
(2016) 12 BOM CK 0099
In the Bombay High Court
Case No : Criminal Appeal No. 243 of 2011

Vishwas Nathu Sase

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 313
Evidence Act, 1872 — Section 3, Section 8
Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 1 AIRBomRCri 132 : (2017) ALLMRCri 974 : (2017) 1 BomCR(Cri) 510 : (2017) 1 MhLJCrI 130

Hon'ble Judges : Smt. V.K.Tahilramani and A.M. Badar, JJ.

Bench : Division Bench

Advocate : Ms. Rohini M. Dandekar, Advocate, for the Appellant; Mr. H.J. Dedia, APP, for the Respondent/State

Final Decision : Dismissed

Judgement

A.M. Badar J. (Oral) - By this appeal, the appellant/accused, who has been convicted for offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for six months, in Sessions Case No.42 of 2008 by Judgment and Order dated 23/02/2011 by the learned Additional Sessions Judge, Islampur, is challenging the said Judgment and Order.

2. According to the prosecution case, as reflected from the police report, the appellant/accused is well acquainted with P.W.No.8 Bandu Dadu Sawant, a mathadi worker, working at Mumbai. P.W.No.8 Bandu Dadu Sawant is resident of Ganesh Nagar, Morewadi, Tal. Shirala, Dist. Sangli. He had two wives and four children, who were residing at Morewadi. The appellant/accused used to help P.W.No.8 Bandu Sawant in cultivating land at Morewadi. He was frequent visitor to the house of P.W.No.8 Bandu Sawant at Morewadi.

3. According to the prosecution case, the appellant/accused had developed trust in the mind of first wife of P.W.No.8 Bandu Sawant namely Ashatai Bandu Sawant (since deceased). During his financial crunch, initially, the appellant/accused took a gold necklace from Ashatai Sawant for the purpose of pledging it and obtaining money to meet his requirement. Thereafter, the said necklace was returned by the appellant/accused to Ashatai Sawant. The appellant/accused stated to be in need of money again and, therefore, he took gold necklace (Laxmihar) from Ashatai Sawant weighing one and half tola for the purpose of pledging it and obtaining money for meeting his need. Trusting him, Ashatai handed over gold necklace (Laxmihar) to the appellant/accused. However, the appellant/accused did not return that gold necklace (Laxmihar) to Ashatai despite repeated requests. Then, according to the prosecution case, the appellant/accused had been to the house of Ashatai Sawant in the night hours of 23/07/2008. At that time, when Ashatai asked him to return her gold necklace (Laxmihar), the appellant/accused refused and threatened Ashatai that if the same is again demanded, he will not keep her alive.

4. According to the prosecution case, at about 1.00 to 2.00 p.m. on 24/07/2008, the appellant/accused entered in the house of Ashatai Bandu Sawant at Morewadi when there was nobody else in the house. He assaulted her and then sprinkled kerosene on her person and set her ablaze causing her instantaneous death. In that incident the appellant/accused also sustained burn injury.

5. Information of death of Ashatai Sawant was given by her son P.W.No.5 Avinash Bandu Sawant to his relatives including P.W.No.1 Chandrakant Patil (brother of the deceased), P.W.No.2 Narayan Hari Patil (uncle of the deceased) and P.W.No.8 Bandu Dadu Sawant (husband of the deceased).

6. The FIR (Exh.12) of the crime in question came to be lodged by P.W.No.1 Chandrakant Anandrao Patil on 26/07/2008, which has resulted in registration of Crime No.29 of 2008 for offence punishable under Section 302 of the Indian Penal Code with Kokrud Police Station, Sangli. After taking inquest notes after inspection of dead body, it was sent for autopsy by the police. Spot panchanama came to be recorded. After his discharge from the Rural Hospital, Shirala, the appellant/accused was arrested on 21/08/2008. On the basis of confessional statement of the appellant/accused recorded on 24/08/2008, his burnt full pant came to be seized. On the basis of his second confessional statement recorded on the very same day, gold necklace (Laxmihar) given to him came to be seized at the instance of the appellant/accused. On completion of investigation, the appellant/accused was charge-sheeted and ultimately, after due trial, he came to be convicted and sentenced as indicated in opening paragraph of this Judgment.

