

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 656 OF 2015
WITH
INTERIM APPLICATION NO. 1516 OF 2024
IN
CRIMINAL APPEAL NO. 656 OF 2015

Dinesh Chandrakant Sutar .. Appellant
Versus
The State of Maharashtra .. Respondent

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Dr. Yug Mohit Chaudhry with Mr.Dashrath Gaikwad and
Mr.Anush Shetty for the appellant.
Mr.S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE AND
MANJUSHA DESHPANDE,JJ.
DATED : 26th JULY, 2024

JUDGMENT:- (Per BHARATI DANGRE, J)

1 On being convicted for committing murder of one of his own daughter and for attempting to murder another daughter, the appellant on being convicted, has been sentenced to undergo Rigorous Imprisonment for life for the offence punishable under Section 302 of IPC and has been sentenced to undergo Rigorous Imprisonment for 10 years on being convicted under Section 307 of the IPC.

In addition, he is also convicted for offence punishable under Section 309 of IPC and is sentenced to undergo Simple Imprisonment for one year.

The judgment dated 11/12/2014 delivered by the Addl. Sessions Judge - 3 at Satara in Sessions Case No. 138/2012, who ordered all the sentences imposed upon recording a finding of guilt against the appellant to run concurrently, has concluded that the prosecution has established the guilt of the accused beyond reasonable doubt, but its request to send him to gallows was turned down, by recording that it is not a rarest of rare case, but the acts of the accused are the result of the mounting frustration.

2 We have heard Dr.Yug Mohit Choudhry for the appellant, in support of the challenge to the judgment dated 11/12/2014 and Mr.Chaudhry has submitted before us that upon the incident having taken place, the accused was arrested on 15/7/2012 and has already undergone more than 10 years of the sentence imposed.

Drawing our attention to the circumstances which have surfaced on record through the prosecution witnesses, Dr. Chaudhry would submit that the present appellant is an individual whose life is marred by unfortunate circumstances and eventualities, which made him face situation of despair, when in the wake of his quarrel with his wife/informant, in a weak

moment, he decided to kill himself and both his daughters aged 8 and 4 years respectively, as a flick response to the desperation which he faced when his wife threatened him to take away his daughters from him.

Dr.Chaudhry has therefore, earnestly pleaded before us that the appellant was so embroiled in the unfortunate circumstances in his life that left him with no choice, and he decided even to kill himself, but survived to face the charge of attempting to murder and murdering his own daughters.

3 The prosecution case which has surfaced before the trial Judge through its witnesses, reveal that the marriage of the informant – PW 1, was solemnized with the appellant on 30/11/2003 and they continued to reside at Wadhe, Taluka Satara. Two daughters were born out of the said wedlock, Samriddhi and Samiksha, aged 8 and 4 respectively.

From the version of PW 1, it is brought on record that the appellant was addicted to liquor and borrowed loan by keeping his wife in dark. His entire income was spent either for buying liquor for consumption or in repaying the loan, and his meager income was insufficient to clear the loans. Not only this, the appellant was also suspecting her character and often used to threaten her that he would commit suicide and even kill his two daughters. In February 2012, he sprinkled kerosene on his person and tried to set himself ablaze, but it is his wife who

pleaded with him and prevented him from taking this extreme step.

According to the deposition of his wife, he used to frequently indulge himself into a threat of taking his life with a knife pointing out towards himself and he was also in a habit of threatening, that he will do his daughters to death.

In one of such incident, which was not in that way unusual, on 17/7/2012, at 9.00 p.m, quarrel ensued between the couple, and therefore, the next day, PW 1 called her mother, when the appellant was also present in the house along with his brother. When she disclosed her decision to accompany her mother to her house along with the daughters, he desperately prevented her from taking the daughters and therefore, she accompanied her mother, all alone.

On reaching Pune, the appellant often made phone calls threatening her that she should resume cohabitation, or he would commit suicide and kill his daughters and even eliminate her. On 19/6/2012, he came to the parental house of the informant, but she refused to accompany him and therefore, once again, in his usual stride, he threatened to commit suicide and kill his daughters, which resulted in lodging of N.C. report at Satara Taluka police station on 21/6/2012.

