



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 494 OF 2019

Vajir Nansing Barela,
Age: 38 years, Occu: Labour,
R/o Kiradi, Taluka Sendhwa,
District Badwani (M.P.)

... Appellant

Versus

The State of Maharashtra

... Respondent

....

Mrs. A. S. Mantri, Advocate for the Appellant.
Mrs. Vaishali S. Choudhari, APP for the Respondent-State.

.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

Reserved on : 20.12.2023

Pronounced on : 22.12.2023

JUDGMENT [ABHAY S. WAGHWASE, J.] :

1. Appellant, a life convict is hereby taking exception to judgment and order of conviction passed by learned Sessions Judge, Dhule dated 30.11.2018 in Sessions Case No. 50/2017 recording guilt of the appellant for the offence punishable under Sections 302 and 201 of the Indian Penal Code [IPC].

2. To put it in brief, Thalner Police Station chargesheeted appellant Vajir accusing him of assaulting his wife Savitabai by use of spanner and causing her multiple grievous injuries on the night of 27.01.2017 after quarrel between him and deceased. PW1 cousin of

deceased, namely, Sobharam lodged report on the basis of which offence was registered and investigated by PW12 PI Vijay Talware who, on gathering evidence against accused, chargesheeted him. Learned Sessions Judge conducted trial and on appreciating the evidence i.e. both, oral and documentary, and on hearing both sides, held charges to be proved and recorded above conviction which is now found fault at by preferring appeal on various grounds raised in appeal as well as during arguments.

3. Learned counsel for the appellant would point out that there is no direct evidence. Very star witness for prosecution i.e. PW7 child of appellant and deceased has not supported prosecution. Therefore, according to her, case is based on circumstantial evidence but there are no incriminating circumstances which are so firmly established that only and only guilt of accused appellant gets established. She further pointed out that at the threshold, here, prosecution failed to establish very motive. She further pointed out that initially AD was registered. That, seized clothes were carrying no blood nor the article spanner was detected to be having blood stains. She also pointed out that even scene of occurrence panchanama shows that part of the house/hut was in burnt condition. Therefore, there are various possibilities, but learned trial court has not considered other

possibilities and in absence of cogent and reliable evidence, in spite of very child not supporting prosecution, has surprisingly accepted the case of prosecution without assigning sound and proper reasons. Lastly, it is her submission that there is improper appreciation of evidence as well as law and hence she seeks indulgence of this court for setting aside the impugned judgment by allowing the appeal.

4. According to learned APP, case is proved beyond reasonable doubt. According to her, appellant is husband and as such, custodian of the deceased. Though PW7 child has been won over and tutored, still her evidence clearly shows that appellant father was in the house. Appellant was absconding after occurrence. Deceased died because of multiple grievous injuries in the house and so, it is her submission that, being husband and custodian of wife, he is answerable for the fatal injuries of which, according to her, there is no explanation. Scene of occurrence and telltale signs noticed during panchanama, including article spanner, are further incriminating appellant. She would point out that appellant had also suffered struggle injuries. Therefore, in the totality of such evidence and circumstances, she would submit that finger of guilt is rightly pointed to husband and is thereby rightly convicted. Hence she prays to dismiss the appeal as there are no merits.

5. Before proceeding to analyze the evidence, in order to satisfy ourselves as to whether prosecution has proved death to be homicidal, we visited the evidence of autopsy doctor PW8 Dr. Anil Patil at Exhibit 29. On conducting postmortem, he claims to have noticed following injuries:

External Injuries

1. CLW over occipital region, 7 c.m. in length, 3 c.m. wide, 2 c.m. deep. Fracture occipital bone, with brain matter seen through it.
2. CLW over chin 2 c.m. x 1 c.m. x 1 c.m.
3. Abrasion over right hand elbow joint 2 c.m. x 12 c.m.
4. Contusion on the left antero-lateral wall of lower chest and upper abdomen. Size 10 c.m. x 6 c.m., with fracture 8th, 9th, 10th ribs, with spleen tear, with intraabdominal massive hemorrhage.
5. Abrasion over left hand elbow joint 2 c.m. x 2 c.m.
6. Abrasion over right knee 1 c.m. x 1 c.m.
7. Fracture occipital bone seen.
8. Fracture left 8, 9, 10th ribs.

Internal injuries

Head:

- (i) CLW over occipital region 7 c.m. in length, 3 c.m. wide, 2 c.m. deep.
- (ii) Skull – Fracture Occipital bone seen.
- (iii) Brain – Laceration on occipital lobe of both hemisphere of brain with large intracranial bleed seen.

Thorax

- (a) Contusion on left anterolateral wall of lower chest seen with fracture 8, 9 and 10th ribs.

Abdomen :

- | | | |
|---------------------|---|---|
| Walls | : | Contusion on the anterolateral wall of left abdomen upper part. |
| Peritoneum & Cavity | : | Massive Haemoperitoneum seen. |
| Spleen | : | Splenic tear on the left lateral wall of spleen about 3 cm x 2 cm x 1 cm. |

According to autopsy doctor, death was due to “Hemorrhagic shock due to cardio-respiratory failure, due to head injury with multiple vital organ injuries, with multiple fracture with massive hemorrhage.” He opined that head injury is possible by means of iron wheel spanner. Considering the nature, number and sites of injuries as well as the answers given by autopsy doctor in cross, we too are of the opinion that death in this case is proved to be nothing but homicidal.

