

(2012) 11 BOM CK 0087
In the Bombay High Court
Case No : Criminal Appeal No. 757 of 2005

Vishnu Rama Shid

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2013) 2 BomCR(Cri) 745

Hon'ble Judges : V.K. Tahilramani, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Rohini Dandekar, for the Appellant; S.A. Shaikh, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival submissions on this criminal appeal preferred by the appellant-accused challenging the judgment and order dated 31st March 2005 passed by the IInd Adhoc Additional Sessions Judge, Nashik in Sessions Case No. 166 of 2004. By the impugned judgment and order, the appellant-accused was convicted for the offence punishable u/s 302 and was sentenced to suffer imprisonment for life and to pay fine of Rs. 1000/-, in default to undergo rigorous imprisonment for six months. The appellant-accused was also convicted for the offence punishable u/s 201 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 1000/-, in default to undergo rigorous imprisonment for 6 months.

2. The case of the prosecution, in nut shell is as under:

The first informant P.W. No. 1 Navnath Shid and the present appellant-accused had their agricultural properties adjacent to each other. There was dispute on account of the boundary between two agricultural fields and there used to be quarrel between the two. The main incident of assault occurred on 5th July 2004 in the afternoon. Prior to the main incident, in the morning, there was quarrel

between the first informant P.W. No. 1 and the appellant-accused when P.W. No. 1 was cultivating his field. During that quarrel, the appellant-accused pelted stones on P.W. No. 1. P.W. No. 1 came back to his home and told his wife Devakibai (since deceased) regarding the incident of quarrel and pelting of stones. It was decided to lodge a complaint with the police and hence Devakibai proceeded to the police station for lodging a complaint. This happened some time by 12.00 noon on 5th July 2004.

3. According to the case of prosecution when victim Devakibai was on her way to the police station, at about 1.30 p.m. or so she was accosted by appellant-accused and he assaulted her by means of sickle/koyta. The said assault was witnessed by P.W. No. 3 Sampat Chavan and also by P.W. No.4 Anita Chavan who were present near the spot but at some distance. Prior to actual assault there was quarrel and it was witnessed by P.W. No. 7 Houshiram. He tried to intervene but could not succeed. As Houshiram was to catch some transport bus, he left the spot. Thereafter also the quarrel between the appellant-accused and victim Devakibai continued and this time the appellant-accused assaulted her by means of sickle/koyta and this was witnessed by P.W. Nos.3 and 4 as earlier mentioned. After the assault, Devakibai fell on the ground. The assault was so severe that in the first blow itself her neck was almost cut and almost severed from the rest of the body, causing cut injury to her spinal cord. Probably, it was a fatal blow causing instantaneous death. However, thereafter also appellant-accused continued to assault the victim. When the persons from near by area started gathering there, appellant-accused ran away from the spot and in that process threw the sickle/koyta he was holding, in the water of some nearby dam.

4. According to the case of the prosecution, initially when P.W. No. 1 informed his wife Devakibai and asked her to lodge a complaint against the appellant-accused, he again went to his field and started the agricultural work. He was in the field till 6.00 p.m. That time, his children, neighbours and police persons came to his field and informed regarding the assault on the Devakibai and that she was found dead when on her way to proceed to Trimbakeshwar Police Station. According to P.W. No. 1, eye witness P.W. No. 3 Sampat Chavan and one girl also informed him that the appellant-accused has killed his wife. P.W. No. 1 then went to Trimbakeshwar Police Station and lodged his complaint Exhibit-8.

5. According to the case of the prosecution, initially on knowing the incident of assault and death of Devakibai, Police Patil reached the spot on that afternoon on some anonymous call. The Station Diary regarding the said call was made by the police. Usual procedure was followed on the spot for inquest panchanama, spot panchanama etc. and police personnel were sent for apprehending the appellant-accused and as such the appellant-accused was arrested in the evening on the same day i.e. 5th July 2004. During investigation, the appellant-accused made a statement to produce the sickle and on 7th July 2004 a sickle Article- 10 was recovered at his instance. Accordingly, the recovery panchanama Exh-31 was drawn in which P.W. No. 11 Walmik Chavan took part as a panch. P.W. No. 12

Kailash Chavan is also examined by the prosecution, as according to him he was also present at the spot where the sickle was discovered at the instance of the accused as his village was near to the area of water dam. The arrest panchanama was conducted in presence of panch and it was supervised by P.W. No. 13 Balasaheb Bhanudas Waghmode, Sub Divisional Police Officer. The said arrest panchanama is at Exh. 20. At the same time, the shirt accused was then wearing was taken charge of. The said shirt Article- 15 was seized on the same evening of the incident.

