



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 1510 OF 2004

Tukaram Vithal Bhangare]
age 56 years, Convict No.C/4693]
Nashik Road Central Prison, Nashik]..Appellant/Accused

versus

State of Maharashtra]
(Satpur Police Station, Nashik)]..Respondent

Mr. Murtaza M. Najmi, Advocate Appointed for Appellant / Accused.

Mrs. A. S. Pai - Additional Public Prosecutor for Respondent – State.

**CORAM : D. D. SINHA AND
K. K. TATED, JJ.**

Date of Reserving the Judgment : 14.06.2011

Date of Pronouncing the Judgment : 20.07.2011

JUDGMENT : (Per : D. D. Sinha, J.)

1. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent – State.

2. In the present criminal appeal the judgment and order dated 21st May 2004 passed by the IInd Adhoc Additional Sessions Judge, Nashik, has been impugned whereby the appellant came to be convicted for the offence

punishable under Section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life and was directed to pay fine of Rs.1,000/- in default R.I. for six months.

3. The circumstances resultant in prosecution of the appellant for offence of murder are as follows:-

Deceased Bibabai was the wife of the appellant and both of them along with their son P.W. 2 Laxman at the relevant time were residing in a farm house of Ajay at Village Satpur. The appellant and deceased were working as agricultural labour on the field. On 6th January 2003 P.W. 2 Laxman returned to his house at 6 p.m., requested the appellant (his father) to give him money to see the film. The appellant gave him money. Laxman went to Gauri Video Hall to watch the movie and returned home at about 11.30 p.m. Laxman found his mother Bibabai was lying on the floor. Her body was covered with a cloth. Appellant was present in the house. He was under the influence of liquor. When Laxman tried to wake up his mother Bibabai she did not respond. Laxman noticed that there was an injury on her forehead and blood was oozing from the said injury. Bibabai was not breathing and therefore Laxman thought that appellant Tukaram may have killed his mother. Laxman closed the door of the house from outside and proceeded to the house of his maternal uncle on bicycle. When Laxman was

about to leave he noticed that the appellant broke open the window of the house and came out of the house and started running away from the house. Laxman chased him and caught him and taken him to the house of a watchman. Laxman put the appellant inside the house and locked the door from outside and proceeded towards the house of his maternal uncle Ashok at Gangapur. When he met Ashok he informed him about the incident. Ashok and Laxman then proceeded to Village Matori where P.W. 8 Hiranman, the another son of the appellant was residing. Laxman, Ashok and Hiranman proceeded to the house of Hausabai, grand mother of Laxman and Ashok. They informed her about the incident.

4. On 7th January 2003 at about 7 a.m. Laxman along with his relatives came back to his house and noticed that the appellant had already escaped from the house of the guard / watchman by breaking open the window. Laxman lodged report about the incident at Satpur Police Station. On the basis thereof offence came to be registered against the appellant. The prosecution after completion of formal investigation filed a charge sheet. Charge under Section 302 of the Indian Penal Code was framed against the appellant which was read over to the appellant. Appellant pleaded not guilty and claimed to be tried. The defence of the appellant emerging from the cross-examination of witnesses and the statement under Section 313 is that

Laxman often used to quarrel with his mother. On the day of the incident he quarreled with his mother and inflicted injury to Bibabai. The appellant also raised plea of alibi. According to the appellant on the day and at the time of incident he was not in his house and was staying with his son-in-law.

5. In the instant case the prosecution has examined as many as 12 prosecution witnesses to bring home the guilt of the appellant for the offence of murder. The prosecution case is primarily based on testimony of P.W. 2 Laxman, P.W. 8 Hiranman, coupled with the medical evidence of P.W. 1 Dr. Kasodkar.

