

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 214 OF 2013

Limbaji s/o Ranghnath Salgar,
Age : 52 years, Occu. Nil,
R/o Waghala, Tal. Parali (Vaijnath),
District Beed

APPELLANT
(Ori.Accused)

VERSUS

The State of Maharashtra,
through Police Inspector,
Police Station,
Parali (Vaijnath) (Rural),
Tal. Parali (Vaijnath),
District Beed

RESPONDENT
(Prosecution)

Mr. V.D. Sapkal, Advocate holding for
Mr. L.C. Patil, Advocate for the appellant
Mr. A.R. Borulkar, A.P.P. for the respondent/State

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 26th September, 2016

ORAL JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

The appellant has challenged his conviction and sentence for the offence punishable under Section 302 of the Indian Penal Code (for short, "I.P.C."), recorded in Sessions Case No. 83 of 2011 on 31st October, 2012 by the learned 2nd Additional Sessions Judge, Ambajogai.

2. In short, it is the case of the respondent that on 16th June, 2011 at about 8.45 a.m., the appellant inflicted axe blows on the person of his wife namely Laxmibai and caused her serious injuries to which she succumbed. The said incident took place in the house which was a part of a Wada (complex), situate at village Waghala, Taluka Parli-Vaijnath, District Beed. After hearing the commotion, the informant viz.:- Zumber Sundarrao Salgar, who was the Police Patil of the village, went to the house of the appellant. He saw the appellant present there armed with an axe. The deceased Laxmibai was lying on the ground. She had sustained bleeding injuries on neck and face. On being asked by the informant, the appellant told that the deceased Laxmibai had gone to Pandharpur in the Dindi (pilgrimage) in the previous year and since then, she was not behaving properly and therefore, he killed her. After getting that information, the informant firstly communicated about the incident to the police on phone. He further lodged a report in respect of that incident on the basis of which Crime No. 86 of 2011 came to be registered against the appellant for the above mentioned

offence. The police prepared the panchanama of the spot. The clothes of the appellant and the axe came to be seized. The inquest panchanama of the body of the deceased Laxmibai was prepared. Her dead-body was referred to the Medical Officer for postmortem. The Medical Officer noticed three injuries on her person. He opined that she died of hemorrhagic shock secondary to neck injury. The statements of the witnesses were recorded. The seized articles were sent to the Chemical Analyzer for analysis and report. After completion of the investigation, the appellant came to be chargesheeted for the above mentioned offence.

3. The prosecution examined nine witnesses to bring home the guilt of the appellant. After evaluating the evidence of the said witnesses, the learned Trial Judge came to hold that the respondent established the guilt of the appellant for the above mentioned offence beyond reasonable doubt. He, therefore, convicted the appellant for the said offence and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 2000/-. The said conviction and sentence have been challenged in the present appeal.

4. The learned counsel for the appellant submits that the case of the prosecution rests on the sole testimony of the informant Zumbar Salgar who has deposed in respect of the alleged extrajudicial confession given by the appellant before him. He submits that the spot of the incident is a complex of houses called Wada wherein there are a number of houses, including that of the sons of the appellant. A number of persons were present at the time of the incident in that complex. Even when the informant claims to have reached to the spot of incident, a number of persons were already present there. However, none of them supports the case of the prosecution. None of the said witnesses has corroborated the version of the informant on the point of presence of the appellant at the spot of the incident as well as his giving the extrajudicial confession. He submits that except the evidence of the informant, there is no substantial evidence to connect the appellant with the incident in question. According to him, the evidence in respect of extrajudicial confession is a very weak piece of evidence in itself. Unless it is corroborated, it cannot form the basis of conviction. He points to the

evidence of other witnesses wherein they have attributed animus on the part of the informant which prompted him to lodge report and depose against the appellant. According to them, the informant wanted to purchase the land which was purchased by the appellant and therefore, he had a grudge against the appellant. This, according to him, is the reason for the informant to depose false against the appellant. He submits that the findings recorded by the learned Trial Judge are not consistent with the evidence produced on record. He, therefore, prays that the appellant may be acquitted of the offence mentioned above.

