

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1007 OF 2015

RAM KASHINATH KIR

)...APPELLANT

V/s.

STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Anil Lalla & Ms. Aanchal Lalla a/w. Ms.Beerta Bajwal i/b.
Lalla & Lalla, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 5th FEBRUARY 2019

JUDGMENT :

1 The appellant/accused, by this appeal, is challenging the judgment and order dated 26th August 2015 passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.508 of 2014, thereby convicting the appellant/accused of the offence punishable under Section 304-II of the Indian Penal Code, and sentencing him to suffer rigorous imprisonment for 10

years apart from directing him to pay fine of Rs.5,000/- and in default, to undergo further rigorous imprisonment for 4 months.

2 Brief facts leading to the prosecution and resultant conviction of the appellant/accused can be summarized thus :

- (a) Appellant/accused Ram Kir was residing in Room No.8 of Shanidev Building situated at Colabawadi, Mumbai, along with his mother Saraswati (since deceased) and his wife PW2 Sandhya. The incident in question allegedly took place at about 5.30 p.m. of 12th February 2014 in the residential room of appellant/accused Ram Kir which he used to share with his family including his mother Saraswati Kir. On that day, PW3 Maya Wilankar – married sister of appellant/accused Ram Kir came to his house for meeting their mother Saraswati. The appellant/accused was heavily intoxicated at that time. He started hitting PW2 Sandhya and PW3 Maya as well as his mother Saraswati by a wooden stick. Frightened PW2 Sandhya and PW3 Maya went downstairs and made a telephonic call to the control room.

PW1 Ananda Patil, Police Naik, was on patrolling duty. He was informed by the control room that quarrel is going on at Shani Building of Colaba wadi and that is how PW1 Ananda Patil along with his colleague police constables reached Room No.8 of Shanidev Building, Colabawadi. He found Saraswati lying unconscious on the floor with bleeding injuries. The appellant/accused was sitting besides her with hands as well as clothes stained with blood. One blood stained stick was also found lying there. Saraswati was then sent to St.George's Hospital for medical treatment. PW1 Ananda Patil lodged report with Police Station Colaba in respect of the incident which has resulted in registration of Crime No.16 of 2014 for the offence punishable under Section 326 of the Indian Penal Code against the appellant/accused. On registration of the crime, the appellant/accused came to be arrested. His clothes came to be seized vide Panchnama Exhibit 32 in presence of PW4 Mohammad Mujawar.

- (b) PW8 Dr.Pooja Khoride, intern with St.George's Hospital medically examined Saraswati on 12th February 2014 and found that she suffered multiple contusions on face as well as arms. On 13th February 2014, Saraswati succumbed to the injuries suffered by her. PW8 Dr.Pooja Khoride conducted autopsy on the dead body. Clothes of deceased Saraswati were seized vide Panchnama Exhibit 39 in presence of PW5 Ashok Mishra. Statement of witnesses came to be recorded and on completion of investigation, the appellant/accused came to be charge-sheeted for offences punishable under Sections 302 and 323 of the Indian Penal Code.
- (c) The appellant/accused came to be charged for offences punishable under Sections 302 and 323 of the Indian Penal Code by the learned trial court. He pleaded not guilty and claimed trial.

- (d) In order to bring home the guilt to the appellant/accused, the prosecution has examined in all twelve witnesses. First Informant Ananda Patil, Police Naik, is examined as PW1. The report lodged by him is at Exhibit 14. Sandhya – wife of the appellant/accused is examined as PW2. His sister Maya Wilankar is examined as PW3. Panch witness Mohammad Mujawar is examined as PW4. Exhibit 32 is Seizure Panchnama of clothes as well as stick. Ashok Mishra - panch witness is examined as PW5. Exhibit 39 is Seizure Panchnama of clothes of deceased Saraswati. Neighbour Vikas Sonawane is examined as PW6. Prem Raut – panch witness to Spot Panchnama is examined as PW7. Autopsy Surgeon Dr.Pooja Khoride is examined as PW8. Carrier Constable Nitin Bhalerao is examined as PW9. Investigating Officers Sahebrao Kharat, Vivek Khavale and Subhash Dudhgaonkar are examined as PW10 to PW12 respectively.
- (e) Defence of the appellant/accused was that to total denial. He contended that he is falsely implicated in the crime in question.

3 I have heard Shri Lalla, the learned counsel appearing for the appellant/accused at sufficient length of time. He argued that PW2 Sandhya and PW3 Maya had turned hostile. There is no evidence to connect the appellant/accused to the crime in question. The learned counsel further argued that though the appellant/accused is convicted of the offence punishable under Section 304-II of the Indian Penal Code, sentence imposed upon him is highly disproportionate, and therefore, the appeal deserves to be allowed.

4 The learned APP supported the impugned judgment and order of conviction and resultant sentence by contending that there is enough evidence to conclude that it was the appellant/accused who assaulted his mother Saraswati and caused her death.

5 I have considered the submissions so advanced and also perused the record and proceedings including oral as well as documentary evidence.

