

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 946 OF 2018

Siddharam Sangappa Dongare,
Age : 26 yrs, Occu: Service,
R/at : 691/692, Premnagar Vasahat,
Near Vani Mata Temple,
Market Yard, PUNE
(Presently at Yerwada Central Jail)

...Appellant

Versus

The State of Maharashtra
(Through Market Yard Police Station)

...Respondents

Mr. Ganesh Gupta i/b Ms. Nagma Tondon for the Appellant

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.
WEDNESDAY, 22nd JUNE 2022**

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 By this appeal preferred under Section 374 of the Criminal

Procedure Code, the appellant has impugned the judgment and order dated 29th November 2016 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 521/2013, convicting and sentencing him as under :

- for the offence punishable under Section 302 of the Indian Penal Code, to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default of payment of fine, to undergo rigorous imprisonment for 6 months.

3 A few facts as are necessary to decide the appeal, are as under :

The appellant was married to Shobha (deceased) on 15th April 2012. After marriage, deceased went to reside with the appellant and his mother at Pune. The appellant was doing labour work.

It is the case of the prosecution, that after two months of the marriage, the appellant started ill-treating Shobha (deceased) by

saying that she did not do the household work properly. The appellant used to pick-up quarrels with Shobha (deceased) on flimsy grounds and used to abuse and assault her. According to the prosecution, the deceased had disclosed the said acts to the complainant (deceased's father), who used to try to convince the appellant, but in vain. It is further alleged that whenever a quarrel took place between the appellant and the deceased, the complainant took the deceased to his place and after some days, used to drop her back to her matrimonial home.

It is alleged by the prosecution that on 5th February 2013, the complainant-Bhimashankar Mane received a call from the appellant, who told him that he had killed his wife-Shobha (deceased), after which, he disconnected the phone; the complainant verified the said news from his relatives at Pune and after confirming the same, went to Sassoon Hospital, Pune, where he saw the dead body of his daughter. The complainant learnt that the appellant had killed his daughter by assaulting her with a weapon on her head.

Accordingly, the complainant lodged an FIR as against the appellant for the offence punishable under Section 302 of the Indian Penal Code. After investigation, charge-sheet was filed in the said case in the Court of the learned Judicial Magistrate First Class, Pune. Since the offence was one under Section 302 of the Indian Penal Code, the case was committed to the Court of Sessions, for trial.

Charge was framed as against the appellant, to which he pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial and false implication.

4 The prosecution examined 14 witnesses in support of its case. PW 1-Bhimashankar Mane (complainant/father of the deceased Sobha/father-in-law of the appellant), to whom an extra-judicial confession was made; PW 2- Basavraj Nimbalkar (the son-in-law of PW 1); PW 3-Usha Salvi (Social Worker/Panch to Spot Panchnama); PW 4-Yasmin Shaikh (Panch to Seizure Panchnama, in respect of clothes of deceased); PW 5-Manisha Wamane (Neighbour of the appellant); PW 6-Head Constable Nitin Kamble (Carrier of Muddemal

to the Chemical Analyser); PW 7-Amar Shinge (Neighbour of the appellant); PW 8-Manohar Lodhe (the Chemical Analyser); PW 9-Dr. Ajay Tawade (who conducted post-mortem of the deceased); PW 10-Amit Karkera (Nodal Officer of Uninor Company); PW 11-Dr. Satyanarayan Punpale (Professor in Forensic Medical Department, B. J. Medical College, Pune); PW 12-Police Naik Arun Patil; PW 13-Namdev Kunjir (Panch to the seizure of mobile phone from the appellant); PW 14-PI Vilas Sonde (the Investigating Officer).

5 The learned Judge, after considering the evidence on record, convicted and sentenced the appellant as stated in para 2 hereinabove.

6 The fact that Shobha (deceased) died a homicidal death, is not seriously disputed. PW 9-Dr. Ajay Tawade, the doctor who conducted the post-mortem on the dead body, noted five external injuries. The said injuries are as under:

“(1) Incised looking laceration present over the head, in mid line, over the vertex placed 10 cms behind nasion starting from anterior hair line, longitudinal anteroposteriously of size 5 x 1.5 cms, bone deep margins irregular reddish.

(2) Incised looking laceration present over the head, over right parietal region 2 Cms right to mid-line longitudinal anteroposteriously of size 11 x 1.5 Cms, bone deep with underlying bones fractured margins irregular, reddish.

(3) Contusion over right wrist dorsaly 6 x 4 Cms irregular bluish.

(4) Contusion over left upper arm, middle third, dorsaly 8 x 6 Cms irregular bluish.

(5) Contusion over the left wrist dorsaly 4 x 3 cms irregular bluish.

All the injuries were ante-mortem and fresh.”

