

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.216 OF 2019

Badri Richhu Mujalde,
Aged about 40 years,
R/o. Jejgad, Tq. - Bhikangaon,
District – Khargaon (MP)

..... APPELLANT

// VERSUS //

The State of Maharashtra,
Through P.S.O.
Tq. - Achalpur, Distt. Amravati.

.... RESPONDENT

Mrs. H. S. Dhande, Advocate (appointed) for appellant.
Shri. S. M. Ukey, APP for respondent/State

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
RESERVED ON : 18/11/2022
PRONOUNCED ON : 09/12/2022

JUDGMENT: [PER: MRS. VRUSHALI V. JOSHI, J.]

1. The appellant/accused has been convicted in Sessions Trial No.80 of 2016 by the Additional Sessions Judge-2, Achalpur vide judgment and order dated 02.04.2018 for the offence punishable under Section 302 of the Indian Penal Code. He was sentenced to undergo life imprisonment along with fine of Rs.5,000/- and in default to suffer rigorous imprisonment for six months, which is subject matter of this appeal.

2. The accused is the husband of the deceased Champabai. It is the case of prosecution that before six months from the incident deceased deserted him and had performed second marriage with one Thansingh and was living with him. On the date of incident i.e. on 21.04.2016, deceased was working in the field of the paternal uncle of her husband Thansingh along with one Radha. At about 12.00 noon, when deceased was washing the clothes with Radha at water tank, the accused came from Jungle and asked deceased to come with him, as she is his wife. On which Champabai told him that she had performed second marriage and asked him to go away and started running towards hut. At that time accused assaulted her with sickle on which she fell down. Radha who was with deceased after seeing the assault became unconscious. Mother of Radha i.e. Gondibai was inside the hut. After hearing commotion, Gondibai came out of the hut and saw one person assaulting deceased Champabai. On her shouts, her husband Zhendalal, who was watering the crops in the nearby field came and on which the accused ran away. The deceased was lying in pool of blood as well as Radha was lying unconscious. They took Radha inside the hut. After Radha regaining consciousness told about the conversation in between the accused and deceased from said conversation they realised that the accused who was husband of deceased had assaulted deceased Champabai.

3. Zhendalal informed the things to husband of deceased Thansingh, who in turn lodged the report in Police Station. Accordingly, the crime was registered against the accused. The investigation was conducted by Police. During investigation Police conducted the spot panchnama, articles which were seized from the spot were sent to Chemical Analysis (C.A). Investigating Officer has conducted Test Identification Parade (T. I. Parade). The accused was arrested from the remote village in Madhya Pradesh. He gave the disclosure statement during his custody which was recorded. After completion of investigation Police filed the charge-sheet in the Court of Magistrate.

4. The accused denied the charges and claimed trial. In order to establish the guilt of the accused, the prosecution has examined total 13 witnesses and relied on certain documents. The defence of accused was of total denial and false implication. The trial Court held that the prosecution has successfully proved the guilt of the accused with requisite standard of proof and accordingly passed the order of conviction.

5. The prosecution case rests on the direct evidence. PW No.7 Gondibai and PW No.8 Radha are the eye witnesses. PW No.8 Radha was with the deceased when she was assaulted by the accused. She has

stated that deceased Champabai was staying in their family and taking meal with them. She has specifically stated that on 21.04.2016, when she was washing the clothes at water tank with Champabai, who is her aunt, at about 12.00 noon suddenly one person came, asked Champabai to accompany him, as she is his wife. At that time Champabai told him that she had performed second marriage and asked him to go away. When Champabai started running towards the hut, accused took out a sickle and assaulted her. By seeing said incident, she became unconscious. She had identified the accused in prior T. I. Parade.

6. During cross-examination, it is brought on record that, PW No.8 Radha never saw the accused. She was not knowing that the accused is husband of deceased. She was not knowing the name of the accused and she was not even aware about first marriage of deceased. That is why the identification of the accused is unbelievable. From her evidence itself it can be ascertained that she came to know about accused as husband of deceased from the conversation before assault. She has identified accused in T. I. Parade as well as before Court.

7. Another eye witness is Gondibai PW No.7 who is the mother of the PW No.8 Radha. She has also stated that on the date of the incident she was working in the field along with her husband, Radha,

Thansingh and Champabai. At about 12.00 noon, Radha and Champabai were washing the clothes at the water tank whilst she was in nearby hut. Her husband was watering the Mung crop besides the field and Thansingh had taken firewood to the village. At about 12.00 noon to 1.00 p.m. she heard noise from the side of water tank and saw the accused assaulting Champabai with sickle. She saw it when she came out of the hut. She called her husband. As the accused saw her husband coming towards them, fled away. She along with her husband went to Champabai, who was lying unconscious in pool of blood. Her daughter was also lying unconscious. Champabai had sustained bleeding injuries on her neck. She had identified the accused. After regaining consciousness Radha told them the conversation between accused and deceased that the accused asked deceased to accompany him as she is his wife. Deceased Champabai told him that she had performed second marriage hence she would not accompany him. When Champabai was running away, accused assaulted her from behind. This witness has identified the accused in prior T. I. Parade and also before the Court.

8. During cross-examination, this witness has also stated that she had earlier not seen the accused i.e. the previous husband of Champabai. Champabai had also not disclosed about her first husband. She saw him for the first time on the date of incident. It is tried to bring

on record that there was no occasion for both the witnesses to see the accused as they were not knowing as to who was the first husband of deceased Champabai. According to defence this witness was inside the hut and she is not the eye witness.

9. The learned counsel for accused has stated that the evidence of both the witnesses is not reliable. They are not the eye witnesses as PW No.7 was inside the hut, she has no occasion to see the incident and PW No.8 was unconscious. PW No.8 was not knowing that the accused is her husband. During cross-examination, PW No.8 has not stated that from which direction the accused came, and therefore, the presence of this witness also creates doubt.

