

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.89 OF 2013

PRAKASH SURYAKANT LAD)
Age : 30 years, Occupation – Nil)
R/o. Lingdal, Taluka – Deogad,)
District – Sindhudurg.)
(Confined as Convict No.C-5329)
Kolhapur Central Prison,)
Kalamba, Kolhapur)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mrs.Pranali Kakade, Advocate Appointed for the Appellant.

Mr.H.J.Dedhia, APP for the Respondent - State.

**CORAM : V.K.TAHILRAMANI &
A. M. BADAR, JJ.**

DATE : 1st DECEMBER 2016.

JUDGMENT : (PER A.M.BADAR, J.)

1 By this appeal, appellant / convicted accused is challenging the judgment and order dated 15th March 2012 passed by the learned Sessions Judge, Sindhudurg, Oros, convicting him of the offence punishable under Sections 302 and 506 of the IPC.

For the offence punishable under Section 302 of the IPC, the appellant / accused is sentenced to suffer life imprisonment and for the offence punishable under Section 506 of the IPC, he is sentenced to pay fine of Rs.100/-, in default, to undergo simple imprisonment for seven days.

2 Shorn off unnecessary details, case of the prosecution as reflected from the police report is thus :

Appellant / accused Prakash Suryakant Lad started residing in the house of Sadhana Prakash Ahir (since deceased) at Village Lingdal, Taluka Devgad, after death of her husband in the year 2001. He established sexual relations with deceased Sadhana during his stay at her house. Deceased Sadhana was residing with her daughter / informant Pratiksha Prakash Lad (PW1) and her son Prasad. The appellant / accused then established physical relations with PW1 Pratiksha also and therefore, deceased Sadhana married her daughter PW1 Pratiksha with the appellant / accused, and as such, he continued to stay at the house of deceased Sadhana.

3 According to the prosecution case, on 23rd February 2011, after finishing her work with the bank, deceased Sadhana returned to her house at Lingdal at about 2.00 p.m. The appellant / accused who was present in the house then started quarreling with her and assaulting her with stick. When informant PW1 Pratiksha attempted to intervene for saving her mother Sadhana from the assault, the appellant / accused threatened to beat her and therefore she was compelled to go out of the house with her small child. The episode of assault and quarrel lasted upto 8 p.m. The accused then came out of the house and therefore PW1 Pratiksha entered in the house to find her mother Sadhana lying on the ground. She made her to sleep on the bed after changing her clothes. In the next morning, when PW1 Pratiksha attempted to wake up her mother Sadhana, she found that Sadhana is not responding to her calls. Therefore, she called her neighbours including her uncle PW5 Shantaram. They all found Sadhana dead and as such police were called. On the spot itself PW6 Jaysing Yadav, P.I. Devgad Police Station, recorded FIR of PW1 Pratiksha and sent it to the police station for registration of the

offence. Accordingly, Crime No.7 of 2011 for the offence punishable under Sections 302 and 506 of IPC came to be registered against the appellant / accused and the wheels of investigation were set in motion. Ultimately, charge-sheet came to be filed and after due trial, the appellant / accused was found guilty and therefore he was convicted and sentenced as stated in the opening paragraph of this judgment.

4 Heard the learned counsel appearing for the appellant / accused. By taking us through the evidence of the prosecution, and particularly, through that of PW1 Pratiksha, the learned counsel vehemently argued that evidence of PW1 Pratiksha is totally unreliable because of her abnormal conduct as PW1 Pratiksha had not called her neighbours for providing medical help to her mother Sadhana. Timely medical help could have averted death of Sadhana. Hence, the offence punishable under Section 302 of the IPC is not made out. The learned counsel in the alternative, submitted that, weapon of assault is alleged to be a stick and as such, the offence would not travel beyond Part (II) of Section 304 of the IPC. The learned counsel further argued that evidence on record shows that

the deceased was addicted to liquor and therefore possibility of her accidental death because of a fall due to intoxication is not ruled out by the prosecution. Therefore, the appellant / accused, in submission of the learned counsel for the appellant / accused, is entitled for the benefit of doubt. The learned counsel further argued that there is no corroboration to the evidence of PW1 Pratiksha in such serious offence of murder. Panch witnesses to the spot panchnama seizure of sticks and clothes of the deceased have turned hostile and therefore the recovery of stick and seizure of clothes of the deceased is not proved by the prosecution.