On internal examination of head, he found the following injuries:

“(1) On reflection of scalp, haematoma in the scalp present over the mid parietal region 10 x 6 cms dark red, irregular. Skull

vault fracture over the right parietal irregular in longitudinal fashion running posteriorly towards right occipital bone and anteriorly towards right frontal bone, irregular reddish. Anterior cranial fossa fractured on right side, irregular, reddish. Anterior cranial fossa fractured on right side, irregular, reddish, with fracture line merging with frontal bone fractured. Meninges intact. Contusion over the right frontal lobe 6 x 4 cms irregular reddish. Thin layer of subarachnoid hemorrhagic seen at places.

(2) On cut section of uterus product of conceptus present of age less than one month enclosed in amniotic sac.”

7 After completion of post-mortem examination, PW 9-Dr. Ajay Tawade noted the cause of death as “due to traumatic and hemorrhagic shock due to head injury”. The said post-mortem report was exhibited at Exhibit 37. PW 9-Dr. Tawade has stated that the aforesaid injuries were sufficient in the ordinary course of nature to cause death and that the said injuries were possible by the iron rod i.e. Article `A’. As noted above, there is no serious challenge to the fact that Shobha died a homicidal death, and hence, the question that arises for consideration is, whether the prosecution has proved that the appellant is the perpetrator of the offence and whether the

circumstances on record have been proved by the prosecution by leading cogent, legal and admissible evidence.

8 PW 1-Bhimashankar Mane, father of Shobha (deceased) has stated that Shobha was married to the appellant on 15th April 2012; that after marriage, Shobha went to reside at Prem Nagar, Pune, with the appellant and appellant's mother; that initially for two months, Shobha was treated well, thereafter, the appellant started ill-treating Shobha i.e. he would abuse and assault her; that the appellant had a hot temper and that he tried to convince the appellant, however, he refused to listen. PW 1-Bhimashankar has further stated that on the day of incident, at about 9:45 a.m, the appellant telephoned him and told him that he had killed Shobha. Thereafter, the appellant disconnected the phone. PW 1-Bhimashankar immediately contacted his relative at Pune and asked him to verify whether the information received was correct. On the relative verifying the information, PW 1-Bhimashankar, along with relatives, went to Sassoon Hospital at Pune, where he saw the dead body of Shobha and that Shobha had sustained

injury on her head. Thereafter, PW 1-Bhimashankar lodged an FIR with the Market Yard Police Station, Pune. The said FIR is at Exhibit-14.

Several suggestions were put to the said witness, however, the same have been denied. He has denied the suggestion that Shobha fell down on a stone in the house, resulting in an injury to her head and that he had lodged a false complaint against the appellant, only on the basis of suspicion. The evidence of PW 1-Bhimashankar shows that the appellant had made an extra-judicial confession to him, soon after the incident. There is nothing elicited in the cross-examination of the said witness, to disbelieve his testimony, with respect to the extra-judicial confession made by the appellant to the said witness. Infact, there is no cross-examination of the said witness with respect to the evidence that has come on record in the examination-in-chief that Shobha was being ill-treated by the appellant.

9 The said evidence is duly corroborated by PW 10-Amit Karkera. The prosecution examined Amit Karkera as PW 10. The said

witness was working as a Nodal Officer in Uninor Mobile Company at Pune, at the relevant time. He has stated that it was his duty to supply the information about call details, the location, subscriber details and other details of mobile subscriber on the basis of the records maintained by the company. He has stated that with respect to the mobile number 8421666368, the information was called for, by way of a letter issued by the ACP, Swargate, Pune, dated 25th April 2013. The said letter is at Exhibit-41. He has stated that on receipt of the said letter, he supplied information to ACP, Swargate, Pune, vide letter dated 25th April 2013, under his signature. The said letter is at Exhibit-42. He has stated that he also supplied the call details in two pages alongwith the said letter and that the said two pages bear the seal of their office (Exhibit-43). He has further stated that as per the record maintained by the Company, the said number was in the name of Siddharam Sangappa Dongare, resident of Premnagar, Market Yard School, Pune; that as per the Company record, vide Exhibit-43, a call was made from mobile No. 8421666368 to another mobile No. 9769739529 on 5th February 2013 at 9:00 hours 43 minutes 34

seconds and the conversation was of 57 seconds; the location code was 12512. The said witness i.e. PW 10-Amit Karkera accordingly issued a Section 65-B Certificate. He has identified the Certificate bearing his signature. The said Certificate is at Exhibit 45. There is no substantial cross-examination of the said witness, so as to disbelieve his testimony with respect to the documents produced by the said witness. PW 10-Amit Karkera has produced the Certificate under Section 65-B of the Evidence Act, which is required for proving the CDR records. Exhibit-42 clearly shows that the mobile No. 8421666368 stood in the name of the appellant with the address - Prem Nagar, Market Yard School, Pune.

10 Thus, the evidence of PW 1-Bhimashankar that he received a call from the appellant disclosing that he had killed Shobha is duly corroborated by PW 10-Amit Karkera, the Nodal Officer, that a phone call was made on the date and time as deposed to, by PW 1-Bhimashankar.

