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Court : Mumbai Aurangabad

Decided On : Mar-27-2014

Judge : K.U. Chandiwal &Amp; V.M. Deshpande

Appeal No. : Criminal Appeal No.611 of 2011 [Jail Appeal]

Appellant : Laxman

Respondent : The State of Maharashtra

Judgement :

V.M. Deshpande, J.

1. Being aggrieved by the Judgment and Order passed by the learned Sessions Judge, Nanded in Sessions Case No.81 Of 2010 dated 21st December, 2010 by which the learned court below convicted the Appellant (Ori.Accused) for the offence punishment U/Section 498(A) of the Indian Penal Code, 1860 (In short, the I.P.Code) and sentenced to suffer rigorous imprisonment for a period of three [3] years and to pay fine of Rs.5000/- [Rs.Five Thousand only] and in default of payment of fine amount, he was directed to undergo further rigorous imprisonment for a period of one [1] year.

The Appellant was also convicted for the offence punishment U/Section 302 of the I.P.Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- [Rs.Ten Thousand only] and in default of payment of fine amount, he was directed to undergo further rigorous imprisonment for a period of three [3]

years.

The Appellant was further held guilty of committing an offence punishable U/Section 316 of the I.P.Code and sentenced to suffer rigorous imprisonment for seven [7] years and to pay fine of Rs.5,000/- [Rs. Five Thousand only] and in default of payment of fine amount, he was directed to undergo further rigorous imprisonment for a period of two [2] years.

However, the Appellant was acquitted for the offences punishment U/Section/s 504 and 506 of the I.P.Code. The learned court below directed that all the sentences to run concurrently.

2. The facts giving rise to the present Criminal Appeal can conveniently be stated as under:-

(i) P.W. No.5 Devrao Champatrao Gunjkar and P.W.No.6 Panchfulabai w/o Devrao Gunjkar resident of village Umri Bazar, Tal. Kinwat, Dist. Nanded are the parents of deceased Chanda @ Chandra. Deceased Chanda was the wife of present Appellant. Their marriage was solemnized on 27th April, 2009. After the marriage, couple resided for some period at village Umri Bazar and thereafter shifted to Hyderabad.

(ii) According to the prosecution, under the influence of liquor, the Appellant always used to cause ill-treatment physically to deceased Chanda. Due to the constant physical assault, the relatives of deceased gave an understanding to the Appellant that he should refrain himself from causing ill-treatment to the deceased. Even at Hyderabad, ill-treatment to deceased Chanda was continued, since the Appellant under the influence of liquor used to beat her on the count of very minor issues. Ill-treatment which Chanda metes out, intimated by her to her mother on mobile phone.

(iii) One month prior to the incident, Chanda contacted the complainant PW No.5 Devrao and it was disclosed to him that, she is pregnant. On getting this information, the complainant told the Appellant that the couple should be at Umri Bazar and after the delivery they can again go back to Hyderabad. Upon that,

couple came from Hyderabad to Umri Bazar. Though they came at Umri Bazar, the Appellant started residing separately alongwith the deceased in one rented premises, owned by Anusaya Sadhubuwa Dongare. During his stay at Umri Bazar, the Appellant used to work with PW No.5 Devrao, father-in-law. He used to join the complainant daily in the morning hours. It is case of the prosecution that even during the pregnancy period also, under the influence of liquor, the Appellant used to inflict physical harm to the deceased Chanda.

(iv) On 10th January, 2010, PW No.5 Devrao had been to the residence of Appellant at 6 O'clock and gave call to the Appellant to accompany him for the work. Since there was no response to his call, he pushed the door and found that his daughter Chanda was lying in a dead condition. Said fact, he immediately intimated to the Village Police Patil, in turn, Police Patil informed the same to the Police Station, Mandwi. On getting said information about the unnatural death of Chanda, police immediately came at the spot at village Umri Bazar. P.W.No.5 Devrao lodged First Information Report against the Appellant; where-in it is alleged that, under the influence of liquor, during the intervening night of 9th January, 2010 to 10th January, 2010, the Appellant assaulted deceased and as thus, responsible to cause her death. F.I.R. is at Exh.No.83.

