
(2000) 02 BOM CK 0002
In the Bombay High Court
Case No : Criminal Appeal No. 10 of 1996

Vyankatesh Maruti Arandekarnaik

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294

Evidence Act, 1872 — Section 105

Penal Code, 1860 (IPC) — Section 302, 323, 84

Citation : (2000) 02 BOM CK 0002

Hon'ble Judges : Vishnu Sahai, J;P.V. Kakade, J

Bench : Division Bench

Advocate : Usha V. Kejriwal, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Kakade, J.—The appellant has preferred this Appeal against the Judgment and Order passed by the learned Additional Sessions Judge, Sawantwadi, dated 12th December, 1995, convicting him for the commission of the offence punishable under sections 302 and 323 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 500/-, in default to suffer R.I. for three months for the offence u/s 302 Indian Penal Code but awarding him no sentence for that u/s 323 Indian Penal Code.

2. The facts involved in the case, in short, are thus :

Witness Sudha Arondekar used to reside at Village Kavathi, Taluka Kudal, District Sindhudurg, with her three sons, including the complainant Sambhaji and appellant Vyankatesh along with other family members. The appellant was married to Vandana about one year prior to the incident. The appellant was of eccentric nature. For sometime after the marriage everything was normal but thereafter the appellant started beating his wife Vandana finding some small excuses. Due to his nature the appellant had separated from his other family members about one week prior to the incident. On the date of the incident, i.e.

26th June 1994, the appellant had gone for fishing and returned at about 11.30 a.m. Again he left the house and came back at about 2.30 p.m. He demanded a nut-cutter for his work which was given to him by Vandana. While he saw Vandana there, his temper flared up and he started beating Vandana. He assaulted Vandana with hoe and also abused and threatened her. Due to the assault, Vandana was injured extensively on head, back and other parts of the body. When the mother and other relatives tried to intervene in the assault, the appellant threatened them with assault. After the assault, the appellant threw the weapon there and went away.

Appellant's brother Sambhaji had also arrived on the scene after he heard commotion and noticed that Vandana had suffered bleeding injuries. She was removed to the ota (platform) of the house. Dr. Khobrarekar was summoned, who gave the first aid and asked them to take Vandana to Kudal. Complainant Sambhaji went to Kudal Police Station and lodged the complaint against the appellant. In the meantime, Vandana was taken to Panjim for better medical treatment, but she succumbed to her injuries and, therefore, offence of murder was registered against the appellant.

3. The investigation commenced in due course. Statements of eyewitnesses and other witnesses were recorded. Spot panchanama was prepared and clothes and other articles, which were seized in the course of investigation, were sent to the Chemical Analyser for analysis. The postmortem report was collected.

4. The post-mortem report shows that there were as many as 14 injuries on the person of Vandana and it was opined that the death was caused due to cranio cerebral haemorrhage (head injury) attributable to impact of blunt weapon. It is pertinent that a perusal of the injuries sustained by deceased shows that they could be caused by a hoe.

5. On completion of the investigation, the charge-sheet was sent to the Court of law. The case was committed to the Court of Sessions in usual manner where charges were framed against the appellant. He pleaded not guilty to them. The defence of the appellant is that of insanity. It was suggested to the witnesses that he was incapable of knowing the nature of the act at the time of committing it due to insanity.

The learned Trial Judge proceeded to hold the trial during which several witnesses, including the eye-witnesses were examined. The medical evidence was admitted u/s 294 of the Criminal Procedure Code.

The learned Trial Judge brushed aside the defence theory and came to the conclusion that the prosecution had succeeded in establishing its case against the appellant on the basis of available evidence and proceeded to record conviction and consequent sentence as aforesaid.

6. Being aggrieved by the said Judgment and Order passed by the learned Trial Judge, the appellant has preferred this Appeal, inter alia, submitting that the

learned Trial Judge did not properly appreciate the evidence on record, as a result of which he was subjected to miscarriage of justice.

7. At this stage, we must note that at the time of hearing the learned Counsel for the appellant, appointed for the purpose of defending the appellant, did not remain present. We thought it fit and proper to proceed with the hearing of the Appeal on merits as the appellant is in jail for several years. That we can do so is clear from the ruling of the Supreme Court in the case of Bani Singh and others vs. State of Uttar Pradesh, reported in AIR (1996) SCW 2896 wherein it is held that under such circumstances, it is desirable to proceed with the hearing of the appeal, on merits. We took help of the learned Public Prosecutor in conducting the matter.

Taking into account the evidence on record in its totality, we are satisfied that the prosecution evidence before us is sufficient to squarely saddle the appellant with the criminal liability with which he is charged.

