

Vat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 613 OF 2015

Balaji Devidas More	)
Age 27 years, Occupation Service,	)
Currently Residing at Rudragadi,	)
Tal. Lovhara, Dist. Osmanabad	)
Currently at Yerwada Central Prison,	)
Pune	)...Appellant

Versus

State of Maharashtra	)
(Through Khadak Police Station, Pune)	)...Respondent

 Mr. Daulat G. Khamkar for Appellant
 Mr. S.S. Pednekar – APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 26, 2019

JUDGMENT:

1. Heard. The Appellant herein is convicted under Section 304 Part II of the Indian Penal Code and he is sentenced to suffer R.I. for ten years and to pay fine of Rs.5,000/-, in default, to suffer S.I.

for six months. The Appellant is also convicted for the offence punishable under Section 323 of the Indian Penal Code and sentenced to suffer R.I. for six months and to pay fine of Rs.1,000/-, in default, to suffer S.I. for three months. The accused is acquitted of the offence punishable under section 504 of the Indian Penal Code by the Additional Sessions Judge, Pune dated 18.4.2014 in Sessions Case No. 434 of 2014.

2. Such of the facts necessary for the decision of this appeal are as under.

3. The Appellant herein was working as a watchman at Hotel Pyaasa, which is situated in a thickly populated area i.e. Mandai Area in Pune. The deceased Savita was residing in the said area along with her second husband. She was into the profession of prostitution. She used to visit Hotel Pyasa quite often along with her friend to consume alcohol.

4. On 2nd April, 2014, Savita had visited Hotel Pyaasa in the afternoon and had consumed alcohol. That at about 3.00 p.m., she had met her friend Sunanda (PW1). They agreed to meet later on . At about 5.00 p.m., Sunanda had called her on her cell phone and inquired about her whereabouts. Savita had told her that she is at Hotel Pyasa and that she should see her in Hotel

Pyaasa. Sunanda had obliged. She had been to Hotel Pyaasa. She was sitting in front of Savita. Savita had ordered a soft drink for Sunanda and had continued to consume alcohol. On the adjacent table, Manisha and her sister were sitting and having alcohol. That the accused who was working as a watchman, had approached the said women. He had driven out Manisha and her sister out of the hotel since Savita was under the influence of alcohol and was murmuring. She was talking to Sunanda, at that juncture, the Accused had spilt the liquor from the glass of Savita. Savita was enraged about the said act, but, before she could react, accused had slapped her twice. When Sunanda intervened, she was also manhandled by the accused. In the meanwhile, Manisha and her sister had left the hotel and were standing outside the hotel. The Accused had not only slapped Savita, but, had kicked her on her stomach and banged her head. Savita was so enraged that she had assaulted the watchman with her footwear. The altercation had taken a violent turn. Thereafter, the accused had caught her by her hair and dashed her head on the wall, due to which, she had sustained injury to her head. The accused had continued to assault her. As a result, Savita had become unconscious. Finally, Sunanda had dialed 100 number and

called the police. She had left the hotel premises to call the police. At that time, the accused had dragged Savita out of the hotel and had thrown her in front of the Pan Stall. Savita was taken to Sassoon Hospital by the police. On examination, she was declared dead.

5. Manisha, her sister Sheetal and Sunanda were taken by the police to the police station and their statements were recorded. They had narrated the incident as it occurred. Since Sunanda was the witness to the incident from the inception, her statement was recorded under Section 154 of the Criminal Procedure Code and on the basis of the said statement, Crime No. 75 of 2014 was registered against the Appellant for the offence punishable under Section 302, 323 and 504 of the Indian Penal Code. The Accused was arrested on 3rd April, 2014. Upon completion of investigation, charge-sheet was filed on 11.6.2014. The case was committed to the Court of Sessions and registered as Sessions Case No. 434 of 2014. The prosecution examined eight witnesses to bring home the guilt of the accused.

6. The case rests upon the evidence of PW1 Sunanda Sonavane, PW3 Nikhil Shah and PW8 Dr. Vijay Jadhav.

7. PW1 Sunanda is an eye witness to the incident. When she

had attempted to intervene, she was also assaulted by the accused. She has stated that the accused had initially spilt the liquor from the glass of Savita, slapped her twice and then banged her head on the wall. It is elicited in the cross examination that her statement was not read over to her. She has stated that Savita used to cover her head with scarf always and she had no knowledge about the surgery on the head of Savita as she was tying black scarf on her head continuously. She has stated that she never saw skull of Savita. She never disclosed to her about any surgery of skull. The said contradiction marked at portion marked A. The said contradiction is immaterial as she had stated in the FIR that when she met Savita at Mandai at 3.00 p.m., she was already under the influence of alcohol. She has denied that she had stated so before the Court. It is also elicited that there were some verbal altercations between Savita and Shanti and her sister before PW1 reached the hotel. It is due to the said quarrel, Savita was continuously murmuring. There is an admission that there are CCTV cameras installed in the said hotel. However, the prosecution has not placed on record the CCTV footages for the reasons best known to it. It is also elicited that prior to the quarrel with the accused, Savita was warned by the waiter of the hotel to

maintain silence. She has specifically stated that the accused had hit the head of Savita on the wall adjacent to the staircase by holding her hair. It is pertinent to note that according to PW1, after Savita had fallen unconscious, she was dragged by the accused outside the hotel and thrown like a dead rat behind the pan stall.

