

Vidya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 971 OF 2009

Vijaykumar Vyankatesh Parsa ... Appellant
Vs.
The State of Maharashtra ... Respondent

Ms. Sushma Nair, Advocate for the appellant.
Mrs. A.S. Pai, APP for the State.

CORAM: **MRS.V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: **JUNE 20, 2016**

ORAL JUDGMENT (Per Mrs. Mridula Bhatkar, J.)

This Appeal is directed against the judgment and order dated 26th & 27th February, 2009 passed by the learned Additional Sessions Judge, Kalyan in Sessions Case No. 269 of 2006 by which the appellant/accused was convicted for the offences punishable under section 302 of Indian Penal Code and is sentenced to suffer imprisonment for life.

2. It is the case of the prosecution Avinash Vijay Parse, complainant is the son of the accused. The incident of assault has taken place on 14th September, 2006 at the residence of the accused. The accused was residing with his wife and their children, i.e., Avinash & Ashwini were staying at Dubai. Ashwini is married and has son of four years old. Ashwini wanted her mother to stay with her at Dubai and to look after her

son. Avinash wanted his mother to go to Dubai and stay there. The accused used to harass his wife. On 14th September, 2006, sister Ashwini, her husband Vinay Shetty (PW-3) were sleeping in the bedroom and Avinash and Kushal were sleeping in the hall. In the morning at around 8.30 a.m., Avinash heard scream of his mother. His brother-in-law Vinay, sister Ashwini ran inside. Thereafter he went and saw that his father had inflicted a blow of the kitchen knife on the throat of his mother. Vinay snatched the kitchen knife from the appellant/accused. His mother had sustained bleeding injuries. Thereafter Avinash and his neighbours shifted his mother to the hospital. Avinash's mother informed him that his father had inflicted blow on her throat. The police arrived at the spot. At the instance of information given by Avinash, the offence was registered at C.R. No. I-118 of 2006 with Vishnunagar Police Station. The police arrested the accused on the same day. They conducted spot panchnama and seized the knife, clothes of the deceased and accused and sent the articles for chemical analysis. After completion of the investigation, Investigating Officer PW-7 Jayant Wagh filed charge sheet in the Court of learned Magistrate. Thereafter the case was committed to the Sessions Court. The charge was framed. The accused pleaded not guilty and adopted defence that his son-in-law Vinay Shetty is an assailant. He inflicted blow on his mother-in-law Mira and when accused tried to save his wife, Vinay inflicted knife blows in the stomach and on the neck of the

accused, so the accused was injured. The prosecution in all examined 7 witnesses. After considering the oral as well as documentary evidence, the learned Sessions Judge convicted the appellant/accused for the offences punishable under section 302 of the Indian Penal Code and sentenced to suffer R.I. for life.

3. It is a short case of 7 witnesses. PW-2 Avinash, who is the first informant and prosecution proved FIR (Exhibit 19) through him and PW-3 Vinay Shetty, are the key witnesses. There is no eye witness to the actual incident of assault. However, the incident has taken place in the house of the accused and deceased in their kitchen in morning at around 8 a.m. to 8.30 a.m. when other members in the family were sleeping.

4. The learned counsel for the appellant submitted that the learned trial Judge has committed an error in appreciating the evidence and not considering the defence adopted by the accused. She argued that Ashwini, who is the daughter of the accused and deceased, is a very material witness, however, she is not examined but her husband Vinay, who is the real culprit, is examined by the prosecution. The investigation is partial. Ashwini and Vinay wanted the deceased to come to Dubai to look after their son Kushal, however she refused to go to Dubai as she was occupied in taking tuition in Mumbai. Vinay, in rage, assaulted his

mother-in-law with kitchen knife in the morning. She submitted that PW-2 Avinash in the cross-examination has given admission that there were injuries caused to the stomach and neck of the accused and these injuries were caused when the appellant/accused was trying to save his wife and resisted the attack of Vinay. She further argued that though the fact of injuries on the person of the accused was admitted by the prosecution witness, the prosecution neither produced his injury certificate nor the medical papers of the treatment given to the accused for his injuries. She further argued that there is no recovery of weapon, i.e., knife (Article 1). This article is not shown to anybody. PW-6 Dr. Raju Dhondiram Lavangare has stated that the injuries caused to the deceased is probable due to this knife (Article 1). She argued that there is no proper opinion expressed by the doctor. The recovery of knife is doubtful, as it was found at the time of spot panchnama. She submitted that the investigation is doubtful. She further submitted that the condition of the deceased was very delicate when she was assaulted. The doctor had opined that due to such injury, the death was instantaneous, however, as per the case of the prosecution, the injury was inflicted at around 8.30 a.m., however, in the postmortem notes, which is marked as Exhibit 27, the time of death is shown as 11 a.m. to 11.30 a.m. As per the medical report, the learned counsel submitted that in the injury of throat, her artery was cut. There must have been huge flow of blood and due to blood loss, it was not