6 In the instant case, PW2 Sandhya and PW3 Maya are eye witnesses to the crime in question. These witnesses are respectively wife and sister of appellant/accused Ram Kir. It is seen that because of near relations with appellant/accused Ram Kir, both these witnesses have turned hostile to the prosecution. It is well settled that such part of evidence of hostile witnesses which supports case of the prosecution can be relied upon for inferring guilt of the accused. Similarly, it is not necessary that guilt of the accused should be proved only by direct evidence. When direct evidence is not available, prosecution can prove its case by circumstantial evidence. If on the basis of proved circumstances, the only conclusion which can be drawn is that of guilt of the accused, then on the basis of circumstantial evidence, the accused can be convicted of the offence charged. In the light of this discussion, evidence of PW6 Vikas Sonawane, neighbour residing at Shanidev building where the incident in question took place, is relevant. It is in evidence of PW6 Vikas Sonawane that on 12th February 2014, PW2 Sandhya and PW3 Maya came to him and requested him to make a phone call to police by narrating to him

that appellant/accused Ram Kir is assaulting inmates of the house. Accordingly, PW6 Vikas Sonawane telephonically contacted control room of police and PW2 Sandhya had a talk with police. She told police that appellant/accused Ram Kir was assaulting them. PW6 Vikas Sonawane further deposed that, thereafter, he went to Room No.8 and found appellant/accused Ram Kir as well as his mother Saraswati in the said room. As per his version, Saraswati was bleeding from her nose and mouth. Blood was also found to be spilled on the floor by this witness. PW6 Vikas Sonawane deposed that Saraswati was lying on a plastic sheet which was also stained with blood. There is nothing in cross-examination of this witness to disbelieve his version about hearing of narrations from PW2 Sandhya and PW3 Maya regarding assault by appellant/accused Ram Kir on inmates of his house. Infact, this evidence of PW6 Vikas Sonawane has virtually gone unchallenged. From cross-examination of this witness it is brought on record that hands of the appellant/ accused were also stained with blood.

7 PW2 Sandhya and PW3 Maya have unanimously deposed that on 12th February 2014, appellant/accused Ram Kir was under influence of liquor and he was chattering in the house. As per version of PW3 Maya, she, therefore, called the control room of police. Cross-examination of PW2 Sandhya shows that she attempted to secure liberty of her husband by applying for bail and she was feeling that the appellant/accused should be acquitted. Rest of evidence of these two witnesses is not supporting case of the prosecution. However, this part of evidence of both these witnesses demonstrate that at the time of the incident, the appellant/accused was very much present in the house in company of his mother Saraswati. It is also seen from evidence of PW2 Sandhya and PW3 Maya that feeling aggrieved by the act of the appellant/accused, they had decided to call police and that is how they telephonically contacted police control room and called police.

8 What happened next has come on record from evidence of PW1 Ananda Patil, Police Naik, who visited the spot in

response to the telephonic call by PW2 Sandhya and PW3 Maya. As per version of PW1 Ananda Patil, Police Naik, when he visited one roomed house of appellant/accused Ram Kir, he found the appellant/accused sitting beside his mother Saraswati. At that time, Saraswati was lying unconscious and was bleeding from nose and mouth. PW1 Ananda Patil, Police Naik, deposed that clothes of the appellant/accused were stained with blood and he was smelling liquor. One blood stained stick was lying nearby. PW1 Ananda Patil, Police Naik, then took appellant/accused Ram Kir to Police Station Colaba and lodged report Exhibit 14. Saraswati was sent for medical treatment by police to St.George Hospital, Mumbai.

9 At St.George Hospital, Saraswati was medically examined by PW8 Dr.Pooja Khoride. She noticed multiple contusions on face and arm of Saraswati and suspected fracture at her right arm. PW8 Dr.Pooja Khoride deposed that on the next day i.e. on 13th February 2014, Saraswati Kir died and then she conducted postmortem examination on dead body. Oral evidence

of PW8 Dr.Pooja Khoride which is corroborated by contemporaneous report of postmortem examination (Exhibit 48) goes to show that dead body of Saraswati was having contusions on right periorbital regions, right cheek and right post auricular region. Similarly, contusions were noticed on her left ear and both hands. There was laceration wound on upper lip of the dead body. The Autopsy Surgeon opined that death of Saraswati was due to Intracranial bleed secondary to head injury in the form of cerebral and cerebellar haematoma and polytrauma. The Autopsy Surgeon opined that injuries found on dead body can be caused by a stick. The Autopsy Surgeon was questioned in the cross-examination regarding quantum of force of blow and she replied that the blows might have been mild or strong. Except this, there is nothing in cross-examination of the Autopsy Surgeon.

