

PETITIONER:
SHIVAJI DAYANU PATIL

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT 12/07/1989

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
NATRAJAN, S. (J)

CITATION:
1989 AIR 1762 1989 SCR (3) 400
1989 SCC Supl. (1) 758 JT 1989 (3) 166
1989 SCALE (2) 66

ACT:

Indian Penal Code, 1860: Section 302--Murder--Accused acquitted by trial court--High Court reversed acquittal order--Held wife's conduct in not naming assailant highly improbable and unnatural--Accused entitled to benefit of doubt--Acquitted.

HEADNOTE:

The appellant was charged under Section 302 I.P.C. for committing the murder of the deceased. At the trial, prosecution produced P.W.3, wife of the deceased, and P.Ws.10, 11 and 12, all eye witnesses. Except for P.W.3, all other eye witnesses were declared hostile. Thus, the prosecution depended on the sole testimony of P.W.3.

P.W.3 deposed that she saw the appellant hitting her husband with a stick. But admittedly, she did not disclose the name of the appellant to anybody including the Police. The doctor, who came to the house of the deceased little later, examined and treated the deceased and removed him to the hospital deposed that he was told by the mother of the deceased that the family did not suspect anybody. Another witness who was passing by the scene of occurrence also testified that nobody informed him about the appellant or any other person, who injured the deceased.

The Additional Sessions Judge acquitted the appellant. But, on appeal, the High Court, set aside the acquittal order, and convicted and sentenced the appellant to imprisonment for life. Hence, the appeal by the accused. Allowing the appeal, this Court,

HELD: The conduct of the deceased's wife was highly unnatural. A wife, who has seen an assailant giving fatal blows with a stick to her husband, would name the assailant to all present and to the police at an earliest opportunity. There is nothing in the evidence to justify this highly unnatural and improbable conduct of the deceased's wife. Even her statement recorded by police head constable, is entirely different than what she stated at the trial. The prosecution has, thus, not

401

been able to prove its case against the appellant beyond reasonable doubt. [404F-G]

Therefore, the appellant is given benefit of doubt, the judgment of the High Court is set aside, and the appellant is acquitted of the charge under section 302, IPC. [404H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 75 of 1979.

From the Judgment and Order dated 6.2. 1976 of the Bombay High Court in Criminal Appeal No. 636 of 1973.

Raghunath Singh (Amicus Curiae) for the Appellant.

A.S. Bhasme and A.M. Khanwilkar for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The appellant, Shivaji Patil was acquitted by the Additional Sessions Judge, Kolhapur of the charge under Section 302, Indian Penal Code for committing murder of one Tulashiram Sutar, but on appeal the High Court by its judgment dated February 6, 1976 set aside the order of acquittal and convicted him under section 302 of the Indian Penal Code and sentenced him to imprisonment for life.

The house of deceased Tulashiram in Village Rashivade adjoins the temple of Shri Ambabai and in front of the temple, there is open place. The deceased along with his wife Parvatibai, two children and parents was living in the house. Cousin brothers of the deceased and their mother were living in the adjoining house.

Vyanku Sutar belonging to the brother-hood of deceased was also living in the same village. The deceased had illicit relation with Vyanku's wife Akkatai. Parvatibai claimed to have caught them in the sex-act in sugarcane fields. The accused Shivaji and Vyanku were friends.

On January 30, 1972 at about 7 or 7.30 P.M. Tulashiram returned to the house after performing his role described as "Sasankathi" in the festival of "Mahi Poornima". In the house Parvatibai, her mother-in-law Tanubai, her husband's sister Malutai, 402

and her husband's cousin brother's wife Shalubai, were present. The male members, namely, deceased's father Pandurang Sutar, his brother Soundappa and servant named Shama had gone to another village called Kote. Tulashiram asked his mother Tanubai to prepare tea and thereafter he went out and sat on the foot-steps of the temple at a distance of about 15 to 20 feet from the house.

What followed can best be reproduced in words of Parvatibai as P.W. 3 at the trial:

"After the tea was ready, I started going out of the house to call for my husband, when I went to the front door of my house, I saw the accused Shivaji hitting my husband with a stick on his head and running away. I saw him running in the direction of the by lane. I saw my husband falling down from the steps and lying on the ground near the "Deepmal". I saw him rubbing his feet on the ground in agony and blood was coming from the injury on his head. I could see this in the light of the tube-light. I went near my husband and started calling him. He could not speak. Hence, I raise a hue and cry and my mother-in-law and sister-in-law Malubai and Shalibai and Vishnu Patil came there. I did not see anybody else nearby then as I was busy attending to my

husband.

