

Bombay High Court

Madhavgir S/O Gururatangir vs State Of Maharashtra on 6 August, 2003

Equivalent citations: 2005 (1) MhLj 161

Author: A Bagga

Bench: B Vagyani, A Bagga

JUDGMENT A.S. Bagga, J.

1. This appeal is directed against the judgment and order dated 18-8-1998, passed by 2nd Additional Sessions Judge, Nanded in Sessions Case No. 126 of 1997, thereby convicting the appellant/original accused for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life.

2. The prosecution story, in brief, is as follows :-

The appellant was residing with deceased Kalawatibai for about 5 to 6 years before the incident in question. Though deceased Kalawatibai was not legally wedded wife of the appellant, she resided with the appellant as his mistress/keep. It appears that the house was recorded in the name of the appellant and deceased Kalawatibai had got her name mutated in the records. On account of this, there was quarrel between the two in which the deceased was assaulted. The appellant was arrested. He was taken to police station. He was, however, released on bail. The appellant returned home on 18-1-1997, at about 7.00 p.m. On return, he asked deceased to serve meals to him. However, the appellant was not served meals. On the next day, i.e. on 19-1-1997, the appellant found the sum of Rs. 1100/- missing from his trunk. The appellant appears to have questioned her with regard to money. Not getting satisfactory answer, the appellant again fought with her. The appellant was not served meals on the next day evening also. The deceased had locked the door of the house compelling the appellant to sleep in the verandah. The deceased came in the evening but did not bother about the appellant who was sleeping in the verandah. The quarrel ensued between them, which was noticed by the neighbours. The matter was reported to the police by the neighbours and Police Constable Yadeo Jambhalikar (P.W.5) arrived along with the neighbours of the appellant. The appellant was present in the house. On inquiry by the Police Constable, the appellant replied that he was about to come to the police station since he (the appellant) had killed his wife. The Police Constable and other neighbours entered the house and saw the dead body of the deceased Kalawatibai. The appellant was taken to the police station and first information report came to be lodged by the appellant himself in the police station, which was recorded by P.S.I. Ashok Mairal at Exh.31. The appellant was arrested in the police station vide arrest panchanama (Exh.15). There were injuries caused by biting on the thigh, fingers of right and left hand of the appellant. Panchnama of the scene of the offence (Exh.10) was recorded by P.S.I. Ashok Mairal and articles such as pieces of bangles, iron blower pipe, vegetable cutter and pillow stained with blood were attached from the spot. After completion of the investigation, charge-sheet came to be filed.

3. Before the learned Sessions Judge, the neighbours were examined, who had heard the commotion from the house of the appellant. A Police Constable who visited the house of the appellant along with the neighbours testified that the accused/appellant was present in the house and that his wife deceased Kalawatibai was found dead, while P.S.L Ashok Mairal came to be examined as P.W. 6,

who had recorded the spot panchnama and attached the articles including blood stained articles from the house of the appellant. Autopsy Surgeon Ashok Mundhe testified the injuries found on the person of the deceased and deposed that the death of the deceased was homicidal. In view of this, the learned Sessions Judge found the appellant guilty and convicted and sentenced the appellant as stated in first para of this judgment.

4. We have heard Shri V.N. Damle, learned Counsel for the appellant and Shri V.B. Nayak, learned A.P.P. for the State.

5. We have carefully gone through the evidence of the prosecution witnesses recorded in this case. We have also perused the documents duly proved in this case as also the statement of the appellant recorded under the provisions of Section 313 of the Code of Criminal Procedure and finally the impugned judgment.

6. P.W.3 and P.W.4 Devrao Ingle and Gangaram Pendur are the witnesses who are neighbours of the appellant. The appellant is known to them. These witnesses stated to have visited the police station on hearing commotion from the house of the appellant. Police Constable Yadeo Jambhalikar, examined as P.W.5 has testified to have come from the police station along with the neighbours P.W.3 and P.W.4 and found the appellant in the house. All these witnesses stated that Kalawatibai was found dead in her house and the appellant was present there. It has been stated by Police Constable that the appellant stated that he was about to come to the police station. The appellant was taken to the police station where P.S.I. Ashok Mairal examined as P.W.6 has recorded the first information report given by the appellant. The first information report is at Exh-21.