7. Heard the learned counsel appearing for the appellant/accused. She vehemently argued that the entire case of prosecution is based on the circumstantial evidence and chain of circumstances is not firmly established by the prosecution in order to infer guilt of the appellant/accused in the crime in question. By drawing our attention to the evidence of P.W.No.5 Avinash Bandu

Sawant, the learned counsel for the appellant/accused argued that the room in which the incident of alleged murder of Ashatai took place was latched from inside and this circumstance is indicative of the fact that the Ashatai died suicidal death. Therefore, according to the learned counsel for the appellant/accused, benefit of doubt needs to be given to the appellant/accused. The learned counsel for the appellant/accused further argued that there is delay in lodging the FIR and, therefore, case of the prosecution is not free from doubt.

8. The learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction by arguing that injuries suffered by the appellant/accused establish his guilt.

9. We have carefully considered the rival submissions and we have also perused the record and proceedings. It is not in dispute that the case of the prosecution is based on circumstantial evidence as nobody has seen the appellant accused either assaulting deceased Ashatai or setting her ablaze inside her house.

10. At the outset, let us put on record undisputed position emerging from cross-examinations of prosecution witnesses, as well as, from statement of the appellant/accused under Section 313 of the Code of Criminal Procedure. The appellant, who is also resident of Morewadi, has not disputed the fact that he was on visiting terms with P.W.No.8 Bandu Sawant and his family members residing at village Morewadi. The appellant has accepted the fact that he was visiting the house of P.W.No.8 Bandu Sawant and helping him for doing agriculture operations. The appellant/accused has accepted the fact that Ashatai (since deceased), her two sons Avinash and Aniket, so also second wife of P.W.No.8 Bandu Sawant and her two sons namely Sagar and Ajit were residing together in a house located at village Morewadi. He has further accepted the fact that during the course of investigation, he has made a confessional statement disclosing that he will show the spot of the offence and will produce his clothes and accordingly he had produced clothes from backside of his residential house. The appellant/accused has further admitted the fact that his full pant came to be seized by police and then it was sealed (answers to question Nos.45 and 46). While answering question No.57 in his statement under 313 of the Code of Criminal Procedure, the appellant/accused had disclosed his defence. His answer to this question can be quoted with advantage. It reads thus :

"I was visiting daily at the home of deceased. While I was going in front of home of deceased, there was hue and cry and people was gathered. Therefore, I directly went into the house and taken the gaddi (mattress) & tried to extinguished the fire. At that time I also had fire on my cloth. Thereafter I take water and extinguished my fire and her fire. Then I along with one companion went on my motorcycle to Shedagewadi fata where I become unconscious. From there who has taken me to the hospital do not know. On the next day I came to know that Ashatai died."

11. Thus, it is the defence of the appellant that he was present on the spot while

Ashatai was still engulfed in fire and he attempted to extinguish the fire on person of Ashatai and, therefore, he sustained burns. The appellant/accused has also admitted papers of his medical treatment at Exh.56 and 58. These papers of medical treatment of the appellant/accused show that on 24/07/2008 i.e. on the day of incident of sustaining burns by Ashatai, the appellant/accused was admitted initially at Rural Hospital, Kokrud and then he was referred to Rural Hospital, Shirala, where he was admitted on that day at about 5.00 p.m. These papers of medical treatment of the appellant/accused show that he had disclosed the history of sustaining accidental burns by him while lightening of the stove. These papers of medical treatment of the appellant/accused show that he had suffered 45% superficial to deep burns on the day of the incident over both hands, both thighs, abdomen, chest and lips. In other words, it is not in dispute that the appellant/accused, who was on visiting terms with deceased Ashatai had attempted to extinguish fire from person of Ashatai and sustained burn injury, which has resulted in his admitted to Rural Hospital to Kokrud and Shirala on the day of incident i.e. on 24/07/2008. With this undisputed position, let us examine the evidence adduced by the prosecution in order to ascertain whether guilt of the appellant/accused in crime in question is established.

12. As stated earlier, the case of the prosecution is based on circumstantial evidence, there being no eye witness to the incident of alleged incineration of Ashatai Sawant. For proving a crime, it is not necessary that the crime must be seen to have committed or must be proved by direct ocular evidence. The principle fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans. However, in such cases evidence adduced by the prosecution must satisfy the following tests :

1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Ashok Kumar v. State of M.P., AIR 1989 SC 1890, Padala Veera v. State of A.P., AIR 1990 SC 79.)