5. As against this, the learned A.P.P. submits that the evidence of the informant is most natural and probable. He had no reason to speak false against the appellant. It is supported by the medical evidence. Moreover, the appellant being the husband of deceased Laxmibai was under an obligation to explain as to how Laxmabai sustained injuries and died on the spot. He submits that in absence of any explanation given by the appellant, the conviction recorded against him for the above mentioned offence cannot be said to be wrong or

illegal.

6. Dr. Pankaj Salgar (PW7), who conducted autopsy on the body of the deceased Laxmabai, found the following three external injuries on the body of the deceased Laxmibai.

- (i) Chop wound over upper part of neck, left side, laterally measuring 7 X 5 cm and underline bone deep, muscles and neck vessels cut.
- (ii) Incised wound over left angle of mandible, measuring 9 X 2 cm. of underlying bone deep. Angle of mandible, left, is fractured.
- (iii) Incised wound over forehead on left side 4 X 2 cm. Superficial tissue deep.

He further states that there was bleeding from left eye of the deceased Laxmibai. He opined that she died due to hemorrhagic shock secondary to neck injury. He was shown the seized axe (Art.1) whereon he opined that the injuries found on the body of the deceased Laxmibai were

possible by that axe. It is not even suggested to Dr.Salgar (PW7) that the injuries found on the body of the deceased Laxmibai were either accidental or suicidal. In the circumstances, in view of the evidence of Dr. Salgar (PW7), the findings of the learned Trial Judge that Laxmibai met with homicidal death will have to be accepted and accordingly, accepted.

7. The respondent is relying solely on the evidence of the informant recorded at Exh-12 to connect the appellant with the death of Laxmibai. He deposes that on 16th June, 2011 at about 8:30 a.m. to 8:40 p.m., when he was sitting in front of his house, he heard the noise from the house of the appellant. Therefore, he rushed to that house. He saw the wife of the appellant namely Laxmibai lying as dead. There were injuries on her face and neck. He saw the appellant present there. There were blood stains on the axe as well as on the spot of the incident. On being asked by him, the appellant told him about the misbehaviour of the deceased Laxmibai after her return from Dindi and therefore, he finished her once for all. Thereafter, the appellant went away towards Maruti temple. This witness

further states that he informed about the incident to the Police Station Parli-Vaijinath on phone. The police personnel came to the spot of the incident. He narrated about that incident before the police. The police recorded that information which came to be treated as F.I.R. (Exh-19).

8. From the above evidence, it is clear that the informant was not the eye witness to the incident. He is the witness on the point of extra-judicial confession alleged to have been given by the appellant. The principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused have been summed up by the Hon'ble Supreme Court as under:-

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.

- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statements essentially has to be proved like any other fact and in accordance with law.

9. It has come in the cross-examination of the informant that the appellant has five sons, out of whom two are married and that all of them were residing jointly with the appellant at the time of incident. He further admits that there was only one dwelling house belonging to the appellant. He further admits that near the house where the incident took place, there were four families in the Wada, comprising of about twenty persons. He then states that when he reached the spot of incident, many persons had already gathered there. It is, thus, clear that the incident took place at the spot where a number of persons including all the family

members of the appellant were present and had an occasion to witness the incident.

10. One Sonerao (PW3) (Exh-20), who is one of the occupants of the Wada wherein the incident took place, Sulenrao (PW4) (Exh-22), the son of the appellant, Saraswatibai (PW5) (Exh-25), the neighbour of the appellant and Sundarrao (PW6) (Exh-26), the person who is residing at some distance from the house of the appellant, have been examined by the prosecution. However, none of them supports the case of the respondent. In fact, they have denied the presence of the appellant at his house at the time of the incident.

11. Sonerao (PW3) states that there were seven families residing in the wada in which the appellant is residing. There were about fifty persons residing in those seven families, just adjacent to each other. It is thus clear that there were number of persons present at the time of the incident. However, none of them states that the appellant assaulted the deceased Laxmibai. None of them states that the appellant ever made any statement before the informant, admitting the guilt of

the offence of causing death of Laxmibai.