10. The presence of both the witnesses is natural on the spot. PW No.8 came to know from the conversation between both of them that he was the husband of deceased. She narrated about it to her mother, as her mother saw the assault and previous conversation was narrated by PW No.8 and therefore, they came to know about the assault by the accused who is the husband of the deceased. PW No.3 Zendalal came to know about said conversation and he informed about it to the husband of the deceased i.e. PW No.2 Thansingh who is the first informant.

11. After receiving the information about assault by the husband of Champabai, PW No.2 Thansingh has lodged the report on which the crime was registered against the accused. It is not against the unknown person. PW No.3 is Zendalal, who is the husband of PW No.7. Soon after the assault, when PW No.7 Gondibai shouted, PW No.3 Zendalal went there and as soon as accused saw him, fled away, he has narrated about how they were in said field and he was watering the Mung crop. He has also narrated that Radha told that she came to know from conversation between Champabai and accused that he is her previous husband who assaulted her. He went to the village and informed about it to the villagers and Thansingh.

12. The prosecution has examined PW No.11 – Dr. Jawanjal, who has conducted autopsy on 22.04.2016. He has noted multiple incise wounds all over the body of the deceased Champabai, which he has mentioned in column No.17 of the Post-Mortem Notes (Exh.40). Particularly, he has noted following antemortem injuries on the dead body.

“1] Incised wound over right hand thumb, measuring 2 Cm X 1 Cm.

2] Incised wound over right side of lower part of abdomen, measuring 10 Cm X 6 Cm with loop of intestine coming out.

3] *Incised wound measuring 10 Cm X 7 Cm X 6 Cm over right side of neck, involving back side of neck with internal structure visualized i-e to say the bony structure and muscles, and vessels were visible.*

4] *Incised wound measuring 4 Cm X 2 Cm over right dorsum of hand.*

5] *Incised wound measuring 10 Cm X 4 Cm X 3 Cm over left lower limb region.*

6] *Incised wound measuring 11 Cm X 4 Cm X 4 Cm over right supra scapular region.*

7] *Incised wound measuring 7 Cm X 4 Cm over left lower chest with fracture of ribs with injury to left lung.*

8] *Fracture of left lower 7th and 8th ribs anterior aspect."*

13. On internal examination, the Medical Officer has noted fracture of 7th and 8th left lower ribs anterior aspects. There was rupture of pleura. There was mucus pale in trachea and bronchi larynx. The cause of death is opined as 'hemorrhagic shock due to multiple incise wounds and loss of blood due to wounds'. The evidence of Medical Officer is supported by Post-Mortem Notes (Exh.40). Bare perusal of the medical evidence, reveals that there were multiple injuries and wounds all over the body of the deceased, particularly on the vital part i.e. neck. It has come in the prosecution evidence that the accused has assaulted the deceased by means of an axe, which was found at the place of occurrence itself. The medical evidence, coupled with the direct evidence of eye witnesses is capable enough to point out that the death

was a result of deadly assault, therefore, we have no hesitation to hold that Champabai met with a homicidal death. The eye witnesses have stated about the incident. Nothing is there to suspect the presence of the eye witnesses on the spot and there was no reason to disbelieve these witnesses. Nothing is brought on record during cross-examination also to disbelieve the oral evidence.

14. The sickle which was found on the spot was stained with blood. Naturally as it was lying near the body and the body was in pool of blood it was stained with the blood which was human blood. There is no denial on the part of the accused that human blood found on the sickle was of the deceased. There is no other possibility of finding blood from elsewhere, therefore, it can very well presumed that the blood found on the sickle was of the deceased, meaning thereby the sickle was used in commission of the crime. The sickle was purchased by the accused from the market. It is proved through the panch witness as the accused has given the memorandum statement and shown the person from whom he had purchased sickle. The said person i.e. PW No.5 is also examined by prosecution and he has identified the accused as purchaser of sickle. The death of deceased due to assault by the sickle is proved.

15. It is the defence of accused that though PW Nos.7 and 8 were not knowing the accused, they identified him in T. I. Parade at belated stage. The said submission is wholly devoid of merit, because if the witnesses know the assailant/culprit prior to the occurrence, then there is no purpose in holding T. I. Parade. When the assailant/culprit is unknown to the witness, then only T. I. Parade is being conducted, as a process of investigation to assure that the investigation is going on the right direction. However, the prosecution has not endeavoured in examining the witness who has conducted prior T. I. Parade, meaning thereby deprived the defence from impeaching his credit, therefore, we are not placing reliance on the said piece of evidence.

16. Pertinent to note that two eye witnesses have identified the accused in the Court as assailant. It is a settled law that identification in Court is substantive piece of evidence. The testimony of PW No.7 Gondibai and PW No.8 Radha consistently states that both of them have seen the accused while assaulting the deceased and they have identified him in the Court. The defence is unable to point out any material to show as to doubt their natural version. The evidence of eye witnesses establishes that accused is the only author of the crime.

17. The circumstances clearly exclude the possibility of

innocence of the accused. In short, the prosecution has established the guilt of the accused with requisite standard of proof. The learned trial Court has properly appreciated the evidence while recording the finding of guilt. Since it is a case of assault with sickle, it can be safely held that the accused had requisite intention and knowledge to eliminate his wife i.e. the deceased, which falls within the meaning of Section 300 of the Indian Penal Code. In the circumstances, the impugned judgment and order calls for no interference. Criminal appeal is, therefore, dismissed.

18. Muddemal property be dealt with in accordance with law.

19. Fees for the appointed counsel for the appellant be paid as per rule.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Sarkate.