

Dhanaji Bhagwan Madne Vs. The State of Maharashtra

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Court : Mumbai

Decided On : Jun-11-2014

Judge : THE HONOURABLE MRS. JUSTICE V.K. TAHILRAMANI & A.S. GADKARI

Appeal No. : Criminal Appeal No. 173 of 2012

Appellant : Dhanaji Bhagwan Madne

Respondent : The State of Maharashtra

Judgement :

Oral Judgment: (Smt. V.K. Tahilramani, J.)

1. The appellant-original accused has preferred this appeal against the judgment and order dated 28.7.2011 passed by the learned Sessions Judge, Sangli, in Sessions Case No.160 of 2010. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default RI for one month.

2. The prosecution case briefly stated, is as under:

(i) The deceased Vandana was the daughter of PW-7 Hariba and sister of PW-6 Bharat. Vandana was married to the appellant. The appellant and Vandana had four daughters. PW-5 Suvarna was the eldest daughter of the appellant and Vandana. The appellant, Vandana and their daughters were residing at village Karanje, TalukaKhanapur, District Sangli. Vandana and the appellant were doing labour work. The appellant used to consume liquor and used to abuse and beat his wife Vandana. The appellant was suspecting the character of Vandana. According to the appellant, his wife Vandana was having illicit relation with Vithu Gavali and Vitthal Kapse and on this count he used to abuse and beat his wife Vandana.

(ii) The incident took place on 30.5.2010. On that day the appellant and his wife Vandana as well as their daughter had gone to attend the marriage. They returned home at about 7 p.m. along with PW-9 Rajaram. At about 8.30 p.m. the appellant, his wife Vandana and their daughters and PW-9 Rajaram alias Rajumama took dinner in the house of the appellant. The appellant had consumed liquor and he was abusing his wife Vandana and also beating her. The appellant told Vandana not to go for work to Vitthal Kapse. The appellant was telling Vandana that she has illicit relation with Vithu Gawli and Vitthal Kapse. After dinner Vandana told her daughter PW-5 Suvarna to give a call to Suvarnas maternal uncle i.e. PW-6 Bharat who was the brother of Vandana. Accordingly Suvarna went to the grocery shop and from the coin-box she talked with her grandfather PW-7 Hariba. Suvarna told Hariba that since two days her father i.e the appellant was abusing and beating her mother Vandana and she told Hariba to come to their house. Hariba told Suvarna that her maternal uncle i.e. PW-6 Bharat was ill and he will come in the morning. Then Suvarna returned home. When she returned home, she saw that her father was abusing her mother Vandana and also beating her. The appellant forced his daughters to sleep in the courtyard and PW-9 Rajumama also slept in the courtyard. The appellant and his wife Vandana slept inside the house. After hearing shouts of her mother Vandana, Suvarna

woke up. She heard her mother shouting for help. Suvarna woke up her sister Sujata and both of them asked their father not to beat their mother and to open the door. Suvarna also woke up PW-9 Rajumama, but he asked them to go to sleep. Then Suvarna and her sister went to the shop to talk on phone to their maternal uncle, but the shop was closed. Hence, she returned home. When she returned home, Suvarna heard her mother shouting for help as her father was beating and abusing her mother. Then Suvarna and her sister went to the house of their neighbour PW-8 Bhimrao and asked him to come to their house as their father was beating their mother. PW-8 Bhimrao told them to sleep in his house and that they would go later. Then they slept in the house of PW-8 Bhimrao. In the morning, Suvarna and her sister returned home. They saw the door of the house was open and blood was lying on the floor and pieces of bangles were seen on the floor. Nobody was in the house. Suvarna enquired with Sakhubai about her parents. Then Sakhubai showed Suvarna the dead body of her mother Vandana lying on the road. Suvarna saw dried blood was on the face of her mother. There was black mark on the throat. At about 6 to 6.30 a.m. her maternal uncle PW-6 Bharat and her grand-father PW-7 Hariba came to the house of Suvarna. Thereafter PW-6 Bharat lodged FIR i.e. Exhibit-26. Thereafter investigation commenced and the appellant was arrested. Blood-stained clothes worn by the appellant at the time of incidence were recovered at his instance under memorandum Exhibit-18 and panchanama Exhibit-19 in the presence of panch-witness PW-2 Tanaji Mane. After completion of investigation the chargesheet came to be filed.

