkar came to the milk Dairy after about half an hour for delivering the milk and for purchasing grocery articles. At that time

Kausalyabai Wable, Shivaji Wable and Gorakh Wable also came there to his shop. Kausalyabai Wable asked Popat Narayan Bhapkar whether Namdeo will come to deliver the milk at the dairy or not. At that time Namdeo Bhapkar, Dilip Bhapkar and Dnyandeo Bhapkar also came to the milk dairy. There Kausalyabai Wable gave a blow by stick to Dilip Bhapkar. Shivaji Wable gave a blow to Namdeo Bhapkar with a chain. The said quarrel was over. He has stated that Kausalyabai Wable demanded salt from him and he gave salt in a plain paper and thereafter all of them took an oath that they will not enter into quarrel or she will not beat or kill anybody. According to the said witness, on 24th July, 1989 he was present in his shop at about 6.00 p.m. At that time police called him asking him that he should hear what Kausalyabai Wable is going to state and then to draw a panchanama. According to the said witness, Kausalyabai Wable stated that she would show the place where the quarrel took place and they should accompany her. Thereafter all of them went towards the said place, Thereafter, he along with Devidas Bhapkar and Kausalyabai Wable and Police Patil went to Patas Road. The jeep had stopped near the temple of Bombay Boroda. Kausalyabai Wable took all of them to the place and had shown the place where the incident took place. Subsequently, panchanama was drawn. In the cross-examination, the witness has stated that on 23rd July, 1989 police was making inquiry in the village and he had not told the fact to anybody before his statement was recorded by the police about the incident in front of his shop and milk dairy on the previous night. In the cross-examination, the witness has further stated that he cannot state the names of persons present in his shop at that time. The witness in the cross-examination stated that he had stated to the police that Laxmibai Bhapkar and accused Kausalyabai Wable, Shivaji Wable and Gorakh Wable quarrelled in front of his shop in the evening of 21st July, 1989 but the police had not recorded the same.

8. The prosecution has also examined one Bhausahab Bhapkar (PW 4) and Sikhadeo Kharade (PW 5) in support of the theory of last seen together. PW 4 in his evidence has stated that he along with 6 to 7 persons went to Wawade vasti, Sonawadi for attending musical programme at about 8 or 8.30 p.m. on 21st July, 1989. He thereafter went to his house at midnight. Thereafter he put his bed for sleeping and at that time he heard noise of dogs barking. Thereafter he went to the said place with the help of torch light. At that time he found three persons viz. Gorakh Wable, Shivaji Wable and Kausalyabai Wable passing from that place and they were having a dead body of a woman. The dead body of the woman was on the shoulder of one Gorakh Wable.

Thereafter he returned back to his house. The witness has stated that on the next day he came to know about the murder of Laxmibai. In the cross-examination, the witness has stated that the distance between his farm house and the farm house of Bhapkar family is about a distance of 2 kilometres. The witness has stated that he had not gone to the house of Laxmibai to see her. Subsequently, he went to Pune for his operation. He returned back to his house after about three weeks. The witness denied the suggestion that he went to Pune

Hospital on 21st July, 1989. The witness has admitted the near relationship with deceased Laxmibai in the cross-examination. The witness denied the suggestion that he had bad relations with Sadashiv Wable and Maruti Wable because of Grampanchayat election.

9. The prosecution has examined Sikhadeo Kharade (PW 5). According to the said witness, he went to Dandwadi for work on 21st July, 1989 and he came back to his house in the night, took dinner and went to sleep. On the next day he went to his field and at that time he found some persons were passing through the road near his field and he could see that Gorakh Wable, Shivaji Wable and Kausalyabai Wable were passing through that road. In the cross-examination the witness has admitted that on the next day morning, he came to know about the death of Laxmibai. The witness has admitted in the cross-examination that the police inquired with him after about two months from the date of incident. The aforesaid two witnesses are examined to prove the last seen theory.