(v) On the basis of the F.I.R. Crime was registered bearing CR No. I 1/10 against the Appellant with Police Station, Mandwi, Tal. Kinwat, Dist. Nanded. Investigation of the said Crime was entrusted with PW No.12 P.S.I. Vyankatesh Whivnaji Ranvirkar who, after completing the investigation, filed Charge-Sheet before the Court of law.

(vi) After the order of committal, the case reached to the Court of Sessions.Charge was framed against the Appellant. The Appellant pleaded not guilty and claimed for trial.

(vii) In order to bring home the guilt of the Appellant, the prosecution has examined in all twelve [12] witnesses. The learned Sessions Judge, Nanded, after examining the prosecution evidence and after considering the defence, as raised by the Appellant, reached to the conclusion that, the Appellant / accused is guilty of committing the offences for which he was charged. Accordingly, he was

convicted as aforestated.

3. We have heard Mr. D.Y. Nandekar, learned counsel appointed through the Legal Aid Committee and Mr. G.K. Naik-Thigale, learned A.P.P. for the State of Maharashtra.

4. P.W.No.1 Dr. Manoj Uttamrao Hude at the relevant time was attached to the Primary Health Center, Umri Bazar, Tal. Kinwat as Medical Officer. When he was on duty on 10th January, 2010, he received dead body of one lady by name Chandra Laxman Dhotre. for conducting the post mortem. He alongwith lady Doctor Smt. Alure conducted the post mortem. The Post mortem report is at Exh No.12. On external examination, it was found by the panel, reddish white fluid oozing through mouth and both nostrils, mouth clinched, tongue bitten in between both jaws, bleeding through bitten tongue present. Contusion on neck Rt. side 1 x 0.3 c.m. and 1 x 0.1 c.m. and Lt. side 1 x 0.2 c.m. reddish discoloration around neck anterior aspect present. According to the Doctor, the injuries were anti mortem. On internal examination, it was noted that, the muscles of neck anterior aspect shows patechild, haemorrhage, mucosa congested, upper two tracheal rings fractures anteriorly. The aforesaid injury was corresponding to injury No. 1 shown in column No.17. Both the lungs found congested. On cut section, reddish white froth oozed out. Heart found congested, Rt. Side full with blood and Lt.side empty. Stomach mucosa congested with contents water with food particles. Liver, pancreas, spleen, kidney were congested, bladder mucosa congested and empty congested. Uterus enlarged of 30 weeks and with male foetus 2.5 k.g. weight. It was also found that the death was within 4 to 6 hours after taking first meal. According to the Doctor, probable cause of death is "**asphyxia due to pulmonary oedema in case of throttling**. According to the Doctor, the internal corresponding injury with injury No.1 shows in column No.17 is sufficient to cause the death in ordinary course.

5. What was the nature of death of Chanda, suicidal or homicidal.? This is required to be considered in view of the submission of the learned counsel representing the Appellant before us that the deceased committed suicide.

6. According to the Appellant, on conceiving the pregnancy, the couple had been to village Umri Bazar and he reached Chanda to her parents house. That time, he paid Rs.10,000/- for expenses and then left Umri Bazar on the very next day, intimating that, he will be at village Umri Bazar only after delivery of Chanda. According to the Appellant, he was having saving of Rs.7000/- and he raised loan of Rs. 2 to 3 thousand from his mukadam. Since he was to repay the amount of the mukadam, he returned to Hyderabad. According to the Appellant, he was arrested at Hyderabad and he is unaware as to why and how Chanda died. Thus it appears that, in his statement before the learned court below, he disclosed his defence of alibi.

7. However, from, the line of cross-examination of PW No.1 Dr. Manoj Hude, it was suggested that, symptoms like oozing reddish white oozing through mouth and nostrils are possible in case of poisoning. Suggestion was given to Dr. Manoj that, it was clear case of poisoning, which was immediately denied by Dr. Manoj.