3. The charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to the said charge and came to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in this case the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above and, hence, this appeal.

4. We have heard Mr. Apte, learned Advocate for the appellant and Smt. Bhonsale, learned APP for the State. We have carefully considered their arguments, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for below mentioned reasons we are of the opinion that there is no merit in this appeal.

5. There is no direct eye-witness in the present case to the murder of Vandana and the case is based on circumstantial evidence. PW-5 Suvarna who is the daughter of the appellant and the deceased Vandana is star-witness in this case. Suvarna has stated that the appellant was her father and the deceased Vandana was her mother. She was residing with her parents and her sisters. Both her father and mother were doing labour work. Her father always used to drink liquor and used to abuse and beat her mother. She has stated that the incident took place on 30.5.2010. On that day her father the appellant and her mother Vandana as well as her sister had gone to attend the marriage. They returned home at about 7 p.m. along with PW-9 Rajaram. At about 8.30 p.m. her father the appellant and her mother Vandana and her sisters and PW-9 Rajaram alias Rajumama took dinner in the house of the appellant. The appellant had consumed liquor and he was abusing her mother Vandana and also beating her. The appellant told Vandana not to go for work to Vitthal Kapse. The appellant was telling Vandana that she has illicit relation with Vithu Gavali and Vitthal Kapse. After dinner Vandana told her to give a call to her maternal uncle i.e. PW-6 Bharat who was the brother of Vandana. Accordingly Suvarna went to the grocery shop and from the coin-box she talked with her grand-father PW-7 Hariba. Suvarna told Hariba that since two days her father i.e. the appellant was abusing and beating her mother Vandana and she told Hariba to come to their house. Hariba told Suvarna that her maternal uncle i.e. PW-6 Bharat was ill and he will come in the morning. Then Suvarna returned home. When she returned home, she saw that her father was abusing her mother Vandana and also beating her. The appellant forced his daughters to sleep in the courtyard and PW-9 Rajumama also slept in the courtyard. Suvarna has stated that her father the appellant and her mother Vandana slept inside the house. After hearing shout of her mother Vandana, Suvarna woke up. She heard her mother shouting for help. Suvarna woke up her sister Sujata and both of them asked their father not to beat their mother and to open the door. Suvarna also woke up PW-9 Rajumama, but he asked them to go to sleep. Then Suvarna and her sister went to the shop to talk on phone to their maternal uncle, but the shop was closed. Hence, she returned home. When she returned home,

Suvarna heard her mother shouting for help as her father was beating and abusing her mother. Then Suvarna and her sister went to the house of their neighbour PW-8 Bhimrao and asked him to come to their house as their father was beating their mother. PW-8 Bhimrao told them to sleep in his house and that they would go later. Then they slept in the house of PW-8 Bhimrao. In the morning, Suvarna and her sister returned home. They saw the door of the house was open and blood was lying on the floor and pieces of bangles were seen on the floor. Nobody was in the house. Suvarna enquired with Sakhubai about her parents. Then Sakhubai showed Suvarna the dead body of her mother Vandana lying on the road. Suvarna saw dried blood on the face of her mother. There was black mark on the throat. At about 6 to 6.30 a.m. her maternal uncle PW-6 Bharat and her grand-father PW-7 Hariba came to the house of Suvarna. It is pertinent to note that normally the daughters slept inside the house as seen from the evidence of Suvarna. However, on the day of incident, the appellant forced his daughters to sleep in the courtyard and only the appellant and deceased Vandana slept inside the house.

