



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 767 OF 2005

Shri Irrappa S/o. Saduram Madge,
Age : 42 years, Occu. : Agril.,
R/o. Hipparga (Rao), Tq. Omerga,
Dist. Osmanabad.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

...
Mr. V. D. Gunale, Advocate for Appellant
Mr. K. K. Naik, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 OCTOBER 2024

PRONOUNCED ON : 14 OCTOBER, 2024

JUDGMENT :

1. In instant appeal, there is challenge to the judgment and order passed by Additional Sessions Judge, Omerga, District Osmanabad dated 08.11.2005 in Sessions Case No. 14 of 2005, by which guilt of the appellant for commission of offence under section 325 of Indian Penal Code was recorded.

IN SHORT CASE OF PROSECUTION IS THAT

2. Sadhuram Madge had four sons including complainant Bhimrao and accused Irrappa. Irrappa was insisting partition of agricultural land and picking up quarrels on such count.

Previously also, he had beaten his parents in such backdrop. On 16.09.2004, when deceased Siddhammabai mother of appellant was sitting under a tree, appellant Irrappa came and assaulted Siddhammabai with the handle of Katti (sickle) causing her bleeding injury, as a result of which she was shifted at hospital, but while undergoing treatment, she succumbed to death. Autopsy Surgeon attributed death due to cardio respiratory arrest due to subdural hematoma due to head injury. Consequently, Bhimrao PW2 approached Omerga police station and set law into motion, resulting into registration of crime bearing No.132 of 2004.

Initially crime was for offence under sections 324 and 504 IPC, but subsequently after demise of Siddhammabai offence was converted into 302 IPC and after investigation at the hands of PW11 PSI Parihar, appellant was tried by learned Additional Sessions Judge, Omerga vide Sessions Case No. 14 of 2005 for offence punishable under section 302 of IPC.

However, after appreciating evidence adduced by prosecution, learned trial Judge, vide its judgment and order dated 08.11.2005 reached to a finding that prosecution failed to establish the charges under section 302 IPC, but charge of 325 gets attracted and sentences appellant to suffer imprisonment for two years.

Feeling aggrieved by the said judgment and order of conviction, instant appeal has been filed.

STATUS AND ROLE OF PROSECUTION WITNESSES

3. The prosecution has examined following 11 witnesses in support of its case. Their role, status and sum and substance of evidence is as under :

PW1 Swami Narayya, Autopsy Surgeon, who conducted post mortem and issued opinion about cause of death “due to cardio respiratory arrest due to subdural hematoma due to head injury”.

PW2 Bhimrao, younger brother of appellant, deposed that occurrence took place at 2:30 p.m. One Gulab Madge, his cousin, informed him about his mother Siddhammabai being beaten and she lying unconscious and was taken to hospital. After which he lodged report Exh.16.

PW3 Nagabai, an acquaintance of deceased stated that occurrence took place in front of her door and appellant assaulted his mother by means of handle of Katti on head.

PW4 Yashodabai in her evidence at Exh.18 stated that around 2:00 p.m. she, Nagabai and Siddhammabai were sitting in the courtyard of Nagabai. Appellant came from back side,

assaulted Siddhammabai on the head by means of handle of katti due to which Siddhammabai fell down and thereafter carried to Omerga.

PW5 Mr. Kushba Shendge, Medical Practitioner, who first examined Siddhammabai on history given about beaten by elder son over head by hard object Katti. He examined her. She was unconscious. Considering the head injury, he treated her, but while undergoing treatment, Siddhammabai expired on 18.09.2004.

PW6 Gulab, cousin of appellant, did not support prosecution.

PW7 Prabhawati, did not support prosecution as she denied knowing cause of death of Siddhammabai.

PW8 Jyotiba, the driver, who took Siddhammabai in his vehicle to Omerga.

PW9 Shivling, pancha to memorandum of disclosure did not support prosecution as he deposed that there was no recovery in his presence and he merely signed on the request of police.

PW10 Sheshrao, second pancha to memorandum also did not support prosecution.

PW11 PSI Parihar is the Investigation Officer.

SUBMISSIONS

On behalf of Appellant : -

4. Pointing to the above evidence, learned counsel for appellant submitted that, *firstly* there was false implication. *Secondly*, prosecution failed to establish the charges beyond reasonable doubt. He would submit that, initially charge was of 302 IPC, but said charge has not been proved. Learned counsel submitted that there is no convincing, cogent and reliable evidence. That, there is no evidence about dispute for partition. That, recovery pancha did not support prosecution. That, death has taken place after 2 to 3 days of the occurrence. Therefore, it is his submission that evidence on behalf of prosecution is very weak and therefore, it is a fit case for extending the benefit of doubt. In the alternative, learned counsel submitted that appellant being behind the bar for a period about 8¹/₂ months out of two years imprisonment, he be let off on the sentence already undergone.

On behalf of Respondent – State :

5. Resisting the above relief, learned APP pointed out that, appellant has killed his own mother. That, there is clear, direct and convincing independent eye witness account. That, death is due to head injury inflicted by the article. That, testimonies of

independent witnesses have remained unshaken. That, death is due to head injury and therefore learned trial court committed no error in convicting the appellant for offence punishable under section 325 IPC. He submitted that, the backdrop in which incident took place and appellant being responsible for death of his own mother, no leniency need to be shown on the sentence already undergone.

ANALYSIS

6. Fundamental grounds of challenge in appeal are that, *firstly*, there is no convincing and cogent evidence about accused hitting his mother. *Secondly*, recovery and spot is not proved. *Thirdly*, so called important witness Gulab and other independent witnesses like neighbours have not supported.