13. The prosecution case is based on the following circumstances in order to point out guilt of the appellant/accused :

- (1) Sustaining of injuries by the appellant/accused at or about the date and time of incident of sustaining burns and consequent death of Ashatai Sawant;

- (2) Recovery of full pant of the appellant/accused on the basis of his confessional statement and finding of kerosene residues on it in chemical analysis;
- (3) Conduct of the appellant/accused in giving false information to the Medical Officer about sustaining burn injuries by him while lightening the stove.
- (4) Taking of gold necklace (Laxmihar) of deceased Ashatai Sawant by the appellant/accused on the pretext of financial crunch for the purpose of pledging it and obtaining money;
- (5) Motive with the appellant/accused to eliminate Ashatai as he was not willing to return the gold necklace (Laxmihar) of Ashatai to her;
- (6) Recovery of gold necklace (Laxmihar) of Ashatai at the instance of the appellant/accused on the basis of his confessional statement from a goldsmith;

14. In order to bring home the guilt to the appellant/accused, at the outset, the prosecution is obliged to establish that Ashatai Sawant had died homicidal death on 24/07/2008 at her residential house at Morewadi. P.W.No.5 Avinash is her 13 years old son, who saw her dead body after returning to home with his step brother Sagar at about 5.30 p.m. on 24/07/2008. His evidence shows that door of the room in the house was closed from inside and his step brother Sagar opened that door and they saw Ashatai in burnt condition lying in the room. Police were summoned and spot panchanama (Exh.15) came to be recorded in presence of P.W.No.3 Pandurang Sawant - panch witness. This spot panchanama is also a document, which is admitted by the defence. The spot panchanama shows that dead body of Ashatai was lying in the room in burnt condition and there was a pool of blood beside that dead body covering area of about 18 inches x 10 inches. The dead body was then sent for autopsy and evidence of Autopsy Surgeon P.W.No.4 Dr. Sunil Kamble shows that on external examination of dead body of Ashatai, there were following injuries :

- (i) CLW on the occipital region 5 x ? cm. deep;
- (ii) 85% superficial and deep burns;

The Autopsy Surgeon opined that injuries on dead body were anti-mortal in nature and cause of death of Ashatai is death due to 85% superficial and deep burns. Thus evidence of Autopsy Surgeon shows that cause of death of Ashatai Sawant is due to burn injuries. The question whether those burns were accidental, suicidal or homicidal will have to be determined by careful scrutiny of other evidence adduced by the prosecution.

15. The first circumstance which needs attention is alleged motive with the appellant/accused to eliminate deceased Ashatai Sawant. The motive is something which prompts a man to form an intention and knowledge is an awareness of the consequence of the act. In cases relating to circumstantial evidence, motive plays an important role. In the instant case, the motive attributed to the appellant/accused is to appropriate gold necklace (Laxmihar)

given to him by deceased Ashatai Sawant for pledging the same for meeting financial requirements of the appellant/accused. On this aspect, the prosecution is relying on the evidence of P.W.No.1 Chandrakant Patil (brother of the deceased), P.W.No.2 Narayan Patil (uncle of the deceased), P.W.No.5 Avinash (son of the deceased) and P.W.No.8 Bandu Sawant (husband of the deceased), so also on evidence of P.W.No.7 Jotiram Patil - panch witness to the confessional statement of the appellant/accused and that of P.W.No.9 Gajanan Jadhav, Investigating Officer, who has recorded memorandum statement on 24/08/2008 resulting in recovery of gold necklace (Laxmihar) of deceased Ashatai at the instance of appellant/accused.

16. Evidence of P.W.No.1 Chandrakant Patil shows that his deceased sister had initially given a gold necklace to the appellant/accused for pledging the same and at that time, the appellant/accused had returned it after one month thereby developing trust in the mind of deceased Ashatai. P.W.No.1 Chandrakant Patil further deposed that on 22/07/2008 his sister Ashatai had been to his house for the purpose of Akhadi festival and at that time, she informed him that the appellant/accused was in need of money and, therefore, he obtained gold necklace (Laxmihar) from her for pledging it and obtaining money. P.W.No.1 Chandrakant Patil further deposed that Ashatai discloses him that the said gold necklace is not returned to her by the appellant/accused despite repeated demands and he is threatening to kill her, if the same is demanded back. P.W.No.1 Chandrakant Patil had been to the spot of the incident soon after the incident and saw dead body of his sister Ashatai on 24/07/2008 itself and then he lodged report of the incident to police on 26/07/2008. Despite searching cross-examination, nothing has come on record to disbelieve version of this witness regarding disclosure made to him by deceased Ashatai regarding taking her gold necklace by the appellant/accused for the purpose of pledging and securing money by pledging it for meeting his financial needs. The testimony of this witness is gaining corroboration by the FIR lodged by him, which is at Exh.12. This FIR is also containing narration of this witness to police regarding motive with the appellant/accused to eliminate deceased Ashatai. The FIR is disclosing recitals of first informant Chandrakant Patil to the effect that despite repeated requests by deceased Ashatai, the appellant/accused had not returned the gold necklace and had threatened her.

