

Rajaram Vs. the State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Jul-17-2013

Judge : Naresh H. Patil & a.I.S. Cheema

Appeal No. : Criminal Appeal No.411 of 2011

Appellant : Rajaram

Respondent : The State of Maharashtra

Judgement :

NareshH. Patil, J.

1. The Appellant is a life convict. The Appellant challenges the Judgment and order of conviction and sentence passed by the trial Court for an offence punishable under Section 302 of the Indian Penal Code.

2. The prosecution case in brief is that the Appellant Rajaram married Gangubai before thirty years of the incident in question. They were having two sons and two daughters out of the said wedlock. The couple was residing at Khudaj Shivhar, in a hut called Akhada situated in their field. The sons were staying in another field situated in Khilar Shivhar. One of the grand son, Dnyaneshwar was staying with Rajaram and deceased Gangubai. One of the sons of the Appellant was not surviving at the relevant time. The prosecution case is that the Appellant was suspecting character of his wife Gangubai.

3. The incident took place on 18th May, 2009. On the day of incident Appellant Rajaram returned to Khudaj Shivhar in the early morning. Deceased Gangubai offered him tea. Thereafter Rajaram asked for bread (Bhakri). After having bread, Rajaram started abusing his wife. He pelted stone on the head of Gangubai. She fell down in front of the house. Thereafter Rajaram, with the help of axe, assaulted the deceased on her neck and arm, due to which she suffered serious injuries and died on the spot. At the relevant time, father of the Appellant, namely, Shripati was present in the hut. After seeing the incident, he fled away.

4. The prosecution claims that grand son of Rajaram, namely, Dnyaneshwar had witnessed the incident. One Raju Dhamne informed the incident to Prakash, son of the appellant, who along with police patil Babarao Rahate, went to police station. The police officer had taken station diary entry and rushed to the spot. By this time Dnyaneshwar informed the incident to his parental aunt and thereafter returned back to the spot. Police drew spot panchnama, seized articles such as stone, axe, earth mixed with blood from the spot in presence of panchas. The complainant gave statement to the police. Inquest panchnama was also drawn. The police noticed injuries on head, neck and arm of deceased Gangubai. The dead body was sent for postmortem.

5. Unusually the Appellant was seen sitting under a tree when the police were investigating. Police arrested the Appellant. Seizure panchnama of clothes of Appellant was drawn in presence of panchas. After reaching the police station, complaint was registered under Section 302 of the Indian Penal Code against the Appellant, on the basis of the statement of complainant Sambhaji Meghade. After postmortem, dead body was handed over to father of the deceased. Viscera was sent to Chemical Analyzer. The Appellant was sent for medical examination, who had two injuries on his person, one was on his face and another was on nose. After completing investigation, charge-sheet was filed. Charge was framed against the Appellant under Section 302 of the Indian Penal Code. The Appellant pleaded not guilty to the charge and came to be tried.

6. Evidence of prosecution witness Dnyaneshwar, PW6, is very crucial in this case. He happens to be grandson of the Appellant Rajaram. He was nine years

old child at the time of his deposition before the Court. In his examination-in-chief, the child deposed that he was staying with his grandfather and grandmother, Appellant and deceased respectively. On the day of incident the witness was with his grandmother at Khudaj. The grandfather was not there during the night hours but returned back in the early hours on the next day morning. Grandfather asked grandmother to prepare tea. Thereafter he asked for some bread and after having bread, he started abusing and beating deceased with stone. The deceased suffered injuries on her head. She fell down outside the hut. Thereafter Appellant picked up an axe and gave blow on the right side of neck of the deceased. The witness deposed that the Appellant had assaulted on the right arm of his grandmother. After assaulting, the Appellant went inside and consumed some water. According to the witness, the great grandfather, Shripati was there in the hut, who, soon after the incident, ran away from the spot. After some time, some women from adjoining field came to the spot. Thereafter witness went to the residence of his parental aunt and stated "BabaneMaye Marli". He used to address his grandfather as 'Baba' and grandmother as 'Maye'. He informed his parental aunt that Baba killed Maye with axe and stone. Thereafter his parental aunt came along with him to Akhada. The child witness identified the stone and axe used by the Appellant. .