6. The evidence of PW-5 Suvarna shows that just prior to the death of Vandana, the appellant was abusing and beating Vandana and telling her not to work with Vitthal as according to the appellant Vandana has illicit relation with Vithu Gavali and Vitthal Kapse. This abusing and beating went on at the time of having dinner at about 8 to 8.30 p.m. Even after dinner, the abuses and beating by the appellant to Vandana took place. Thereafter when Suvarna and her sister went to sleep in courtyard and the appellant and his wife Vandana went to sleep in the house, after some time Suvarna woke up and heard shouts of her mother calling for help. Suvarna tried to get assistance of PW-9 Rajumama who was also sleeping in the courtyard, but as Rajumama was intoxicated he asked them to go to sleep. Suvarna then also sought help of their neighbour PW-8 Bhimrao, but he told them to sleep in his house and they would go to the house of Suvarna later. Thus the evidence of Suvarna shows that the appellant was continuously beating and abusing his wife Vandana in the house as he was suspecting her character.

7. The motive for the appellant to commit the crime is that he was suspecting the character of his wife Vandana. This has been stated by PW-5 Suvarna the daughter of the appellant and deceased Vandana, as well as by PW-6 Bharat who was the brother of Vandana and PW-7 Hariba who was the father of Vandana. PW-6 Bharat has stated that the appellant always used to consume liquor and used to abuse and beat his sister Vandana as the appellant was suspecting the character of Vandana. Bharat has stated that his sister Vandana told him that her husband was suspecting her character and after consuming liquor he used to beat her.

8. PW-7 Hariba, father of Vandana, has stated that his son-in-law used to suspect about the character of his daughter Vandana and used to beat her. PW-7 Hariba, father of Vandana, has stated that Vandana had been to his house one month prior to the incident and his daughter told him that her husband was suspecting her character and her husband was abusing and beating her after consuming liquor. Hariba has further stated that on the day of the incident his grand-daughter Suvarna (PW-5) talked with him on the phone. Suvarna told him that her father after consuming liquor was abusing and beating her mother and Suvarna told Hariba to come to their house. Hariba told Suvarna that as his son had gone to the hospital, after his son returns home he will come in the morning. The evidence of PW-6 Bharat also shows that on the day of incident he had been to Dr. Dabhade as he was not feeling well. He returned home at about 9 to 9.30 p.m. When he returned home, his father Hariba told him that a phone call was received from PW-5 Suvarna and Suvarna told Hariba that her father was beating her mother and asked them to come early. Hariba informed PW-6 Bharat that he informed Suvarna that her maternal uncle went to the doctor and they will come in the morning. In the morning Hariba and Bharat were informed that Vandana had been killed.

9. In the light of the medical evidence there can be no doubt that the death of Vandana was homicidal in nature. The medical evidence and the facts and circumstances in which the dead body of Vandana was found lying on the road, clearly shows that it was a case of homicidal death. PW-11 Dr. Anil Patil conducted postmortem on the dead body of Vandana. Dr. Patil stated that he started the postmortem at 12.45 in the afternoon on 30.5.2010 and it was over at 2.00 p.m. During postmortem he found the following external injuries on the dead body of Vandana:

Multiple abrasion on anterior and both sides of neck with blackish discoloration.

In the opinion of Dr. Patil the injuries were ante mortem.

There was blood stained froth coming out from both the nostrils and the mouth and marks of blood were seen on the face, neck, head and upper part of the chest. According to Dr. Patil the cause of death is due to asphyxia due to throttling and such type of death is possible because of pressing of neck.

