Vithal Tukaram More & Ors vs The State Of Maharashtra on 23 July, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2715, 2002 AIR SCW 3060, (2002) 3 EASTCRIC 50, 2003 ALLMR(CRI) 310, (2002) SC CR R 813, (2002) 3 CURCRIR 44, 2002 (7) SCC 20, (2002) 2 CGLJ 246, (2002) 3 RAJ CRI C 837, 2002 UJ(SC) 2 1049, 2002 CRILR(SC MAH GUJ) 582, 2002 BOM LR 4 509, (2003) 1 GCD 45 (SC), (2002) 3 CRIMES 29, (2002) MAD LJ(CRI) 958, (2002) 3 RECCRIR 629, (2002) 2 UC 522, (2002) 2 ALD(CRL) 275, (2002) 4 CAL HN 150, (2002) 5 SUPREME 106, (2002) 2 ALLCRIR 2001, (2002) 5 SCALE 289, (2002) 3 ALLCRILR 721, 2002 CRILR(SC&MP) 582, (2002) 2 ANDHLT(CRI) 203, 2002 SCC (CRI) 1555, (2002) 5 JT 289 (SC)

CASE NO.:
Appeal (crl.) 801 of 2001

PETITIONER:
VITHAL TUKARAM MORE & ORS.

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT: 23/07/2002

BENCH:
ND... MS.ANDTHOASRHMADHHEIGKDAERI

JUDGMENT:

DHARMADHIKARI, J This court by Order dated 04.5.2001 in this case has rejected the Special Leave Petition preferred by appellants nos. 1 & 2 for appeal to this court against their conviction and sentences under Sections 302, 323, 201 read with Section 34 on the Indian Penal Code [for short 'I.P.C']. This appeal by grant of leave, therefore, is confined to the consideration of the cases of appellants nos. 3 to 6.

By the judgment of the court of Additional Sessions Judge, Billoli in Sessions Case No. 3 of 1994, the appellants before us have been convicted under Section 302 read with Section 34 of IPC to undergo a sentence of imprisonment of life and a fine of Rs. 1,000/- each, in default of payment of fine, RI

for six months. They have also been convicted for offence under Section 323 read with Section 34 of IPC and sentenced to pay a fine of Rs. 1,000/- each and in default, to undergo RI for six months. They are separately convicted and sentenced for offence under Section 201 read with Section 34 of IPC and sentenced to undergo RI for 3 years and to pay a fine of Rs. 500/- each, in default of payment of fine, further RI for 3 months.

The victim of the alleged crime is Sundarabai aged about 20 years. Her parents died during her childhood. Her uncle Dashrath (PW-1) brought her up. She was married to convicted accused Taterao, about two years before the date of her death in the intervening night of 22.10.1993 and 23.10.1993. It is alleged that 10 or 12 days before she was found dead, she was beaten by her husband for not attending to the household work and she had gone to complain about it to her cousin, Raosaheb (PW-2). Raosaheb informed the incident to her uncle, Dashrath. Both of them saw injuries over the head and back of the deceased. Both of them then took her to her marital home and after pacifying the members of her husband's family, she was left at their place at about 3.00 PM in the afternoon of 22.10.1993. On the next day i.e. 23.10.1993, the co-accused, Vithal Tukaram (who is one of the appellants before us) reported to Dashrath, uncle of the deceased that she had gone to fetch water from the bore-well and from there did not return. Dashrath then went to the Police Station to lodge report of the fact of missing of Sundarabai. At that time, one villager Subhash Kondiba (PW-4) came to the Police Station to report that he had seen a dead body floating in the well of sarpanch of the village. The dead body was taken out of the well. After inquest, autopsy was performed. The post-mortem report revealed that there were as many as 15 injuries of the nature of 'contusions' of different sizes on various parts of her body. The cause of death found by the autopsy surgeon was not 'drowning' but 'strangulation by neck'. On the evidence of Dashrath (uncle of deceased) and Raosaheb (cousin of the deceased) and Ananda More (PW-3) who was (a neighbour of the accused) both the trial court and the High Court in appeal accepted the prosecution case that the deceased was subjected to physical assaults by members of the family on minor complaints against her in course of household work and she was killed by them. Based on the oral evidence and the medical evidence indicating her death to be homicidal, the courts below came to the conclusion that all the accused participated in the commission of the crime. They were, therefore, convicted and sentenced as mentioned above.

The learned counsel appearing for the appellants submit that conviction of the appellants is based purely on circumstantial evidence which is not of a conclusive nature. The learned trial Judge in considering and weighing the evidence led by the prosecution has recorded that there is no direct evidence of the appellants having participated in beating the deceased and killing her by strangulation. According to learned trial Judge, as the incident took place inside the house, 'the accused persons alone could have the knowledge as to how she was physically assaulted leading to her death'. The learned trial Judge on the basis of post-mortem report showing presence of 15 ante-mortem injuries on the body of the deceased raised the following inferences against the accused which may be reproduced in his own words: -

> "It can be safely presumed that at the time of causing her death by strangulation, some of the accused persons have caught hold of the different body parts such as hand, legs, wrist of the deceased and one of them pressed her neck and killed her by

> strangulation and there by voluntarily caused injuries to her. The accused persons are the best persons knowing about the manner of in which the incident was caused and they have not explained it. There is nothing on record to show that there is possibility of any other explanation, other than the fact that the accused persons are the only guilty persons. Therefore, I hold that the prosecution has been able to prove the commission of offence by the accused persons under Sections 302, 323, 201 read with Section 34 of IPC. Hence, I have recorded my findings accordingly on point nos. 1 to 4".

The High Court in appeal has confirmed the conviction and sentences against all the accused persons.

The High Court held the following circumstances to have been proved by the prosecution to infer complicity of the accused. The High Court in its judgment has stated that the presence of the appellants in the house on the night of the alleged incident of physical assault on the deceased, has to be believed because none of the accused in their statement under Section 313 Criminal Procedure Code [for short 'Cr.P.C.] stated that they were not in the house on that night. What they stated is that since evening of 22.10.1993, the deceased was not with them. The reasoning of the High Court is that this plea of accused which is found to be false, leads to an inference that the accused were in the house when Sundarabai was physically assaulted. In the opinion of the High Court in the absence of clear statement under Section 313 Cr.P.C by the accused that they were not in the house on the night intervening to 22.10.1993 and 23.10.1993, their presence in the house at the time and date of incident is fully established. For better appreciation of reasoning of the High Court, the relevant part of its judgment needs reproduction : -

> "As it is, the accused also are not stating in their statement under Section 313 Cr.P.C, that they were not in the house on that night. On the contrary, the statement made by the accused under Section 313 Cr.P.C indicates that they want to say that Sundarabai was not with them on 22.10.93 since evening. If it is read properly, it means that they were in the house, but Sunderabai was not there. In such circumstances, it is not necessary for the prosecution to establish independently that all the accused were in the house in the evening of 22.10.93 at about 7 P.M and onwards. The fact is not denied by the accused. The other evidence brought on record is sufficient to hold that the accused were at their house. Generally, in the evening, it is expected that all the family members will be at the house. This probability cannot be ignored. But it does not remain in the realm of probability, because there is evidence of Sambhaji (PW-8), which goes to show that accused Tukaram and Hirabai were outside the house, when he went there and the other accused had not stated that they had gone out of the house and they were not in the house during that time. So this is not the case of "may be", but this is a case of "must be"."

Having thus inferred presence of the appellants co-accused in the house on the alleged date and time of incident, the High Court catalogued the following circumstances which is in its opinion unerringly point to the guilt of the present appellants. It enumerates them thus :-

> "If the facts of the present case are scanned as per the guidelines given in this judgment, there is sufficient evidence to hold that the accused had reason to assault Sunderabai, because, once she was assaulted, driven out from the house but she had returned to their house. Immediately thereafter, this incident has taken place. The second circumstance is that not only Sunderabai was in the house, but all the six accused were also in the house, when the alleged incident took place. The third circumstance is that the medical evidence clearly indicates that it was a homicidal death and not a suicidal or accidental death. As many as 15 injuries were there on the person of Sunderabai and the accused have no explanation for any of these injuries seen on the person of Sunderabai, when the doctor specifically stated that all the injuries were ante-mortem injuries".

The High Court for basing conviction on the above circumstantial evidence reasoned thus :-

> "It is impossible for the prosecution in such circumstances to prove which of the accused did particular act to cause death of Sunderabai. If that evidence had been there, then, it would have been the case of direct evidence and not of circumstantial evidence. In circumstantial evidence, when more than one person is present at the place of the incident, then the only circumstance which has to be looked into as to what are the injuries on the person of the deceased to find out whether that circumstance supports the prosecution case. Here, there were six persons in the house. As many as 15 injuries are found on the person of Sunderabai. Some are found even on her private part and the fatal injury was caused on neck. So, these injuries amply prove that this was not an act done by one person, but it was an act of more than one person. In the given circumstances, there cannot be evidence showing that accused no. 1 caused particular injury or accused no. 6 caused particular injury. All of them jointly took part in the incident. Some might have played a lesser role, while some might have played a major role, but the fact remains that they were together and they did assault Sunderabai, a hapless woman alone in the house".

Lastly, taking note of the opinion of the Autopsy Surgeon on nature of death as contained in his post-mortem report, the High Court draws its conclusion thus :-

> "Because of the medical evidence, it is amply proved that the death was not due to drowning, but it was due to strangulation and this circumstance clinches the prosecution case that how the dead body of Sunderabai could go out of the house when all the accused were in the house on that night of event. The prosecution thus, has established the case against all the accused. There is no ground to interfere with the order of conviction and sentence recorded by the learned Additional Sessions Judge".

We have heard the learned counsel appearing for the accused who strenuously urged that the circumstances taken into consideration by learned trial Judge and the Judges in appeal neither singly nor cumulatively prove the involvement of the present appellants in the alleged offence of

assault and murder of the deceased. He submits that merely because the present appellants are close relatives and lived in the same house with the deceased and the convicted accused (her husband and father-in-law), no inference reasonably could be drawn that they also participated in physically assaulting the deceased and had a common intention to commit her murder.

We have also heard the learned counsel appearing for the State who has tried to support the conviction.

In the case of State of U.P vs. Dr. Ravindra Prakash Mittal, [AIR 1992 SC 2045], this Court has held that the essential ingredients to prove guilt of an accused by circumstantial evidence are : (a) the circumstances from which the conclusion is drawn should be fully proved; (b) the circumstances should be conclusive in nature; (c) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (d) the circumstances should to a moral certainty, exclude the possibility of guilt of any person other than the accused.

In considering the validity of the conviction of the present appellants, therefore, we have to apply the above strict test before relying on the circumstantial evidence. From the facts found and the reasoning adopted by the learned Trial Court and the High Court in appeal, we find that the circumstantial evidence in the present case falls short of the required standard of proof. We also find that there is fallacy in their reasoning and therefore, in the inferences drawn by them from the facts and circumstances alleged to have been proved.

The learned trial Judge (as seen from the relevant part of the judgment quoted above) entered into the arena of surmises and tried to visualise by imagination the manner of commission of the offence. On the basis of nature and number of injuries found on the body of the deceased in the post-mortem report, it is inferred that all the accused persons must have caught hold of different parts of the body of the deceased and assaulted her separately on different parts. Such kind of inference is highly speculative.

The High Court also fell into similar error. In its judgment, it is observed that so many injuries of the nature of contusions found on various parts of the body of deceased could not have been caused by one or two persons and all the six persons must have participated in the assault. We have seen the post- mortem report (Ex.40) which describes nature of injuries as "contusions" of different sizes on different parts of the body. We fail to understand how the learned Judges came to the conclusion that it was not possible for one or two persons to have caused so many injuries on the person of deceased. Merely because as many as 15 injuries were found on body of the deceased, it cannot be inferred that all the accused must have participated by a joint assault. Such inference, in our considered opinion, is highly imaginary.

So far as other circumstances held to have been proved by the High Court are concerned, we find that they also fall short of the test of proof required for basing conviction on circumstantial evidence.

Accepting the fact to have been proved that few days before the date of incident, Sunderabai was driven out from her house and was brought back by her uncle the same day, the said fact cannot lead to an irresistible conclusion that all the present appellants as members of the family were unwilling to receive her back to the house. The proof of presence of present appellants in the house at the time and date of the alleged incident cannot also reasonably lead to an inference that they all participated in the act of physical assault. The High Court has referred to the statement of the accused under Section 313 Cr.P.C. It stated in its judgment that the accused in their statements took a common plea that Sunderabai was not in the house on the alleged date of incident but the same is found to be false, therefore, indirectly the accused should be deemed to have admitted their presence in the house on the date and hour of incident of physical assault.

Assuming that the presence of all the accused persons on the date and time of the incident is fully proved but that fact alone cannot lead to an inference that all of them jointly assaulted the deceased and had common intention to kill her. Mere presence of the appellants/accused in the house cannot reasonably lead to an inference of their joint participation in physical assault and common intention on their part with the convicted accused to commit her murder. The medical evidence showing that the death was not 'suicidal' but 'homicidal' also does not necessarily lead to the inference of involvement of all the accused in the homicidal death of the deceased.

The High Court in a portion of the judgment (quoted above) has stated that the prosecution cannot be expected to discharge the impossible task of proving by direct evidence the part played by each of the accused in the alleged crime and the nature of injury/injuries caused by each of them.

It is true that such crimes against married women are generally committed within four-walls of a house and many times in secrecy. Independent eye-witnesses or other direct evidence are scarcely available to the prosecution. But that is no reason to rely on circumstantial evidence which is not of required standard and base conviction on surmises. In the instant case, both the trial court and the High Court erred in not applying the strict test before relying on the circumstantial evidence to pass the verdict of conviction. They convicted the appellants before us only because they resided in the same house as members of the joint family of the deceased and the two convicted accused and were found to be present at the time and date of incident. There are several circumstances pointing to the innocence of the accused which were not taken into consideration. It is likely that the present appellants were present at that hour and time of incident but did not join with the convicted accused in physically assaulting the deceased. There may be inaction on their part in not saving the deceased from assault by the convicted accused. Their apathy may be morally reprehensible but would not make them criminally liable. Their statement under Section 313 Cr.P.C that Sunderabai was not in the house in that evening has been found to be false but that could not lead to a necessary inference that therefore they must have joined other convicted accused in assaulting the deceased. The existence of so many ante-mortem injuries found on the body of the deceased in her post-mortem report also does not lead to an inference that they could have been caused only by more than one person. We fail to understand why injuries like 15 contusions could not have been caused by two convicted accused by repeatedly inflicting blows on the deceased.

In a sound criminal justice system such offences against women should not escape unpunished but it is equally desirable in social interest that members of the family of the victim are not made to suffer punishment merely because of their relation with the deceased. It is the duty of the courts to see that the penal provisions intended to curb such crimes by bringing the offenders to book do not cause injustice to innocent people.

We, therefore, set aside the conviction of the appellants and sentences under Sections 302 and 323 read with Section 34 of IPC.

So far as the offence under Section 201 read with Section 34 of IPC for which they are charged and convicted is concerned, from the discussion of the evidence made by the two courts below and by us above, the evidence on record, in our opinion, is sufficient to sustain their conviction for the said offences. Their presence in the house has been proved. On recovery of the dead body of the deceased from the well, the post-mortem shows the cause of death to be homicidal and not suicidal. The present appellants have been found to be present on the date and hour of the incident in the house in which the deceased was done to death by physical assaults made by the two convicted accused. The present appellants were certainly guilty of screening the offenders. The body of the deceased after she was physically assaulted and murdered was thrown into the well to the knowledge of the appellants. Yet they took a false plea that on the date and hour of the incident, deceased was not in the house.

Consequently, this appeal partly succeeds. We set aside the conviction of the appellants under Section 302, 323 read with Section 34 of IPC. Their conviction and sentences imposed on them under Section 201 read with Section 34 of IPC are maintained. The bail bonds of accused are cancelled and if they have not completed the period of sentences imposed on them under Section 201 read with Section 34, they will suffer the remaining part of the sentences. The appellants/accused who have already suffered the period of sentences for the above offences shall be forthwith released from the custody if not required in any other case.