In cross-examination the child witness deposed that there was dispute between his father Prakash and grandfather Rajaram on account of well water. They were staying separately. They used to quarrel on the said issue. To a question the witness deposed that his father Prakash told him that on the day of release of grandfather from the jail, he will be required to return back land to grandfather. His father asked him to depose before the Court. The child witness was also told by his father that his evidence is very material and important. On the day of deposition, father of the child was present in the Court premises. He admitted suggestion that his father had told him that before the Court he has to state that his grandfather had killed his grandmother. The defence brought on record contradiction in the evidence of the witness in respect of Appellant assaulting the right arm of the deceased and omission in respect of presence of great grandfather Shripati in the hut.

7. PW1 is Kundlik Narayan Zate. He was examined as pancha to prove spot panchnama. In his cross-examination he deposed that police had asked him that he should put his signature on the panchnama as those articles were seized from the spot. As the police asked him to put his signature, he accordingly put his signature. He therefore claims that he does not know the panchnama and what was written in it. It seems that this witness has not wholeheartedly supported the prosecution.

8. PW2 is Sunil Ambhure, Police Nayak. This witness has carried Muddemal articles to Chemical Analyzer at Aurangabad.

9. PW3 is Shrirang Wakle, retired P.S.I., who forwarded Muddemal through police constable Sunil Ambhure, PW2. He had forwarded eight articles along with the covering letter.

10. PW4 is Sambhaji Maghade, complainant, who is father of the deceased Gangubai. He deposed before the Court that Appellant was complaining that he should take care of his daughter as she was not behaving properly. Gangubai was complaining regarding behaviour of her husband whenever she visited house of the witness. The Appellant was reluctant to live with deceased Gangubai, according to the witness. The witness on receiving message, went to the spot by Jeep and found injuries on the person of the deceased. The deceased had suffered blows of axe on her neck and head, according to the witness. In his presence, police had reached the spot and drawn panchnama. Dead body was sent for conducting post mortem. Police enquired with the witness. His statement was recorded. .

In the cross-examination, the witness deposed that in thirty year's marital life there used to be some bickerings between the couple. At times deceased used to come back to her parental house and the Appellant used to take her back. But the disputes were not of very serious nature. It was stated before the Court that he had been to police station to state that Rajaram had killed his daughter.

11. PW5 is Kishan Gaikwad, who was attached to Narsi police station at the relevant time. He recorded complaint. Crime was registered accordingly. He was

working as police station officer who recorded entry in the station diary on that day. He admitted that prior to the receipt of the complaint, there was information received to the police station regarding the incident and station diary entry at No.16/2009 was recorded. Due to seriousness of the incident intimated, police rushed the spot. He admitted that after receipt of the information the police visited the spot and drew inquest panchnama and spot panchnama. He denied the suggestion that station diary entry No.16/2009 was the first information report of the incident. The time of the filing of complaint was mentioned at about 1.30 p.m. The witness deposed that crime was registered at 3.00 p.m.

12. PW-7 is Dr. Deepak More, the medical officer who examined the Appellant on 19th May, 2009. He noticed following two injuries on the person of the Appellant:

"[1] Abrasion 2 cms X 1 cm on forehead. Simple in nature. Probably caused by hard and blunt object. Age of injury was more than 24 hours. Said abrasion found in scab formation brownish colour; and

[2] Abrasion 1.5 cms X 1 cm on left side of nose, simple in nature, probably caused by hard and blunt object. Age of injury was more than 24 hours. It was also having scab formation, brownish colour."

The Appellant did not give any history to the medical officer.

13. PW-8 Dr. Vanita Guthe, carried post mortem of the deceased between 6.00 to 7.00 p.m. on 18th May, 2009. According to the medical officer, Rigor Mortis was well marked. There was no sign of decomposition, no postmortem lividity, no bullae was present. The medical officer noticed following injuries, which were mentioned in column No.17 of the post mortem report:

[1] Deep incise wound, on left side of neck, 8 cms X 4 cms X 4 cms;

[2] CLW On forehead size 4 X 2 X 2 cms;

[3] CLW On forehead size 2 X 2 X 2 cms;

[4] CLW on head, left occipital side size 2 X 1 X 1 cms; and

[5] CLW on left elbow joint size 2 X 2 X 1 cms.