8. Looking to the line of defence before the Court below and specific statement before this court, though it is the case of the Appellant that, Chanda committed suicide; said statement cannot be accepted in view of the injuries found on the person of deceased Chanda. We cannot forget one fact that, deceased was carrying foetus of 30 weeks. Motherhood is one of the most beautiful gift of woman. It is just impossible to imagine that a lady carrying such advanced pregnancy will commit suicide by taking poison.

9. However, there is nothing on record to show that any empty bottle of poison was found on the spot while drawing the spot panchnama. In that view of the matter and in view of the specific evidence of Dr. Manoj Hude, death of Chanda was homicidal death.

10. Next question is, who is the author. According to the Appellant after reaching Chanda at village Umri Bazar at her parents house, he left for Hyderabad. In the present case, there are no eye witness. The case is based on circumstantial evidence. According to the learned defence counsel, the prosecution has utterly failed to complete the chain of events pointing the guilty towards the Appellant.

11. According to PW No.5 Devrao and PW No.6 Panchfulabai, father and mother of deceased and PW No.10 Deubai one of the relative, Chanda had been to village Umri Bazar for her delivery alongwith her husband - Appellant. The couple started residing there in a rented premises owned by Anusayabai Dongare.

12. PW No.7 is Jivan Pundlikrao Kotrange. He is the panch witness. He has proved the spot panchnama. It is at Exh.No.27. Accordingly, his evidence would reveals that the spot was house of Dongare. There was no reason for Chanda to reside separately alone in a rented premises of Anusaya Dongare; especially when she had been to Umri Bazar for her delivery. That fact itself proves case of the prosecution that the Appellant used to stay at Village Umri Bazar, in a rented premises. Even as per the evidence of PW 5 Devrao and PW No.6 Panchfulabai, couple used to stay in the rented premises. In their searching cross-examinations, their evidence is not shattered. Not only that, in the cross-examination of P.W. 5 Devrao, father of the deceased, it has been brought on record that, distance between his residential house and said rented premises is 20 - 30 fts. In that view of the matter, it is clear that, the Appellant used to stay with Chanda at Umri Bazar and not at Hyderabad, as suggested by him in his answer to the question put to him in his statement recorded U/Section 313 of Cri.P.C.

13. PW No.8 Sai Yellayya Irpulwar deposed that, he is employee since last five years in one country liquor shop of Baburao Bhumanna Tadalwar, which is situated at village Umri Bazar. Said Country Liquor Shop used to remain open from 10.00 a.m. till 10.00 p.m. His evidence would reveals that, he used to sell liquor to the customers being an employee. This witness has identified the Appellant in the court as the customer, who used to visit daily to the said country liquor shop to consume the liquor.

14. Thus, it is clear that, the Appellant was regular visitor to the said country liquor shop where-in PW No.8 Sai was an employee and who used to serve liquor to the customers. There is no challenge to this version of PW No.8 Sai.

15. Evidence of PW No.8 Sai further throw light that on 9th January, 2010 the Appellant had been to the liquor shop in the evening hours and that time, he purchased two country liquor bottles of 180 M.L. each and after purchasing the

bottles, the Appellant left the shop and went to his house.

16. Spot panchnama is at Exh.No.27, mentioning the fact that two empty bottles of country liquor were found at the spot. Even PW No.7 Jivan Pundlikrao Kotrange [Panch] also testified from the witness-box that two empty bottles of country liquor of 180 M.L. were found at the spot.

17. The criticism was made in respect of the evidence of P.W. 8 Sai to the effect that, no receipt of purchase of country liquor bottles were issued; nor he disclosed the said fact to the police when his statement during the investigation was recorded by the Police that the accused / Appellant purchased two country liquor bottles of 180 M.L. each manufactured by Sanjivani Distilleries. Said omission, on which the Appellant wanted to rely heavily remained to be unproved; since it was not put to the Investigating Officer. Further the fact of recovery of two empty bottles of country liquor of 180 M.L. from the spot, corroborates the version of PW No.8 Sai. There was no reason to state falsehood against the Appellant, for this witness. In fact, there are no suggestion to this witness that for or on any count, he was nursing grudge against the present Appellant.

