IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1233 OF 2009
(Arising out of S.L.P. (Criminal) No. 5482 of 2007)

Raj Kumar ... Appellant

JUDGMENT

Versus

State of Maharashtra ... Respondent

J U D G M E N T

J.M. PANCHAL, J.

Leave granted.

2. The appellant has challenged judgment dated September 25, 2006, rendered by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 230 of 2002 by which decision dated February 21, 2002, passed by the learned 2nd Additional Sessions Judge, Yavatmal in Sessions Trial No. 108 of 1995 convicting him for the offences punishable under Sections 302 and 498A IPC and sentencing him to suffer R.I. for life and fine of Rs.500/- in default imprisonment for one month for commission of offence punishable under Section 302 as well as R.I. for one year and fine of Rs.500/- in default imprisonment for one month for commission of offence punishable under Section 498A, is confirmed.

3. From the record of the case following facts emerge. The appellant was married to deceased Pramila. The incident in question took place on November 12, 1994. During the subsistence of marriage the deceased gave birth to a boy named Sangam. The appellant used to ill-treat the deceased. Therefore, her brother Ishwar Sambhaji Kahire brought her to Village Belora. A compromise took place and, therefore, the deceased was sent to her matrimonial home. However, thereafter also the appellant continued to ill-treat the deceased. Therefore, her brother again brought her back to Village Belora. As the deceased had no means to sustain herself and her son, she had filed proceedings under Section 125 of the Code of Criminal Procedure, 1973 for obtaining maintenance from the appellant. The brother of the deceased took a room on rent for the deceased and her son at Wani belonging to one Dadaji Shankar Ganfade. The deceased and her son aged four years were residing in the said rented room and the boy was

taking education. After about one and a half months the appellant started visiting the deceased and pressurizing her to withdraw the proceedings initiated for getting maintenance.

On November 11, 1994, the appellant went to the room of the deceased in the evening time from his village Lalguda and asked the deceased to withdraw the maintenance proceedings. However, as the deceased had no means to maintain herself and her son, she refused to withdraw the proceedings. Again on November 12, 1994 at about 4.00 A.M. in the morning the appellant went to the room of the deceased. At that time the deceased and her son Sangam were sleeping. The appellant came there under the influence of liquor. On door being knocked by the appellant, the deceased opened the door and that is how the appellant entered the room occupied by the deceased. On entering the room the appellant pressed the neck of the deceased but the deceased got herself released from the clutches of the appellant.

Thereafter, the appellant took up an iron Polpat, i.e., Stone Rolling Pad and inflicted a blow on the head of the deceased. Because of the injury sustained by her, the deceased started bleeding. The appellant took some amount lying in the room and ran away. The son of the deceased started weeping loudly. His cries attracted the attention of the landlord Dadaji Shankar Ganfade. Dadaji in turn woke up his wife and other tenants and rushed to the room occupied by the deceased. On entering the room, he found that the deceased was lying injured seriously. On enquiry being made, the deceased told him and other tenants that as she had refused to withdraw the maintenance proceedings, her husband had inflicted blow on her head with a stick. The landlord of the house and other tenants immediately shifted the deceased to Wani Hospital.

The Medical Officer, who was in-charge of Rural Hospital, Wani, sent an intimation to the Police Station, Wani at about 5.00 A.M. that one woman named Pramila

was admitted in the hospital in an injured condition. The P.S.O., Wani Police Station, sent a requisition to the Executive Magistrate for recording dying declaration of the deceased in the very morning itself. On receipt of the requisition, the Executive Magistrate went to the Rural Hospital, Wani and recorded the dying declaration of the deceased at about 6.30 A.M. The P.S.O., Wani Police Station also directed Head Constable Ashok Dudhane to go to Rural Hospital, Wani, and record the dying declaration of the deceased. Accordingly the Head Constable went to the hospital and recorded the dying declaration of the deceased. After going through the contents of the dying declaration the Head Constable himself became the first informant and filed his complaint. On the basis of the First Information Report lodged by the Head Constable Ashok Dudhane the P.S.O., Wani Police Station registered crime No. 195 of 1994 for the offence punishable under Section 324 IPC against the appellant. Head Constable Ashok Dudhane

issued a letter to the Medical Officer, in-charge of Rural Hospital, Wani for medical examination of the deceased and accordingly the deceased was examined by the Medical Officer. However, the condition of the deceased started deteriorating. Therefore, she was referred to Chandrapur Hospital from where she was referred to Government Medical College and Hospital at Nagpur. On learning that her sister was admitted to Nagpur Hospital with serious injuries, her brother Ishwar Sambhaji Kahire went to the said hospital where the deceased made oral dying declaration before him that the appellant had beaten her by means of stick as she had refused to accede to his pressure tactics to withdraw the maintenance proceedings.

