
(2021) 09 BOM CK 0029

Bombay High Court

Case No: Criminal Appeal No.667 Of 2016 With Interim Application No.1829 Of 2021

Sanjay Vishwas Kengar

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: Sept. 17, 2021

Acts Referred:

- Indian Penal Code, 1860 - Section 302
- Code Of Criminal Procedure, 1973 - Section 313
- Evidence Act, 1872 - Section 106

Hon'ble Judges: Sadhana S. Jadhav, J; Sarang V. Kotwal, J

Bench: Division Bench

Advocate: Ashish Satpute, Arfan Sait

Final Decision: Dismissed

Judgement

Sarang V. Kotwal, J

1. The appellant has preferred this appeal against the judgment and order dated 15th July 2015 passed by the Additional Sessions Judge " 2,

Kolhapur in Sessions Case No.121 of 2014. By the impugned judgment and order, the appellant was convicted for commission of offence punishable

under section 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- and in default to suffer RI

for three months.

2. The prosecution case is that on 14th June 2014 before 6.00 am, the appellant committed murder of his wife Aarti in their matrimonial house at

Kolhapur by giving a blow with a heavy stone block used for grinding spices because he was suspecting her character.

3. Heard Mr. Satpute, learned counsel for the appellant and Mr. Arfan Sait, learned APP for the Respondent " State. The prosecution case is based

on circumstantial evidence as there are no eyewitnesses to the actual incident when the appellant had allegedly given the fatal blow. The prosecution,

in its support, examined 20 witnesses. The defence of the appellant was of total denial. He has not examined any witness in his support. Besides 20

witnesses examined in the Court, the prosecution has introduced important documents viz. FIR, Panchanama, Post-mortem notes, etc. through these

witnesses.

Prosecution Evidence

4. The prosecution evidence can be categorised and summarised as under :-

1] Relatives of the deceased Aarti who spoke about the motive and the events on that particular day.

(i) In this regard, the prosecution has examined P.W. 2 " Suman Hattikate. P.W.2 is mother of the deceased. She has stated that her daughter Aarti

was married with the appellant 12 to 13 years prior to the date of incident. The deceased was residing with the appellant, his father and sister at

Kolhapur. P.W.2's other daughter Shital was residing at Shastrinagar in Kolhapur. P.W.2 has stated that Aarti was treated properly by the

appellant for about 4 years. But thereafter, he started suspecting her character and on that count, started assaulting her. Aarti had disclosed this to

P.W.2. This witness had tried to make the appellant see reason and behave properly with Aarti. But the situation did not improve. About 7 to 8 months

prior to the incident, the appellant had assaulted Aarti and therefore, this witness had taken Aarti to Satara with her. Aarti stayed there for that entire

period. Appellant's mother came to Satara and convinced them that Aarti would be treated properly and therefore, Aarti came back for

cohabitation with the appellant about 15 days before the date of the incident. P.W.2 had come to the house of her other daughter Shital at Kolhapur on

13th June 2014. In the evening, she had gone to the matrimonial house of the appellant and her daughter Aarti. At that time, Aarti complained to her

that the appellant was harassing her even more and on the previous day he had tried to throttle her. She informed P.W.2 that she was not willing to

stay with the appellant. P.W.2 tried to pacify her and promised to take her back to the parental house on the next date. However, on the next date i.e.

on 14th June 2014 in the morning P.W.2 got a message that the appellant had assaulted Aarti with a heavy stone block on her head. P.W.2

immediately rushed to their house and found Aarti lying in a pool of blood. The appellant was not seen anywhere. P.W.2 then went to Rajarampuri

Police Station and lodged FIR. The FIR is produced on record at Exhibit 14.

