
(2012) 08 BOM CK 0007
In the Bombay High Court
Case No : Criminal Appeal No. 263 of 2006

Vilas Babu @ Ramling Sonavane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 1 BomCR(Cri) 435

Hon'ble Judges : V.M. Kanade, J;P.D Kode, J

Bench : Division Bench

Advocate : Sarojini Upadhyay, for the Appellant; P.P. Shinde, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard, Mrs. Sarojini Upadhyay, Learned Counsel for the Appellant and Mrs. P.P. Shinde, Learned APP for the State. The Appellant is challenging the Judgment and Order passed by the Ad-hoc Additional District & Sessions Judge, Thane dated 18th August, 2001 whereby learned Judge was pleased to convict the appellant for the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer R.I for life.

2. The prosecution case in brief is that the appellant was the husband of deceased women and he was residing in the house of his mother-in-law alongwith his wife and two children. The case of the prosecution is that on the date of the incident i.e. 13th September, 2000 at about 5.00 a.m. the accused assaulted the deceased with a sickle and this fact was witnessed by his mother-in-law (PW-1) Kalubai Shantaram Gaikwad and by the brother of the deceased Ram Shantaram Gaikwad. According to the prosecution, the accused was immediately apprehended and the blood stained sickle and blood stained clothes were seized and sent to the chemical analyser. The Doctor performed the postmortem and gave his opinion that the cause of the death was due to shock due to the multiple injuries which were caused by the sickle. The investigating

officer recorded the statements of the witnesses and the trial court on the basis of the evidence adduced by the prosecution was pleased to convict the appellant for the offence punishable u/s 302 of the Indian Penal Code.

3. Learned Counsel appearing on behalf of the appellant submitted that the prosecution had not established the motive behind the assault by the appellant on the deceased. It is submitted that the statements of other independent eye-witnesses were not recorded. It is submitted that PW.2 Ram Shantaram Gaikwad could not have witnessed the said incident since in the cross examination he had admitted that when his mother raised an alarm, he got up and before that he was in his room and that room was closed from the inside by him. It is submitted that therefore PW.2 could not be treated as an eye-witness to the said incident. It was further submitted that the sickle which was seized by the police from the accused was not found bearing the blood of the deceased.

4. It was therefore submitted that the Judgment and Order of the trial court was liable to be quashed and set aside.

5. On the other hand, learned counsel appearing on behalf of the State submits that the incident had taken place in the house and it was witnessed by mother-in-law and the brother in law of the appellant and that the accused was apprehended near the spot alongwith the blood stained sickle and blood stained clothes. It was further submitted that the blood of the deceased was found on the clothes of the appellant. It was submitted that the appellant was not doing anything and demanded money from his wife for drinking liquor and when the said money was not paid, he assaulted her with the sickle. It was submitted therefore that the appeal was liable to be dismissed.

6. After having heard learned counsel appearing on behalf of the appellant and learned APP appearing for the State and having given our thoughtful consideration to the submissions made by the Counsel appearing on behalf of the appellant and the respondent, in our view, no case is made out for interfering with the findings recorded by the trial court.

7. It is not seriously disputed that the death of Vimal-wife of the appellant was homicidal and unnatural. PW.7, Dr. Ramchandra Masu Dhotre, who performed the postmortem has stated in his evidence that there were 10 incised wounds on the person of the deceased-Vimal Sonavane and incised wounds on the neck and cheek and on the chest and other parts of the body. The Doctor has stated that these injuries could have been caused with the sickle, which was seized from the accused and that the injuries were sufficient in the ordinary course to cause death of the deceased. The prosecution has therefore established that the death was homicidal.

8. In support of the case, the prosecution has examined PW.1 - Kalubai Gaikwad, mother-in-law of the appellant. She has stated in her evidence that the appellant was un-employed and did not do any work and use to consume liquor and harass his wife. According to her, he demanded money from the deceased for the

purpose of liquor and when the amount was not paid there was an altercation and all of them therefore slept without taking any food and in the morning the accused assaulted her daughter with a sickle. PW.1 has stated that after the deceased-Vimal raised hue and cry, she went inside her room where the appellant was assaulting the deceased with a sickle and thereafter he ran away from the house. PW.2, brother of the deceased has also stated that he has seen the accused assaulting the deceased with a sickle and that he had seen this from the door after his mother had raised hue and cry. Though in the cross examination, this witness has stated that he was inside the room and the door was locked from inside and therefore it is difficult to accept this testimony. PW.2 - Ram Gaikwad was in the house and has deposed about the presence of the appellant in the house. To that extent, PW.2 corroborated the testimony of PW.1. Apart from this evidence, the clothes of the appellant were seized alongwith the sickle which he was carrying and the C.A report clearly shows that the blood of the deceased which was blood group "B" was found on the clothes of the appellant. In our view, therefore, the prosecution has established its case beyond reasonable doubt. The submissions made by learned counsel appearing on behalf of the appellant therefore cannot be accepted. The Appeal therefore is dismissed. The Judgment and Order passed by the trial court is confirmed.