

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.693 OF 1993

Manik Abaji Nikam @ Mundhe	]	
Age : 46 Yrs., Occ.: Labourer,	]	
R/o. Son-Hivra, Ral. Ambejogai,	]	 Appellant /
Dist. Beed	]	(Org. Accused)

Versus

The State of Maharashtra	]	 Respondent
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Mr. Kuldeep S. Patil for the Appellant.

Mrs. S.D. Shinde, A.P.P., for the Respondent-State.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 12TH FEBRUARY, 2015.

ORAL JUDGMENT [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. The Appellant, who stands convicted for the offence punishable under Section 302 of the IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.3,000/-, in default to suffer S.I. for two months, by the Judgment dated 28th September, 1993 in Sessions Case No.466 of 1992 by the Additional Sessions Judge, Pune, by this Appeal questions the correctness of his conviction and sentence.

2. Facts, as are necessary, for the decision of this Appeal may briefly be stated thus :

On 30th July, 1992, while PW-8 PSI Dilip Mane was on duty at Chakan Police station, he received information from Aalandi Police that a lady residing in the room belonging to PW-1 Dinkar Bawiskar-Shastri was found to be dead. Then he went to the spot along with the staff. There, PW-1 Dinkar was present. In his presence, the door of the room was opened and inside the room, they found the dead body of the lady by name Shalan Manik Nikam with strangulation mark over her neck and smell of poisonous substance coming out from her mouth. He conducted the Inquest Panchanama (Exhibit-9) and sent the dead body for post mortem. At the same time, he also made Spot Panchanama (Exhibit-10). The PW-1 Dinkar was then brought to Chakan Police Station, where his complaint (Exhibit-13) came to be recorded. On the said complaint, C.R. No.70 of 1992 was registered against the Appellant.

3. During the course of investigation, the clothes of the deceased were seized under Panchanama (Exhibit-10). The search of the Accused was taken at various places and he came to be arrested on 7th August, 1992. The statements of witnesses were recorded accordingly. The viscera and the empty bottle of poison (Article No.8), which was seized from the spot,

were sent to the Chemical Analyzer. On completion of due investigation, the Charge-Sheet came to be filed in the Court.

4. On case being committed to the Sessions Court, the Trial Court framed charge against the Accused vide Exhibit-2 for the offence punishable under Section 302 of the IPC. On charge being read over and explained to the Accused, he denied the guilt and claimed trial, raising the defence of simple and total denial.

5. To prove its case, the Prosecution has examined eight witnesses, including PW-1 Dinkar, the Panchas, PW-6 Dr. Subhash Madane, who conducted the post mortem, and PW-8 PSI Shinde, the Investigating Officer. On appreciation of evidence, the Trial Court accepted the said evidence and convicted and sentenced the Accused as stated above.

6. This Judgment of the Trial Court is the subject matter of this Appeal. We have heard Mr. Kuldeep Patil, the learned Counsel for the Appellant, and Mrs. S.D. Shinde, the learned A.P.P. for the Respondent-State. In our considered opinion, in order to effectively deal with their rival submissions, it would be useful to refer to the evidence on record.

7. The Prosecution, in this case, has relied upon two circumstances; (i) that of the homicidal death of Shalan; and (ii) deceased Shalan was last seen by PW-1 Dinkar in the company of the Accused.

8. PW-6 Dr. Madane has conducted the post mortem on the dead body of Shalan at Primary Health Center, Chakan and on the external examination, he found the following injuries :-

“(i) Semi circular contusion on right side of neck 2 cm lateral to mid line of level of thyroid cartilage. It was bluish black in colour, semi circular in shape directing upward and posteriorly about one and a half inch breadth and half inch in length thumb in shape.

(ii) Crescentric abrasion on left side of the neck – 1” lateral to mid-line at level of thyroid cartilages three in number and 2” in length and directing vertically.

(iii) There was contusion on right side of face at cheek about 2” in length directly vertically.

(iv) Abrasion on left leg posterial aspect 2” x 1”.

(v) Abrasion on right knee joint anterior aspect lenier 1” in length.

Injury discovered by palpitation – (1) fracture of thyroid cartilage on right side; (2) fracture of rib on right side.”

9. According to him, all these injuries were ante-mortem.
10. On internal examination, he noticed the following corresponding injuries :-

“Examination of Thorax – ribs on right side No.7, 8 and 9 were fracture and on left side No.10 rib was fracture at mid-auxiliary line. Oblique in direction, pleura was fear at fracture side, hyoid bone on right side at cornu fracture obliquely. The position of thorax mentioned at Serial No.20 – 200 cc of semi solid material without any specific smell.”