5 The learned APP supported the impugned judgment and order by contending that the impugned judgment and order of conviction is based on the evidence on record and there are no compelling or substantial reasons for interfering with the impugned judgment and order of conviction and sentence. The learned APP argued that clothes of the accused were found to be stained with the blood of the blood group of the deceased and even forensic evidence supports the case of the prosecution.

6 We have carefully considered the rival submissions and also perused the record and proceedings. According to the prosecution case, the incident in question took place in the house of the deceased, shared by him with his wife PW1 Pratiksha, who happens to be the daughter of deceased Sadhana. As such, fate of the prosecution case to a large extent hinges on the evidence of PW1 Pratiksha, who claims to be an eye witness to the crime in question. As the offence alleged is punishable under Section 302 of the IPC, at the first place, it is incumbent on the part of the prosecution to prove that deceased Sadhana died homicidal death. It is defence of the accused, as seen from his statement under Section 313 of the Code of Criminal Procedure as well as from cross-examination of the prosecution witnesses, that the deceased who was addicted to liquor died because of liver serosys and alcohol addiction. The defence is also propounding the theory of accidental death of Sadhana because of her fall in the state of intoxication from the ota as well as her fall on head after taking a bath.

7 It is seen from the evidence of PW6 Jaysing Yadav, Investigating Officer, that he reached on the spot of the incident at about 10.30 a.m. on 24th February 2011 upon getting information regarding the incident from the police patil. This witness, then took inquest notes after inspecting the dead body. This inquest panchnama which is a document not disputed by the defence is at Exhibit 27. The inquest panchnama at Exhibit 27 shows that dead body of Sadhana was having blunt trauma all over apart from swollen face. The dead body was then sent for autopsy and PW4 Dr.Siddharth Patil conducted postmortem examination thereon. He also proved contemporaneous documents i.e. report of postmortem examination on dead body of Sadhana which is at Exhibit 29. Testimony of Dr.Siddharth and report of postmortem examination on the dead body of Sadhana shows that the deceased had suffered following injuries apart from internal bleeding :

- i) Multiple contusions present over the chest, back, arms, legs and face.
- ii) Lacerated wound on lower lip, measuring 1 cm x 3 cm
- iii) Lacerated wound measuring 3 cm x 5 cm x 1 cm on lateral surface of liver

- iv) Lacerated wound measuring 1cm x 5 cm over spleen
- v) Fracture of 8th, 9th and 10th rib of the right side in axilla
- vi) Fracture of 9th and 10th rib in posterior axillary line on left side
- vii) Blood and blood clots in abdominal cavity
- viii) Blood collection at axilla over 8th and 9th rib in abdominal walls and peritoneum.

Autopsy surgeon opined that death of Sadhana was due to haemorrhagic shock due to internal bleeding in abdomen caused by lacerated wounds to liver and spleen. There is positive evidence of Autopsy Surgeon that the injuries found on the dead body of Sadhana cannot be caused by a single fall. Autopsy Surgeon PW4 Dr.Siddharth has categorically stated in his evidence that injuries found on the dead body of Sadhana were possible because of fists and kick blows as well as by sticks. Even otherwise, there is no suggestion to this Autopsy Surgeon that injuries on the dead body could have been caused because of fall of a person in the state of intoxication. What was tried to be suggested to the Autopsy Surgeon was that liver serosys could cause deformation of size of liver and addiction to alcohol causes swelling of the liver. However, the Autopsy Surgeon denied the suggestions that liver can be burst by swelling.

8 At this juncture, it also needs to be noted that stomach of the dead body was found to be empty. It is not elicited from the Autopsy Surgeon that the fluid in the small intestine of the dead body was having smell of alcohol. Contemporaneous notings in the postmortem report Exhibit 29 shows that small intestine was containing some fluid but it is not stated that the said fluid was having any abnormal smell or smell of alcohol. There are no suggestions to the Autopsy Surgeon that findings in the postmortem report are suggestive of consumption of alcohol by the deceased. This evidence, as such, unerringly, points out that deceased Sadhana died homicidal death because of injuries suffered by her which were sufficient in the ordinary course of nature to cause death.