6. The counsel for the appellant has submitted that the material evidence in the present case is of P.W. 2 Laxman and P.W. 8 Hiranman. Both are the sons of the appellant and the deceased was their mother. It is contended that neither Laxman nor Hiranman are the eye witnesses to the incident. It is no doubt true that Laxman at the relevant time was residing with the appellant and deceased at the farm house of Ajay. However, at the time of incident Laxman was not present in the house. It is the case of the prosecution that Laxman has last seen the deceased Bibabai, in the company of the appellant at 8.30 p.m. in a house where at the relevant time they were residing. It is contended that in the instant case the testimony of Laxman only

demonstrates that his mother deceased Bibabai was last seen in the company of the appellant in the house where they were residing at the relevant time at about 8 O'clock when he left the house to watch the movie. It is contended that the solitary circumstance of deceased last seen with the appellant without any corroboration cannot be made basis for convicting the appellant for the offence of murder. It is submitted that though the prosecution has examined number of witnesses, P.W. 3 Samadhan Ahire, P.W. 4 Sham Waghmare and P.W. 6 Shivaji Ahire are the panch witnesses examined by the prosecution to prove various panchnamas. P.W. 7 Dada Gangurde, P.W. 10 Vinayak Saindane, P.W. 11 Anil Bharaskar and P.W. 12 Hiranman Khotare are the police personnel. P.W. 1 Kasodkar is the medical officer who has conducted post mortem examination and therefore the prosecution mainly placed reliance upon the evidence of P.W. 2 Laxman and P.W. 8 Hiranman. It is contended that evidence of both these witnesses coupled with the medical evidence does not prove the charge of murder against the appellant. The prosecution failed to establish any motive for the crime in question alleged to have been committed by the appellant and the testimony of Laxman only demonstrates that when he left the house on the day of incident at about 8 / 8.30 p.m. to watch the movie, his mother deceased Bibabai was in the company of his father and when Laxman returned home at about 11.30 p.m. he found a dead body of his mother

lying on the floor of his house. It is contended that the evidence of P.W. 8 Hiranman only shows that on 6th January 2003 at about 1 a.m. Laxman and Ashok went to the house of this witness at Village Matori and informed him that the appellant killed their mother by inflicting injury on her head. They also went to the house of their paternal grand mother and informed her about the incident. It is submitted that the evidence of both these witnesses is not sufficient to prove the charge of murder against the appellant. It is submitted that the evidence of Medical Officer Nashik shows that the deceased sustained only one injury on the forehead. However, there is no opinion given by the medical officer whether the said injury in the ordinary course of nature was sufficient to cause death. Counsel for the appellant therefore contended that the evidence adduced by the prosecution is not reliable, trustworthy and ought not to have been accepted by the trial court.

7. The learned Additional Public Prosecutor on the other hand has supported the impugned judgment and order of conviction passed by the trial court and submitted that the evidence of P.W. 2 Laxman and P.W. 8 Hiranman is reliable and trustworthy. These are the sons of the appellant and deceased Bibabai and therefore there is no reason for them to falsely implicate the appellant in the crime in question. It is further contended that the evidence of last seen is also trustworthy and clinching. Similarly the

conduct of P.W. 2 Laxman informing the incident to his maternal uncle Ashok and P.W. 8 HIRAMAN lends corroboration to the prosecution case. It is submitted that the medical evidence of Doctor Kasodkar P.W. 1 shows that the deceased received injury on forehead above right eye brow 3 inch x ½ inch bone deep and the internal examination revealed that on the frontal bone there was a crack placed in an oblique direction which was 1 inch in length. The medical officer has opined that Bibabai died because of shock due to intracranial haemorrhage due to fracture of skull. The medical officer also opined that injury sustained by the deceased was possible by Articles 1 and 11. The learned Additional Public Prosecutor therefore contended that the prosecution succeeded in proving the charge of murder against the appellant and therefore the impugned judgment is sustainable in law.

8. Considered the contentions canvassed by the respective counsel and carefully scrutinised the evidence adduced by the prosecution. It is no doubt true that if the conviction is based on circumstantial evidence the prosecution has to establish the circumstances from which the inference of guilt is sought to be drawn must be cogently and firmly established, they should unerringly point towards the guilt of the accused and if taken cumulatively should form a chain so complete which must demonstrate in all probability that the crime was committed by the accused. Similarly the

evidence of last seen though is a weak type of evidence, however if it is convincing, trustworthy, inspires confidence and is corroborated by other prosecution evidence it can safely be relied upon.