The Investigating Officer prepared spot panchnama and seized iron Polpat used in the commission of crime. It may be mentioned that the deceased had referred to assault on her with stick because she was lying on bed and could not have seen or identified the weapon when

assaulted. Blood stained chadar from the spot was also attached. The Investigating Officer recorded statements of those persons, who were found to be conversant with the facts of the case. In spite of treatment given to the deceased at the Government Medical College and Hospital, Nagpur, she succumbed to her injuries at 10.30 A.M. on November 19, 1994. The Medical Officer, in-charge of the Hospital, conducted Post Mortem. The Investigating Officer was searching for the appellant but the appellant was found absconding. Ultimately he was arrested on November 28, 1994. The incriminating articles seized were sent to Forensic Science Laboratory for analysis. On completion of investigation, the appellant was charge-sheeted in the court of learned Judicial Magistrate, First Class, Wani for commission of offences punishable under Section 302 and 498A IPC.

As the offence punishable under Section 302 IPC is exclusively tried by a court of sessions, the case was committed to Sessions Court, Yavatmal for trial. The

learned Sessions Judge framed charge against the appellant at Exh.-18 for commission of offences punishable under Section 302 and Section 498A of the IPC. The charge was read over and explained to the appellant. However, the appellant did not plead guilty to the charge and claimed to be tried. Therefore, the prosecution examined 11 witnesses and produced documentary evidence to prove charge against the appellant. After examination of the witnesses was over, the learned Judge explained to the appellant the incriminating circumstances appearing against him in the evidence of prosecution witnesses and recorded his statement under Section 313 of the Code of Criminal Procedure. In the further statement, the case of the appellant was that of total denial. However, he did not examine any witness in support of his defence.

2. On appreciation of evidence adduced by the prosecution the learned Judge held that

commission of offence punishable under Sections 302 and 498A IPC by the appellant were proved by the prosecution beyond reasonable doubt. Thereafter, the appellant and the learned Public Prosecutor were heard on the question of sentence. After hearing the appellant and the learned Public Prosecutor the learned Judge by judgment dated February 21, 2002 imposed sentence of life imprisonment and fine of Rs.500/- in default imprisonment for one month for commission of offence punishable under Section 302 IPC as well as R.I. for one year and fine of Rs.500/- in default imprisonment for one month for commission of offence punishable under Section 498A IPC.

3. Feeling aggrieved, the appellant preferred Criminal Appeal No. 230 of 2002 in the High Court of Judicature at Bombay, Nagpur Bench, Nagpur. The Division Bench has dismissed the appeal by

judgment dated September 25, 2006 giving rise to the instant appeal.

4. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also perused the evidence on record. It may be mentioned that the Special Leave Petition was placed for admission hearing before this Court on September 5, 2007. It was found that there was delay of about 199 days in filing the special leave petition. After hearing the learned counsel for the appellant, the delay was condoned and notice was issued confining to the nature of offence.

5. Though the notice is issued confining to the nature of offence committed by the appellant, this Court has considered evidence on record to assure that the conviction of the appellant is well founded. The testimony of Dr. Vinod Agrawal, who was Lecturer in Forensic Medicine, Government Medical

College, Nagpur, shows that he had conducted Post Mortem on the dead body of the deceased Pramila Patil. In his substantive evidence the doctor has mentioned the external as well as internal injuries sustained by the deceased. The Medical Officer in his deposition has stated that all the injuries found on the body of the deceased were ante mortem and were sufficient in the ordinary course of nature to cause death. The doctor had also produced corroborative evidence in the nature of post-mortem notes prepared by him wherein external and internal injuries sustained by the deceased are mentioned. It is not the case of the appellant that the deceased had died because of self-inflicted injuries or that the injuries sustained by her were accidental or suicidal. Under the circumstances the finding recorded by the Sessions Court and the High Court that the deceased had died a homicidal death is eminently just and is hereby confirmed.

6. As noticed earlier two dying declarations of the deceased were recorded – one by the Executive Magistrate and another by the Head Constable. In both the dying declarations the deceased has given consistent version of the incident in question. In both the dying declarations it was stated by her that because she had refused to withdraw the maintenance proceedings initiated by her against the appellant, the appellant had entered her room in the morning of November 12, 1994 and inflicted blow on her head with a stick. This is not a case of misidentification of the appellant as person who had mounted attack on his wife because the wife knew the appellant very well. There was no reason for the deceased wife to falsely implicate her husband in such a serious case and allow the real culprit to go scot-free. The deceased had every opportunity to identify the appellant, who was permitted to enter the room by the deceased when

the door was knocked by the appellant. Incidentally, it may be mentioned that the testimony of child witness Sangam recorded before the Sessions Court also makes it more than clear that the appellant was the person who had inflicted injury on the head of the deceased. Though this child witness was subjected to searching cross-examination, nothing could be brought on record so as to impeach his credibility. The defence could not even prima facie establish that the child witness had given tutored version of the incident before the Court. No major contradictions and/or improvements with reference to his earlier police statement could be brought to light at all. This Court finds no reason to discredit the evidence of the child witness. On re-appreciation of the evidence on record, this Court finds that the finding recorded by the Sessions Court and the High Court that the appellant was author of the fatal injury

inflicted on the head of the deceased, is well founded and no case is made out by the learned counsel for the appellant to interfere with the same.