4 On 22/6/2012, when the informant went to Satara police station, in order to claim custody of her daughters, she

gained knowledge from one Dattaram Nalavade of Dnyandev Academy that her husband and her daughters were found in an unconscious condition as her husband had administered poison to both his daughters and attempted to commit suicide.

Upon being informed, she filed a complaint (Exhibit 22) and went with her relatives to see the daughters at Sanjeevani Hospital. Prior to this, her brother-in-law kept her updated about the health status of his daughters and was informed that they are in good condition, and after they are treated, their custody shall be handed over to her.

On 9/7/2012, the younger daughter daughter passed away.

5 It is at the instance of PW 1 Anuradha, the offence was registered under Section 302, 307, 309 of the IPC and the Investigating Officer prepared the spot panchnama and seized the ice-cream packs from the incident and some liquid substance in the bottles. The Investigating Officer recorded the statement of witnesses and on its completion, filed the charge-sheet.

6 In support of the prosecution case, in addition to Anurdha, wife of Anuradha, her sister also stepped into the witness box (PW 2), who corroborated her on his attitude and conduct, and also about the differences which the couple shared.

PW 2 also deposed that the appellant used to suspect her sister who was making both ends meet by conducting tuition classes.

She is also aware of the phone call received from the appellant, informing her sister that he had administered poison to her daughters through ice-cream and he had himself consumed the poison.

According to PW 2, the daughters of her sister spoke to her and disclosed to her that her that appellant had given ice-cream to them which was bitter in taste, and after consuming it, they started vomiting.

7 The elder daughter Samriddhi who survived in the incident of poisoning, is examined as Witness no.3 and she has narrated before the Court that her father was engaged in carpentry work and she was studying in a school, whereas her sister Samiksha used to attend pre-school.

She categorically deposed that her father used to beat her mother upon consuming liquor and thereafter, her mother started residing at Pune.

While they were residing at Wade, their father disclosed that he would get ice-cream and they accompanied him to an agricultural field belonging to them and he sprinkled something from the bottle over the ice-cream, which they consumed and started vomiting.

According to PW 3, her father had also consumed the substance in the bottle and Samiksha passed away.

8 The two panchas examined by the prosecution i.e PW 4 and PW 5 upon seizure of bottles and clothes, are declared hostile and have been cross-examined.

 Similarly, PW 6 and 7, the spot panchnama have also failed to support the case of the prosecution and have been declared hostile. Another witness on the production of one book at Sanjeevani Hospital and the panch on handwriting samples has also turned hostile.

9 PW 13, the brother of the appellant, is also declared hostile as he failed to support the case of the prosecution by stating that there was no quarrel between Dinesh, the appellant, and his wife and they never resided separately from one another, but on account of some bickering, she went to Pune and the daughters continued to reside with his brother.

 He has deposed that when he was called by his brother to the field, as he was feeling uneasy, he found his brother and the girls in dizzy state and therefore, he carried them to Sanjeevani Hospital, where they received treatment. While facing the cross-examination by Advocate for the accused, he faintly suggested that on 18/6/2012, mother-in-law of the appellant had visited their house and she was insisting that his brother should come to Pune and start residing there and he suggested that it is the mother-in-law of appellant and Nanda Sutar, aunt of his wife who had bought ice-cream, which was kept in the common fridge

shared by him. He also attempted to suggest that Anuradha had an affair prior to her marriage with his brother, and she used to talk to the person over phone and she herself had told about her love affair.

10 PW 14 is the Investigating Officer, who has exhibited the seizure panchnama as regards seizure of article nos.3 and 4, the ice-cream packs and Samsung Mobile which was found on the spot.

He also deposed about the medical certificate which he obtained from Sanjeevani Hospital as well as the post mortem report. In the cross-examination, the Investigating Officer has cleared that the distance of the accused house from the spot is approximately 4 to 5 kms and the accused took the girls to the agricultural field on his motor bike though the vehicle was not seized from the spot, but it was found lying nearby. He did not make any inquiry with the neighboring agricultural labourers since he did not find anybody in the adjoining field nor any person had witnessed the incident.