9. In the instant case we cannot ignore the fact that the deceased Bibabai was the mother of P.W. 2 Laxman and P. W. 8 Hiraman and the appellant is the father of these witnesses. In view of these peculiar facts of the case these witnesses falsely implicating their own father (appellant) in the crime in question, in our view, has been completely ruled out. There is nothing on record to show that these witnesses were on inimical terms with the appellant (their father) nor the evidence of the prosecution shows that the appellant had any grudge against his own sons.

10. We have scrutinised the evidence keeping in view the law on the point of last seen as well as circumstantial evidence and the circumstances required to be proved by the prosecution in a case where the conviction is based on circumstantial evidence.

11. In the instant case the evidence of P.W. 2 Laxman reveals that Bibabai was with the appellant in their residential house at 8.30 p.m. on the day of the incident. P.W. 2 Laxman left the house for watching a movie and

returned home at about 11.30 p.m. and found dead body of his mother lying on the floor of the house and the appellant was also present by her side. We have already observed that the evidence of last seen otherwise may be a weak piece of evidence, however, in the instant case deceased was last seen in the company of the appellant at 8.30 p.m. and her dead body was found almost within three hours and at that time appellant was also present. Considering the thin gap, between the deceased last seen with appellant and finding of her dead body, the evidence of last seen, in our view, is clinching and since same is adduced by the son of the appellant it becomes more authentic, reliable and trustworthy because possibility of concoction and fabrication in view of the relationship between Laxman P.W. 2 and appellant as well as deceased has been completely ruled out. Similarly the subsequent conduct of P.W. 2 Laxman going to the house of P.W. 8 Hiranman (another son of appellant) and disclosing him the incident also consistent with the material particulars of the prosecution case. Similarly the testimony of P.W. 8 Hiranman shows that Laxman is his younger brother and at the relevant time was residing with the appellant and the deceased. It has come in the testimony of Hiranman that at 1 a.m. Laxman visited his house and informed that the appellant killed their mother deceased Bibabai by causing injury on her head. Laxman also informed him that he has detained their father, the appellant, in the house. It is no doubt true that in the cross-

examination of this witness this witness has not disputed that relations between Laxman and appellant were not cordial because the appellant wanted Laxman to do some job. It is most natural for a father to expect a grown up son to do some job, and, therefore, in our view the said admission by Hiranman in his cross-examination does not show that the relation between Laxman and appellant were inimical.

12. The medical evidence of P.W. 1 Doctor Kasodkar shows that deceased sustained injury on her forehead resulted in causing crack in the frontal bone and as per the opinion of the medical officer deceased died due to head injury.

13. Considering the over all evidence in general and evidence of P.W. 2 Laxman, P.W. 8 Hiranman coupled with the medical evidence as well as other attending circumstances, we are of the view that the prosecution has established the circumstances from which the inference of guilt can safely be drawn since those circumstances are cogent, trustworthy and point towards the guilt of the appellant and therefore in our view the prosecution has proved the complicity of the appellant in the crime in question. However it is necessary to evaluate whether the offence committed by the appellant is murder punishable under section 302 of the Indian Penal Code or under

section 304-I of the Indian Penal Code.

14. Culpable homicide is murder when the act by which the death is caused with the intention of causing death or with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person whom harm is caused or if it is done with the intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death or the assailant knows that the act is so eminently dangerous that it must in all probability would result in death. In the instant case if the appellant really intended to commit murder of his wife, then he would not have inflicted only one injury on the person of the deceased; on the other hand would have inflicted more injuries. It is well settled that though the act which results in causing death is done with the intention to cause such bodily injury which is likely to cause death would be punishable under section 304-I of the Indian Penal Code. In the instant case the appellant caused injury to the deceased with the intention of causing such bodily injury as is likely to cause death and therefore in our considered view act committed by the appellant would fall within the ambit of provisions of section 304-I of the Indian Penal Code.

15. For the reasons stated herein above, the criminal appeal is partly

allowed. Conviction of the appellant for the offence punishable under section 302 of the Indian Penal Code is hereby set aside. The appellant now is convicted for the offence punishable under section 304-I of the Indian Penal Code and is sentenced to undergo imprisonment for eight years. Since the appellant is in custody for more than eight years, the appellant be released forthwith on the basis of the sentence already undergone provided he is not required in any other criminal case.

(D. D. SINHA, J.)

(K. K. TATED, J.)