17. Testimony of this witness is sought to be doubted on the ground that there is delay of two days in lodging the FIR. However, in chief-examination, this witness had stated that for two days he was in disturbed state of mind. His cross-examination shows that after two days he became sure that it is the appellant/accused who committed the crime. Even otherwise, this informant is not an eye-witness and was not knowing who had murdered his sister. Thus, the delay of two days gets satisfactorily explained from the testimony of the informant/P.W.No.1 and as such this cannot be a circumstance to doubt the case of the prosecution.

18. P.W.No.2 Narayan Patil - uncle of deceased Ashatai has also stated that at the time of Akhadi festival, deceased Ashatai had come to Bhedasgaon from Morewadi and disclosed him that the appellant/accused is not returning her gold necklace and threatening her.

19. Then comes evidence of P.W.No.5 Avinash, who happened to be son of deceased Ashatai. This witness was residing with deceased Ashatai at Morewadi. He has stated that on 23/07/2008 i.e. the day before the incident at about 10.00 p.m., the appellant/accused came to his house and at that time, deceased Ashatai had asked him to return the gold necklace. P.W.No.5 Avinash testified that at that time, the appellant/accused declined to return it and threatened his mother Ashatai that if she again demands it back, then the appellant/accused would not keep her alive. Testimony of this child witness was recorded after putting some preliminary questions to him by the learned trial Court and after ascertaining his understanding and competency to depose. Careful perusal of his cross-examination shows that his testimony so far as the incident which took place in the night hours of 23/07/2008, is not at all shattered. On the contrary, from cross-examination of this witness, it has brought on record that the appellant/accused used to visit house of deceased Ashatai at least once in a day and Ashatai also used to visit house of the appellant/accused for the purpose of agriculture work. The same is the defence of the appellant/accused and, therefore, it is established by the prosecution that the appellant/accused had in fact visited house of deceased Ashatai in night hours of 23/07/2008 and threatened her when she demanded back gold necklace from him.

20. Evidence of P.W.No.9 Gajanan Jadhav, Investigating Officer shows that the appellant/accused was arrested on 21/08/2008. Prior to that, he was taking treatment as indoor patient for burn injuries at Rural Hospital, Shirala. P.W.No.9 Gajanan Jadhav, Investigating Officer and P.W.No.7 Jotiram Patil unanimously stated that the appellant/accused had made confessional statement (Exh.31) while in custody of police and this has resulted in recovery of gold necklace (Laxmihar) from shop keeper named Shankar Dighe. Versions of both these witnesses show that by drawing recovery panchanama (Exh.32) that gold necklace came to be seized. Contemporaneous documentary evidence in the form of admissible portion of the confessional statement of the appellant/accused recorded under Section 27 of the Evidence Act and recovery panchanama (Exh.32) duly corroborates testimonies of both these witnesses. It is, thus, proved that gold necklace of deceased Ashatai came to be seized at the instance of the appellant/accused to be that of his deceased wife Ashatai.

21. Seized gold necklace was then shown to the P.W.No.8 Bandu Sawant - husband of deceased Ashatai. This witness has identified the seized gold necklace (Laxmihar) recovered at the instance of the appellant/accused.

22. With this clear, cogent and consistent evidence, prosecution has proved that the appellant/accused had taken gold necklace from deceased Ashatai for meeting his financial needs for pledging the same and he was not returning the

same despite repeated requests by deceased Ashatai. It is also proved by this evidence that the appellant/accused was extending threats to deceased Ashatai when she was requesting him to return that gold necklace. Ultimately, at the instance of the appellant/accused that gold necklace of deceased Ashatai was recovered on 24/08/2008. By this, the prosecution has also proved motive constituting compelling force with the appellant/accused to eliminate deceased Ashatai.