10. The prosecution also examined the son of the deceased, viz. Hanumant Somaji Bhapkar (PW 3), who filed the original complaint. The said witness in his evidence has stated about the loan transaction between his mother and the accused Kausalyabai Wable. The witness has further stated that he along with his brother Dattatraya went to the field for removing grass in the morning on 21st July, 1989. Subsequently, they went back to their house for taking meals and at that time they were told by their mother that she would be going to the dispensary and accordingly their mother went away from their house. The witness has further stated that he, along with his brother, went to the field for removing grass and at that time one Gorakh Sadashiv Wable came to their field at about 12 noon on 21st July, 1989 and told him that Shivaji Wable and Kausalyabai Wable tied his mother in the house and he was asked to go to that house. The witness has further stated that he did not go to the house in view of the threats of Kausalyabai Wable. Subsequently, Shivaji Wable and Gorakh Wable again came to the field within one hour and started beating the witness. The witness has further stated that he, along with his brother, went to Baramati and met their Advocate and narrated the incident to the Advocate. The Advocate told him to go to the Court and narrate the incident to the Advocate's Clerk. Subsequently the clerk of the Advocate wrote down the complaint as narrated by the witness and the same was subsequently handed over to Vadgaon Nimbalkar Police Station. The said complaint is produced on record at Exh. 34. According to the said witness, subsequently he along with his brother Dattatraya came to Baramati and went to Government dispensary and took treatment there. The witness has further stated that in the morning of 22nd July, 1989, they met their Advocate at Baramati and subsequently he along with his brother Dattatraya and maternal uncle went to Supa. At that time, Arjun Haribhau Bhapkar, Gulabrao Bhapkar and Shankar Bhapkar and Police Patil of their village met him at Supa and the witness was told by the said persons that his mother had been murdered and the dead body was thrown in the field of Jambhale. The witness has further stated that thereafter he along with his brother, maternal uncle and other people

went to Supa outpost and lodged a complaint against the accused at Vadgaon Nimbalkar Police Station. The same is at Exh. 35 on record. In the cross-examination, the witness has admitted that his mother and accused No. 2-Kausalyabai Wable were close friends since last about 7 to 8 years. The witness has further stated that his mother used to take treatment from one Dr. Hingmire since about 6 to 8 months prior to the incident. In paragraph 5 of the cross-examination, the witness has admitted that the payment of amount obtained from Kausalyabai Wable was completely settled after mortgaging their lands to Arjun Bhapkar. The witness has admitted that it is true that nothing remained to be paid by his mother to Kausalyabai Wable and the transaction was already settled since about 4 to 6 months prior to the date of the incident.

11. The prosecution also examined Investigating Officer as well as the doctor who carried out the post-mortem on the deceased as well as the doctor who had given treatment regarding injuries received by the complainant. The prosecution has also examined another witness viz. Popat Narayan Bhapkar (PW 7) in connection with establishing the other links in the chain of events.

12. So far as the last seen theory is concerned, in our view, the learned Sessions Judge rightly dismissed the evidence of PW 1, grocery shop owner. The say of the said witness in his evidence is highly improbable. According to the said witness, he had not told the incident about quarrel at his shop between the accused and the deceased to the police till his statement was recorded by the police. According to the said witness, the quarrel took place at his shop in the evening of 21st July, 1989. He had not disclosed this aspect to the police and subsequently when police came to his shop on 24th July, 1989, he had accompanied the police for drawing panchanama. Even according to the evidence of this witness, deceased Laxmibai had come to his shop to purchase bidi and after purchasing the same, she went back to Patas Road. A material omission was also put to the witness to the effect that he had not stated to the police that Laxmibai Bhapkar and accused Kausalyabai Wable had quarreled in front of his shop in the evening on 21st July, 1989. The witness never tried to separate the accused and the deceased, if they were really quarrelling in front of his shop. The learned Sessions Judge has not believed the evidence of the said witness and, in our view, no credence can be placed on the evidence of the said witness.

13. So far as the evidence of PW 3 is concerned, as per his evidence, one of the accused came to his field and informed him that Shivaji Wable and Kausalyabai Wable tied his mother in the house. The said incident had taken place at about 12 Noon on 21st July, 1989. The natural conduct of a son at that time would be to go and save his mother immediately, instead he decided not to go. According to the said witness, the accused came to his field thereafter again after about one hour and started beating him. The said witness had not gone to the Police Station immediately informing about the said incident nor he had gone to the dispensary for taking treatment on the same day. Instead, the witness decided to go to the Advocate for taking legal advice. It is interesting to note that if the