My husband had become unconscious due to the head injuries and froth had come out of his mouth. Myself, Vishnu Patil and sister-in-law bodily lifted my husband and took him to the house Somebody went and brought a local doctor named Jayant Patil. The doctor came there, examined and treated my husband and advised him to be removed to his dispensary. My husband was accordingly taken there, but I did not go, as my small children were crying and I was prevented from going there. My children had frightened. In the morning next day, I came to know that my husband was removed to C.P.R. Hospital at Kolhapur. Hence in the morning, myself my mother-in-law and others went to Kolhapur by Yelavade-Kolhapur Bus reaching there at about 8.30 A.M. When we reached the C.P.R. Hospital my brother-in-law came there crying saying that my husband had overnight succumbed to his injuries. Hence myself and my mother-in-law started crying and shouting. Hence some villagers brought a taxi, we were

403

asked to sit in the taxi and we were taken to Rashivade even without showing the dead-body to us. We reached Rashivade at about 11 A.M. After reaching home, we were crying in agony and our house became full with females and I did not notice who others had come there."

Vishnu Patil deposed that he was returning from his sugarcane crushing site and while passing by the temple he found deceased Tulashiram lying injured in front of the steps of the temple and his wife was crying nearby. At a distance of about 5 or 6 feet from there, he saw Nana Patil and asked him what was the matter. Nana Patil replied that he did not know anything. Vishnu Patil asked Nana Patil to call the doctor. Dr. Jaywant Patil a private practitioner reached the house of the deceased and on his advice the deceased was removed to the dispensary. When for two hours, Tulashiram did not regain consciousness, Dr. Patil at about 11/12 P.M. took him to the hospital at Kolhapur in his own car. Dr. Patil at the trial stated that Tanubai said to him and also gave in writing (Ex. 26) to the effect that she had no complaint against anybody.

The prosecution produced P.W. 3 Parvatibai, P.W. 9 Krishan Wadkar, P.W. 10 Shankar Patil, P.W. 11 Krishna Sadashiv Patil and P.W. 12 Nanu Patil, all eye witnesses. Except P.W. 3 Parvatibai all other eye witnesses were declared hostile. The prosecution case, thus, hinges on the sole testimony of Parvatibai.

Parvatibai has deposed that she saw on the evening of January 30, 1972, Shivaji Patil hitting her husband with a stick. Admittedly her mother-in-law, her two sisters-in-law and Shivaji Patil came present on the spot immediately thereafter. Parvatibai did not disclose the name of the assailant to them or to anybody else. Rather Dr. Patil who came to the house little later was told by Tanubai that the family did not suspect anybody. Vishnu Patil stated at the trial that nobody informed him about the accused or any other person who gave injuries to the deceased.

The Police Patil in his report dated 31.1.1972 stated that at 10.30 A.M. on that day he went to the house of deceased. The father of the deceased, an uncle and a distant

relation were present in the house. The Police Patil asked them about the incident. They replied that they had no knowledge about the incident as they were not present in the house at the time of occurrence. The Police Patil further says that while he was present in the house a taxi came from Kolhapur and the

404

mother and wife of Tulashiram deceased got down from the taxi. The Police Patil questioned the ladies as to how Tulashiram was injured. The ladies were not prepared to talk and no information regarding the alleged occurrence was given to him. He made further enquiries from other people but nobody gave him any information regarding the assailants. On the basis of the Police Patil's report a case was registered at police station Rachanagari wherein it was mentioned that the cause of death of Tulashiram was not known.

Head constable B.S. Patharvat sent a complaint on 1st of February, 1972 wherein he stated that he came to know about the incident on the morning of 31st of January, 1972 and he went to the house of Tulashiram at about 10/11 A.M. and asked the in-mates about the occurrence but nobody gave him any information. He again went to the house of Tulashiram deceased on 1st of February, 1972 and recorded the statement of Parvatibai. She stated that when she came to the front door she saw Shivaji Patil running with a stick from near about her husband. She said that the relations between her husband and Vyanku were not good and Shivaji Patil and Nana Patil were friends of Vyanku Sutar. She further stated that Vyanku Sutar, Shivaji Patil and Nana Patil made company and assaulted her husband. On the basis of the statement of Parvatibai the head constable sent the complaint for registering the case against Vyanku Sutar, Shivaji Patil and Nana Patil under sections 302/34, IPC, though ultimately charge was filed by police only against Shivaji Patil.

The question for consideration is as to why was Parvatibai mum from 30.1.1972 to 1.2. 1972? The High Court felt satisfied by saying that she was in a dazed mood. We do not agree with the High Court. Parvatibai's conduct was highly unnatural. A wife, who has seen an assailant giving fatal blows with a stick to her husband, would name the assailant to all present and to the police at an earliest opportunity. There is nothing in the evidence to justify this highly unnatural and improbable conduct of Parvatibai. Even on 1.2. 1972 the statement of Parvatibai recorded by police head constable is entirely different than what she stated at the trial. The prosecution has, thus, not been able to prove its case against the appellant beyond reasonable doubt.

We, therefore, give benefit of doubt to the appellant and accept the appeal. The judgment of the High Court is set aside and the appellant is acquitted of the charge under section 302, IPC. The appellant is on bail and as such his bail-bond is cancelled.

N.P.V.

Appeal allowed.

405