



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 93 OF 2019

Rumaliya Bajya Varti
Age: 56 years, Occu.: Labour,
R/o Rozawa Plot, Tq. Taloda,
Dist. Nandurbar

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. G.N. Chincholkar, Advocate for appellant (appointed through Legal Aid)
Ms. U.S. Bhosale, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
RESERVED ON : 22nd JANUARY, 2024
PRONOUNCED ON : 30th JANUARY, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenged in this appeal is to the order of conviction and consequential sentence dated 14th June, 2016 passed by the Court of Additional Sessions Judge, Shahada in Sessions Case No. 47 of 2014. Vide the impugned order, the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code, and therefore, sentenced to suffer life imprisonment and pay a fine of Rs.2,000/- with default stipulation.

2. Facts giving rise to the present appeal are as follows :-

The appellant was resident of Rozawa Plot, Tq. Taloda, Dist. Nandurbar. Aushibai (deceased) was his wife. The couple was blessed with a son, Nilesh (P.W.3). It so happened that on the intervening night of 24th and 25th April, 2014 the appellant, his wife (deceased) and their son (P.W.3) went to sleep in the front yard of their house. In the midnight, i.e. little past 01:00 a.m. there was quarrel between the appellant and his wife. The appellant got enraged thereby. He assaulted on the head of Amshibai with *Kusa* (a hoe like article). On hearing the quarrel, P.W.3 – Nilesh got up. He saw the appellant assaulted his mother. Since P.W.3 raised cries, the appellant assaulted him. On hearing hue and cry, the neighbors gathered. They tied the appellant. One of the neighbors, P.W.6 – Suklal went to the house of P.W.1 - Jaharsing, brother-in-law of the appellant to report him of the incident. P.W.1 - Jaharsing, alongwith his family members came to the house of the appellant to find his sister dead. He, therefore, lodged the F.I.R. (Exh.16).

3. The villagers handed over the appellant to the police. He was thus arrested. Scene of offence panchanama (Exh.24) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the appellant was proceeded against by filing charge-sheet.

4. The Court of J.M.F.C., Shahada committed the case to the Court of Additional Sessions Judge, Shahada (trial Court). Trial Court framed charged (Exh.4). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined eight witnesses and produced in evidence certain documents to bring home the charge. Trial Court, on appreciation of evidence, convicted the appellant and consequentially sentenced to suffer life imprisonment.

6. Learned counsel appointed to represent the appellant would submit that the case is based on sole eye witness, P.W.3 – Nilesh, son of the appellant. He was just twelve years of age at the relevant time. Since the day of the incident he was residing alongwith his maternal uncle (P.W.1). His evidence before the Court, therefore, has been influenced by his maternal uncle (informant). According to him, the appellant had happy married life. He had no reason to commit murder of his own wife. It was summer. Somebody else might have assaulted the deceased for unknown reason. Learned counsel relied on Apex Court's judgments to ultimately urged for allowing the appeal :-

Karunakaran Vs. State of Tamilnadu, AIR 1976 SC 383

Ramji Surjya and Anr. Vs. State of Maharashtra, AIR 1983 SC 810

7. Learned A.P.P. would, on the other hand, submit that the case is based on an eye witness account. The witness is none other than the appellant's son. He was twelve years of age at the relevant time. He had no reason to give false evidence against his own father. Evidence of the neighbors reinforces the prosecution case. The deceased died when she was in the company of the appellant. The appellant did not offer any explanation except alleging to have been falsely implicated. According to learned A.P.P., interference with the impugned order of conviction and consequential sentence is not warranted. He, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Let us appreciate the evidence in the case.

9. P.W.1 - Jaharsing, is the brother-in-law of the appellant (brother of appellant's wife). It is in his evidence that on 25th April, one Sukalal (P.W.-6) came to his residence at the dead of night. They informed him the appellant to have killed his sister. He, therefore, alongwith his wife and other relatives came to the house of the appellant to find his sister Amshibai dead. She had suffered head injury. He, therefore, lodged the F.I.R. (Exh.16) against the appellant.

10. In his cross-examination, it has come on record that the appellant and his deceased wife would work as sugarcane harvesters. They would go

to Gujarat to earn their living by doing such work. Just about eight days before the incident, they had returned to the village. It is further in his evidence that the deceased had never made any complaint against the appellant. According to him, some villagers had accompanied him to the police station. The villagers narrated the incident. Accordingly, it was reduced into writing. He put thumb impression below the said writing.

11. The appellant and his brother-in-law (P.W.1) are the rustic tribes. P.W.1 had admitted to have not seen the incident. His admission that the villagers narrated the incident to the police and then he signed below the same would, therefore, be of little consequence. Lodging of the F.I.R. would only be relevant in this case so as to set the criminal law in motion.

12. Evidence of P.W.1 gets reinforced by the evidence of P.W.6 – Sukalal. It is in his evidence that he was neighbor of the appellant. He saw crowd at the house of the appellant by 12:30 midnight. The villagers asked him to go and inform P.W.1 about the appellant to have killed his sister. He, accordingly went to the house of P.W.1 and related him the same.

13. P.W.2 - Hiralal is a witness to the inquest panchanama (Exh.23) and the scene of offence panchanama (Exh.24). P.W.3 – Nilesh, son of the appellant, testified that on the fateful night he alongwith his parents went to sleep in the front yard of their house. There was quarrel between the

appellant and the deceased – Amshibai. As a result of the quarrel, he woke up. He saw the appellant assaulted Amshibai with an iron *Kusa*. It is further in his evidence that having seen him, the appellant too assaulted him and tied his legs.