10. The conduct of the appellant is also relevant. The evidence of PW-5 Suvarna shows that she along with her sisters always used to sleep inside the house along with their mother. However, on the night of the incident, the appellant forced Suvarna and her sister to sleep outside the house in the courtyard. This shows that the appellant had made up his mind to murder his wife and due to this he had forced them to sleep in the courtyard. That the incident occurred inside the house itself is clear from the fact that the blood-stains were found in the house, as stated by the panch-witness PW-1 Sarjerao Mane. The evidence of PW-1 Sarjerao shows that the bloodstains were found on the mat as well as pieces of bangles were lying there. The pieces of bangles were also found having human blood stains. The CA report Exhibit 36 shows that the blood-stains on the mat were human blood-stains. As per the CA report Exhibit 36 there were also human blood-stains on the bangles. It is pertinent to note that Dr. Patil who conducted the postmortem has stated that because of pressing of neck there can be blood-stained froth from the mouth and nostrils. Because of shortage of Oxygen, the lung tissues break resulting into mixing of blood and air in lung forming a blood-stained froth. Dr. Patil has stated that the blood-stained froth was coming out from the nostrils and mouth and marks of blood were found on face, neck, head and upper part of chest.

11. Mr. Apte, the learned Counsel for the appellant has stated that the CA report shows only human blood-stains and it does not show the blood-group of the blood-stains. In this connection, we may usefully refer to the decision of the Supreme Court in the case **GuraSingh Vs. State of Rajasthan** (2001) 2 SCC 205), wherein it has been observed as under:

"In view of the authoritative pronouncement of this Court in Teja Ram Case (1999) 3 SCC 507) we do not find any substance in the submissions of the learned Counsel for the appellant that in the absence of the report regarding the 'origin of the blood, the trial Court could not have convicted the accused. The Serologist and Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant.

Moreover it is seen that the appellant has not given any explanation for the presence of blood stains on the mat and the bangle pieces.

12. Thereafter Mr. Apte, learned Counsel for the appellant submitted that the body of Vandana was found almost at a distance of one kilometer from the house and it is not possible that one person could have carried Vandana and thrown her dead body one kilometer from the house. He submitted that this shows that the appellant is not involved in this case. As far as this aspect is concerned, from the evidence on record especially Exhibit 23 it is seen that the deceased was short and had a slim build, hence, it was possible for the appellant who is of medium build to carry the deceased Vandana to a distance of one kilometer from the house and throw her body there.

13. It is the prosecution case that the appellant has throttled his wife and caused her death. The medical evidence is totally consistent with the prosecution case. One more important circumstance against the appellant is stated by PW-9 Rajumama who was sleeping in the courtyard of the house of the appellant on the night of the incident. PW-9 Rajumama has stated about extra judicial confession made by the appellant in his presence. He has stated that the appellant told that he had killed his wife and threw her body. Nothing has

been elicited in the cross-examination of PW-9, so as to render his testimony unreliable. We find his testimony to be absolutely reliable and trustworthy, hence, we have no hesitation in relying on the same.

14. It is pertinent to note that the appellant and the deceased were the only two persons inside the house. There was no one else inside the house. In such case, it is for the appellant to explain how his wife died. The evidence on record shows that only the appellant and the deceased Vandana were in the house at the time of the incident. In such case, the appellant has to explain how the deceased Vandana sustained injuries and died. In this connection, we may refer to Section 106 of the Evidence Act. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In several recent decisions, the Supreme Court has held that the principles which underlies Section 106 of the Evidence Act can be applied in such cases. In the case of **State of Rajasthan Vs. Kashi Ram** (2006)12 SCC 254 : AIR 2007 SC 144), the Supreme Court has observed that if the accused fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

15. It is also pertinent to note that it has not been brought on record by way of cross-examination that except for the appellant anyone else had any motive to murder Vandana. Nor any such suggestion has been put to any witness during their cross-examination.

16. After going through the evidence, we are of the opinion that there is sufficient evidence to connect the appellant with the crime. We see no merit in the appeal. The appeal is dismissed.

17. At this stage, we must record our appreciation for Advocate Mr. Abhaykumar Apte who is on the High Court Legal Services Committee and who was appointed to represent the appellant in this appeal. We found that he had meticulously prepared the matter and he has very ably argued the appeal. We quantify total legal fees to be paid to him in this appeal by the High Court Legal Services Committee at Rs.5000/-.

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