
(2011) 03 BOM CK 0137

In the Bombay High Court

Case No : Criminal Revision Application No. 220 of 2007

Vinod Thakre

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 376

Citation : (2011) 03 BOM CK 0137

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : V M Deshpande, for the Appellant; C.N. Adgokar, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale , J.—By this Revision, the applicant has questioned the validity, legality, propriety and correctness of the judgment and order of conviction dated 23.8.2007 convicting the Appellant passed by the learned Adhoc Additional Sessions Judge, Achalpur in Criminal Appeal No. 2/2003 arising from judgment and order of conviction in Sessions trial No. 74/2001 decided by 3rd Adhoc Additional Sessions Judge, Achalpur on 23.12.2002 whereby the revision applicant was convicted of offence punishable u/s 307 of the Indian Penal Code (in short "IPC") and was sentenced to suffer R.I. for seven years and to pay a fine in the sum of Rs. 1,000/in default, to suffer RI for three months.

2. The facts in brief are that, the revision applicant on or about 4.10.1999 at about 3.30 p.m. went to the house of first informant opal Janrao Akatkar and knocked the door. When his sister Pushpa Janrao Akatkar opened the door, the revision applicant had dragged her out of the house and stabbed her on her back side of the head and ear thereby causing incised wounds. With the result, she fell unconscious. She was taken by the first informant to Rural Hospital, Daryapur. The complaint was lodged at Daryapur Police Station. The cause of incident was that the applicant had a love affair with Pushpa (the injured) who had conceived

a female child out of said relationship. The revision applicant was also prosecuted for alleged offence of rape; but was held not guilty and acquitted of the offence of rape. According to prosecution, the victim Pushpa insisted upon revision applicant to marry with her and accept the female child conceived from the applicant. Enraged by this, the applicant decided to do away with Pushpa and attempted to commit murder of her on 4.10.1999 at about 15.30 hours, at village Shivala by visiting her house. The prosecution had led evidence of victim Pushpa (PW 5), along with other 12 witnesses in order to prove the prosecution case. The learned trial Judge believed the case of the prosecution that PW 5 Pushpa Akatkar had love affair with the accused and prior to the incident of her attempted murder. Pushpa had insisted the accused shall marry with her as she was pregnant from him. She had even attempted to commit suicide by jumping into the well when the accused had flatly refused to marry with her. The accused, however, disowned her as well as her child. Though he was prosecuted for offence punishable u/s 376 IPC, he was acquitted of the offence of rape as according to the prosecution case, Pushpa had showed her willingness to compound the offence if the accused agreed to marry with her but the accused had different object in his mind and decided to end the life of Pushpa by means of knife repeatedly assaulting her. Fortunately, she was taken to the Hospital and was saved. It is case of the prosecution that her dying declaration was also recorded by Special Executive Magistrate. It appears that the learned trial Judge did consider the medical evidence in respect of incised wounds as deposed by Dr. Manoj Nichat (PW 9). Apart from evidence of other witnesses led by the prosecution including direct evidence that of Pushpa (PW 5), the trial Court believed the prosecution case that the accused had attempted to kill her by means of knife on the day of the incident. In the result, the learned trial Judge convicted the revision applicant for offence punishable u/s 307 IPC and sentenced him to suffer RI for seven years and to pay a fine in the sum of Rs. 1000/in default, to suffer further RI for three months.

3. The convict accused/revision applicant had challenged the decision by filing Criminal Appeal No. 2/2003 which was decided by the learned Adhoc Additional Sessions Judge, Achalpur (Court No. 2), on 23.8.2007 by confirming the conviction of the revision applicant for offence punishable u/s 307 IPC and dismissed the appeal, by a well reasoned judgment.

4. Learned Advocate for the revision applicant made a carping criticism of the judgments of both the Courts below on the ground that Vimal (PW 3) was in the agricultural field at the time of the incident and her evidence is in the nature of hearsay. It appears that the admission was elicited during her cross examination that she had attended agricultural field on the day of the incident. It is further submitted that Vandana, sister of Pushpa, was not examined and evidence of alleged eye witness was withheld by the prosecution. Further, according to learned Advocate for the applicant, the Special Executive Magistrate who recorded dying declaration of Pushpa (PW 5) was also not examined.