In her cross-examination, P.W.2 clarified that she received the information at about 6.00 am and she reached the appellant's house at about 6.15

am. She went to the Police Station at about 6.30 am. P.W.2 admitted that she was unable to tell the exact day and date when Aarti had disclosed to

her about ill-treatment suffered by her at the hands of the appellant for the first time. According to this witness, the appellant was doing centering

work. The appellant and Aarti had two sons. She denied the suggestion that Aarti was not interested in cohabiting with the appellant, she was not

getting divorce from the appellant and therefore, out of frustration she committed suicide. Her deposition was quite consistent with her FIR which was

immediately lodged at 7.00 am on 14th June 2014 vide C.R.No.114/2014 at Rajarampuri Police Station.

(ii) P.W.6 " Shital Kamble was sister of the deceased. She was residing in Kolhapur. P.W.2 was staying with her when P.W.6's brother

Deepak informed them about the incident through a call on mobile phone at 6.00 am. This witness accompanied P.W.2 to the spot of incident. Rest of

her evidence is on the similar lines of those of P.W.2. The cross-examination was also on similar lines and nothing much was elicited favouring the

defence.

II] Neighbours :-

The most important witness in this context is P.W.5- Renuka Karade. She was residing on the first floor of the building. The deceased along with the

appellant was residing on the ground floor. She deposed that the couple was residing with their two sons and the appellant's mother. She has

stated that on some occasions, the appellant used to consume alcohol. She has narrated that because of the quarrel the deceased had gone to reside at

Satara with her parents and had come back to Kolhapur about a month prior to the incident and after that their relations were good. On 14th June

2014, she had gone to the house of the appellant and had enquired with the deceased Aarti as to whether there was water supply from the

Corporation's pipelines. This witness used to fetch water from a water tap at the ground floor which was located behind the house of the

appellant. Aarti had told her that water was not available till that time. After sometime, when there was water supply, this witness came down. She

saw that the appellant was moving around that place. The appellant's mother was washing utensils in front of their door. This witness has deposed

that the appellant's sister shouted loudly that the appellant had assaulted Aarti with a grinding stone block on her head and had run away. This

witness rushed inside the house of the appellant and saw Aarti lying in a pool of blood. She saw the grinding stone block nearby. The appellant's

mother came inside and asked others to take Aarti to Hospital but Aarti had died on the spot.

In her cross-examination, this witness has stated that she had a conversation with Aarti at about 4.45 am. Aarti's relations with the appellant and

his mother were good after Aarti had returned from her parents' house. She has stated that, on one occasion, she had seen quarrel between the

couple. She has further stated in the cross-examination that she had seen the appellant wandering in the area at about 5.45 pm and at that time, he

was wearing black pant and white half shirt. Water was available at about 5.15 am. She denied the suggestion that the appellant's sister Geeta

was not present on the date of incident and that Geeta had not shouted about the appellant assaulting Aarti. In her police statement she had not

mentioned about the water tap being located behind the house of the appellant.

III] Hostile witnesses and Relatives of the appellant-

(i) P.W. 4 -" Sunita Dabhade was one of the neighbours. She deposed that prior to 15 days of the incident, the deceased had come to stay at

Kolhapur for 4 days and before that she was residing with her parents for about 7 to 8 months. She has deposed that at about 6.00 am on 14th June

2014 she heard some shouts from the house of the appellant. She went there. She saw Aarti was lying in a pool of blood and the grinding stone block

was lying nearby. She has also deposed that Geeta i.e. the appellant's sister was present there. She tried to bring rickshaw but Aarti had already

died. She denied the suggestion that the appellant's mother Laxmibai was shouting that the appellant had assaulted the deceased and had run

away. As she did not support the prosecution case on this issue she was declared hostile. She denied having stated before the police about Laxmibai

i.e. the appellant's mother shouting that the appellant had assaulted the deceased. This particular portion from her statement was shown to her

and it was ultimately proved to the Investigating Officer vide Exh.48.

(ii) P.W. 7 -" Anil Kasture had a grocery shop in the same area of the appellant's house. He had opened his shop at about 4.45 am for selling

milk. He has deposed that, at about 5.00 am, the appellant had been to his shop to buy cigarette but he has denied any knowledge about the incident

and he was declared hostile. This witness is not of much importance as, in any case, he did not have any knowledge about the incident and he had not

seen or heard anything of special significance.