All the injuries were antemortem. According to the medical officer, the cause of death was stated as "probably due to multiple deep incise wound on head and neck". Viscera was preserved. No blood sample was collected as heart was empty. According to the medical officer, injuries on neck and forehead were possible by sharp weapon and on the head by hard and blunt weapon. The injuries on neck and forehead were possible by pointed side of axe and the injury on head was possible with the handle of axe. The Court put following question to the witness:

"Whether head injury can be possible by the backside of the iron part of axe on its handle?"

"Witness replied that it can be possible."

During cross-examination the witness deposed that she cannot state that in this case death might have occurred in the evening. Injury Nos. 2 to 5 can be possible by irregular shaped stones. Injury No.1 could not be possible without applying force. If force is used on occipital region of the head, it may cause fracture to the head. There was no fracture caused due to injury Nos. 2 to 5, according to the medical officer.

14. PW9 is Gangadhar Maske, who was examined to prove the inquest panchnama and spot panchnama and seizure of the articles lying on the spot. He was police head constable at the relevant time. He had given details of the investigation, drawing of panchnamas during the course of investigation. He had carried the dead body for postmortem.

15. PW-10 is Gyanba Maghade and PW11 is Sitaram Sable. They were examined to prove inquest panchnama and seizure panchnama of clothes of the Appellant.

16. PW-12 is Trimbak Pandhre, in whose presence shirt and dhoti on the person of the Appellant were seized under panchnama. Police had also seized saree and blouse of deceased Gangubai, in his presence.

17. PW-13 is Prakash Rajaram Banduke, who is son of the Appellant. He deposed that he had three sons, one of the son was Dnyaneshwar, the grandson happens to be eye witness in this case. This witness deposed that his father was suspecting character of his mother. His father was not allowing his mother to talk with anybody. He informed police patil that his father had killed his mother and he reached the spot when Dnyaneshwar, eye witness was there. The A.P.P. declared the witness as hostile after the witness deposed in Para 4 as under:

"4. When I reached to the spot, Dnyaneshwar was there. It did not happen that I received any information from Dnyaneshwar about the incident. It did not happen that Dnyaneshwar disclosed me about the incident and the manner in which it was occurred and I have given information about it to police."

In his cross-examination PW13 deposed that their family was having 9 to 10 acres of land. Entire land was in the name of his father, except one acre of land which was recorded in his name.

18. PW-14 is Babarao Rahate. He is resident of village Khudaj and he was acting as police patil since the year 1985. He deposed that son of the Appellant, Prakash came to inform that his father committed murder of his mother. He had seen the injured condition of the deceased. He did not give information as to when the murder was committed. Though the witness accompanied Prakash to police station, he did not give any information but he heard Prakash giving information to the police, which was not reduced into writing in the station diary in his presence. He had seen the Appellant on the spot sitting under a tree, till forwarding dead body for post mortem. The Appellant did not try to flee away from the said place, according to the witness.

19. Chemical Analyzer's report shows that blood of the Appellant is of "B" group and blood on articles like axe, shirt, Dhoti, blouse and saree was of "B" group.

20. The learned counsel for the defence submitted that complainant's version is hearsay one, therefore it cannot be relied upon. The prosecution witnesses are not firm and confident to say that the Appellant had committed murder. There is no eye witness in this case. Evidence of child witness cannot be believed as he was

tutored and was under the influence of his father, PW13 Prakash. This is a case where corroboration to the evidence of the child was necessary. The Appellant had no intention to kill his wife. He had strained relations with his son, therefore, the son deposed against him though declared hostile. The prosecution has failed to establish the case beyond reasonable doubt. In support of her submissions, the learned counsel placed reliance on the following reported Judgments:

(1) State of M.P. vs. Ramesh and another, 2011 DGLS (Soft.) 240,

(2) K. Venkateshwarlu vs. State of Andhra Pradesh, 2012 DGLS(Soft.) 366.

21. The learned A.P.P. submitted that PW6 Dnyaneshwar is a natural witness. His presence in the house at the relevant time, cannot be disputed and discarded. Just because he is child witness, his testimony cannot be viewed with suspicion, doubt by labeling him to be tutored witness. Even if it is assumed that his father has spoken to him in respect of the evidence to be given in the Court, but in view of the facts and attending circumstances, the evidence of child witness cannot be discarded in this case, which is of vital significance. PW13 Prakash, father of the child witness who happens to be son of the Appellant and deceased, for the reasons best known to him, has not wholly supported the prosecution. He was declared hostile by the prosecution. There is corroboration to prosecution case by medical evidence. The death was caused due to brutal assault made by the Appellant. There was absolutely no reason for the Appellant to commit such crime. It was thirty years old marriage and on some flimsy ground and on suspicion, the Appellant committed murder of his wife. It was submitted that the subject death is custodial death, for which the Appellant is responsible to give explanation. Absolutely no explanation is given by the Appellant. Blood stains were noticed on the clothes of the Appellant. The Chemical Analyzer's report supports the prosecution case. Therefore, the Appellant cannot be shown any mercy.