5. I have considered the submissions advanced on behalf of the revision applicant; so also the learned APP. As regards the incident, the prosecution has mainly relied upon the ocular evidence of PW 5 Pushpa who unfolded the prosecution case. As regards the incident as well as history prior to the incident she stated that on 4.10.1999 at about 2.30 p.m. the accused came to her house carrying a knife with him. He had asked to hand over her daughter to him failing which he threatened to kill her. The accused had assaulted her on back, ear and neck; and while she ran for her life, she fell in a nali. She became unconscious. Then she was taken to Daryapur Hospital and had to undergo medical treatment for ten days. Her dying declaration was also recorded by Special Executive Magistrate. Her blood stained clothes were seized during the course of investigation which were also referred to Chemical Analysis. Human blood was detected on her clothes by C.A.; she had also identified the articles i.e. her clothes which were seized as also pair of chappals belonging to the accused seized during the course of investigation and identified the accused. It appears from her evidence that she had love affair with the accused prior to the incident and, in fact, she as well as her mother had a wish that Pushpa shall marry with the accused as she became pregnant from him. But, she steadfastly spurned the very idea of marrying with her. She had also jumped into the well on 5.6.1995 as a result of refusal of marriage but was saved. She had also filed a complaint about the rape committed by the accused which gave Sessions Trial No. 79/1995 before the learned 2nd Additional Sessions Judge Achalpur. She admitted that though the accused was acquitted of the offence of rape, she did not challenge the acquittal of the accused as it appears that she was ready to compound the offence if the accused acceded to marry with her. She had delivered a female child conceived from the accused and also prayed for grant of maintenance for herself and her daughter; but the accused chose to deny his paternity, refused to marry with her and also refused to pay maintenance to her daughter. It appears that the evidence of victim is also corroborated by other evidence on record. Although PW 1 Anandrao, uncle of the Pushpa and Devkabai (PW 2), aunt of Pushpa, feigned ignorance about the incident and turned hostile to the prosecution case, PW 3 Sau. Vimal (mother of Pushpa) deposed that the accused had come to her house and assaulted her daughter by means of a knife on neck, back ear and abdomen which resulted in bleeding injury. PW 4 Gopal also deposed that he had heard shouts and he came of the house on the date of the incident. He saw his sister Vandana weeping on the road who informed him that accused had assaulted Pushpa near the house of Shivajirao Deshmkuh. He had attended Pushpa and took her to Police Station and filed the complaint (Exh.32). Thereafter she was taken initially to Daryapur Hospital and then she was shifted to General Hospital, Amravati. PW 6 Dadarao Kale had an occasion to see the accused on the day of the incident with blood stained short and knife in his hand. He also identified the accused before the Court. PW 7 Anil Ajabrao deposed that he had an occasion to see the accused coming from the village side, with his clothes stained with blood and when he asked the accused as to why he is running. The witness later came to know about the incident of stabbing of

Pushpa. The blood stained clothes of Pushpa were seized under Panchnama (Exh. 42). The prosecution also led medical evidence of Dr. Manoj Nichat (PW 9) who deposed about the following injuries which he had found on the person of Pushpa which also appears to have a tella tell effect:

- 1) Incise wound 1 cm x 1/2 cm. over right cheek;
- 2) Incise wound 6 cm x 5 cm below the chin, age of the injury is 6 hours; healing period 7 to 10 days;
- 3) Incise wound 3 cm. X 1 cm. Over neck interiorly over thyiod region, age of the injury 6 hours;
healing period 7 to 10 days;
- 4) Incise wound 4 cm x 1 cm left ear at the middle portion; age of the injury 6 hours, healing period 7 to 10 days
- 5) Incise wound 3 cm. X 1 cm left scapular region: age of injury 6 hours ; healing period 7 to 10 days and
- 6) Incise wound 1cm x 1/2 cm left wrist posterior region,: age of the injury 6 hours, healing period 7 to 10 days.

Dr. Manoj deposed that all the above injuries were possible by means of a knife and were caused by a sharp edged weapon.

6. Thus, there is sufficient evidence beyond reasonable doubt to believe that it was the revision applicant and he alone was author of the injuries sustained by Pushpa. The Courts below had applied mind to the evidence led before the trial Court and arrived at the logical conclusion of guilt against the revision applicant. After perusal of the judgments by the Courts below and bearing in mind the limited power of interference in exercise of revisional jurisdiction, it has to be observed that no ground is made out for interference in the concurrent judgments recorded by the Courts below. The legal position is settled that the Revisional Court shall not interfere unless (1) the decision is grossly erroneous; (2) there was no compliance with legal provisions; (3) the finding is perverse or without evidence; (4) the conclusion is arbitrary exercise of discretion or not according to law.

7. In the facts and circumstances of the present case, I do not find any ground as indicated above so as to interfere with judgments delivered by the Courts below. Since there is no merit in the Revision Application, the same is dismissed.