(iii) P.W. 9 -Laxmibai Vishwas Kengar is the appellant's mother. She has deposed that the appellant was doing some work using silver and also

was a mason. According to her, there was no problem between the couple but she has admitted that Aarti was residing with her mother for about 9

months at Satara and that Aarti had left the appellant's house against their wish. She denied the suggestion that the appellant was suspecting her

character. She stated that, on the previous day of the incident, nobody had visited their house from Aarti's side. On the day of incident, the

appellant, this witness, Aarti and Aarti's two sons were residing together. She stated that on the day of incident, she had gone to collect garbage

and when she returned, she saw that Aarti was lying on the bed. She denied that the police had recorded her statement or that she had stated before

the police that the appellant had assaulted Aarti with a stone and that she had shouted loudly. On that denial, this witness was declared hostile. She

was confronted with her police statement and in particular, the portions marked "A" and "B" from her statement which were contrary to

her deposition. She denied those suggestions but those portions were proved through the evidence of the Investigating Officer and were marked at

Exh.49.

(iv) P.W. 14 Joti Deepak Patkar is the sister of the appellant. She denied being present in the appellant's house at the time of the incident. She

was declared hostile. She was confronted with her statements marked as "A" and "B". In those portions, she has spoken about the incident

and about her own shouts mentioning that the appellant had assaulted the deceased. However, she denied having stated those portions but they were

exhibited through the evidence of the Investigating Officer and were marked at Exh.54.

(v) P.W.15 Yash Kengar is 12 year old son of the deceased and the appellant. His evidence was recorded on 4th June 2015. That means at the

time of incident, he was 11 years of age. He has not supported the prosecution case. He has deposed that the appellant was treating the deceased

properly and the deceased herself was not behaving properly. At the time of incident, he was sleeping and when he woke up, the deceased was

already lying with bleeding injury. He was also confronted with certain portions of his statement in which he had implicated the appellant. In fact,

these portions which are exhibited through the Investigating Officer at Exh.50 indicate that he was an eyewitness to the actual incident.

IV] Various Panchas -

(i) P.W.1 "Ajit Majgaonkar was a pancha to the inquest panchanama which was conducted between 7.15 am to 8.45 am. The panchanama is produced at Exh.9/C.

(ii) P.W.3 "Imran Gadkari was a pancha for the spot panchanama which is produced at Exh.16/C. It was conducted between 8.55 am to 10.15 am on 14th June 2014. The spot panchanama makes a reference to the murder weapon i.e. the grinding stone block having blood stains, broken bangles pieces and pool of blood.

(iii) P.W.8 "Pradip Baranje was a pancha in whose presence clothes of the appellant were seized at the police station. The panchanama was produced on record at Exh.27/C. It was conducted between 4.25 pm to 5.35 pm on 15th June 2014.

(iv) P.W.13 "Shyam Jadhav was a pancha in whose presence the clothes of the deceased were seized.

(v) P.W.11 " was a photographer who had taken photographs of the dead body of the deceased.

V] Important witnesses on the conduct of the appellant -

~, P.W.10 "Malutai Korane is an important witness in the context of the case. Malutai was a relative of the appellant. She has deposed that, on

14th June 2014, the appellant had come to her house under the influence of alcohol. He told her that he had come from Gangapur by walking from

house of his maternal aunt. This witness gave him dinner. He slept in her house. He left her house without informing her in the morning. In her cross-

examination, she has stated that the police had not recorded her statement. She denied other suggestions.

VI] Medical Evidence -

P.W.12 " Dr. Gurunath Dalvi conducted post-mortem examination. The post-mortem notes are produced on record at Exh.35/C. The deceased had

suffered the following injuries:-

(i) CLW of 3 x 3 x 1 cm over left ear at lower angle of ear;

(ii) Contusion of 6 x 4 cm over right temporo-parietal region of scalp;

"The cause of death was mentioned as head injury."