11 It is also pertinent to note that a mobile phone of Nokia Company, having No. 8421666368 was seized by the police during the personal search of the appellant. PW 13-Namdev Kunjir is the Panch to the seizure of the mobile phone. He has stated that on 5th February 2013, at about 2:15 p.m, he was called by the police in the Market Yard Police Station, to act as a Panch. He has stated that one black phone of Nokia make was seized from the right side pocket of pant of the appellant. It is pertinent to note that although the said witness was cross-examined, no suggestion was made to the said witness that the mobile No. 8421666368 seized was not that of the appellant, nor the appellant, in his 313 statement, has stated as to how he came into possession of the said mobile. It is also not the case of the appellant that the said phone was used by somebody.

12 Another incriminating circumstance as against the appellant is the seizure of clothes of the appellant and the deceased as well as the spot panchnama. PW 3 - Usha Salvi is the panch. She has stated that she was called to the spot, where she saw a lady lying in a

pool of blood; that the clothes worn by the lady i.e. grayish coloured gown and blue colour petticoat, were stained with blood. She has further stated that there were one Bermuda, white coloured T-shirt having blood stains and an iron rod was also seen on the spot having blood stains. All the said articles were seized from the spot and panchnama was made. PW 3-Usha Salvi has proved the said spot panchnama, which is at Exhibit 25. The said witness has also identified the clothes found from the spot.

It is pertinent to note that not a single suggestion was made to the said witness, during the course of cross-examination, that the clothes lying at the spot i.e. Bermuda and T-Shirt were not of the appellant.

13 PW 4- Yasmin Shaikh was examined to prove seizure of clothes of the deceased. The said panchnama is at Exhibit-28. PW 4- Yasmin has identified the clothes of the deceased. It may be noted that the appellant has not challenged that the clothes were not of the deceased.

14 No doubt, two of the panch witnesses are habitual panch witnesses, however, that by itself, cannot be a ground for disbelieving their evidence, more particularly, when their evidence has gone unchallenged on material aspects.

15 PW 8-Manohar Lodhe received information from the Control Room that an incident has occurred in the jurisdiction of the Market Yard Police Station. Accordingly, he went to the spot and collected the blood samples from the spot. His evidence has also gone unchallenged. It is pertinent to note that the CA report (Exhibit 67) clearly shows that the blood group found on the clothes of the deceased and the appellant was blood group 'O'. The appellant has offered no explanation whatsoever, as to how 'O' blood group was found on his clothes. The CA report also shows that the iron rod was stained with the same blood.

16 As far as evidence with respect to motive is concerned, the prosecution has examined PW 2-Basavraj Nimbalkar, PW 5-Manisha Wamane and PW 7-Amar Shinge.

17 PW 2-Basavraj was working as a Labour Contractor, at the relevant time. He has stated that on 5th February 2013, at about 8:00 a.m, when he went to Prem Nagar to bring labourers, he heard some commotion from one room, opposite to a public toilet in Prem Nagar locality; that in view of the said commotion, he went to another locality; that when he returned to the Prem Nagar locality at 9:30 a.m, he saw that some persons had gathered outside the same room from where he heard commotion; that he learnt that in the said room, Shobha Dongare was assaulted by her husband. The said witness is stated to be the son-in-law of PW 1-Bhimashankar i.e. the brother-in-law of deceased-Shobha.

Even if the evidence of this witness is excluded from consideration, there are two other witnesses who have spoken about the quarrel that took place on the said date and time i.e. PW 5-Manisha and PW 7-Amar Shinge.

18 PW 5 -Manisha, a resident of the same locality, has specifically stated that she used to hear quarrels between the appellant and the deceased-Shobha; that on the day of incident, she saw the appellant at about 9:00 a.m. coming out of his home hurriedly; prior thereto, she heard a quarrel between the appellant and his wife-Shobha. She has further stated that the police came to the spot, after which, they saw Shobha lying in an injured condition in a pool of blood.

19 PW 7-Amar Shinge, also a resident from the same locality, also stated that the appellant and his wife would quarrel often and he often heard shouts; that on the day of the incident at 9 a.m, he saw the

appellant coming out of house hurriedly and after sometime, he saw the dead body of Shobha lying in a pool of blood, inside the house.

A perusal of the cross-examination of both the witnesses shows that they have withstood the cross and nothing is elicited in their cross-examination, so as to disbelieve their evidence.

20 Both, PW 5-Manisha Wamane and PW 7-Amar Shinge have seen the appellant leaving home at around 9:00 a.m, soon after which, the dead body was found. Both these witnesses had heard a quarrel on the said day, prior to the appellant leaving the house.

21 From the aforesaid, it is evident that each of the circumstance and evidence is established by the prosecution by leading cogent, legal and admissible evidence. The circumstances so established form a chain, which is consistent only with the guilt of the appellant.

22 Coupled with the aforesaid circumstances proved by the

prosecution, the additional link is failure of the appellant to discharge his burden under Section 106 of the Evidence Act.

23 Considering the aforesaid, no infirmity can be found in the impugned judgment and order. The appeal is accordingly dismissed.

V. G. BISHT, J.

REVATI MOHITE DERE, J.