9. PW3 Nikhil Shah is running a shop in the name of Nikhil Traders just opposite Hotel Pyasa. In 2006, there was some quarrel between PW3, the owner of the hotel and the workers including accused Appellant and an offence was registered at Khadak Police Station in respect of the said incident. As far as the incident in question is concerned, PW 3 has stated that on 2nd April, 2014, at about 8.30 p.m., he had seen two women outside Hotel Pyaasa in a frightened condition. He thereafter saw a third woman in a frightened condition and seen the accused dragging a woman outside the hotel. He had seen the woman thrown on the road and that woman was motionless. The accused had not stopped at that time, but had pulled the woman and thrown her near pan shop in front of Mukund Engineering Shop and in the meanwhile he had seen one of the women accompanying the police to the spot. The witness has not been shattered in the cross

examination.

10. PW7- Sandipan Savant happens to be the investigating officer. He has deposed before the Court the steps taken by him in the course of investigation. He had reached the spot within 15 to 20 minutes and before he reached the spot, the injured was taken to the hospital by the staff of Khadak Mobile Van. The evidence of the investigating officer is so pathetic that it is doubtful that as to whether he has really seen the papers of investigation prior to filing of the charge-sheet. He has stated in the cross examination that it did not transpire in his investigation that the deceased had consumed alcohol. It did not transpire that the deceased was murmuring under the influence of alcohol. He had not seen the CA report although he had received them. The distance between Khadak Police Station and Pyaasa Hotel is hardly one kilometer. He has deposed that the accused was convicted in criminal case No. 2058 of 2007 for the offence punishable under Section 323, 324 and 504 of the Indian Penal Code and sentenced to suffer R.I. for one year. It is surprising that he has denied the installation of CCTV Cameras in Pyaasa Hotel initially and thereafter, has admitted that CCTV cameras were installed. For the best reasons known to him, he has not collected the CCTV footage.

11. PW8 – Dr. Vijay Tarachand Jadhav has proved the contents of the postmortem notes which are at Exhibit 19. He had mentioned in Column No.17 that there were two burn marks, circular in shape on the left forearm which were fresh. There was contusion on the forehead above left eyebrow. Abrasion over right lateral aspect of neck, below right mastoid of size 8 cm. x 4 cm. As far as internal injuries are concerned, Column No. 19 indicate that there was an under scalp haematoma present over right parietal region and over left frontal region. Brain subarachnoid hemorrhage. The doctor has opined that the cause of death is due to head injury. He has also opined that when a person is hit on a wall, injury No.2 and 3 of Col. No.2 and under scalp haematoma and subarachnoid hemorrhage is possible. He has noticed that the burns were of cigarette and according to him it is evident that a burning cigarette had come in contact with the injured, thereby causing injury No.1. The injury Nos. 2 and 3 are internal damages.
12. This is a case of direct evidence. PW1 Sunanda happens to be an eye witness as far as the incident is concerned. Therefore, conviction can be recorded on the basis of the solitary sterling testimony as in the present case. The evidence of PW1 is devoid of any exaggerations, omissions and contradictions and there is no

reason for the Court to disbelieve PW1 on any count. The brutality of the acts of the accused appellant are apparent on the face of record. In answer to Question No. 85, the accused has stated as follows:

“The case is false. Savita was sleeping in front of hotel. Manager told me to keep her to side. Therefore, I lift her and kept her to one side. Savita had consumed more liquor. False allegations are made against me.”

The investigation in the present case is pathetic. The Investigating Officer has not taken the CCTV footages. The manager has not been arraigned as an accused. The defence is falsified, in the sense that the scene of offence pachanama would show that the footwear of Savita were seized from the Hotel from under the table where Savita was consuming alcohol. Her cell phone was found just next to the table in a broken condition. There are eye witnesses, who have specifically stated that after Savita had fallen unconscious, she was inhumanly dragged from the hotel and thrown in front of Mukund Engineering, from where the police had picked her up her and taken her to Sasoon Hospital.

13. The evidence of the eye witness is corroborated by

medical evidence. The death was due to the head injury, which was caused because of banging her head on the wall adjance to the staircase. She had sustained burn injuries by burning with the butt of cigarettes.

14. Since the incident was not premeditated, no weapon was used and had occurred in the course of an altercation, the Learned Sessions Judge has rightly convicted the accused for the offence punishable under Section 304 Part II of the Indian Penal Code. The accused was fully aware that Savita is wholly under the influence of alcohol and yet he had kicked her in her stomach and banged her head twice on the wall. Due to which, there was an under scalp haematoma, which resulted into death. It cannot be said that the accused had no knowledge that the said assault would result into death. The disturbing feature is that after Savita had fallen and before she was dragged outside the hotel, she was given burns by cigarettes on her left wrist at two places. The said burns were given in order to make her conscious. She had died in a most inhuman way.

15. In view of the above discussion, the appeal deserves to be dismissed. However, the sentence needs to be modified. The conviction of the offence for the offence punishable under

Section 304 Part II of the Indian Penal Code is upheld. The Appellant is sentenced to suffer 9 years imprisonment instead of 10 years. The sentence of fine is maintained. The Appeal is dismissed accordingly.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam