

Changdeo Vs. State of Maharashtra

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Court : Mumbai

Decided On : Aug-22-1990

Reported in : 1992CriLJ1240

Judge : G.D. Patil and; V.A. Mohta, JJ.

Appeal No. : Criminal Appeal No. 12 of 1987

Appellant : Changdeo

Respondent : State of Maharashtra

Advocate for Def. : H. Ahmad, Asstt. Govt. Pleader

Advocate for Pet/Ap. : M.R. Daga, Adv.

Judgement :

G.D. Patil, J.

1. The instant appeal is directed against the judgment and order dated 18th November, 1986 passed by the Additional Sessions Judge, Yavatmal in Sessions Case No. 52 of 1986 convicting the accused for the offence punishable under S. 302 of the Indian Penal Code and sentencing him to imprisonment for life and to pay a fine of Rs. 200/-, in default to payment of fine, to suffer rigorous imprisonment for six months.

2. The appellant accused was prosecuted on the charge that on 6-2-1986 at 4 a.m. at village Belora, P.S. Yavatmal Rural he stabbed his wife Vithabai by means of a knife, who died on 9-2-1986 due to stab-injuries and thereby he committed murder intentionally or knowingly causing the death of Vithabai Deotale and thereby committed the offence under section 302 of the Indian Penal Code.

3. The prosecution story was that the appellant accused Changdeo was resident of village Belora and was married to Vithabai of village Sayphal before about 14 years. After the marriage they cohabited Belora and they have a son aged about 9 years and daughter aged about 1 years. The prosecution further alleged that there used to be quarrels between the accused and his wife and the accused was suspecting fidelity of his wife Vithabai.

4. The incident in question occurred on 6-2-1986, before two months of which wife Vithabai had gone to her parents' house at Sayphal. The accused had gone to bring Vithabai to Saypahal before 15 days of the incident and having learnt that his wife had gone to field, he had also gone to the field, where he found his wife Vithabai sleeping with Shankar Damodhar Shende, his cousin in the field. The accused got annoyed, abused his wife and also narrated the incident to his mother-in-law and also beat his wife in her presence. Thereafter the accused brought his wife to Belora and the next day he went to village Kosadani along with his wife, stayed there for 10-12 days and thereafter brought his wife to Belora on 5-2-1986. The son of the accused was at Yavatmal.

5. On the night of 5-2-1986 the accused along with his wife and daughter slept in the house at Balora. It is alleged by the prosecution that the accused early in the morning at about 4 a.m. on 6-2-1986 assaulted his wife while she was asleep, by means of a knife. In all he dealt four knife blows on the person of his wife Vithabai. After assaulting his wife, the accused came out of the house and went to the house of his neighbour Ananda Kamble, to whom he called out of house and told that he had killed his wife and that he should look after his daughter. The accused then went away. Thereafter Ananda went to the house of Govinda Kumbhar and told him about the incident. He also narrated the incident to Nana Dapase and Police Patil Uttam Raut. Thereafter Ananda and the said persons returned to the

house of the accused and on entering into the house, they found Vithabai lying on the cot with bleeding injuries on stomach, back and head. Vithabai was conscious at that time. Ananda and others inquired from her as to what had happened, whereupon she told them that her husband assaulted her. Vithabai was taken to P.H.C. at Belora, where she was given first-aid treatment by Compounder Kondalikar and as the condition of Vithabai was serious, thereafter she was taken to Yavatmal and admitted in the General Hospital, when she died on account of the injuries sustained, on 9-2-1986.

6. The accused went to the Police Station, Arni and lodged oral report which was reduced into writing as per Exh. 14 by P.S.I. Deshmukh. On the basis of that report offence was registered as Crime No. 0/86 under Section 307 of the Indian Penal Code vide FIR Exh. 15. The accused was arrested vide arrest panchanama (Exh. 16), his blood stained Banian was seized under seizure memo (Ex. 17) and as the offence comes under the jurisdiction of Police Station, Yavatmal-Rural, all the relevant papers were sent to that Police Station through constable Datta, B. No. 920.

7. Head-Constable Ramdas on 6-2-1986 at about 8.50 a.m. received a message from Kantaprasad Tiwari of P.S. Yavatmal City that one Vithabai Deotale was admitted in the General Hospital, Yavatmal with injuries. H. C. Ramdas took entries of that message in the Station Diary at Sana No. 9 H. C. Ramdas also received a message on phone from Head-Moharar, P.S. Arni that the accused came to the Police Station after assaulting his wife. H. C. Ramdas took entry of that message in the Station Diary at Sana No. 10 vide Ex. 20. The ward-boy by name Purushottam of General Hospital, Yavatmal also informed about the admission of Vithabai in the General Hospital, Yavatmal with injuries and entry to that effect was taken in the Station Diary at Sana No. 12. Copy of that Sana is at Ex. 21. On the basis of the said information H. C. Ramdas registered the offence at Crime No. 12/86 vide F.I.R. Ex. 22. Further investigation was handed over to L.C.B. Yavatmal.

8. P.S.I. Shukla (P.W. 6) received case diary of Crime No. 12/86 on 6-2-1986 from P.S. Yavatmal (Rural) for investigation, whereupon he visited the house of the

accused and prepared spot panchanama (Exh. 25). He seized the blood stained knife, torn quilt and bed-sheet from the spot vide Seizure Memo Ex. 27. He also recorded statement of Ramdas and others. The accused was brought to the police Station, Yavatmal-Rural and was taken to Belora, where he was interrogated by P.S.I. Shukla. The accused stated that he would produce the iron coupling. Memorandum panchanama to that effect was prepared vide Ex. 28. The accused produced the iron coupling which was concealed behind a tin in the corner of his house. The coupling was seized vide seizure-memo Ex. 29. Blood of the accused and Vithabai was also collected.

9. On the death of Vithabai on 9-2-1986 in the Hospital on receipt of death memo (Ex. 44), P.S.I. Shukla went to the Main Hospital, Yavatmal and held inquest panchanama on the dead body of Vithabai vide Ex. 4. post-mortem examination of the dead body was performed and the post-mortem report is at Ex. 48. On the query made to the Medical Officer as to whether the injuries sustained by Vithabai could be caused by knife and coupling, opinion was given by the doctor which is on record at Ex. 38. In all 6 articles including the knife, coupling and clothes were sent to the Chemical Analyser's Office and the report of the Chemical Analyser is at Ex. 54. Statements of the material witnesses were recorded by P.S.I. Shukla and after completion of the investigation, charge-sheet was submitted to the Court of Judicial Magistrate, First Class, Yavatmal on 21-4-1986, which is at Ex. 55 and the case was committed to the Court of Session on 5-5-1986.

10. Charge under section 302 of the Indian Penal Code was framed and explained to the accused on 5-7-1986, to which the accused pleaded not guilty and claimed to be tried. His defence in short was of denial. According to the appellant, on 6-2-1986 at 4 a.m. he had gone to answer the call of nature and he returned back after about half an hour. On his return he found his wife in an unconscious state and, therefore, he got frightened and called his neighbour Ananda. According to the appellant, Ananda did not wake up and, therefore, he went to Police Station, Arni and lodged report. The appellant submitted that the Police had not recorded his report as per his say. It is also submitted by the appellant that Ananda and Sheshrao have deposed falsely against him on account of enmity. The appellant did not adduce any evidence in his defence nor did he examine himself on oath.

The prosecution examined in all 6 witnesses.

11. The learned Additional Sessions Judge, after considering the evidence on record, by his judgment dated 18-11-1986 found that it is established beyond doubt that Vithabai met with homicidal death, that Vithabai was a licentious lady and the appellant had every reason to kill his wife. He further held that the defence of the appellant that some one else had assaulted his wife when he had gone to answer nature's call was not at all probable and reasonable and could not be accepted and the oral evidence of Anandrao (P.W. 1) and Sheshrao (P.W. 2) established that the accused assaulted his wife by means of knife. The learned Additional Sessions Judge did not accept the plea of the accused that the incident occurred due to quarrel which took place between him and his wife immediately before the assault, wherein Vithabai provoked the accused by saying that he was impotent and that she would accompany other person, bringing the case of the appellant under Exception-1 of Section 300, I.P.C. The learned Additional Sessions Judge also found that the medical evidence fully supported to the oral version of Anandrao (P.W. 1) and Sheshrao (P.W. 2) and the recitals of the report at Ex. 14 made by the accused himself. The learned Additional Sessions Judge further found that taking into consideration the weapon used and the vital organs on which blows of knife were given causing three incised wounds and one stab wound to the deceased, the offence committed by the accused was the one falling under clause (2) of Section 300, I.P.C. and held that the appellant has committed murder of Vithabai and consequently committed an offence under Section 302, I.P.C. and sentenced him to suffer imprisonment for life.

12. Mr. M. R. Daga, the learned counsel for the appellant did not seriously dispute before us the finding recorded by the learned Additional Sessions Judge that deceased Vithabai met with homicidal death. We also find from the evidence on record, oral as well as documentary, and particularly the evidence in the form of Medical Certificate (Ex. 36), the Inquest Panchanama (Ex. 34), Post-mortem report (Ex. 48) and the opinion of Dr. Hingade (Ex. 38), that the death of Vithabai was neither natural nor accidental, whereas from the evidence it was beyond doubt that Vithabai met with homicidal death. Shri M. R. Daga, the learned counsel for the appellant, however, assailed the finding recorded by the learned Additional

Sessions Judge that it was the accused who had assaulted his wife by means of a knife, causing 4 injuries, and holding that the accused committed an offence punishable under section 302, I.P.C. He also urged before us that the learned Additional Sessions Judge erred in coming to the conclusion that the defence of the appellant could not be accepted and further also erred in rejecting the appellant's plea about the case of the appellant coming under Exception 1 of Section 300, I.P.C. Mr. Daga contended before us that there was no record of treatment in the hospital, to deceased Vithabai, that there was no evidence that she died because of the injuries in question, that the learned Additional Sessions Judge ought not to have relied upon the statement of the accused in the report (Ex. 14) and further he also contended that the probability of the commission of the act due to grave and sudden provocation cannot be ruled out in the wake of the evidence on record and the benefit, therefore, in the circumstances, ought to go to the appellant and at the most the offence would fall under Exception 1 of Section 300, I.P.C. and at the most the appellant can be convicted under Part-II of Section 304, I.P.C. and therefore, the appellant's conviction under section 302, I.P.C. was not sustainable.

13. The learned Assistant Government Pleader appearing on behalf of the State, however, urged before us that having regard to the evidence on record, the learned Additional Sessions Judge has rightly held that the appellant has committed the offence under section 302, I.P.C. and has rightly consequently sentenced him to suffer imprisonment for life and payment of fine of Rs. 200/- and the judgment under challenge, passed by the learned Additional Sessions Judge in the circumstances, be upheld, dismissing the appeal of the appellant.

14. At the outset it may be pointed out that in the instant case there are no eye-witnesses to the incident. The incident occurred in the morning of 6-2-1986 at 4 a.m. in the house of the appellant. There was nobody except the daughter of the appellant, aged about 1 years, in the house at the time of occurrence of the incident. Nevertheless there are circumstances on record which point out involvement of the appellant in the crime. The motive provided for the murder is that the appellant was suspecting the fidelity of his wife. The appellant, however denied in his statement under section 313, Cr.P.c. that he was doubting the fidelity

of his wife. However, Anandrao (P.W. 1) has deposed about the quarrel between the appellant and his wife so also Sheshrao (P.W. 2) who deposed that the appellant used to doubt the fidelity of his wife and, therefore, there used to be quarrels between them. A suggestion was also put to Anandrao (P.W. 1) that the appellant was doubting the fidelity of his wife. The report lodged by the appellant (Ex. 14) to the Police Station, Arni immediately after the occurrence also disclose that the appellant was doubting the fidelity of his wife. The finding recorded by the learned Additional Sessions Judge that it was established on record that Vithabai was a licentious lady is perfectly justified.

15. Anandrao (PW 1) neighbour of the appellant-deposed on oath that the appellant told him that he had killed his ... and that he (Anandrao) should look after his daughter, immediately after the incident. He further deposed that he along with one Uttamrao, Nana Dapase and Rambhau Pandhare had gone to the house of the appellant and Vithabai was lying on the cot. Vithabai had sustained bleeding injuries to her stomach, head and face and on enquiry from her she told them that her husband assaulted her. The version of Anandrao (P.W. 1) is corroborated by the version of Sheshrao (PW 2) who resides at a distance of 15 feet away from the house of the appellant and came to the house of the appellant after hearing cries and saw Anandrao, Govindrao Nana Dapase and Police Patil standing in the courtyard of the house of the appellant. Sheshrao had also entered in the house of the appellant along with Anandrao and others. Sheshrao deposed that Vithabai was lying on the cot in injured condition with bleeding injuries on her stomach and head. It has also come in his evidence that on enquiry by Anandrao, Vithabai told them that her husband assaulted her on her stomach and head by means of knife. A suggestion was put to Sheshrao (P.W. 2) that Vithabai not in a position to speak, which he stoutly denied. There is nothing on record to indicate that Anandrao (PW 1) and Sheshrao (PW 2) were having any enmity with the appellant nor even a suggestion to this effect has been made to them. Their evidence has not at all been shattered in the cross-examination. Their evidence is further corroborated by the medical evidence. The medical certificate at Ex. 36 in respect of Vithabai shows that Vithabai had sustained three incised wounds, one on the lower part of Chest, skin deep on 9th and 10th rib, second on the side back of lumbar region and third on the lateral side of cheek. She also sustained stab wound on the lower

part of chest and hypochondrium region. Dr. Hingade gave his opinion vide Ex. 38 that these injuries could be caused by means of knife at Article 2, which was seized from the house of the appellant vide seizure memo Ex. 27. It is thus apparent that the appellant had assaulted Vithabai by means of knife and caused injuries on her vital organs. Post-mortem report at Ex. 48 shows that the probable cause of death was shock due to injury to vital organs. The complicity of the appellant in commission of the crime is further established by the fact of human blood of 'A' group on his Banian, which was seized from the person of the appellant in the police station at Arni. The report of the Chemical Analyser (Ex. 54) shows that blood group of the deceased Vithabai was 'A' whereas the blood group of the appellant is 'O'. The report of the Chemical Analyser (Ex. 54) shows that human blood was detected on the knife. The appellant has not given any explanation as to how human blood of Group 'A' was detected on his Banian, but it is apparent that the blood of the deceased must have fallen on the Banian of the appellant when he assaulted and caused four injuries to the deceased by means of a knife. The medical evidence thus supports the prosecution case that it was the appellant and none else who stabbed his wife causing her 3 incised wounds and 1 stab wound on her vital organs with the result of which she expired on 9-2-1986.

16. In the wake of this evidence it is also futile to urge that there was no evidence that Vithabai died because of the injuries. Similarly the contention of Mr. Daga about the absence of record of treatment in the hospital, to the deceased Vithabai is also of no consequence inasmuch as there is no suggestion of behalf of the accused either to Balwant (PW 3) compounder in the Primary Health Central at Belora, who gave first-aid to Vithabai or to PSI Deshmukh (PW 4) or to PSI Shukla (PW 6) nor in his statement under section 313, Cr.P.C. the appellant anywhere stated that deceased Vithabai was not properly treated in the hospital.

17. It has further to be seen that the weapon used by the appellant for assaulting his wife was dangerous. Knife was used by the appellant for causing injuries on the vital organs of the deceased which was having length of 11 1/2' and its end was pointed. The breadth of the knife at the hilt was about 1 1/4'. It is thus clear that the weapon used i.e. the knife was deadly weapon. Blows were given to the stomach and lumber region. Taking into consideration the weapon and the vital

organs on which blows of knife were given, causing 3 incised wounds and one stab wound to the deceased, conclusion is inevitable that the intention of the appellant was to murder his wife Vithabai.

18. However, still questions fall for our consideration as to what offence the appellant has committed. The learned Additional Sessions Judge has held on that the offence committed by the appellant is of murder intentionally causing the death of his wife Vithabai and consequently has convicted him under section 302, I.P.C. the learned counsel for the appellant Mr. M. R. Daga, however, contended before us that having regard to the evidence on record, exception I to Section 300 is attracted and the offence committed by the appellant at the most would fall under Part II of Section 304, I.P.C. as no intention to cause death or to cause such bodily injuries as would likely cause death can be attributed to the appellant. The offence committed by the appellant cannot be held to be a murder but at the most would be culpable homicide not amounting to murder, falling under Exception 1 to Section 300, I.P.C. As we have pointed out hereinabove, on taking into consideration the weapon used and the vital organs on which blows of knife were given causing 3 incised wounds and one stab wound to the deceased, inevitable conclusion which can be arrived at is that the intention of accused was to murder his wife. There is therefore, no force in the submission of the learned counsel for the appellant Mr. M. R. Daga that the offence in question attracts the provisions of Part-II of Section 304, I.P.C.

19. The question, however, still survives that though the injuries are caused by the appellant to his wife Vithabai to which she later on succumbed with intention of causing her death, whether the appellant can be said to have committed the offence of murder falling under Section 300, I.P.C. as held by the learned Additional Sessions Judge or whether it comes in Exception 1 to Section 300, I.P.C. as urged by Shri M. R. Daga, learned counsel for the appellant. In this behalf Mr. Daga invited our attention to the deposition of PW 1 Anandrao and PW 2 Sheshrao. In his statement on oath Anandrao (PW 1) has deposed that the appellant told him that he had killed his wife and that he i.e. Anandrao should maintain his (appellant's) daughter. He further deposed that on enquiry Vithabai told him and others that her husband assaulted her. He further deposed that the

appellant and his wife Vithabai were not pulling on well and there used to be quarrels between them. He denied the suggestion put to him that the accused told him that he assaulted his wife as quarrel took place between him and his wife. However, he stated in his cross-examination as well that that appellant told him that he assaulted his wife and that Vithabai had told him that her husband assaulted her, and that she had not disclosed the reason for the said assault. To the suggestion put to him that before the incident there was a quarrel between the appellant and his wife and that Vithabai had stated to the appellant that he was impotent, during the said quarrel, and that the appellant told to Vithabai that she should not go with some other person to which Vithabai replied that she would accompany other persons as he was impotent, PW 1 Anandrao replied that he was not knowing anything of these facts.

20. In so far as Sheshrao (PW 2) is concerned, it was brought to our notice by Mr. M. R. Daga, the learned counsel for the appellant, that he also deposed that on enquiry from Vithabai she told Anandrao and others that her husband had assaulted her on stomach on head by means of knife. Sheshrao (PW 2) also stated on oath that there used always to be quarrels between the appellant and his wife and the appellant suspected her fidelity.

21. Mr. Daga, learned counsel for the appellant on the basis of this evidence, urged before us that there is no evidence on record to prove that the assault was made by the appellant on his wife Vithabai while she was asleep. On the contrary, the nature of injuries also suggests that the injuries could not have been inflicted while Vithabai was asleep, and even Anandrao (PW 1) and deceased Vithabai herself also do not speak about the injuries having been caused while Vithabai was asleep and the finding reached by the learned Additional Sessions Judge was, therefore, not sustainable. Mr. Daga also contended that for the same reason non-acceptance of the plea of the appellant, of falling his case in Exception 1 of S. 300, I.P.C. was improper. We find much substance in this submission of Mr. M. R. Daga, learned counsel for the appellant.

The learned Addl. Sessions Judge while not accepting the appellant's submissions on this count, has relied on the circumstance that the appellant has not stated in

his statement under S. 313, Cr.P.C. that quarrel took place between him and his wife immediately before the incident and that Vithabai provoked him by saying that he was impotent and that on the contrary he had taken a stand that he was not present when the alleged incident occurred. The learned Additional Sessions Judge further also relied upon the report (Ex. 14) lodged by the appellant himself at Police Station, Arni wherein it has been stated that on 6-2-1986 at about 4 a.m. in the morning when his wife was asleep, because of her bad character the appellant delivered two blows on her stomach with iron knife. Mr. Daga contended before us that the statement in the report (Ex. 14) ought not to have been relied upon by the learned Additional Sessions Judge as it was of incriminating nature and in any case since the appellant in his statement under section 313, Cr.P.C. had stated that this oral report was not correctly recorded by the police, it could not have been relied upon for coming to the conclusion that the appellant had assaulted his wife by means of knife while she was asleep, particularly when there was other positive evidence on record to indicate that the assault was made while Vithabai was asleep and further particularly when even Vithabai herself has not told to Anandrao (PW 1) and others that she was assaulted when she was asleep.

22. The aforesaid submission of Mr. M. R. Daga, the learned counsel for the appellant, appears to be justified to us having regard to the evidence of Anandrao (PW 1) and Sheshrao (P.W. 2) and the nature of the injuries inflicted upon the deceased and we feel that the assault must not have been made by the appellant while Vithabai was asleep. Having arrived at this conclusion and having regard to the prosecution case itself that the appellant was doubting the fidelity of Vithabai, we also feel that in any case probability of there being a quarrel between the appellant and his wife before the incident, the appellant's saying therein that she should not go with some other persons and giving of reply by Vithabai that she would accompany any other person as he was impotent and thereby the appellant depriving of the power of self-control due to grave and sudden provocation caused by the charge of impotency, resulting into attacking his wife, cannot be ruled out. Merely because the appellant did not state in his statement that the quarrel took place between him and his wife immediately before the incident and Vithabai provoked him by saying that he was impotent and on the other hand he had taken and defence that he was not present when the alleged incident occurred, the

appellant cannot be deprived from the benefit of doubt arising from the circumstances which can be gathered from the prosecution evidence itself and the learned Additional Sessions Judge, in the circumstances, in our opinion, was not justified in not accepting this plea of grave and sudden provocation bringing his case under Exception 1 of Section 300, I.P.C. on consideration of the entire evidence on record, we find that the appellant in the circumstances is entitled to the benefit of doubt as the possibility of there being quarrel between him and his wife immediately before the incident and the assault being the result of grave and sudden provocation by his wife saying that he was impotent, cannot be ruled out.

23. On coming to the conclusion by us that the possibility of there being a quarrel between the appellant and his wife immediately before the incised and the assault being the result of grave and sudden provocation by his wife saying that he was impotent, cannot be ruled out, the conviction of the appellant by the learned Additional Sessions Judge under section 302, I.P.C. cannot be sustained. Having regard to the evidence on record, we find that Exception 1 to Section 300, I.P.C. is attracted in the instant matter and the offence committed by the appellant comes under Part I of Section 304, I.P.C. as the injuries caused were fatal in the ordinary course of nature, with dangerous weapon on vital part of the body and the blows were repeated, inasmuch as 4 injuries were caused and the offence but for the application of Exception would have come under section 302, I.P.C. However, in our opinion, since Exception of Section 300, I.P.C. is attracted, the offence is governed by Part I of Section 304, I.P.C. The conviction of the appellant thus will have to be modified to the one under section 304, Part I, I.P.C.

24. On the aspect of sentence we find that taking a lenient view in the matter would not be unjustified in the present case. The appellant-accused is presently about 40 years of age and is having two minor children son and daughter. The occurrence of the incident is due to sudden quarrel without premeditation and as a result of charge of impotency and defiance by the deceased to the say of the accused about not going with other person. There is no previous involvement of the appellant in any offence. Having regard to all thesde circumstances, we hold that the sentence for the period already undergone in jail by the appellant would meet the ends of justice. It is seen that the appellant is in jail from 6-2-1986 i.e. for

about 4 1/2 years.

25. In the result appeal is partly allowed the order of conviction and sentence passed by the learned Additional Sessions Judge against the appellant for the offence under section 302, I.P.C. is set aside and instead the appellant-accused is convicted for the offence punishable under Section 304, Part I of the Indian Penal Code and sentenced to the rigorous imprisonment for the period already undergone by him in the jail. The accused be released forthwith, if not required in any other offence.

26. Appeal partly allowed.

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