
(2014) 10 BOM CK 0154
In the Bombay High Court
Case No : Criminal Appeal No. 500 of 2010

Vishwas Namdeo Dhundare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Evidence Act, 1872 — Section 25, 26 — Penal Code, 1860 (IPC) - Section 302, 449, 452

Citation : (2015) ALLMR(Cri) 2308

Hon'ble Judges : P.V. Hardas, J; Anuja Prabhudesai, J.

Bench : Division Bench

Advocate : Rakesh Bhatkar and Mohan Devkule, Advs., for the Appellant; U.V. Kejriwal, APP, for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J. The appellant, who stands convicted for an offence punishable under Sections 302, 452 and 449 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 20,000/-, in default of which to undergo further RI for one year, RI for seven years and to pay a fine of Rs. 5000/-, in default of which to undergo further RI for six months and RI for seven years and to pay a fine of Rs. 10,000/-, in default of which to undergo further RI for one year, by the Additional Sessions Judge. Pune, by judgment dated 14.05.2010, in Sessions Case No. 320 of 2009, by this appeal questions the correctness of his conviction and sentence. Facts, as are necessary for the decision of this appeal, may briefly be stated thus:-

PW 5 - PSI Mahadeo Todare, who was attached to the Chinchwad Police Station and was on duty on 13/1/2009 was informed by one Bhagwan Walekar, a Social Worker, that Jayshree, mother of PW 1 - Dheeraj, was unconscious. A note was accordingly taken in the station diary and PW 5 - PSI Todare proceeded to the scene of the incident. On reaching the scene of the incident, he noticed a lady, who was unconscious and thereafter recorded the report/complaint of PW 1 -

Dheeraj at Exh. 8. He thereafter recorded the scene of the incident panchanama in the presence of panchas at Exh. 15. He summoned the services of the finger print expert and also called the sniffer dog squad. The dead body of deceased Jayshree was sent to the YCM Hospital and on the basis of the report of PW 1 - Dheeraj at Exh. 8, an offence was registered. The investigation was handed over to PW 6 - PI Mahesh Joshi.

PW 6 - PI Mahesh Joshi, who was also attached to the Chinchwad Police Station, was informed by PW 5 - PI Todare about finding a lady, lying unconscious in her house at Walhekar Wadi. PW 6-PI Joshi accordingly reached the scene of the incident at about 2.15 p.m. After registration of the offence, he took over the investigation of the offence which was registered under Sections 302 and 452 of the IPC. Steps were taken for tracing the whereabouts of the appellant. PW 6 - PI Joshi received information that the appellant was in the custody of the Pimpri Police Station as he had surrendered himself. The appellant was then taken into custody by PW 6 - PI Joshi. The inquest panchanama of the dead body of deceased Jayshree was accordingly drawn. Statements of witnesses were recorded. Clothes of deceased Jayshree were seized under seizure memo at Exh. 17. The blood samples of the accused were referred to the Chemical Analyzer under requisitions at Exhs. 18 and 19. Further to the completion of investigation, a charge-sheet against the appellant was filed.

It appears that the appellant had surrendered himself before PW 4 - Police Head Constable Popat Gavate, who was attached to the Pimpri Police Station. It further appears that the appellant had confessed his crime. PW 4 - Police Head Constable Gavate accordingly informed the Chinchwad Police Station and thereafter handed over the custody of the appellant to the Chinchwad Police Station.

Postmortem on the dead body of deceased Jayshree was performed by PW 3 - Dr. Rajabhau Thorat, who noticed the following external injuries:-

- (i) Contused abrasion on left maxilla measuring 1/2 c.m. x 1/2 c.m.
- (ii) Linear contused lacerated wound on left lower lip on inner margin, measuring 3/4 c.m. x 1/4 c.m. muscle deep margins wound irregular, blood clot noted at the edges of wound.
- (iii) Contusion on left side of neck at the level of thyroid cartilage directed upwards towards left measuring 6 c.ms. x 1 c.m. subcutaneous haematoma noted underneath measuring 10 c.ms. x 2.5 c.ms. correspondingly.
- (iv) Oblique contused abrasion on right side of neck at the upper level of thyroid cartilage 3/4 c.m. right to midline measuring 3/4 C.M. x 1/4 c.m. subcutaneous haematoma noted underneath measuring 2 c.ms. x 1 c.m. correspondingly.
- (v) Imprint abrasion to a point that is 1/2 c.m. right to injury No. 4 measuring 1/2 c.m. x 1/2 c.m. subcutaneous haematoma noted underneath measuring 1 c.m. x 1 c.m. correspondingly.

(vi) Imprint vertical contused abrasion on right side of neck 1 1/2 c.m. right to midline and just above injury No. 5 measuring 1 c.m. x 1/2 c.m. subcutaneous haematoma underneath measuring 2 c.ms. x 2 c.ms. noted correspondingly.

(vii) Contused abrasion on acromion process of right scapula measuring 3 c.ms. x 1/2 c.m. tailing downwards.

He opined that the probable cause of death of deceased was asphyxia due to constriction of neck. The postmortem report is at Exh. 11.

2. On committal of the case to Court of Sessions, the trial court vide Exh. 2 framed charge against the appellant for offence punishable under Sections 452, 449 and 302 of the IPC. The appellant denied his guilt and claimed to be tried. Prosecution, in support of its case, examined six witnesses. The defence of the appellant was of denial. The trial court, upon appreciation of the evidence, convicted and sentenced the appellant as afore-stated.