8. In order to bring home the guilt, the prosecution has relied upon the testimony of as many as three eye-witnesses to the incident. P.W. 1 Sudha (Ex. 13), is the mother of the appellant. She has stated in her testimony that at the time of the incident the appellant came home and asked for nut-cutter from the house, which was given to him by his wife Vandana. She stated that the presence of Vandana in his house enraged the appellant because he had separated from the remaining household about one week prior to the incident and was of the opinion that neither Vandana nor any members of his family should visit him. She also stated that the appellant started assaulting Vandana with hoe on her head and backside as well as other parts of the body, as a result of which she suffered serious bleeding. She stated that witness Sahadeo Naik also came there but the appellant threatened him with the hoe and thereafter the appellant chased her mother and threw the hoe in the trees. Thereafter the villagers lifted Vandana and kept her in the house of Sahadeo Arondekar. She was soaked in blood. The doctor was brought, who gave first aid to her and asked them to remove her to Kudal Hospital, which was done.

Similar is the version of P.W.3 Ramchandra Toraskar (Ex. 16), who is a distant relation and neighbour. He has stated that when he heard commotion, he went near the house and saw that the appellant was beating his wife with a hoe. The appellant thereafter started chasing his mother.

This version is again supported by the testimony of P.W. 5 Sahadeo Arondekar (Ex. 36). He has stated that he heard hue and cry from the house and went there and noticed that the appellant was assaulting his wife with a hoe. He also witnessed the appellant giving hoe blows on the head and backside of Vandana and when he tried to intervene in the assault, the appellant threatened him also. Witness Sahadeo was then got frightened and jumped on the road from the courtyard and went aside. Thereafter the appellant seeing the neighbours gathered on the spot, threw the hoe in bushes and went away.

9. In our considered view, the evidence of eye-witnesses is sufficient to bring home the guilt because it has established that it was the appellant himself, and none else, was the author of the crime, as a result of which Vandana had succumbed to her injuries caused with a hoe. No doubt the eye witnesses are relatives, but the fact remains that their presence on the spot is quite natural and their evidence cannot be disbelieved even for a moment. Moreover, it is also to be noted that the witnesses are mother and brothers of the appellant and they have absolutely no reason to involve the appellant falsely in the ghastly crime of murder of Vandana. In view of this, we hold that the eye-witness account of the said witnesses is reliable as well as credible and, therefore, has to be accepted.

10. The eye-witness account again is further supported by the medical evidence on record. The post-mortem examination notes (Ex. 25), which are admitted by the defence u/s 294 of the Criminal Procedure Code, do show that there are as many as 14 injuries on the person of Vandana. Their perusal shows that they were attributable to a weapon like hoe. The chart attached to the post-mortem examination notes also clarifies that the location of wounds, including the skull fracture which was obviously sufficient to cause death in the ordinary course of nature as can be seen from the cause of death given by the Medical Officer in the post-mortem examination notes, namely Cranio cerebral haemorrhage. The nature of injuries reveal that they are caused due to heavy blunt object such as hoe, which was seized on the spot by the police during the course of spot panchanama. Thus, the medical evidence before us fortifies the prosecution case and we have therefore come to the conclusion that all the available evidence before us squarely establishes the guilt of the appellant beyond reasonable doubt.

11. We may note that a feeble attempt is made on behalf of the defence to suggest that the appellant was of unsound mind and was incapable of knowing the nature of his act at the time of committing it. In support of such defence it was tried to suggest that he was in mental asylum for some time and was insane at the relevant time. However, on a careful scrutiny of the entire evidence before us, we are totally satisfied that such defence theory is devoid of any merits.

It is to be noted that the provisions of section 84 of the Indian Penal Code stipulate that nothing would be an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. Therefore, to invoke this provision, it is necessary that it must be established that the person was of unsound mind at the time of doing the Act Furthermore, the provisions of section 105 of the Indian Evidence Act clearly show that the burden of proving the alleged factum of insanity squarely lies on the appellant. In this case, absolutely no defence evidence had been led, nor circumstantial evidence is sufficient to show, that the appellant was insane at the time of commission of the act. We have given our anxious thought to the evidence, including cross-examination of witness Sudha, the mother of the appellant, from whose evidence it can, at the most, be concluded that the appellant was of

eccentric nature and, therefore, was referred to the Mental Asylum at Ratnagiri long time ago prior to the incident. However, this aspect would not be sufficient to establish the defence theory that the appellant was an insane person at the time of commission of the offence as contemplated by section 84 of the Indian Penal Code. In view of this aspect, we are unable to accept the defence theory even for a moment.

12. For the reasons recorded above, we hold that the learned Trial Judge has rightly concluded that the appellant has committed offences punishable with which he is charged namely those under sections 302 and 323 of the Indian Penal Code and, therefore, the impugned judgment does not warrant any interference from us.

13. In the result, we confirm the conviction of the appellant for the offence under sections 302 and 323 of the Indian Penal Code. We also confirm his sentence for the offence u/s 302 of the Indian Penal Code. We dismiss this appeal. The appellant is in jail and shall serve out his sentence.