9 Now let us examine whether evidence on record establishes that it was the appellant / accused who caused injuries to deceased Sadhana with requisite intention and knowledge for causing her death. Evidence of PW1 Pratiksha

– wife of the appellant / accused and daughter of deceased Sadhana categorically shows that initially the appellant / accused had love affair with her deceased mother, and then, her mother i.e. deceased Sadhana was compelled to marry her with the appellant / accused because of sexual relations of the appellant / accused with her. It is elicited from her cross-examination that PW1 Pratiksha married the appellant in the year 2006 and a son was born because of this wedlock in June 2006 itself. The evidence of PW1 Pratiksha also shows that after death of her biological father in the year 2001, the appellant started residing with them in the house with her mother i.e. deceased Sadhana. Though PW1 Pratiksha has stated that her brother Prasad used to stay in the same house, cross-examination of PW5 Shantaram – cousin brother-in-law of deceased Sadhana shows that subsequently, Prasad started residing with this witness. Thus, a fact is established that the appellant was residing with deceased Sadhana and her daughter PW1 Pratiksha at their house at Village Lingdal.

10 So far as the incident of murderous assault is concerned, PW1 Pratiksha has stated that at about 2.00 p.m. on 23rd February 2011, her mother Sadhana returned from the bank and then the appellant started quarreling with her and assaulting her by means of stick. PW1 Pratiksha further stated that she attempted to intervene in order to save her mother Sadhana but the appellant / accused threatened to beat her and therefore taking her child with her, she went outside the house. Evidence of PW1 Pratiksha makes it clear that episode of quarrel and assault by the appellant lasted till 8.00 p.m. and then the appellant came out of the house, thereby allowing PW1 Pratiksha to enter into the house. PW1 Pratiksha further stated that she found her mother Sadhana lying on the ground. She changed clothes of her mother and put her on the bed. It is in evidence of PW1 Pratiksha that in the next morning despite her calls, her mother did not wake up and therefore she called neighbours including her uncle PW5 Shantaram. They found her mother Sadhana died and then police came on the spot and her report was recorded. This witness further identified muddemal article nos.1 and 2 sticks and states

that those are the sticks by which her deceased mother was assaulted. She further identified muddemal article nos.3 and 4 saree and blouse of her deceased mother, apart from articles nos.6 and 7 Shirt and pant of the appellant i.e. her husband, worn by him on the day of the incident.

11 Careful scrutiny of cross-examination of this witness makes it clear that the defence could not elicit anything in order to doubt her version in the chief examination. On the contrary, the cross-examination reflects that the appellant started residing in the house of mother of this witness since prior to her marriage with this witness PW1 Pratiksha. The motive for committing crime is also coming on record from cross-examination of PW1 Pratiksha. It is elicited from her cross-examination that appellant was insisting that the ancestral property of the family be transferred in the name of Prasad instead of selling it out.

12 Though it was suggested to PW1 Pratiksha that her deceased mother Sadhana was addicted to liquor, and because of

intoxication, lost balance and suffered a fall, all such suggestions are denied by PW1 Pratiksha. No such suggestions were made to PW4 Dr.Siddharth Patil, Autopsy Surgeon, in order to bring on record the fact that injuries suffered by deceased Sadhana are possible because of fall of a person. It is, thus, clear that evidence of PW1 Pratiksha unerringly points out that it was the appellant / accused who had assaulted her deceased mother in their house from 2.30 p.m. to 8.30 p.m. on 23rd February 2011. It is worthwhile to mention that PW1 Pratiksha is closely related to deceased Sadhana and appellant Prakash. She is natural witness to the incident of murderous assault on her mother by her husband which took place in their house. Being daughter of deceased Sadhana, she is not likely to screen the real culprit to falsely implicate her own husband. Ultimately, she is a mother of a son born from the appellant. Therefore, there is no reason to doubt version of PW1 Pratiksha in respect of the incident of assault.

13 It is seen from the evidence of PW6 Jaysing Yadav, Investigating Officer, that he reached the spot at Village Lingdal, after getting information from the police patil at about 10.30 a.m.

on 24th February 2011, and then, he recorded the FIR lodged by PW1 Pratiksha. It is, thus, clear that the FIR at Exhibit 23 was lodged with promptitude and it was recorded at the spot of the incident itself. Version of PW1 Pratiksha is consistent with her FIR lodged immediately after the incident in question. The FIR lodged with promptitude corroborates her version regarding assault on the deceased by the appellant.

14 Evidence of PW1 Pratiksha further gains corroboration from evidence of PW5 Shantaram – brother-in-law of the deceased who was residing in the neighbourhood. PW5 Shantaram has stated in his evidence that on 23rd February 2011 in the afternoon he noticed the appellant standing at the door of his house armed with a stick and threatening deceased Sadhana. After seeing PW5 Shantaram, they both went inside the house. Evidence of PW5 Shantaram further shows that the episode of quarrel between the appellant and the deceased lasted up to 8 p.m., and on the next day, at the instance of PW1 Pratiksha, he went to her house and saw dead body of Sadhana with marks of injuries.