3. We have heard Mr. Bhatkar, learned counsel for the appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

4. Prosecution has examined PW 1 - Dheeraj, son of deceased Jayshree, who deposes that his father and the appellant had jointly purchased a plot admeasuring about 1000 sq.ft., From out of the said plot of 1000 sq.ft., father of PW 1 - Dheeraj had paid the consideration for 600 sq.ft., while the appellant had paid consideration for 400 sq.ft. Father of PW 1 - Dheeraj had accordingly constructed a house on 600 sq.ft. of land which he had purchased The 400 sq.ft. of land purchased by the accused was an open land as the appellant had not constructed a house on the said land. The appellant was affectionately referred to by PW 1 - Dheeraj as "uncle" i.e. cousin of deceased Jayshree. According to Dheeraj, deceased Jayshree had advanced Rs. 20,000/- to the accused and whenever Jayshree demanded the refund of the said amount from the appellant, the appellant used to quarrel with Jayshree. Jayshree had told the appellant to sell the vacant land admeasuring 400 sq.ft. to her or to construct a house of his own.

According to Dheeraj, on 13/1/2009, he and his father had gone to attend to their employment at about 6 a.m. and 9 a.m. respectively. Deceased Jayshree was alone at home. At about 1 to 1.20 p.m. PW 1 - Dheeraj returned home and on returning home, he noticed a crowd gathered in front of his house. PW 2- Manda informed him that the appellant had come to the house and had caught Jayshree by her hair and had dragged her inside the room and had latched the door from inside. PW 2 - Manda had asked the appellant to show restraint, but the appellant had expressed that it was his personal matter. Thereafter PW 2 - Manda had left for attending to her duty. Dheeraj claims that thereafter his statement was recorded. In cross-examination, he has admitted that he has no personal knowledge about the incident. Obviously, PW 1 - Dheeraj was not

present and the recitals in the FIR are based upon what was told to him by PW 2 - Manda.

5. PW 2 - Manda, a neighbour of deceased Jayshree, states that Jayshree had informed her that she had advanced Rs. 20,000/- to the appellant, but the appellant had not refunded the said amount. Jayshree had accordingly informed the appellant to either sell the vacant land to Jayshree or that the appellant should construct a house of his own. The relations between Jayshree and the appellant were strained to some degree on account of the said dispute. In respect of the incident, Manda deposes that on 13/1/2009, at about 11.30 a.m. when she was about to leave her house, she noticed that the appellant had arrived at the house of Jayshree and had caught Jayshree by her hair and had dragged her inside the house. PW 2 - Manda, therefore, went to the house of Jayshree, but the appellant had latched the door from inside. Manda requested the appellant to open the door but the appellant informed her that it was his personal problem and asked Manda to go away. Manda states that thereafter her statement was recorded. In cross-examination, she has admitted that when she noticed the appellant latching the door from inside, she felt it necessary that she should call her husband. Admittedly, Manda had not called anyone. She has also admitted as correct that she has no personal knowledge about loan advanced by Jayshree to the appellant. She has admitted that she has no personal knowledge about straining of the relations between Jayshree and the appellant. She has admitted that when she had gone to the house of deceased, she had noticed her son and 4 to 5 other persons sitting at the scene of the incident.

6. Prosecution has examined PW 3 - Dr. Thorat, who has deposed about conducting the postmortem examination. The Medical Officer, however, has not deposed about the time when deceased Jayshree had died. All that the postmortem report establishes is the unnatural death of deceased Jayshree.

7. The evidence of PW 4 - Police Head Constable Popat Gavate cannot be relied upon as PW 4 claims that the appellant had confessed to him and has reproduced the confession. The aforesaid confession would be hit by the provisions of Sections 25 and 26 of the Indian Evidence Act and would be wholly inadmissible in evidence. The only evidence against the appellant, therefore, is the testimony of PW 2 - Manda, who states that the appellant and deceased were together at about 11.30 a.m. The appellant was not a stranger as the appellant was a frequent visitor to the house of deceased Jayshree. PW 1 - Dheeraj, in fact, was affectionately referring to the appellant as "uncle". Deceased Jayshree had advanced money to the appellant and, therefore, the presence of the appellant in the house of the Jayshree on the day of the incident is not a suspicious circumstance. Moreover, PW 2 - Manda had seen the appellant and the deceased together at 11.30 a.m. The person who had noticed the dead body of deceased Jayshree has not been examined as a witness by the prosecution. The circumstances in which the dead body of deceased Jayshree was noticed, therefore, have not been brought on record as well as the exact time when the

dead body was noticed. PW 1 - Dheeraj had returned home between 1 to 1.30 p.m. and by that time, the dead body had already been found. We thus find that from 11.30 a.m. to 1.30 p.m. there is a time gap in respect of the deceased being last seen alive and the dead body of deceased being discovered. It appears that the clothes of the appellant were not seized and there is no other circumstantial evidence which would connect the appellant with the commission of the crime. The evidence of last seen is also infirm as the Medical Officer has not deposed about the time of death. In the absence of any other evidence, which would connect the appellant with the commission of crime, in our opinion, the appellant is entitled to be given the benefit of doubt. Accordingly, Criminal Appeal No. 500 of 2010 is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the appellant, be refunded to him. Since the appellant is in jail, he be released forthwith, if not required in any other case.