23. Now, let us advert to situation prevalent on the spot of the incident found immediately after the incident. The incident took place in the room of the house of P.W.No.8 Bandu Sawant situated at village Morewadi. That house was undisputedly occupied by deceased Ashatai - first wife of P.W.No.8 Bandu and their two sons, as well as, second wife of P.W.No.8 Bandu and their two sons. P.W.No.5 Avinash had stated that the dead body of his mother Ashatai was seen in the room where deceased Ashatai and her two sons including P.W.No.5 Avinash were residing. That room was found to be latched from inside and as per version of P.W.No.5 Avinash his step brother Sagar put his hand inside from the gap of the door and opened the latch. It is sought to be demonstrated by the learned counsel for the appellant/accused that this indicates suicidal death of deceased Ashatai, as the room was latched from inside. However, it is the defence of the appellant that he was present on the spot and had attempted to extinguish the fire from person of Ashatai. Hence, this submission is devoid of merit. The spot panchanama at Exhibit 15, which is a document admitted by the defence and also proved by P.W.No.3 Pandurang Sawant goes to show that the said room was definitely not kitchen of the house. The spot panchanama shows that the said house was having a hall with three doors to go further inside the said house. The middle door of that hall was found open while conducting spot panchanama. This door was opening inside the room where dead body of Ashatai was found by her son P.W.No.5 Avinash. The spot panchanama itself shows that the said room was having door at the western side also and that door was open. Therefore, the room where the incident had happened had access from two doors - one from the door at the hall and another from the door at the western side of that room which was open. Therefore, the prosecution case cannot be said to be suffering from shadows of doubt merely because front door of the room where the incident had happened was found latched from inside. The spot panchanama further shows that in that room of deceased Ashatai a can of five liters capacity containing about two liters of kerosene was found. A small diary containing photocopy of the driving license of the appellant/accused was also found inside that room. Burnt and non-burnt match sticks and broken bangles were found on the spot. Dead body of Ashatai with blood spilled near it was found lying in that room having pungent smell of kerosene. By preparing spot panchanama (Exh.15) that can containing kerosene, pocket diary with photocopy of license of the appellant/accused, match box with sticks etc. came to be seized. This evidence and particularly finding of a pocket diary containing photocopy of the driving licence of the appellant on the spot of the incident soon after the incident is a

circumstance indicating the guilt of the appellant.

24. Confessional statement of the appellant/accused has resulted in recovery of his burnt full pant, which came to be seized and sealed vide recovery panchanama at Exh.23. The prosecution has examined P.W.No.6 Babaso Patil - panch witness and P.W.No.9 Gajanan Jadhav - Investigating Officer to prove these facts though the defence has admitted these documents viz. Confessional statement (Exh.22) and recovery panchanama (Exh.23). Articles seized from the spot, so also burnt full pant seized at the instance of the appellant/accused were sent for chemical analysis. Reports of Chemical Analysis at Exh.47 and 46 show residues of kerosene on burnt clothes seized from the spot, so also on seized full pant of the appellant/accused. Liquid in the can was found to be kerosene in the chemical analysis. Thus, situation prevalent on the spot of the incident shows that deceased Ashatai was incinerated in the room after she was subjected to physical violence causing contuse lacerated wound to her head leading to profused bleeding. These circumstances eliminate the chances of deceased Ashatai dying suicidal or accidental death. Finding of residues of kerosene on the burnt full pant of the appellant/accused is indicative of the fact that he had caused homicidal death of Ashatai by sprinkling of kerosene on her and then igniting her.

25. The conduct of the appellant/accused also becomes relevant and incriminates him. In his examination under Section 313 of the Code of Criminal Procedure of the appellant/accused, he has stated cause of burn injuries sustained by him at about the time and date of the incident as due to his attempt to extinguish fire from person of deceased Ashatai. However, on the first opportunity when he got himself admitted to the Rural Hospital, Shirala the appellant/accused has stated the history of sustaining burn injuries as accidental burn caused during lightening of the stove by him. This is reflected from papers of medical treatment of the appellant/accused, which are admitted by him. He had suffered 45% burn injuries in the incident. The history narrated by him to the medical officer first in point of time is of accidental burns, whereas during his examination under Section 313 of the Code of Criminal Procedure, he is stating that he sustained burns while extinguishing a fire from person of Ashatai. It is obviously a false plea taken by the appellant/accused. A false plea taken by the appellant/accused in case of circumstantial evidence providing an additional link in the chain of circumstances (see *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984)4 SCC 116).

26. In the result, we hold that the prosecution has successfully proved each and every circumstance against the appellant/accused and chain of proved circumstances unerringly points out that the appellant/accused had incinerated Ashatai Sawant with requisite intention and knowledge of causing her murder.

27. In this view of the matter, no infirmity can be found in the impugned Judgment and Order recording finding of guilt of the appellant/accused for the offence punishable under Section 302 of the Indian Penal Code.

28. In the result, the appeal is devoid of merit and the same is dismissed.

29. The fees to be paid to the appointed Advocate are quantified at Rs. 5,000/-.