10 Cumulative effect of this evidence adduced by the prosecution shows that Saraswati did not die natural or accidental death. Her death was certainly attributable to successive blows inflicted on her by means of a weapon like stick. Evidence of PW1

Ananda Patil, Police Naik, shows that the deceased was with appellant/accused Ram Kir at his house. The blood stained stick was noticed by this witness at the spot. Soon prior to visit of PW1 Ananda Patil, Police Naik, to the house of appellant/accused Ram Kir, PW2 Sandhya and PW3 Maya, who are respectively wife and sister of the appellant/accused, had complained to PW6 Vikas Sonawane that appellant/accused Ram Kir is assaulting them. PW6 Vikas Sonawane, after making PW2 Sandhya to speak with police for reporting acts of the appellant/accused, had been to the spot and noticed the appellant/accused by the side of injured Saraswati. Thus, the deceased was found in custody of her son i.e. the appellant/accused, at the time of the incident in question. She was in injured condition. Clothes of the appellant/accused so also his hands were stained with blood. Blood stained stick was found lying on the spot. Though the appellant/accused was having special knowledge as to whatever happened at his house leading to death of his mother, he had not offered any explanation about the incident either by cross-examining prosecution

witnesses or in his statement under Section 313 of the Code of Criminal Procedure.

11 Evidence of PW4 Mohammad Mujawar shows that clothes of appellant/accused Ram Kir were seized on 12th February 2014 vide Panchnama Exhibit 32. Similarly, clothes of deceased Saraswati were seized vide Panchnama Exhibit 39 which is proved by PW5 Ashok Mishra. Seized clothes were subjected to chemical analysis and report thereof is at Exhibit 77. This report shows that clothes of the appellant/accused as well as that of the deceased were stained with human blood of “B” group.

12 These circumstances, which are duly proved by the prosecution, unerringly point out that the appellant/accused had assaulted his mother Saraswati which has ultimately caused her death. The learned trial court has correctly arrived at the conclusion that the appellant/accused had not intended to cause death of his mother Saraswati as the weapon used for assault was stick. However, it is seen that the appellant/accused had given

successive blows of stick to the deceased. The blows were given on head as well as on arms. Because of blows of stick on head of the deceased, there was Intracranial bleeding. The Autopsy Surgeon had noted cerebral and cerebellar haematoma as well as polytrauma on dead body of Saraswati. As such, it needs to be held that the appellant/accused was certainly knowing that by giving successive blows of stick to his mother Saraswati, he was likely to cause her death. Hence, no infirmity can be found in conviction of the appellant/accused of the offence punishable under Section 304-II of the Indian Penal Code.

13 Now let us examine whether the consequent sentence of rigorous imprisonment for 10 years apart from direction to pay fine and default sentence imposed on the appellant/accused is proper or not. It is well settled that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. The sentencing court are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a

sentence commensurate with the gravity of the offence. The sentence is required to be adequate, just and proportionate with the gravity and nature of the crime. At the same time, circumstances of the accused are also required to be kept in mind while imposing the sentence, as one of the objects of the criminal justice system is to rehabilitate the transgressors and the criminals.

14 Perusal of the sentencing trend in past for the offence punishable under Section 304(II) of the Indian Penal Code shows that sentence of 10 years of rigorous imprisonment is too harsh considering the facts and circumstances of the case. In the matter of **Shivappa Buddappa Kolkar alias Buddappagol vs. State of Karnataka**¹, modifying the conviction of the appellant/accused from the offence punishable under Section 302 of the Indian Penal Code to the one punishable under Section 304(II) of the Indian Penal Code, the Honourable Supreme Court had imposed sentence of imprisonment for a period of five years apart from fine of Rs.7,000/- on the appellant/accused. In the matter of **Padmakar**

¹ AIR 2004 SUPREME COURT 5047

s/o. Dadarao Thorat vs. The State of Maharashtra² Division Bench of this court by modifying the conviction of the appellant/accused from the offence punishable under Section 302 of the Indian Penal Code to the offence punishable under Section 304(II) of the Indian Penal Code, had sentenced the appellant/accused therein for rigorous imprisonment for 5 years apart from payment of fine of Rs.500/-. Similarly, in the matter of **Manke Ram vs. State of Haryana**³ by altering the conviction of the appellant/accused therein from the offence punishable under Section 302 of the Indian Penal Code to the one punishable under Section 304(II) of the Indian Penal Code, the Honourable Supreme Court was pleased to award sentence of 5 years of rigorous imprisonment apart from fine of Rs.2,000/- on the appellant/accused therein. Considering this trend in sentencing for the offence punishable under Section 304(II) of the Indian Penal Code, it needs to be held that the sentence imposed on the appellant/accused is disproportionate, and therefore, needs to be scaled down.

² 2015 ALL MR (Cri) 2628

³ 2003 CRI.L.J. 2328

15 In the result, the following order :

ORDER

- i) The appeal is partly allowed.
- ii) Conviction of appellant/accused Ram Kir for the offence punishable under Section 304(II) of the Indian Penal Code is maintained. However, sentence of rigorous imprisonment of 10 years imposed on him by the learned trial court is altered to sentence of rigorous imprisonment for 5 years. Fine of Rs.5,000/- and default sentence of rigorous imprisonment for 4 months is maintained.
- iii) The appeal stands disposed off with this order.

(A. M. BADAR, J.)