14. During cross-examination of this witness, it has come on record that since the day of the incident, he has been staying at the house of his maternal uncle (P.W.1). He had come to the Court to give evidence in the company of P.W.1. He was confronted with his police statement to bring on record certain omissions to the effect that his statement is silent to record that he too was assaulted. There is no evidence to indicate P.W.3 had suffered any injury.

15. P.W.4 – Rajesh and P.W.5 - Chandrasing claim to be the neighbours of the appellant. It is in their evidence that on hearing hue and cry they woke up and went to the house of the appellant. They saw wife of the appellant to have suffered head injury. The appellant confessed to have killed her. According to them, the appellant was tied and kept in one room only with a view to hand him over to the police.

16. P.W.7 – Dr. Sanjay conducted postmortem examination. He noticed following injuries on the person of Amshibai (Pg.92, 1 to 4).

- “1. *There was contuse lacerated wound 1.5 apart from right ear having size 3x2x3.5 cm. Having inverted margin.*
2. *Haematoma over frontal region of head on right side having size 4x3 cm.*
3. *Abrasion over left scapular region having size 2x2 cm.*
4. *Contuse lacerated wound over left occipito parietal region of head having size 4x3 cm. X deep.*
There was fracture over zygomatic process of right temporal bone.”

In his opinion, the deceased died of shock due to head injury.

Postmortem report is at Exhibit 36.

17. Each case has to be decided on its peculiar facts and circumstances. On facts, testimony of the sole eye witness is not relied on. The case of Karunakaran (supra) was of death sentence based on testimony of a sole witness. While in case of Ramji Surjya (supra) it has been observed that in case of sole eye witness, there has to be corroboration to sustain the conviction for charge of murder.

18. The entire incriminating evidence of the prosecution was put to the appellant to solicit his response in his examination under Section 313 of Code of Criminal Procedure. Except denying the same, he offered no explanation. He did not dispute that the deceased was in his company on the fateful night. It is not his case that his son P.W.3 - Nilesh was not with them on that night. P.W.3 - Nilesh was about twelve years of age at the relevant time. He was of the age of understanding. After demise of his mother and

the appellant to have been sent to jail, he would necessarily take shelter at the house of his maternal uncle (P.W.1). There is nothing wrong. Nothing has been adduced to indicate P.W.3 - Nilesh to have reason to speak against his father (appellant). Evidence of neighbours (P.W.4 and 6) goes a long way to infer that on hearing hue and cry they got up and went to the house of the appellant. The appellant made them extra judicial confession. The appellant had to be tied so as to detain him to hand him over to the police. Based on the evidence on record, no other inference than the appellant to have assaulted his wife with a *Kusa* and as a result thereof she died, can be drawn.

19. The question is whether it is an offence of murder or culpable homicide not amounting to murder. The evidence on record indicate the appellant had a happy married life. There was even no matrimonial bickering. The couple had returned from Gujrat just seven-eight days before the incident. They would work as sugarcane harvesters. On the fateful night, there was quarrel between them. The appellant got enraged thereby. He picked up a *Kusa* (agricultural equipment) lying nearby and assaulted on the head of Amshibai therewith. In case of ***Anbazhagan Vs. State represented by The Inspector of Police, AIR 2023 SC 3660***, it has been observed in paragraph nos. 49 and 58 as follows :-

“49. In *Jai Prakash v. State (Delhi Admin.)*, (1991) 2 SCC 32, this Court, after an exhaustive review of various decisions, more particularly, the principles laid down in case of *Virsa Singh V. State of Punjab, AIR 1958*, concluded as under:-

18. *In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simplicitor unless exception is attracted. We are concerned under clause 3rdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention is established and if the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, clause 3rdly is attracted and it would be murder, unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that clause 3rdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC.*

58. *In Hem Raj v. State (Delhi Admn.), 1990 Supp SCC 291, the accused inflicted single stab injury landing on the chest of the deceased. The occurrence admittedly had taken place on the spur of the moment and in heat of passion upon a sudden quarrel. According to the doctor the injury was sufficient in the ordinary course of nature to cause death. This Court observed as under :-*

14. *The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and*

circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither clause I nor clause III of Section 300 IPC will be attracted.

This Court while setting aside the conviction under Section 302 convicted the accused under Section 304 Part II and sentenced him to undergo rigorous imprisonment for seven years.”

20. The facts of the case before the Apex Court were that on the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

21. There is nothing to indicate the appellant to have had intended to eliminate his wife. A quarrel was ensued between him and the deceased. He

got enraged thereby. He picked up a *Kusa* from nearby and hit on the head of the deceased. There is evidence to indicate that the police picked up said article and took it to the police station without seizure. Although said article was before us to find it to be very heavy, there is nothing to indicate that it was the very article with which the deceased was assaulted. As such, it is a case that occurred in a spur of moment on a quarrel between the appellant and his wife (deceased). It is at the most a case of the appellant to have knowledge that with such a blow his wife may die. We, therefore, find it to be a case of culpable homicide not amounting to murder, punishable under Part II of the I.P.C.

22. For all the aforesaid reasons, we are inclined to partly allow the appeal. Hence, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) The order of conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code and consequential sentence of life imprisonment is hereby set aside.
- (III) He is convicted for offence punishable under Section 304 Part II of the Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for nine years and to pay fine of Rs.2,000/- (Rupees Two Thousand), in default to suffer rigorous imprisonment for two months.

(IV) The appellant is in jail since the day of his arrest. He be set at liberty forthwith, if he has already undergone the sentence.

(V) Fees of Mr. G.N. Chincholkar, learned counsel appointed through Legal Aid, is quantified to Rs.15,000/- (Rupees Fifteen Thousand).

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)