15 Evidence of PW5 Shantaram about presence of appellant in company of the deceased on 23rd February 2011, threatening by the appellant to deceased Sadhana and lasting the episode of quarrel up to 8 p.m. of that day, is not challenged in cross-examination. Similarly is the case in respect of the evidence of PW1 Pratiksha. Her evidence regarding presence of appellant in their house along with presence of her mother Sadhana in the house at the time of the incident in question, went unchallenged. Thus, evidence of PW1 Pratiksha and PW5 Shantaram is consistent with each other and evidence of PW5 Shantaram fully corroborates the version of PW1 Pratiksha.

16 Inquest panchnama at Exhibit 27 is a document which is admitted by the defence. It shows that the dead body of Sadhana was having marks of blunt trauma all over the body apart from swollen face. This indicates violence and corroborates the testimony of PW1 Pratiksha on the aspect of assault on deceased Sadhana by the appellant / accused.

17 Though, PW2 Dasharath Loke and PW3 Suryakant Fatak – panch witnesses to spot panchnama and seizure effected from the spot have turned hostile, the spot panchnama at Exhibit 32 which has resulted in seizure of two sticks as well as saree and blouse of the deceased is proved by PW6 Jaysing Yadav. His evidence shows that after visiting the spot of the incident, he inspected the spot and seized two sticks from the spot, apart from saree and blouse worn by the deceased at the time of the incident. There is nothing in cross-examination of this witness to doubt his version regarding seizure effected by him from the spot by showing the spot cum seizure panchnama at Exhibit 32. One cannot nurture fallacious impression that such panchnama can be said to be proved only if panchas support the factum of inspection of the spot and seizure. Official acts of police are regularly done is wise presumption of law recognized by the legislature in terms of provisions of Section 114 of the Evidence Act. There is nothing in cross-examination of PW6 Jaysing Yadav, Investigating Officer, to disbelieve his version in that regard. Similarly, the arrest cum

seizure panchnama at Exhibit 26 by which the appellant was arrested and his clothes were seized is a document admitted by the defence. Evidence of PW6 Jaysingh Yadav shows that seized articles including sticks, saree and seized clothes of the appellant were sent for forensic examination. Report of Chemical Analysis of sample of postmortem blood of deceased Sadhana as well as those of seized articles are at Exhibit 33 / 1 -3. This forensic evidence supports the case of the prosecution and fully corroborates the testimony of informant PW1 Pratiksha. Blood of deceased Sadhana was found to be of A Group. Blood of A group was found on pant and shirt of the appellant as well as on seized wooden stick and saree of deceased Sadhana. With this evidence on record, we are unable to find any infirmity in the judgment of the learned trial court, whereby, it held that the appellant / accused had assaulted deceased Sadhana with requisite intention and knowledge of causing her death.

18 This now requires us to consider the next submission of the learned counsel for the appellant to the effect that if timely

medical treatment was provided to the deceased, her death could have been averted and therefore no offence punishable under Section 302 of the IPC is made out. This is, a wholly irrelevant submission. The deceased and her daughter PW1 Pratiksha were residing in a remote village Lingdal in Devgad Taluka. There is no cross-examination of prosecution witnesses to suggest that provision of medical treatment was available in the vicinity. Moreover, the submission so advanced is not legally tenable in view of explanation 2 to Section 299 of the IPC which defines culpable homicide. This explanation 2 reads thus :

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Thus, what is relevant is determination as to whether injuries are sufficient in the ordinary course of nature to cause death and the argument that by providing skillful sufficient medical treatment, the death might have been averted is wholly irrelevant.

19 Lastly, we do not find any infirmity in the judgment and order of convicting the appellant / accused for the offence punishable under Section 506 of the IPC as the evidence of PW1 Pratiksha clearly establishes that the appellant / accused had intimidated her by giving threats when she attempted to intervene during the course of assault by the appellant for saving her mother Sadhana.

20 In the result, we hold that the prosecution had established commission of offences punishable under Sections 302 and 506 of the IPC by the appellant / accused.

21 To conclude, the appeal is devoid of merits and therefore the same is dismissed.

(A. M. BADAR, J.)

(V.K.TAHILRAMANI, J.)