
(2012) 12 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 970 of 2005

Waman Laxman Mirka

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 304(II)

Citation : (2013) 2 BomCR(Cri) 478

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

Bench : Division Bench

Advocate : Sarojini Upadhyay, for the Appellant; S.A. Shaikh, Assistant Public Prosecutor, for the Respondent

Judgement

Joshi A.R., J.—Heard rival arguments on this criminal Appeal preferred by the appellant-accused challenging the judgment and order of conviction dated 10th May, 2005, passed by III Additional Sessions Judge, Thane in Sessions Case No. 244 of 2004. By the impugned judgment and order, the appellant-accused was convicted for the offence punishable u/s 302 of the Indian Penal Code (IPC) and was sentenced to suffer imprisonment for life and to pay fine of Rs. 2,000/- in default to suffer further R.I. for thirty days.

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

The appellant-accused and his wife victim Barkabai were residing at village Kambagaon, Taluka Bhiwandi, District Thane. They were residing in a hut like structure having two rooms. Both were addicted to consume liquor and there were frequent quarrels between them on various counts. At times they used to go to the village Police Patil one Arun Gaikar P.W. 1 for consultation etc. The incident occurred on 27th April, 2004. That time the appellant-accused came to P.W. 1 Arun Gaikar and asked him to come to his house. That time the appellant-accused was drunk and he had consumed liquor. P.W. 1 enquired with him as to what was the matter. However, the appellant-accused answered that when he would reach home, he will come to know. Accordingly, both went to the house of

appellant-accused. There inside the house P.W. 1 saw the wife of the appellant lying on the ground and her body was covered by some cloth. Apparently, said Barkabai, wife of the appellant-accused was not alive. P.W. 1 Police Patil called the neighbouring lady and with her help he removed the cloth and found that said Barkabai had bleeding injury to her throat and also there were some injuries on her hand and fingers. She was found dead. On this, P.W. 1 enquired with the appellant-accused as to how it had happened? On this enquiry, according to case of prosecution, appellant-accused gave extra judicial confession before P.W. 1 stating that in that afternoon he came back home with some articles. At that time, his wife who was also apparently drunk, raised a quarrel with him saying that he should not live in the house and he should live with his one sister by name Indubai Waghe. There was hot exchange of words and in a fit of rage, appellant-accused took one wooden handle of the axe/wooden log and hit on the head of his wife Barkabai, causing severely bleeding injury and apparently causing in her death. On this revelation from the appellant-accused, P.W. 1 took him to the Police Station where his complaint was taken down by Police Officer Sudhakar Jadhav P.W. 3. Offence was registered against the appellant-accused u/s 302 of the Indian Penal Code. On visiting the scene of offence, spot panchanama was drawn. The appellant-accused was put under arrest on the same day afternoon. His blood stained clothes were taken charge of. On the same day, appellant-accused made a voluntary statement to produce the wooden log of the axe. It was then recovered from the house of the appellant-accused under panchanama. During investigation, dead body of the victim was sent for post-mortem and post-mortem report was obtained. Seized articles were sent for C.A. and C.A. report was obtained. On completion of investigation, charge-sheet was filed. The matter was committed to the Court of Sessions and it ended in conviction vide judgment and order which is impugned in the present appeal.

2-A At the threshold, it must be mentioned that the learned Advocate for the appellant-accused had virtually accepted the case of the prosecution in as much as the presence of the appellant-accused on the spot and finding of dead body of his wife. Admittedly, it is a case of custodial death and, there is no probable explanation coming from the appellant-accused as to how she has died. In fact, the homicidal death of the victim has been admitted by the appellant-accused and only point raised before us is whether the facts and circumstances of the case would attract punishment u/s 302 of the Indian Penal Code or whether the said case can be considered as punishable u/s 304 Part II of Indian Penal Code.

3. On the only submission as mentioned above, it is pointed out to us the substantive evidence of P.W. 1 Police Patil and P.W. 3 Police Officer Sudhakar Jadhav, so also emphasis was placed on the substantive evidence of Dr. Babasaheb Sorate, P.W. 5. and contents of the post-mortem report. During the arguments, it is also brought to our notice that admittedly according to the case of prosecution, there was sudden fight between the appellant-accused and his wife and in fact the said quarrel was initiated by the victim herself when the appellant-accused came back to the house after purchasing some articles from

the market. She raised the quarrel on the count that appellant should not stay in the house and he should stay with his sister who is very close to him. On this, appellant accused become infuriated and in a fit of anger he lifted the wooden log and gave apparently only one blow on the head of the victim. At that time the appellant-accused was under the influence of liquor. It is also argued that the appellant-accused did not intend to kill his wife, however, his act of assaulting his wife on her head with a wooden log, at the most can bring him under the clutches of Part - II of section 304 of the Indian Penal Code i.e. having knowledge that his act would cause the death though he had not intended to kill his wife. It is further argued that said intention not to kill his wife can be gathered by the weapon which is used by him. It is pointed out that the appellant-accused had not used any deadly weapon or sharp cutting instrument or even the cutting blade of the axe, but, only used the wooden log to hit his wife and that also only under the influence of liquor. We have carefully gone through the substantive evidence of Dr. Babasaheb Sorate, P.W. 5 and also the substantive evidence of the Police Officer P.W. 3 Sudhakar Jadhav and of the Police Patil, P.W. 1 Arun Gaikar. Also we have seen the contents of the post-mortem report and noticed the injuries sustained by the victim. Only one major injury was on the head causing fracture of the skull bone. There are no other vital injuries on the body. So also we have observed that according to the case of the prosecution, there was quarrel which was raised by the victim and in which the appellant-accused had assaulted his wife. Considering this circumstance, in our opinion, the arguments advanced on behalf of the appellant-accused can be accepted to dilute the said offence from section 302 of Indian Penal Code to section 304(II) of the Indian Penal Code and in that event the present appeal is partly allowed, hence, the order:

ORDER

- i. Criminal Appeal No. 970 of 2005, is partly allowed.
- ii. The conviction of the appellant-accused u/s 302 of Indian Penal Code, is set aside, instead, the appellant-accused is convicted u/s 304 Part II of Indian Penal Code and he is sentenced to suffer R.I. for 10 years and to pay fine of Rs. 3,000/- in default, R.I. for one month.
- iii. The present judgment and order be communicated to the appellant-original accused through the concerned jail authorities where he is presently lodged.