18. In view of the quality of evidence of the prosecution witnesses and in absence of serious challenge thereto, it is clear that the Appellant was habituated to consume the liquor. In that view of the matter, it is not impossible that on 9th January, 2010 after evening hours, he purchased two bottles of country liquor. At this stage, it will be useful to mention that deceased and Appellant belongs to Vadarcommunity, the community traditionally used to engage in stone breaking. By common knowledge, it can be said that it is a job required hard physical work.

19. According to PW No.5 Devrao on 10th January, 2010 in the morning, he had been to the house of Chanda and gave call to the Appellant to join him for work. Since there was no response, he pipped inside. When he pipped inside the room, he noticed that Chanda was lying and blood was oozing from her mouth and she was in a dead condition. As discussed earlier, that fact was intimated to the police. Police party arrived at the spot. Since PW 5 Devram specifically asserted that it is the Appellant, who committed the murder of his daughter, investigation started immediately on that line.

20. PW No.4 Police Constable Nivrutti Marotirao Raman Bainwad deposed that, on 10th January, 2010, Investigating Officer Mr. Vyankatesh Ranvirkar took him to Umri Bazar in connection with CR No. I 1/10 i.e. Crime in question. That time, it was revealed to the police party that, the Appellant had gone towards the Navargaon by walk-path of Mohada to Navargaon road from Dar Sangvi. On getting this information, police party went to village Dar Sangvi by police jeep. PW No.4 P.C. Nivrutti Bainwad alongwith A.P.I. Rithe had been to Dar Sangvi. There they enquired with the villagers, whether they had seen the Appellant Laxman. Dar Sangvi must a small village, because the villagers gathered around the police party. One of them, amongst the gathering by name Nilesh Jadhav (PW No.11) told the police party that, the Appellant went towards the Navargaon by walk-path of Mohda to Navargaon. This Nilesh is also examined by the prosecution as PW No.11. Version of PW No.4 Nivrutti is corroborated by PW No.11 Nilesh. PW No.4 PC Nivrutti Bainwad further disclosed that, since they were unknown to the walk-path from Mohada to Navargaon, they took Nilesh alongwith them. This assertion made by PW No.4 Nivrutti Bainwad found corroboration in the testimony of PW No.11 Nilesh.

21. Evidence of PW No.4 Nivrutti Bainwad would further reveals that when they were on the said walk-path, they saw one person by name Sanjay Rathod, who was taking meal alongwith his wife. An enquiry was made with him. Upon enquiry, he disclosed that, though he do not know Laxman Dhotre but, one person went from that road just few time ago by that road. PW No.4 Nivrutti Bainwad requested said Sanjay (PW No.3) to accompany them; obviously because they were unknown to the road or walk path from Mohada to Navargaon. Thereafter, PW No.4 Nivrutti Bainwad, A.P.I. Rithe, PW 11 Nilesh and PW 3 Sanjay went by Mohada " Navargaon road till hillock as it was a forest area having several hillocks. After reaching to hillock, they saw one Tulsiram Sahir while sitting on the machan erected in the field. On enquiry, he also told that he do not know Laxman Dhotre but, he saw one man while passing from that road few time ago. Thereafter they tried to trace out the accused / Appellant till 11 to 121.30 a.m. but they could not traced out, therefore, they went back to Police Station, Mandvi.

22. During trial, Sanjay (PW No.3) identified the accused / Appellant as the person who had passed by the road. A criticism was made that when he was not knowing the name of the Appellant, how he was able to disclose his name. However, even the question No.2 put to this witness by the Court below and answer given to it if we perused minutely then it is crystal clear that, He [PW 3 Sanjay] never claimed that person by name Laxman was passing by the road however, he said that the Appellant passed by that road and name is supplied to him by the police.