22. We have perused the entire evidence and considered the submissions advanced by the learned counsel appearing for the respective parties. From the evidence on record, it is clear that there used to be some bickering in day to day life of the Appellant and his wife, deceased Gangubai. Gangubai used to be reluctant to come back to her matrimonial life, but on insistence of Appellant she

used to return back. It has come on record that Appellant was suspecting character of Gangubai, though Appellant and Gangubai were living life together. Sons and daughters of Appellant were separately residing. It has come on record that Dnyaneshwar, grandson was staying along with Appellant and deceased Gangubai.

23. The evidence of PW6 Dnyaneshwar is very crucial to decide this case. After putting certain questions by the trial Court, his deposition was recorded. The child witness has deposed before the Court with reasonable degree of comfort and confidence. Considering the answers given to the questions, we can safely arrive at a conclusion that there was no doubt in the mind of the child witness. The narration of the incident made by the child witness shows that he was definite about the incident which he had seen. Even if he had given answer to the effect that his father had told him to depose in the Court in a particular way, but the same could not shatter the efficacy and admissibility of the evidence of the child witness. Being natural father of the witness, interaction between child and his father in the case of present nature, cannot be ruled out. We cannot expect that till child deposes in the Court, father or any relative will not have any interaction with the child. The testimony of the child witness, therefore, needs to be appreciated in the light of the facts and circumstances and evidence brought on record. We have, therefore, no hesitation to accept the evidence of the child witness, who has deposed before the Court and narrated the incident as was seen by him.

24. The conduct of the Appellant was little astonishing. After he assaulted his wife with axe and the dead body was lying in front of hut, he was seen sitting under a tree by the police, neighbours and villagers. This could not be construed to be an act of innocence of the Appellant. In such a situation, a person may react in various ways, either a person may run away with fear or a person may sit quietly under shock. It depends upon the temperament and thinking of the person who is committing crime. We cannot expect specific expected conduct from such accused persons. Therefore, each case will have to be considered in its peculiar factual background. The conduct of the Appellant in not running away from the spot, cannot be expected as an act of innocence as argued by the defence.

25. The defence argued that complaint made by the complainant cannot be treated as first information report as earlier entry was taken in the station diary. The police reached the spot and started investigation and thereafter the first information report was registered. The police officer was examined on this point. Even if the first information report was registered after the police drew spot panchnama, but the same was done after taking entry in the station diary. On that count prosecution case cannot be disbelieved.

26. So far as the evidence of PW13 Prakash is concerned, it is seen that he is a son of the Appellant. Prakash was not sure as to what he should depose. It may be that he was under pressure that he was to depose against his own father. The consequences of deposing against father in such a serious case were known to son, Prakash. Prosecution declared him hostile. But it is necessary to note that in Para 2 of his deposition, in examination-in-chief, he stated that his father was suspecting about character of his mother and was not allowing her to talk to anybody. He further stated that he took one person with him and went to police patil and informed that his father killed his mother. This part of deposition of Prakash corroborates the version of child witness PW6 Dnyaneshwar and lends credibility to the prosecution case.

27. The medical evidence supports the prosecution case. The Chemical Analyzer's report further clinches the issue. The evidence of the complainant has described the background of relationship between the Appellant and deceased. It is unfortunate that inspite of leading thirty years of married life, the Appellant could brutally assault his wife and killed her on suspicion that she was not lady of a good character.

28. We have perused the reasoning adopted by the trial Court. We find that the trial Court has scanned the evidence and appreciated the same reasonably. We do not notice any perversity in the reasoning adopted by the trial Court. In the facts of the case, we are not inclined to pass order under Section 357 of the Code of Criminal Procedure.

ORDER

(A) Criminal Appeal No.411 of 2011 is dismissed.

(B) We quantify the fees of the learned counsel appointed for the Appellant at Rs.5000/- (Rupees Five Thousand only).

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