7. We are mindful of the fact that the contents of this first information report recorded by Ashok Mairal (P.W.6) being confessionary in nature, would not be admissible in evidence. We are, therefore, refraining ourselves from commenting on the contents of this first information report. The fact, however, remains that the accused was brought in the police station and that he was arrested vide arrest panchnama Exh-15. On perusal of the arrest panchnama which has been duly proved, it would be noticed that the appellant's clothes were blood stained and a Banian, Sweater and Lungi stained with blood were seized from the person of the appellant at the time of arrest. These articles were later sent for Chemical Analyser's report and these articles No. 9, 10 and 11 were found stained with human blood vide Chemical Analyser's report at Exh.22. We have already pointed out earlier that the accused was found in his house.

8. Thus, it would be noted that the accused and deceased Kalawatibai resided in the house. At the time of the incident, the appellant/accused was present in the house and Kalawatibai was found dead. The death has been proved to be homicidal, which is clear on perusal of the evidence of Autopsy surgeon Dr. Ashok Mundhe (P.W. 1) and the post mortem report at Exh-12. The appellant was taken in the police station and the blood stained clothes were attached from his person. This leaves no room for any doubt whatsoever that the appellant was the author of the injuries caused on the person of Kalawatibai.

9. The Autopsy Surgeon Dr. Ashok Mundhe has proved post mortem report and has stated that there were multiple incised and contused wounds on the body of the deceased. These injuries apparently were caused by iron blower pipe and vegetable cutter, the kitchen appliances. It is pertinent to note that the appellant, at the time of his arrest had injuries on his right thigh and fingers of his both hands. The Investigating Officer P.S.I. Ashok Mairal (P.W.6) has also referred to the said injuries in his examination-in-chief. The Investigating Officer has stated that the injuries found on the person of the appellant were biting injuries. These injuries were found on right thigh as well as fingers of both the hands of the appellant. It is also stated by the Investigating Officer that the appellant was referred for medical examination. The appellant has explained the circumstances under which the incident took place. He has stated in his first information report that after he came from the police station on 18-1-1997, Kalawatibai refused to serve him meals. It is also stated by him that Kalawatibai locked the house and went away forcing the appellant to sleep in the verandah and further on return, Kalawatibai ignored the appellant and again refused to serve him meals. Certain amount belonged to the appellant was also found missing and on account of that there was quarrel, in which the deceased bit him thrice on his thigh and on his hands. The appellant, stated that it was for this reason that he lost control and repeatedly hit by iron blower pipe and vegetable cutter on the head of the deceased, which resulted in her death. On arrival of Police Constable, he is reported to have said that he was about to come to the police station.

10. Though Section 25 of the Evidence Act prohibits the proof of first information report given by accused to a Police Officer which amounts to confessional statement and the confession includes not only the admission of the offence but all other admissions of incriminating facts contained in the confessional statement - law permits, however, the perusal of contents of first information report for the accused. The explanation for murder in a confession by the accused to the police in a first information report may be relied on to prove motive or provocation with a view to extenuate the offence or sentence. In other words, there is no bar to a confession in first information being used in favour of the accused. In a case between *Murli v. State of Rajasthan*, 1995 SCC (Crimes) 57, the Supreme Court has held that where the accused has made first statement which formed first information report, the confession therein may not be proved against the accused but the admissions therein are relevant to prove whether the case comes within exception 1 to Section 300 of the Indian Penal Code. Again, a confessional statement that the accused killed his wife on receiving provocation from her was held to be admissible for use, not against the accused but in his favour to mitigate his offence (*In re Thandavan* 1973 Cri.L.J. 1041).

11. In the present case, we find that the accused has stated in his first information report that he was refused food and that there was quarrel between the couple when he questioned about the missing amount from the house and it was his wife who had bitten him and as a consequence thereof, he lost control and assaulted his wife. We accept this statement of the accused made in the first information report. The evidence of Investigating Officer lends credence to this statement of the accused. As observed by us earlier, the Investigating Officer has admitted that he found injuries by biting on thigh and fingers of both hands of the appellant and further the appellant was referred for medical examination. We have also found reference of these injuries in the arrest panchnama recorded by Police Officer. In view of this evidence, we are inclined to hold that the appellant assaulted his wife either in self-defence or on account of sudden provocation. For these reasons, though we find that

the accused is guilty of culpable homicide, the culpable homicide, in view of the circumstances narrated by us, would not amount to murder.

12. For the reasons discussed above, we set aside the conviction and sentence of the appellant for the offence punishable under Section 302 of the Indian Penal Code. Instead, he is convicted for the offence punishable under Section 304, Part I of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years.

The appeal is partly allowed.