23. Nilesh(PW No.11) has specifically replied to the Court question, he was knowing the Appellant as he used to visit his field for breaking the stone. In that view of the matter, it is clear that, these persons are the witnesses to the fact that, on 10th January, 2010 in the morning hours the Appellant was found on the said road which is in near vicinity of village Umri Bazar.

24. We had evidence of PW No.9 Dilip Ramji Rathod. He is resident of village Sangvi Tal. Kinwat. He deposed that, in the morning hours when he was present in his field, he saw the accused while coming from Narvargaon towards Dar Sangvi by walk which go to Dar Sanvi from Navargaon, from his field. He saw that the accused was possessing '**sutk'** [sort of hammer for breaking the stone] Having seen the sutk, he told the accused to break one big stone which is lying in his field and offered to pay him Rs.50/-. On negotiation, the accused showed his willingness to break the stone on payment of Rs.30/-. Said work was undertaken by the Appellant and after breaking the stone, Rs.30/- were given to him. When this witness reached to village Dar Sangvi, he found police jeep. This witness had been to the Police. That time and upon enquiry, he told that the accused had gone towards Navargaon. This witness also identified the Appellant in the court. These facts clearly show that the Appellant was present during the night time of 9th January, 2010 at village Umri Bazar.

25. There is recovery of liquor bottles from which we can safely draw an inference that the Appellant must have consumed the liquor and must be under the influence of liquor in the night time. What must be happened during that intervening night of 9th and 10th January, 2010 is within the special knowledge of the Appellant only. The deceased, being his wife, was in his custody. Therefore, in view of provisions

of Section 106 of Indian Evidence Act, the Appellant was required to give plausible explanation in respect of the injuries found on the dead body of Chanda. We found no explanation in the entire record. Since deceased was in the company with the Appellant and looking to the nature of the injuries, it will not be unsafe to reach to the conclusion that the Appellant is the author of homicidal death of Chanda.

26. During the course of argument, the learned counsel for the Appellant submitted that Charge was not properly framed by the learned trial court and, therefore, entire trial is vitiated. In order to buttress this submission, he has placed his reliance on the following reported case laws:-

[i] SheoShankar and another V/s. King-Emperor, reported in A.I.R. 1926, Oudh, 148.1996.

[ii] Anil Umrao Gote V/s. State of Maharashtra, reported in 2008 ALL MR (Cri.) 2066.

Submission deserves rejection. In view of the reported decision of this court, reported in **1993 Cri.L.J. 2309 Pandurang Punappa Karpe and Ors., V/s. The State of Maharashtra**, this court has found that defect in framing of charge by itself does not vitiate the trial. What has to be established as per the said decision, is prejudice to the person prosecuted in view of the defective charge. It will be also useful to refer the decision of Hon'ble Apex Court reported in **(2003) 1 S.C.C. 217. K. Prema Rao and Ors. V/s. Yadla Shrinivasa Rao and Ors.**, In the present case, during the trial or even before this court, the learned counsel was unable to show what was the defect in the charge framed. Further assuming that the charge was defective, what was the prejudice caused to the Appellant / accused. In view of the Appellant being failed to show any prejudice caused to him, even assuming that the charge was defective, that does not render the trial vitiated.

27. Alibi is defence. That was taken by the Appellant, therefore, it ought to have been proved during the trial. However merely making a statement that at the relevant time, he was at Hyderabad nothing has brought on record by the Appellant to show that at the relevant time, he was Hyderabad. Thus, the said plea must fail.

28. The learned trial court has minutely examined every aspect of the matter. We concur the findings reached by the learned court below. In the present case, the prosecution has fully established the circumstances by which it could be said that finger of guilt is only towards the Appellant and there is no doubt about it.

29. In that view of the matter, Criminal Appeal fails and it is dismissed. Judgment and order of conviction passed by the Court below stands confirmed. Fees of Mr. D.Y. Nandedkar, Advocate [Appointed] for the Appellant is quantified at Rs. 5000/- [Rs. Five Thousand only].

Criminal Appeal dismissed.

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