6. We have re-appreciated, re-analyzed, re-evaluated the entire prosecution evidence by revisiting the substantive evidence as well as documentary evidence and on doing so, we have realized that appellant and deceased are husband and wife who had three daughters and a son. Informant PW1 Sobharam, who is cousin

brother of deceased, had reached the spot on getting news about appellant killing deceased and fleeing away. According to him, when he reached, he saw her body with injuries on head, face, limbs and chest. He further stated that daughter of deceased, namely, Rekha was present there and on his asking, she told that last night there was quarrel between accused and deceased and on that count appellant beat deceased by means of iron spanner and so this witness lodged report Exhibit 23 to that extent.

In his cross it has been brought that parents of deceased resided in neighbouring village whereas accused mostly used to remain outside the house. But this witness is unable to depose regarding domestic affairs and relations between accused and deceased.

7. Next witness who is crucial is PW7 Rekha, child of appellant and deceased. This 9 years old child in her evidence at exhibit 27, in the initial part of her chief gave information about knowing accused as he is her father, she named her mother and also gave names of her siblings. According to her, the incident took place two years back. On the day of occurrence she woke up in the morning and claims to have found her mother dead. According to her, her father was not present in the hut and therefore, seeing injuries on the head of her mother, she went and informed uncle Sitaram. She also deposed that previous

night mother prepared mutton and except mother they all ate and after dinner her mother was in the hut, but at this juncture she deposed that she does not know what happened thereafter.

She further testified that police had visited their hut and made inquiries with her. Then she deposed that on the say of her maternal uncle she told police that her father killed her mother. She also stated that her statement was recorded in Shirpur Court over which she has caused thumb impression and the same to be at Exhibit 28. However, she stated that its contents are not correct and therefore finding her not supporting, she was subjected to cross by the APP by seeking permission of the court and during cross she stated that appellant was addicted to liquor but she denied quarrel between her parents. She admitted that it was a bazar day on the day of incident and her both parents had been to bazar. She denied that while returning, her father consumed liquor. She further stated that she met her maternal uncle after eight to ten days of death of her mother and that after one and half month when he revisited her, that time she told him as to how the incident took place. She denied stating portion marked "A" and according to her, portion marked "A" and "B" is incorrect. Then she stated that after death of her mother, for two-three days her father did not return.

8. Rest of the witnesses are panchas to spot panchanama, inquest panchanama, seizure of clothes etc.

9. From above discussed material, here, it is emerging that appellant and deceased were husband and wife. PW7 Rekha, their 9 years old daughter has not supported prosecution. However, there are certain peculiar circumstances which are very unusual. Child confirms in cross that on that day, her parents had been to bazar together, however she merely denied suggestion that her father consumed liquor on that day. She has not denied that he returned along with her mother. Appellant has not taken any plea of alibi. There is a mere question to PW1 informant, of which there is admission that appellant used to stay outside. But, there is no explanation/defence from appellant's side even while answering during recording of statement under Section 313 of Cr.P.C. that he was not present in the house. Being husband and custodian of deceased wife, he is expected to offer explanation.

10. It is true that by virtue of Section 106 of the Evidence Act, appellant is expected to offer explanation, which he has not done here, but initial burden or primary burden is always on prosecution to

show that appellant is the author of fatal injuries on deceased. It needs to be noted that PW1 informant, who was resident of another place, had reached the spot on getting news and he claims that he had interacted with PW7 Rekha and at that time the child told that there was quarrel in the night between her parents and on such count, her father assaulted her mother by means of iron spanner. Unfortunately, after the child PW7 came in contact with paternal aunt, i.e. sister of her father, she has denied involvement of her father. Therefore, obviously, she was under influence of her aunt and thereby seems to have not supported prosecution. But, she has admitted regarding a statement being recorded before Shirpur Court. Though she denied its contents while in the witness box, on going through Exhibit 28, which is an exhibited document being recorded by court, one comes across question no. 7 being put to her as to whether there used to be quarrels between her parents and she has answered in affirmative. To question no. 8 as to when there was last quarrel between her parents, child has answered that last quarrel between them was two-three months back. Here, the occurrence in question is of 28.01.2017 and her above statement under Section 164 of Cr.P.C. is recorded on 11.04.2017.

11. Therefore, though child witness has not supported prosecution, her entire evidence need not be discarded as her testimony to the extent of occurrence taking place in the house and her version that all family members were residing in the hut clearly suggests that her father was also residing there. She has not specifically stated that her father was not in the house that night. What she says is that when she woke up in the morning and found her mother dead, thereafter she speaks of father to be not present in the hut. Even, as stated above, while under cross, she has admitted that on that day, it being *bazar* day, her both parents had been to the *bazar* and she merely denied a suggestion that her father consumed liquor and not that he did not return home that day. Therefore, taking into account so much part of her testimony, inference that can be drawn is that accused was very much present in the house and therefore answerable for grievous multiple injuries on vital parts of his wife.

12. During spot panchanama, investigating machinery has gathered articles from both, inside the hut as well as outside the hut, which suggests some resistance, struggle, scuffle. Appellant before arrest was got examined through PW9 Dr. Surajkumar Magar who had noticed injuries on his neck, which this medical expert opines to be possible due to scuffle and according to him, the injuries are three to

four days old. Therefore, this is another additional incriminating circumstance of which there is explanation from prosecution.

13. Therefore, here, though very child has not supported prosecution, taking into consideration other incriminating circumstances discussed above, it can safely be held that it is the appellant who is the author of multiple grievous injuries on the person of his wife.

14. We have gone through the impugned judgment. No fault can be found in the appreciation. Findings are supported by reasons and therefore no case being made out for interference, we proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]