12. When the sons of the appellant were residing in the same house where the incident took place, it was most natural and probable on their part to state about the incident in question. There is nothing on record to show that the appellant and the deceased Laxmibai were residing in any separate room and that the incident took place in that room. If that be so, it was not necessary that the appellant should have explained the circumstances under which the deceased Laxmibai sustained the injuries. Moreover, the presence of the appellant at the time of incident itself has not been stated by the other witnesses, who, in the natural course, were present nearby the spot of the incident. As such, the version of the informant about the so-called extra judicial confession of the appellant has remained totally uncorroborated.

13. It has come in the cross-examination of Sonerao (PW3) that the relations between the informant and the appellant were not good on account of purchase of the agricultural land by the appellant, which the informant

wanted to purchase. There is nothing on record to show as to why the appellant would disclose about the incident to the informant only, more particularly, when the relations between the informant and the appellant were not good. As such, the evidence of the informant in respect of the extra-judicial confession given by the appellant before him cannot be attached with any importance. It does not at all inspire confidence. If the evidence of the informant is kept aside, there is absolutely no evidence to connect the appellant with the death of his wife – Laxmibai.

14. Here, it may be mentioned that the clothes of the appellant came to be seized during the course of the investigation. They were sent to the Chemical Analyzer for examination and report. The Chemical Analyzer's report (Exh-41) shows that the clothes of the appellant (i.e. Art. Nos.5, 6, 7 and 8) were not at all stained with blood. In the ordinary course, the clothes of the appellant would have got stained with blood at the time of the incident. The presence of blood stains on his clothes would have been a circumstance to establish presence of the appellant at the spot of the incident

when it took place. The absence of blood stains on his clothes also is a big impediment in the way of the respondent in connecting the appellant with the incident in question.

15. As stated above, the evidence of the informant is not natural, probable and acceptable. There is no corroboration to his evidence. There is no circumstantial evidence to connect the appellant with the incident in question. In the circumstances, the prosecution cannot be said to have established the guilt of the appellant for the offences of committing murder of Laxmibai. Here, it will be worthwhile to reproduce paragraph no.49 (j) of the impugned judgment, which reads as under:

"Here in this case prosecution have proved their case from probability to possibility and more than fifty percent of certainty. In that event Accused is not entitled for benefit of doubt."

16. It is strange to note that the learned Trial Judge tried to connect the appellant with the incident in question on the basis of probabilities and possibilities. Though he mentions that there is

possibility of involvement of the appellant in the incident to the extent of more than 50%, still he makes a contradictory statement that the benefit of doubt cannot be extended to him. The entire judgment seems to be based on surmises and conjectures. It is not based on the legal and dependable evidence. In the circumstances, the findings recorded by the learned Trial Judge holding the appellant guilty for the above mentioned offence, cannot be upheld.

17. For the reasons recorded above, the conviction recorded and sentence passed by the Trial Court against the appellant cannot be said to be sustainable. The respondent has failed to establish the guilt of the appellant for the above mentioned offence. He deserves to be acquitted of the said offence. In the result, we pass the following order:-

O R D E R

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order dated 31st October, 2012, passed by the 2nd Additional Sessions Judge, Ambajogai in

Sessions Case No. 83 of 2011, convicting and sentencing the appellant for the offence punishable under section 302 of the Indian Penal Code are quashed and set aside.

(iii) The appellant is acquitted of the offence punishable under section 302 of the Indian Penal Code.

(iv) The appellant, who is in jail, be set at liberty forthwith, if not required in any other case.

(v) The fine amount of Rs. 2000/-, if deposited by the appellant, be refunded to him.

(vi) The appellant shall execute bail bond of Rs. 10,000/- (rupees ten thousand) with a surety in the like amount before the trial Court vide section 437-A of the Code of Criminal Procedure.

[SANGITRAO S. PATIL]
JUDGE

[S.S. SHINDE]
JUDGE