

CASE NO.:
Appeal (crl.) 253 of 2001

PETITIONER:
SYED GANI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 25/07/2002

BENCH:
R.C. LAHOTI, BRIJESH KUMAR.

JUDGMENT:

R.C. Lahoti, J.

The Additional Sessions Judge, Nanded has held the accused-appellant guilty of offences punishable under Sections 302, 201 and 506 of the Indian Penal Code. He has been sentenced to rigorous imprisonment for life with a fine of Rs.1000/-, in default to suffer rigorous imprisonment for three months under Section 302 IPC. He has been further sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month, under Section 201 IPC. He has also been sentenced to suffer rigorous imprisonment for three months under Section 506 IPC. All the substantive sentences have been directed to run concurrently. The accused-appellant challenged his conviction and sentences before the High Court of Bombay, Aurangabad Bench but unsuccessfully. The present appeal is by special leave.

According to the prosecution Sonerabi, PW-5 was married to one Mehboob (not examined as a witness in the case). Within 15 days of the marriage it was found that Sonerabi was pregnant. Mehboob got Sonerabi medically examined. She was found to be in an advanced stage of pregnancy. She admitted to have conceived from Syed Gani, the accused-appellant who was related to her and was often visiting her prior to marriage. The accused-appellant was called by Sheikh Mehboob. After mutual discussion it was agreed that the marriage between Sheikh Mehboob and Sonerabi would be dissolved by Sheikh Mehboob giving Talaq to Sonerabi. That was done. A Nikah (marriage) was thereafter performed between Sonerabi and accused Syed Gani at village Anmal and Sonerabi started living with Syed Gani. Three months after the date of the marriage with the accused-appellant, Sonerabi delivered a male child. However, the accused-appellant insisted on Sonerabi killing the child to which proposal Sonerabi was not agreeable. On 9.7.1994 in the morning at about 5 a.m. at village Tandala the accused-appellant killed the 15 days' old child by pressing the child's neck and pulling his leg in the presence of Sonerabi. The accused threatened Sonerabi to observe silence and not to disclose the incident to anyone else otherwise she would also be killed in the same way. The dead body of the child was buried by the

accused proclaiming that the child had died a natural death.

The dead body of the child having been so disposed of, Sonerabi went to her parents' house in village Anmal and there she disclosed the incident to her brother, Syed Roshan, PW6, who lodged first information report of the incident on 10.7.1994 at 10 p.m.. The FIR, Exhibit 27, was recorded by Ashok Vishwanathrao, P.S.I. Crime under Sections 302, 201 and 506 of the IPC was registered and investigation commenced. The dead body of the child was exhumed in the presence of Naib Tehsildar and sent for post-mortem examination.

Dr. Jairam, PW1 who performed the post-mortem examination found the dead body of a male child about 15 days old. The height of the child was 1 feet and 3 inches and weight was 2.5 kgs. The body was found to have sustained two ante-mortem injuries, namely, contusion 2 inches x 1 inch in front and side of neck below skin and another contusion 2 inches x 1 inch in front of chest. Haemorrhage was present with both the injuries. The injuries were grievous in nature and were ante-mortem. Sternum in front of chest wall ribs were fractured. Anterior chest wall was haemorrhagic and congested. The cause of death, in the opinion of Dr. Jairam, was cardio-respiratory failure due to throttling and chest compression.

The most material testimony in support of prosecution is of Sonerabi, PW5 who has on her personal knowledge deposed to all the events and incidents constituting the prosecution case in very many details. She has been cross-examined at length. But, there is nothing to shake her. She has remained consistent and firm throughout her statement. The child has been killed by the accused by throttling in her presence. When she tried to raise a hue and cry she was threatened by the accused by saying that if she disclosed the incident to anybody else she would also be killed like the child. The dead body was then disposed of by the accused by burying the same.

The statement of Sonerabi finds general corroboration from the statement of her brother, Syed Roshan, PW6 who had lodged the FIR and from the nature of the injuries found on the dead body of the child. Syed Roshan has also deposed to the factum of Talaq (divorce) between Sheikh Mehboob and Sonerabi. Nikah (marriage) between Sonerabi and the accused was performed in the presence of Syed Ali, PW4.

The suggestion given in the statement of Sonerabi during the course of her cross-examination is that some heavy object had fallen on the child which had caused his death. However, it is difficult to believe why Sonerabi would falsely implicate her own husband and the person from whom she had conceived and delivered the child if only the child had died an accidental death.

It is urged by the learned counsel for the accused-appellant that the Talaknama said to have been executed between Sonerabi and Sheikh Mehboob, the previous husband of Sonerabi has not been produced and Sheikh Mehboob has also not been examined by the prosecution which causes an infirmity in the prosecution case. It would have been better if the Talaqnama would have been produced and Sheikh Meboob also examined to corroborate the prosecution case. However, from this much alone the prosecution case cannot be doubted when the material part of the prosecution case formulating the gravamen of charge is found to have been substantiated by the testimony of Sonerabi and other prosecution witnesses.

The Trial Court and the High Court have dealt with the

testimony of all the prosecution witnesses and found the prosecution case proved beyond any reasonable doubt. Having heard the learned counsel for the accused-appellant and for the State at length we are not inclined to take a different view. No fault can be found with the judgments of the Sessions Court and the High Court. The conviction of the accused-appellant along with the sentences passed thereon are upheld and the appeal is dismissed.

JUDIS