11 Dr.Umesh Patil, Medical Officer at Civil Hospital, Satara, is examined as PW 8, who had conducted post mortem of Samiksha and found no external injury on her body but opined the cause of her death to be “death due to Poison”, and issued the final cause of death as “Death due to Organo Phosphorous poison”.

12 Dr.Umesh Deshmukh, at Sanjeevani Hospital who received the appellant along with his two daughters in his hospital on 21/6/2012 at about 10.30 p.m, and on examination, found symptoms of poisoning is examined as PW 11. He examined the blood samples of the patients and noticed the contents of poison.

Samiksha Sutar died on 9/7/2012, whereas the other daughter and the appellant responded to the treatment and therefore, they were discharged on 4/7/2012 is his version.

In the cross-examination, he has admitted that he treated the patients on the basis of symptoms which featured through various tests conducted on them and he categorically admit that it was a case of strong poisoning and this he could say on the basis of the symptoms i.e. vomiting, giddiness, etc.

PW 12, another Medical Officer who issued the certificate is also examined by the prosecution and though he had not treated the patient, Samiksha, he had signed the certificates.

13 On appreciation of the entire evidence brought on record by the prosecution, accepting its case that the appellant administered poison to his daughters which resulted in the death of younger one, the Sessions Judge found him guilty of offence punishable under Section 302 and for administering poison to the elder daughter, knowing well that it would cause her death, he was found guilty of Section 307 of IPC.

14 On appreciating the evidence of PW 1 and PW 2, who have categorically referred to the behaviour of the appellant, it can be concluded that he was addicted to liquor, was indebted and under pressure, since his wife went to reside at her parental house, and he was also apprehensive that she would take the daughters away from him.

PW 1 and PW 2, in sync, had spoken about his previous attempts to kill himself and the threats given to kill his daughters. His behaviour was of a rattled human being, who blamed himself for the failure in his life, may be on account of the fact that he was addicted to liquor and was unable to take care of his family.

In this moment of rage and anguish, when he spoke to Anuradha, his wife on the telephone, he threatened that he is going to kill himself and his daughters and acted accordingly, as he consumed poison and also administered poison to both his daughters.

The liquid in the bottles which was seized from the spot was found in the stomach of the younger daughter and in fact, the doctors treating her, specifically deposed that all the three patients suffered from symptoms of poisoning and he had accordingly, administered treatment and two of the patients responded to the treatment and were discharged, but Samiksha could not be saved and she succumbed on 9/7/2012, on account

of presence of Organo Phosphorous poison being administered to her.

15 Though a motivational speaker may say 'Every bad situation will have something positive' in case of the appellant, it was not so. The entire incident can be described as highly unfortunate, but one thing is clear that the appellant had no intention to kill his daughter, though he had the knowledge that on administering poison, they may either suffer death or suffer such bodily injury which is likely to cause death.

In fact, he had every intention to even put end to his life as the survivor Samruddhi Sutar PW 3, had deposed that even her father consumed the same liquid from the bottle.

Losing his own young daughter definitely has left him in everlasting pain, as any other father would suffer on loss of his own child and he is more vulnerable since he is responsible for the death.

16 Considering the totality of the circumstances, since the appellant is arrested since 15/7/2012, according to us, we deem it appropriate to acquit him for the offence punishable under Section 302 IPC and instead classify his act under Part II of Section 304, and on finding him guilty, direct that he shall undergo sentence of imprisonment of 10 years on the said count. Since the appellant has already undergone the sentence of 10 years, by setting aside the conviction under Section 302, the Appeal is allowed.

We direct that the appellant shall be set at liberty forthwith, if not required to be detained in any other case.

We however, uphold his conviction under section 307 of the IPC and 309 of the IPC.

In view of the disposal of Criminal Appeal, pending Interim Application No.1516/2024 stand disposed off.

(MANJUSHA DESHPANDE,J)

(SMT. BHARATI DANGRE, J.)