P.W.12 " Dr. Gurunath Dalvi has deposed that the injuries were possible by the stone block and that they were possible because of one stroke. He

admitted that the injuries were possible because of use of Article 3 i.e. stone block which was produced. He has accepted in the cross-examination

that the injury no.1 was possible due to fall because of giddiness and that injury was possible in the case of suicide.

VII] Police witness conducting investigation-

(i) P.W.16 " PSO Vijay Ghatge was on duty at the police station. He has deposed that the appellant's mother came to Rajarampuri Police

Station at 6.20 am and stated that the appellant had given a blow with stone block on the head of the deceased and had absconded. He had taken a

station diary entry to that effect. He sent PSI Badiwale and others to the spot. At about 6.30 am, P.W.2 and P.W.6 had come to the police station to

lodge the FIR. He had recorded the FIR and had made an entry in the station diary. He has produced the station diary entry recording the information

given by the appellant's mother Laxmibai at 6.20 am. The entry is produced at Exh.43/C.

(ii) P.W.17 " Police Constable " Audumbar Kore had carried the articles to the C.A. Laboratory.

(iii) P.W.18- Bajrang Badiwale conducted initial part of the investigation. Under his supervision the inquest panchanama and the spot panchanama

were prepared. The photographs were also taken.

(iv) P.W.19- P.S.I. - Sharad Mali had recorded the statements of various witnesses and he has proved the contradictions from the statements of

various witnesses who were declared hostile as mentioned earlier.

(v) P.W.20- Police Naik "Avinash Gavade had produced a N.C dated 16th October 2012 lodged by the deceased against the appellant about the

abuses and assault suffered by the deceased at the hands of the appellant on 16th October 2012. The entry of this N.C. is produced on record at

Exh.61/C.

Besides this evidence, C.A. report produced on record shows that full pant seized from the appellant showed presence of blood of "O" group on

left leg, front and back lower portion of the pant. The blood group of the deceased was found to be "O". The appellant's own blood group

was not found as the samples were unsuitable for grouping. This in short, is the prosecution evidence.

As mentioned earlier, the defence of the appellant was of total denial. He has not taken up any specific defence. In his statement under section 313 of

Cr.P.C., he has stated that on the day of incident, he was not present in the house and a false case was filed against him. He stated that the deceased

was denied divorce and therefore, she had threatened to commit suicide.

SUBMISSIONS

5. Mr. Ashish Satpute, learned counsel for the appellant submitted that it is the case based purely on circumstantial evidence and the chain is not

complete. None of the circumstances by itself is proved by the prosecution beyond reasonable doubt. The motive is not established. In the examination

under section 313 of Cr.P.C. the relevant questions regarding evidence against the appellant are not put to him. The appellant was not seen in the

company of the deceased prior to the incident. The evidence about the appellant moving around outside the house is not incriminating because it was

his own house and it was not unnatural that the witness had seen him outside his house. Most of the witnesses have turned hostile.

6. On the other hand, learned A.P.P. Mr. Arfan Sait submitted that, though many of the witnesses have turned hostile, they were the relatives and

neighbours of the appellant. Therefore, the appellant cannot derive benefit of these witnesses not supporting the prosecution. There were several

circumstances against the appellant which formed a complete chain. The appellant was not in his house on 14 th June 2014. That, by itself is

incriminating. No explanation is offered by him. If he was present and if he had not committed offence, the natural conduct for him, would have been

to take the deceased to the Hospital or to inform the Police. The motive is sufficiently established. The suggestion that it was a case of suicide is not

acceptable as it is clearly a case of homicidal death as is revealed from the medical evidence. The appellant has not discharged the burden on him to

establish his defence which was strictly within his knowledge as per section 106 of the Indian Evidence Act.

REASONING

7. We have considered these submissions. Following are the circumstances against the present appellant :-

(i) Motive;

(ii) Assault has taken place inside the matrimonial house of the appellant/ deceased;

(iii) The incident had occurred at early hours inside the house;

(iv) The appellant did not turn up in his house throughout the day but he stayed in his relative's place;

(v) The blood stains on his pant.

