

(2021) 09 BOM CK 0047
In the Bombay High Court
Case No : Criminal Appeal No. 98 Of 2020

Vasant Chandar Waghamare

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 22-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 302

Code Of Criminal Procedure, 1973 — Section 313, 313(2)

Citation : (2021) 09 BOM CK 0047

Hon'ble Judges : Sadhana S. Jadhav, J;Sarang V. Kotwal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Sadhana S. Jadhav, J

1. The appellant herein is convicted for the offence punishable under Section 302 of Indian Penal Code by the Additional Sessions Judge-2, Sangli in Sessions Case No. 108 of 2018 vide judgment and order dated 19th June 2019. Hence, this Appeal.

2. Such of the facts necessary for the decision of this appeal are as follows:-

a) On 4th March 2018, at about 6.45p.m one Rajendra Ramrao Chavan (P.W.1) lodged a report at the police station alleging therein that he was in the business of preparing Charcoal at village Kauthali. He was supplying the said Charcoal to a trader at Uran, Panvel. The present appellant was engaged as a labourer in the said Charcoal Unit. The appellant was residing with his mother in a hut belonging to the brother of the appellant. He was the original resident of Honad, Taluka-Khalapur, District-Sangli and informant had brought him at his village and engaged him as a labourer. On 4th March 2018, he claims to have visited the hut of the accused at about 10.30a.m. He noticed that the accused was sleeping in the hut in an injured condition. The accused appeared to be under the influenced of Alcohol. The informant had seen the mother of the accused lying near the hut

in an injured condition. His father Pralhad Pawar had verified her pulse. He found her to be breathless and he was convinced that she had died.

b) According to the informant, upon enquiry the accused had informed him that his mother had objected to his consumption of alcohol, upon which he got annoyed and assaulted her with a sickle on her head. Thereafter, he regretted his act and therefore, he hit his head on the wall. The informant had asked his relatives to wait near the dead body and with the help of other labourers he had taken the injured-accused to the hospital. On the basis of the said report, Crime No. 58 of 2018 was registered at Sangli Police Station for the offence punishable under section 302 of Indian Penal Code.

c) The accused was admitted in the hospital on 4th March 2018 and was arrested on his discharge on 7th March 2018.

3. At the trial, the prosecution has examined four witnesses to bring home the guilt of the accused. The conviction of the accused-appellant rests upon an extra judicial confession of the accused given to PW.1. Hence, it would be necessary to scrutinize the substantive evidence of PW.1.

4. PW.1-Rajendra Chavan has deposed before the Court in consonance with the F.I.R. lodged by him and has reiterated the fact that on his way to work, he had visited the hut of the accused along with his father-in-law Pralhad. That his mother was lying at a distance of five feet from the hut in an injured condition. Upon enquiry the accused had admitted that he had caused the homicidal death of his mother with a sickle as she had objected to his consumption of alcohol. He had called his brother Sanjay to the spot along with labourers. He had admitted injured in the hospital and thereafter, lodged a report. The contents of the F.I.R. are admitted. Hence, F.I.R. is marked at 'Exhibit-15'. He has identified the clothes of the deceased and the accused.

5. In the cross-examination, PW.1 has admitted that he has a cellphone and motor-cycle. The spot of the incident can be reached within 10 to 15 minutes from village Kauthali and one can reach the police station within 15 minutes from the spot of incident. It is also admitted that the Charcoal was prepared by burning Chilari trees which he used to purchase on wholesale basis. He used to bring the labour from Khopoli, Raigad to work on his plant. Since he was producing Charcoal in huge quantity, he had not executed any contract with the labourer. He used to give advance amount to them and maintained its accounts and also looked after their day to day essential needs. In a specific question by the Court, PW.1 has admitted that the accused and his mother were residing in a hut near the streamlet where Chilari trees were grown in abundance. No basic facility like water, electricity and WC were attached to the hut.