7. The learned counsel for the appellant maintained that the appellant was deprived of the power of self control by grave and sudden provocation offered by the deceased when the deceased refused to withdraw the maintenance proceedings and had inflicted only one blow which ultimately resulted into her death and as the appellant had not taken undue advantage of the situation by inflicting another blow, the offence committed by the appellant would fall within 'Exception 1' of Section 300 IPC and, therefore, the appellant at the best would be liable to be convicted for commission of offence punishable either under Part I or Part II of Section 304 IPC.

8. The learned Public Prosecutor, however, contended that no grave and sudden provocation was offered by the deceased at all and, therefore, it is wrong to suggest that the appellant was deprived of the power of self control at all and as the appellant had inflicted one blow with Stone Rolling Pad known as Polpat on vital part of the body, namely, head with great force which resulted into death of the deceased, both the Courts were justified in convicting the appellant under Section 302 IPC.

9. Though the learned counsel for the appellant has relied on certain reported decisions to buttress the argument that the offence committed by the appellant would fall either under Part I or Part II of Section 304 IPC, this Court is of the opinion that decided cases on the basis of evidence adduced therein can hardly constitute binding precedents in

criminal matter. Further there is no universal rule that whenever a single blow is inflicted resulting into death of the victim, the case would fall either under Part I or Part II of Section 304 IPC. Each case of single blow has to be decided on the facts and circumstances obtaining in the case. Therefore, detailed reference to the decisions cited at the Bar, is avoided.

10. It is well settled that whenever a Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for

considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 IPC is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300 IPC. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder punishable under Part I or Part II of Section 304 IPC, depending, respectively, on whether second or third clause of Section 299 IPC is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300 IPC, the offence would still be culpable homicide not amounting to murder punishable under the First

Part Section 304 IPC. The above are only broad guidelines and not cast-iron imperatives.

11. Applying the abovementioned broad tests to the facts of the instant case, this Court finds that it is proved beyond pale of doubt by the prosecution that the appellant had done the act of giving Polpat blow on the head of the deceased and by doing this act, had caused the death of the deceased. The positive evidence of the Medical Officer, who conducted Post Mortem on the dead body of the deceased, clinchingly establishes that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause her death, which would bring the instant case within the purview of Clause 'Thirdly' of Section 300 IPC, which defines and explains as to when culpable homicide is murder.

The record of the case would show that the defence of the appellant is that of total denial. Section 105 of the Indian Evidence Act, 1872 casts burden of proof on the

accused to show that his case comes within one of the exceptions provided in IPC. Section 105 of the Evidence Act stipulates that where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions under the Indian Penal Code or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances. The statutory illustration (b) appended to the said Section explains that A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control; the burden of proof is on A. When the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, he did not mention existence of circumstances bringing his case within 'Exception 1' to Section 300 IPC. Therefore, the court would be justified in presuming absence of such circumstances.

Though the appellant failed to prove the existence of circumstances bringing his case within 'Exception 1' to Section 300, the court may look to the evidence of prosecution to find out whether the burden cast by Section 105 of the Indian Evidence Act stands discharged by the appellant by preponderance of probabilities. The deceased in her two dying declarations has clearly mentioned that when she refused to accede to the demand of the appellant to withdraw the maintenance proceedings, the appellant had inflicted blow with Stone Rolling Pad on her head. Exception 1 to Section 300 has certain provisos. The first proviso states that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing any person. Here in this case the wife, who was neglected by the appellant and was not able to maintain herself and her son, was justified in initiating maintenance proceedings against the appellant. The appellant could not have insisted that the proceedings against him for

maintenance should be withdrawn by the deceased. Further when a lady, entitled to initiate maintenance proceedings against her husband, refuses to accede to unreasonable demand made by her husband to withdraw the maintenance proceedings, it can hardly be said that her denial to accede to such unreasonable demand would amount to grave and sudden provocation within the meaning of 'Exception 1' of Section 300 IPC. In any view of the matter the facts of the case clearly indicate that the so called provocation was sought by the appellant himself as an excuse for killing his wife and, therefore, the appellant is not entitled to the benefit of the provisions of 'Exception 1' to Section 300 IPC.

The evidence on record shows that the deceased was totally unarmed. The appellant had inflicted blow with Polpat on the vital part of the body of the deceased, namely, head and inflicted the blow with such a great force that it resulted into her death. It is not the case of

the appellant that the injury on the head of the deceased was accidental nor it is the case of the appellant that the blow was aimed on some other part of the body and because of supervening cause like sudden intervention or movement of the deceased the blow struck on the head. On the facts and in the circumstances of the case, it will have to be held that it was the intention of the appellant to cause that very injury which ultimately proved fatal. As noted earlier, the medical evidence shows that the injuries were sufficient in the ordinary course of nature to cause death and, therefore, the offence committed by the appellant would be punishable as murder under Section 302 IPC and his case would not fall under the first part or the second part of Section 304 IPC.

2. The net result of the above discussion is that there is no substance in the appeal and the same will have to be dismissed.

3. Accordingly the appeal fails and is dismissed.

.....J.
[R.V. Raveendran]

.....J.
[J.M. Panchal]

New Delhi;
July 15, 2009.