6. On completion of investigation, charge sheet was filed and the matter was committed to the Court of Sessions and it was finally heard and ended in conviction of the appellant-accused. Hence, the present appeal.

7. The entire case of the prosecution mainly rests on the substantive evidence of main prosecution witnesses P.W. Nos.3 and 4. Both are the eye witnesses and corroborate the case of the prosecution and also substantiate the involvement of the appellant-accused in the assault on the victim. Even substantive evidence of P.W. No. 1 Narayan Shid speaks regarding earlier incident of pelting of stones by appellant-accused on him and thereafter P.W. No. 1 coming to his house and informing Devakibai and asking her to lodge a complaint. Even in the substantive evidence of eye witness P.W. No. 4 Anita Chavan she makes a reference regarding the presence of Houshiram-P.W. No. 7. According to her, she saw accused and Devakibai quarreling on Trimbakeshwar road and at that time, Houshiram intervened and stopped their quarrel. However, thereafter, Houshiram proceeded to Trimbakeshwar, as he was to catch the vehicle to proceed ahead. Thereafter also the quarrel continued between the accused and Devakibai. That time, P.W. No. 4 saw the accused taking out sickle/koyta from near his waist and gave a blow of sickle/koyta on the back side of neck of Devakibai. He gave 2-3 blows even after Devakibai fell on the ground. The injuries on Devakibai are so severe as mentioned earlier and probably the first blow was a fatal blow. The said injuries as reported by Dr. Pravina Pawar P.W. No. 14, are as under:

1) Incise wound over posterior aspect of neck of size 17 cm. Long, by 6 cms. and bone deep more on left side. Underlined muscles, and bones exposed. It was a cut (illi) injury of neck (cutting spinal cord & spine) partially separating head from body. Cut was at the level of second survival.

2) Incise wound on right shoulder 3 x 1 x 1 inches.

3) Abrasion on right knee having size 4 cm x 4 cm.

2) On opening body I found brain matter and manige congested with multiple minute hemorrhages. Other organs of body were pale. Second survival brain was cut.

3) All these injuries were antemortem in nature. In my opinion Devakibai died because of hemorrhagic and Qnic shock because of injury to the spinal cord.

8. Substantive evidence of P.W. No. 4 is otherwise corroborated by substantive

evidence of P.W. No. 7 Houshiram as he had intervened the quarrel at the initial stage when he saw the appellant-accused quarreling with Devakibai on Trimbakeshwar road. Even according to P.W. No. 1 Narayan Shid, he was informed by Houshiram regarding the said quarrel.

9. It is apparent that the case of the prosecution is having overwhelming evidence of eye witnesses as discussed above coupled with recovery at the instance of the accused as to his shirt and also the sickle/koyta at his instance. After going through the substantive evidence of the prosecution witnesses, we are of the considered view that the trial court had rightly appreciated the evidence in coming to the conclusion of the guilt of the appellant-accused for the offence of murder.

10. On behalf of the appellant-accused, a feeble attempt was made by the learned Advocate Ms. Rohini Dandekar mentioning that the eye witnesses cannot be believed, as according to P.W. No. 3, he saw the incident of assault from a distance of about 100 feet. For this purpose, the evidence of P.W. No. 3 Sampat Chavan is brought to our notice. So far as the another eye witness P.W. No. 4 is concerned, there is no such evidence available on record as to from how much distance she had witnessed the assault. All the same, still if it is accepted that P.W. No. 3 Sampat Chavan witnessed the incident from 100 feet, there is nothing brought on record that he is unable to see the object from some distance. Moreover, it cannot be lost sight of the factual position that the incident of assault took place on broad day light at about 1.30 p.m. or so on the open public road i.e. Trimbakeshwar road. As such, the argument on behalf of the appellant-accused as to raising doubt, on the substantive evidence of P.W. Nos. 3 and 4, cannot sustain. Apart from this sole submission, there was nothing argued on behalf of the appellant-accused. In the result, considering the substantive evidence produced before the court, there is nothing to entertain the present appeal so as to quash and set aside the judgment and order of conviction or to alter the same in any manner. In the result, there is no merit in the present appeal and the same is accordingly dismissed. Intimation be given to the appellant through Jail Authorities.