6. P.W.1 has specifically admitted that he had not informed the police about the death of the mother of the accused after he learnt about it from his father-in-law. The reason assigned is that he was frightened. PW. 1 had also not divulged the said fact to the labour. It is also admitted that the dead body was at the spot

when the accused was taken to the rural hospital, Atpadi. It is admitted that he has not intimated the police about the death of the mother of the accused when they visited the rural hospital, although he had opportunity to do so. He could not assign any specific reason for non disclosure of the said fact. It is admitted that the accused was taken to the hospital at 5.00p.m. to 5.30p.m. and he visited the police station at about 6.45p.m. since the time was spent in calling upon his brother and other labour. He admits to have visited the police station on 5th March 2018. A specific suggestion was given to PW.1 that he was author of the injuries sustained by the accused as well as his deceased mother. He has denied the suggestion that in the previous night i.e. on 3rd March 2018 he and his father-in-law were consuming alcohol near the house of the accused. There is a specific suggestion that the deceased had informed PW.1 that the deceased had asked her son to inform PW.1 that they were to leave at dawn on 4th March 2018. PW.1 had then insisted upon returning the advance amount given to the accused and despite the assurance given by the accused that they would return for work, he had abused the accused, threatened him, that if they left without informing him they would be killed with a sickle.

7. The tenor of the cross-examination clearly reflects the defence of the accused.

8. PW.3-Prasad Todkar has performed autopsy on the dead body of deceased-Kamal. According to PW.3, on 4th March 2018 at about 9.00p.m. the dead body was referred to the hospital for autopsy. The dead body was identified by Sanjay Chavan. The postmortem notes are at 'Exhibit-30'. The injuries sustained by the deceased are as follows :-

1) Stab wound 5x1cm on frontal area of head extending from hairline towards backwards in the direction of sagittal plane.

3) Stab wound 3 x 1cm on left temporal area.

9. PW.3 has clarified that injury nos. 1 and 3 are sufficient in the ordinary course of nature to cause death. PW.3 has not mentioned the time of probable death in the postmortem note but has admitted that since rigor mortis had receded, the death must have occurred more than 12 to 18 hours before it was brought for autopsy. However, PW.3 was not sure as to whether the death has occurred on 3rd March 2018 between 8.00 to 10.00 p.m.

10. It is the case of the prosecution that the accused/appellant was injured. However, the investigating agency has not placed on record the injury certificate. The prosecution has also not examined the medical officer who had treated the injured in Rural hospital at Atpadi but the reason for arresting the accused on 7th March 2018 is assigned to his admission in the rural hospital from 4th March 2018 to 7th March 2018. The accused was wearing the same shirt from 4th March 2018 to 7th March 2018.

11. PW.4.-A.P.I, Sudhakar Dedhe has admitted that on 5th March 2018 he had issued a letter to the medical officer, Rural Hospital, Atpadi for obtaining his

opinion regarding the injuries of the accused. The said letter is marked at 'Exhibit-44'. It is contended that the opinion of the medical officer was not received. The clothes of the accused along with clothes of the deceased were sent for chemical analysis. The CA report is on record at 'Exhibit-13' and it appears that the blood group of the accused is 'O' whereas the blood group of the deceased is 'A'. The articles were sent for chemical analysis and it has the blood group 'A'. There are no blood stain of 'A' blood group on the clothes of the accused.

12. Appointed learned counsel to espouse the cause of the appellant has vehemently urged that the extra judicial confession in the present case is shrouded with mystery. According to her, in the eventuality, the said information was divulged in the morning at 10.00 to 10.30 a.m. there was no reason to lodge the F.I.R. at 6.45p.m. Moreover, the injured was taken to the hospital at 5.30p.m. and till then the dead body of Kamal was lying on the spot. It is urged before the Court that the accused has stated the actual events that led to the death of his mother in his statement under section 313 (2) of Cr.P.C. It is submitted that in fact, the accused and his mother were working as bonded labour. They were brought from their village for cutting the Chilari trees which are used for making of Charcoal.

13. We have perused the statement of accused under section 313 (2) of Cr.P.C. The accused has specifically stated that in the late hours of 3rd March 2018, PW. 1 and his father-in-law were consuming alcohol near his hut. The accused, at the behest of his mother was insisting upon going for pilgrimage (Wari), that PW.1 had denied the leave on the ground that there was a heavy demand of Charcoal. He could not afford to give leave to the labour. Moreover, he was insisting upon returning Rs.10,000/- which was given as advance, forthwith and therefore had abused and assaulted the accused.

14. It is contended that PW.1 had raised a sickle to assault the accused. However, his mother had intervened to safeguard her son and at that stage had fallen prey to the assault by PW.1 who were under the influence of Alcohol at the relevant time. That on the following day he was taken to the hospital and thereafter was implicated in a false case by PW.1.

15. According to the learned counsel, in view of this, the accused seems to be a victim of circumstances. He is falsely implicated and deserves to be acquitted.