mother of the said witness was kidnapped or illegally kept by the accused, it is surprising as to how deceased Laxmibai was seen at the shop of PW 1 on the same day in the evening at 7 p.m. That itself creates a doubt about the version of the said witness. If really accused wanted to do away with the deceased, they would not have allowed her to go away as, according to the prosecution, on that very day in the evening she had gone to purchase bidi from the shop of PW 1. The said witness has stated that on 21st July, 1989, the complaint was prepared by the Clerk of the Advocate and he had signed the same and subsequently he and his brother went to Baramati and thereafter went to Govt. Hospital for treatment. As per the evidence of the said witness, on the next day i.e. 22nd July, 1989, they again met their Advocate at Baramati and subsequently he along with his brother and maternal uncle went to Supa and at that time Arjun Bhapkar, Gulabrao Bhapkar and Shankar Bhapkar along with Police Patil of the village met him and told him that his mother was murdered. It is interesting to note that if the mother of the said witness had not come back to her house on 21st July, 1989, the natural conduct of the witness would be to enquire about her or at least inform the police, as the incident had happened during the night on 21st July, 1989. Instead, on the next day i.e. 22nd July, 1989, according to the said witness, he went to the advocate and subsequently as the said witness has stated in para 2 of his examination-in-chief that on the morning of 22nd July, 1989, they went to meet their Advocate in the morning and subsequently when they were returning back they were told about the murder of his mother. If the mother was missing from the house in the night, the natural conduct of the son was to inform the police or at least try to know the whereabouts of his mother, instead he decided to go to the Advocate on the next day morning. Apart from the said aspect, the witness has clearly admitted in the cross-examination that the dues which his mother owed to Kausalyabai Wable were settled about 6 to 7 months prior to the incident.

14. The prosecution has examined Bhausaheb Bhapkar (PW 4). He has stated that he found three persons viz. Gorakh Wable, Shivaji Wable and Kausalyabai Wable were passing from the place with the dead body on the shoulder of Gorakh Wable. In this connection, it is required to be noted that the said witness has never stated anything to the police about the said incident and his statement was recorded after about two months. It is difficult to accept the version of the said witness who went out with a torch in the midnight and with the torch light had seen the accused carrying the dead body of the deceased and failed to inform the police and ultimately disclosed the said incident after two months when his statement was recorded. The learned Sessions Judge has also rightly not given weightage to the evidence of the other witnesses examined by the prosecution as they were found to be closely related to the deceased.

15. As pointed out earlier, it is a case of circumstantial evidence. Considering the totality of the evidence of the prosecution witnesses, in our view, the prosecution has miserably failed to prove its case against the accused and has failed to prove that the accused have committed the offence in question by proving the same

beyond reasonable doubt. It is not possible to believe the evidence of the son of the deceased, which is highly improbable evidence, as stated above. The said witness never tried to save his mother in the afternoon of 21st July, 1989 when accused went and informed him that his mother is tied at their house.

16. Apart from the said aspect, it is required to be noted that as per the evidence of PW3, he has stated that on 21st July, 1989 in the noon he was assaulted by Shivaji Wable and Gorakh Wable. Instead of going to the Police Station or taking treatment from the Doctor, PW 3 and his brother went to their Advocate to get the complaint drafted through the Clerk of the Advocate and subsequently went to the doctor for treatment.

17. As per the evidence of Dr. Krishnath Gaikwad (PW 12), the injuries in question received by PW 3 were minor in nature. The injury No. 1 was not visible injury. Injury No. 2 can be possible with the stick of the cane crop or like any other crop found in the field. Regarding injury Nos. 3 to 6, the doctor stated that it was possible due to scuffle between two persons. Similarly two other persons who were present along with the complainant in the field on 21st July, 1989 were also examined by the doctor on 23rd July, 1989. Dr. Suresh Sonawane (PW 11) examined Dilip Bhapkar on 23rd July, 1989 i.e. after two days of the alleged incident of beating. In the evidence the doctor has stated that though the said witness was complaining about lathi blows over left thigh, the doctor had not found any visible injuries except the tenderness. According to the doctor, the injuries might have been caused by hard and blunt object. Similarly, injured Namdeo Bhapkar was also examined by PW 11 but, according to the said doctor, he examined the said Namdeo on 25th July, 1989. If the incident had happened on 21st July, 1989, it is surprising as to how the injured Namdeo went to the doctor for treatment after four days.

18. Considering the totality of the evidence on record, in our view, the evidence led by the prosecution hardly inspires any confidence. This being an appeal against acquittal, even if two views are possible, this Court is not required to reverse the order of acquittal simply because another view is possible. Considering the evidence on record, the prosecution has failed to prove its case against the accused beyond reasonable doubt. We have not discussed the other evidence in detail. The important evidence which we have discussed above i.e. son of the deceased as well as the person who had seen the deceased in the company of accused does not inspire any confidence. The learned Sessions Judge has rightly not relied upon the said evidence and rightly acquitted the accused in connection with the aforesaid offence. As pointed out earlier, the prosecution has not examined any independent witness from the vicinity and statement of the witnesses have been recorded after considerable time. In view of what is stated above, we do not find any substance in the above Appeal. The Appeal is accordingly dismissed.