possible for the deceased to talk but she would have been collapsed immediately. However, the theory of the prosecution of she giving dying declaration to PW-2 Avinash is doubtful and it should be discarded. She further submitted that as the appellant/accused was injured, wife was injured, there bound to be blood stains on the clothes of the accused. The deceased would have been spoken nothing due to injury to her vocal part. She further argued that the explanation given by the accused of his presence and the injuries in his statement recorded under section 313 of Cr. P.C. should have been given weightage and should be given benefit of doubt, as the manner in which the prosecution has presented the offence as committed, in fact was not occurred.

5. Learned APP opposed this Appeal and has supported the judgment of the trial Court.

6. We have gone through the evidence of all the witnesses. The record and evidence discloses that accused used to harass the deceased and there was dispute between them in respect of her visit to Dubai to the house of her daughter and son-in-law. On the date of incident, i.e., on 14th September, 2006, at around 8 a.m. to 8.30 a.m., all the members of the family were present in the house. Though nobody claims of seeing the actual assault, both the witnesses PW-2 Avinash and PW-3 Vinay have

stated that they heard shouts of deceased Mira in the morning from the kitchen and immediately they rushed to the kitchen. Vinay was the one who reached first in time and he saw the accused holding kitchen knife. His mother-in-law was injured and there was bleeding wound to her throat. He immediately intervened and tried to take away the knife from the hands of the accused. Though PW-2 has admitted that the applicant/accused was also injured but witnesses have stated that accused tried to inflict injuries to himself with the said knife. As soon as they heard scream of the deceased, they immediately reached the spot and saw accused holding knife and it necessarily establishes nexus between the accused and the offence. There was nobody in the kitchen. The prosecution has tendered one more important piece of evidence, i.e., Avinash, son of the accused and the deceased, has stated that when he reached near his mother, she immediately told him that his father has assaulted her. This disclosure is a dying declaration which is most natural, voluntary and appears truthful. Avinash has no reason to lie. He is the son of both the deceased and the accused. Rather it is most unfortunate for him to witness that his father had given a fatal blow of knife to his mother. The injuries which were found on the body of the accused, as stated by these two witnesses, were self-inflicted. This act of the accused is also possible as he had inflicted blow to his wife and thus out of frustration or defence mechanism, such injuries can be self-inflicted.

7. Mira was shifted to hospital. PW-6 Dr. R.D. Lavangare has conducted postmortem on her body on the same day and declared that she died at 11.30 a.m. It was a deep incised wound. Postmortem notes (Exhibit 27) corroborates his evidence. The injury was fatal. Though as per the admission given by the doctor, this injury resulted not instantaneous death, but death of Mira was immediate. The injury was deep and on the vital part. Instantaneous death is possible, however, it depends upon the sustaining capacity of the person and thus the deceased in fact was not in a position to talk or do anything when she was shifted to the hospital. She was unconscious, therefore, the theory that there was no instantaneous death, hence blow was not fatal cannot be stretched beyond point. There are other two witnesses, i.e., PW-4 Jayesh Pokhraj Lalwani and PW-5 Kishor Gangji Karani, who are neighbours. However, in respect of dying declaration of the deceased, there is a significant omission and therefore, on that point, their evidence is not considered. However, they corroborate on the point that deceased was assaulted in the house on that day in the morning and at that time, apart from the accused and the deceased, PW-2 Avinash and PW-3 Vinay Shetty were present in the house.

8. In the spot panchnama (Exhibit 16) panch PW-1 Sandeep Maruti Arekar has deposed that he was present at the time of spot panchnama

and when he went to kitchen, blood stains were found and there was one kitchen knife and the blade of the knife was blood stained. His evidence corroborates with the evidence of spot panchnama (Exhibit 16) wherein it is mentioned that the police sized at the time of spot panchnama a kitchen knife with blood stained blade (Article 1).

9. The prosecution has fully established that the appellant/accused was the one who attacked his wife in the morning of 14th September, 2006 and she died due to cut injury to her throat inflicted by the appellant/accused with a knife. His defence that it was Vinay Shetty PW-3, son-in-law, is a real assailant and he attacked his wife is imaginary and cannot be appreciated. Under such circumstances, we maintain the verdict given by the trial Court. Hence, the Appeal is dismissed.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)