On the other hand, prosecution claims that there is direct, convincing and undisturbed evidence of independent witnesses.

7. On re-appreciating the entire evidence, incident seems to have taken place on 16.09.2004 around afternoon. FIR is at the instance of younger brother of accused Bhimrao. He claims that, he learnt from Gulab, his cousin, about the occurrence and so he rushed and saw his mother unconscious with bleeding injury from the nostril and ear and so she was brought to the hospital and he

lodged complaint. After deposing to the above extent, he deposed that at the time of assault by Irrappa, he was not present and that Irrappa had already run away. After seeking permission of court, learned prosecutor cross examined informant, but he denied seeing Irrappa abusing his mother on the ground of partition. But, to a question whether he was holding weapon, he has answered in affirmative. He again affirmed that, blow was inflicted on the head of his mother by appellant by putting to use handle of the sickle and he admitted that it was cause of injury, due to which she also fell down.

Except admitting that, after the incident he went to house of Prabhakar Mule and he was in 'Khalcha gav' and that Irrappa was residing at Pune and about strained relations between Irrappa and his wife, rest all suggestions are denial.

8. PW3 Nagabai, who is said to be an eye witness, has testified that, Siddhammabai met to death as assaulted by a boy and on being questioned by learned APP as to who was the boy, she has named the appellant and further deposed about occurrence taking place in front of her door around 2:00 p.m. while deceased and another lady Yashodabai were together. She categorically stated that, Irrappa assaulted his mother by means of handle of Katti on the head and she become unconscious.

While under cross, it is tried to suggest after hearing hue and cry, she came out of the house, she has answered that she was sitting there only. The manner of cross and answer confirms the occurrence to be witnessed by her.

9. PW4 Yashodabai, another lady in the company of PW3 Nagabai and deceased, in her evidence at Exh.18 stated that occurrence took place at 2:00 p.m. while she, PW3 Nagabai and deceased Siddhammabai were sitting in the courtyard of PW3 Nagabai. Appellant came from back side, assaulted Siddhammabai on the head by handle of Katti, due to which Siddhammabai fell. Suggestion that she heard hue and cry goes to show that there is no serious dispute about occurrence. While answering question no.4 put by defence, she stated that many persons assembled by that time Siddhammabai was lying. Though to initial question she answered that she has deposing at the instance of Bhimrao and Yashodabai. The last question suggesting that appellant did not assault, she answered that he assaulted.

10. Testimony of PW3 Nagabai and PW4 Yashodabai, who are independent witnesses and were in the company of deceased have categorically stated about deceased being hit by appellant with handle of sickle around 2:00 p.m. and she falling unconscious

and taken to hospital. Though PW6 Gulab cousin of informant, PW7 Prabhawati and PW8 Jyotiba have not supported, it is evident from their testimonies that they were not present and they came later on.

11. But, occurrence narrated by above two witnesses PW3 Nagabai and PW4 Yashodabai are consistent and both corroborating each other and their testimonies are not shaken, rather occurrence is got confirmed by putting suggestions in such manner which clearly shows that there is no serious challenge to the occurrence of assault.

12. Prosecution to support ocular account examined PW5 Dr. Shendge, a medical practitioner and he in his evidence at Exh.19, deposed about son of deceased gave history regarding beating by elder son at 2:00 p.m. by means of object, namely Katti. He passed information to police and examined Siddhammabai and according to him, she was unconscious and marks of injury over head on center part. He treated her, but her condition deteriorated within 24 hours and she expired on 18.09.2004.

While under cross, above medical expert stated that he brought case papers. He admitted that he did not record size of the injury. He admitted that, head injury made over due to subdural

hematoma and is possible by fall on rocky substance or possible due to old age associated with other problems like blood pressure.

However, this medical witness has given history, attention of accused and site of injury and he deposed that in spite of treatment by him she expired.

13. PW1 Dr. Narayya, autopsy surgeon has attributed death due to cardio respiratory arrest due to subdural hematoma due to head injury. Consequently, medical accounts supports ocular account and therefore there is no further necessity of other evidence to record guilt. Mere recovery panchas not supporting would not be sufficient to doubt prosecution as PW11 PSI Parihar Investigating Officer in paragraph Nos. 8 and 9 of his evidence deposed about receiving memorandum of disclosure and recovery vide panchanama at Exh.29. Therefore, there is recovery of weapon also. Resultantly, prosecution did succeed in attributing assault to present appellant and he to be the author of head injury of his mother.

14. Learned counsel in the alternative has submitted that, appellant has already undergone over 8 months incarceration. Trial Judge has held him guilty for offence under section 325 in

spite of there being charge of section 302 IPC and sentence awarded is of two years. Therefore, he prayed to let off accused for suffering above sentence i.e. as already undergone. Learned APP has strongly opposed the same.

15. Here, there is ocular account supported by medical account. In the backdrop of partition, appellant has inflicted head injury by weapon like Katti (sickle) i.e. by handle part. Direct eye witnesses speak of deceased falling unconscious immediately. Informant, who reached shortly spoke about noticing bleeding through ear and nose. Therefore, the impact on the blow was internal hemorrhage. This is a case of “matricide” i.e. act of killing ones own mother. Therefore, this court is not in favour reducing the sentence to already undergone as prayed. No case being made out on merits, I proceed to pass following order :-

ORDER

The criminal appeal is dismissed.

(ABHAY S. WAGHWASE, J.)