16. Per contra, learned APP submits that the theory put up by the accused is an after thought and his defence taken by the accused is at the stage of recording statement under Section 313 of Code of Criminal Procedure. However, the extra judicial confession made, PW.1 cannot be overlooked as it was made soon after the incident.

17. The submission of the learned APP cannot be considered in the present case as there are specific suggestions to PW.1 that he is the perpetrator of the crime and has falsely implicated the accused. Therefore, it cannot be said that the

defence under section 313 of Code of Criminal Procedure is an after thought.

18. The case rests on the extra judicial confession. The Hon'ble Apex Court in a catena of decision has held that 'the extra judicial confession must be voluntary and truthful'. In the case of Balwinder Singh vs. State of Punjab 1995 SCC Supl. (4) 259 the Apex Court has held as follows:

(ii) Extra-judicial confession:

An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra judicial confession.

19. In view of this, it would be necessary to appreciate the extenuating circumstances in which the case has come to light and therefore, it becomes necessary to appreciate the evidence of PW.1 and his conduct upon being informed by the accused that he had caused the homicidal death of his mother.

20. According to PW.1 the incident had come to light at about 10.30a.m. after he had seen the accused in an injured condition and his mother lying dead near the unprotected hut. No immediate steps were taken by the complainant. He had taken injured to the hospital at about 5.30p.m. and thereafter, at about 6.45p.m. had lodged the F.I.R. There is no plausible explanation on the part of the complainant for the inordinate delay in setting the law into motion. The police had reached the spot at about 7.00p.m. This was despite the fact that P.W.1 had a cellphone and a motor-cycle. The distance between the spot of incident and the police station could be covered within 10 to 15 minutes and yet no positive steps were taken by PW.1 to set the law in-motion.

21. It would be apt to refer to the principle laid down by the Hon'ble Apex Court in the case of Thulia Kali vs. The State of Tamil Nadu 1972 SCR (3) 622 in which the Apex Court has held as follows:-

'That the delay in lodging the report would raise considerable doubt regarding the veracity of the evidence of two witnesses and point to an infirmity in that evidence and would render it unsafe to base the conviction of the appellant. The first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as, the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a Creature of after thought. It is therefore essential that the delay in lodging the report should be satisfactorily

explained'.

22. The possibility and probability that the F.I.R. is a figment of after thought of PW.1 cannot be ruled out.

23. By elimination, it is reiterated by the learned APP that the case exclusively rests on the extra judicial confession. It is also stated that the deceased Kamal has died while in custody of her son. An extra judicial confession in the nature of his explanation can be considered as a circumstance and can be relied upon.

24. We disagree with the proposition that this is a case of custodial death. The dead body of mother of the accused was lying almost more than 5 feet away from hut. The accused had not fled from the scene of occurrence and was lying in the hut in an injured condition till he was taken to the hospital by P.W.1.

25. The conduct of PW.1 appears to be doubtful. There is no respect for the deceased. The dead body was abandoned for more than 8 hours at the spot, even after he learnt about the incident.

26. It is settled principle that the sanctity of extra-judicial confession would depend upon veracity and credibility of the witness to whom it was made. It is a weak piece of evidence and an accused can be convicted on the basis of the same provided that it is free from doubt and the conduct of the person to whom such confession was made, soon after the incident would inspire confidence of the Court. To make extra judicial confession reliable, it has to be necessarily clear, consistent and convincing. In this case, the extra-judicial confession does not pass this test and hence the prosecution has failed to prove its case beyond reasonable doubt.

27. The learned advocate, Ms. Megha Bajoria was appointed in the present matter to espouse the cause of the appellant as it happens to be an appeal filed by the appellant, who is in custody. She has put in her best efforts to espouse the cause of the appellant. Hence, her professional fees are quantified as per rules to be paid to her by High Court Legal Aid Services Committee, Mumbai.

28. In view of the above observations and discussions, the conviction of the accused will be unsustainable in the eyes of law. Hence, the appeal deserves to be allowed.

ORDER

i) The appeal is allowed.

ii) The conviction and sentence imposed vide Judgment and order dated 19th June 2019 passed by the Additional Sessions Judge-2, Sangli is hereby quashed and set aside.

iii) The appellant is acquitted of all the charges levelled against him.

iv) The appellant be released forthwith, if not required in any other case.

- v) Fine be refunded, if already paid.
- vi) The appeal is accordingly disposed of.