8. As far as motive is concerned, the evidence of the mother and sister of the deceased i.e. P.W. 2 and P.W.6 is clear enough. Not only these

witnesses but even the other witnesses who have turned hostile have admitted that the deceased has come to reside with the appellant only 15 to 30

days before the incident and before that she was residing with her parents for about 7 to 8 months. This, thus, shows that their relations were not

cordial. Apart from that, the prosecution has brought on record the record of N.C. complaint which was lodged by the deceased herself against the

appellant. Thus, the prosecution has proved beyond reasonable doubt that the relations between the appellant and the deceased were not good and that

there is no reason to discard the evidence of the mother of the deceased that the appellant was suspecting character of the deceased.

9. The defence had tried to suggest through evidence of appellant's mother that P.W.2 was not present on the previous day however, the FIR

was lodged by P.W.2 immediately after the incident at about 6.45 am in the morning. Therefore, P.W.2's presence in Kolhapur on the previous

day and also on the date of incident cannot be doubted. Thus, this particular circumstance is also proved beyond reasonable doubt.

10. The informant was seen around his house at the time of incident by P.W.5 "Renuka Karade. She was the one who had immediately entered

the house on hearing shouts. She had seen the deceased lying in the pool of blood. This witness had met the deceased at 4.45 am. Both of them were

waiting for supply of water. At 5.45 am she had seen the accused outside the house. The incident occurred around that time when she heard the

shouts. P.W.5 is a natural witness and she had given sufficiently reliable evidence against the appellant.

11. The deceased was found lying in a pool of blood in their matrimonial house. Their sons were sleeping in the house. The appellant's mother

was washing utensils outside the house as per the version of P.W.5 "Renuka Karade. Therefore, the burden was on the appellant himself to

explain about the incident because the deceased was residing in the matrimonial house. The incident took place inside the house. The appellant had not

gone for his work. The incident had occurred at early hours when the appellant was expected to be in his house. The deceased had expressed

apprehension against the appellant on the previous day itself. The appellant had failed to discharge his burden under section 106 of Indian Evidence

Act. Though the mother, sister, son and neighbour of the appellant have turned hostile, evidence shows that Laxmibai "mother of the appellant had

immediately visited the police station and had informed about the incident. Though the contents of the information are not admissible as she has not

deposed about them, the fact that she had gone to the police station and that the information was taken down in the station diary stands proved.

Subsequently, she had denied having gone to police station is a circumstance which shows that this witness Laxmibai is trying to help her son. The fact

that she had gone to the police station to give some complaint can be taken into consideration.

12. The subsequent conduct of the appellant is also incriminating in that context. Evidence of P.W.10 "Malutai Korane is important. As mentioned

earlier, she has stated that on 14th June 2014 the appellant had gone to her house in Kolhapur itself under influence of liquor. He had stayed there,

slept there and had left without telling her. No explanation is offered as to why he has not gone to his own house which was in Kolhapur itself.

13. The pant of the appellant was seized in presence of panchas. It was sent for C.A. examination. The C.A. report shows that it had blood stains of

"O" group. The blood group of the deceased was also "O". There is not much cross-examination on this aspect. No explanation is offered by

the appellant and hence, it is also an incriminating piece of circumstance.

14. The medical evidence also shows that the deceased had suffered injuries on the head as mentioned earlier. The cause of death was "head

injury." Looking at the nature of injuries, it is quite clear that it can only be homicidal death. There is no substance in the submissions that it could be

a case of suicide.

15. Considering all these circumstances together, we are satisfied that the prosecution has proved each of the circumstances beyond reasonable

doubt. They formed a complete chain against the present appellant and therefore, we are satisfied that the appellant has committed this offence.

16. Based on this discussion, we do not find merit in this appeal. The Appeal is dismissed.

17. Before parting with this judgment, we record our appreciation of the efforts put in by both the learned counsel Mr.Ashish Satpute and Mr. Arfan

Sait, learned APP. Shri. Ashish Satpute be paid fees for working out this appeal as per Rules.