11. At the time of post mortem, he has preserved the viscera, which was sent to the Chemical Analyzer. The C.A. Report (Exhibits 22 and 23), however, disclose that no recognizable poison was detected in the viscera. Hence, PW-6 Dr. Madane has confirmed the finding noted in the Post Mortem Report that the probable cause of the death was *“asphyxia by throttling”*. His Post Mortem Report with the endorsement of the final cause of death is produced at Exhibits 22, 23 and 24. There is not much cross-examination of PW-6 Dr. Madane as to the cause of death and,

therefore, the circumstance relied upon by the Prosecution that death of Shalan was homicidal as a result of asphyxia due to throttling stands proved on record.

12. To prove the second circumstance that of Shalan being last seen in the company of Accused, entire reliance of the Prosecution case is on the evidence of PW-1 Dinkar. He is the owner of the property. One of the room in the said property, as deposed by him, was given for residence to the Accused just two months prior to the incident. Accused was residing therein, according to his evidence, along with deceased Shalan. It is deposed by him that on 29th July, 1992 at about 9 p.m., he took the food in the house of the Accused, along with Accused. Shalan has cooked the food and has served both of them. After taking the dinner, he returned to his house and at about 10 pm, he went to sleep. Next day in the morning, he found that the door of the room of the Accused was not opened. Hence, at about 7 am, he found that the door was locked from outside. As he saw the light inside the room, he peeped through the holes and he saw that one lady was sleeping. He could see her legs only and one empty bed was near her. He became suspicious and hence called his neighbor PW-3 Chandrakant Shirsat. They gave call to the Accused and Shalan from outside. However, nobody answered and hence suspecting foul play.

PW-1 Dinkar informed the Police. As stated above, Police came on the spot and found Shalan dead with strangulation marks on her neck and her mouth smelling of poisonous substance. Therefore, PW-1 Dinkar lodged the complaint (Exhibit-13).

13. In his cross-examination, Defence Counsel has succeeded in bringing certain admissions on record, which create doubt about the veracity of his evidence. It is brought on record that he and Shalan had gone to Pandharpur, stayed together there for five days. From there, they went to Kingaon to meet one Maharaj. Further, it is also brought on record that deceased Shalan used to cook food for him. The further suggestions put up to him by the Defence Counsel that Shalan used to give body massage to him and also clean his house and wash his clothes are denied by him. He has also denied the suggestion that one watchman used to frequently visit Shalan and he did not like it. On that count, there used to be quarrels between him and Shalan, is also denied by him. However, his evidence goes to show that he was having illicit relations with deceased Shalan, which fact he has not disclosed in his complaint.

14. In the back-drop of these facts, the evidence of PW-1 Dinkar that he has last seen Shalan in company of the Accused becomes seriously

suspicious. In the first place, there is no evidence to show that Accused was really residing along with Shalan in the said room. There is also no evidence except for his words to show that on that night Accused was in the house of Shalan, when he left her house after taking dinner.

15. The other witness examined by the Prosecution, namely, PW-2 Rukmini Pawar, is not stating anything about Shalan residing in the said room with the Accused. She is the sister of deceased Shalan and, therefore, her silence on this point is significant.

16. PW-3 Chandrakant Shirsat is the neighbor. Though he has deposed that he knows deceased Shalan and Accused as they were residing in the said room, in his examination-in-chief itself, he has stated that one and a half month to two months before the incident, they were residing in the said room. Therefore, his evidence does not disclose that at the time of incident or in that period, he found Accused residing with Shalan.

17. Except for the evidence of these two witnesses, there is no other witness examined by the Prosecution to prove that Accused was really residing with deceased Shalan in the said room and on the date of incident, at night, Accused was sleeping with Shalan in the said room.

18. Sole testimony of PW-1 Dinkar on this aspect, in our considered opinion, is not of such worth to place implicit reliance thereon, without there being any corroborating evidence on record.

19. Except for this circumstance, which Prosecution has failed to prove against the Accused, there is no other incriminating circumstance brought on record by the Prosecution to prove the complicity of the Accused in the said offence. In our considered opinion, therefore, the Judgment of the Trial Court convicting and sentencing the Appellant for the offence punishable under Section 302 of the IPC, on the basis of such insufficient evidence, cannot be upheld or confirmed. The Appeal, therefore, deserves to be allowed.

20. Consequently, the Criminal Appeal No.693 of 1993 is allowed. The Judgment of conviction and sentence of the Trial Court is quashed and set aside. The Appellant - Manik Abaji Nikam @ Mundhe is acquitted for the offence punishable under Section 302 of the IPC. His Bail Bond stands cancelled. Fine amount, if any, paid by the Appellant be refunded to him.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]