Sheikh Jumman

v.

State of Maharashtra

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

Criminal Appeal No. 208 Of 2008 | 12-09-2012

1. The sole accused is the appellant before us. The challenge is to the judgment of the Division Bench of the High Court of Bombay in Criminal Appeal No.230 of 2001 dated 4.4.2005 by which the appellant was convicted for the offence punishable under Section 302 read with Section 498-A of the Indian Penal Code and was sentenced for life as well as rigorous imprisonment for three years apart from a fine of Rs. 300/-, in default, to undergo further rigorous imprisonment for three months with a direction that the substantive sentences shall run concurrently.

2. The brief facts which are required to be stated are that the deceased Taiyrabi is the wife of the appellant herein. Their marriage was solemnized 15 to 16 years prior to the incident. According to the prosecution, the appellant was suspecting the character of his wife and was constantly ill-treating her and was also assaulting her. On the fateful day, i.e., 20-10-1999 when the appellant and deceased were in their house at about 4.45 a.m., the appellant is alleged to have inflicted injuries on the chest of the deceased. The deceased sustained bleeding injuries which was witnessed by Hanimabi PW 3 who is none other than the mother of the deceased. PW 3 Hanimabi is stated to have been residing separately in the same house who rushed to the spot of the incident on hearing the cries of her daughter and had seen the appellant delivering blows on his wife and also saw that he had withdrawn the knife after the last assault. On seeing that gruesome incident, Hanimabi PW 3 is stated to have ran outside the house to seek the help of Sheikh Jabbar PW 7, son of her sister and thereafter the incident was stated to have been reported to PW 1 Police Patil Sudhakar, pursuant to which FIR (Exh. 37) came to be recorded between 9.00-9.30 a.m.

3. Ramdas Uikey PW 6 was the investigation officer who visited the spot of incident and drew spot panchanama in presence of pancy witness Suryabhan PW 2 and seized one bed-sheet, pair or slipper, mat, pillow cover, simple earth, earth mixed with blood, gunny bag, etc. from the spot of incident. PW 6 also arrested the accused who was standing on the road and was threatening the witnesses having a knife in his hand and his clothes were stained with blood. Pursuant to the arrest of the appellant his blood stained clothes consisting the baniyan and full pant was also seized. After holding the inquest over the dead body which was lying in front of the door of the house of the appellant under the presence of the panch witnesses, Ramdas Uikey PW 6 stated to have sent the dead body for autopsy. PW 4 Dr. Ashok Barapatre held the post-morterm on 21.10.1999 between 8.00 A.M. to 11.00 A.M. and issued the post morterm report(Exh. 21). PW 4 Dr. Ashok Barapatre noted as many as four incised wounds which were ante-mortem injuries on the body of the deceased. He also opined that the probable cause of death was shock and haemorrhage due to multiple injuries to the vital organs like liver, heart and lung. The knife which was recovered from the appellant was marked as article No.7. After recording the statement of the witnesses, the charge sheet was filed and the appellant was charged for the offences under Section 302 read with Section 498A.

4. One other factor to be noted is that when the appellant was questioned under Section 313 Cr. PC, apart from denying the offence alleged against him, the appellant came forward to examine himself and offered himself for cross-examination. Thereafter, we find that PW 7 Sheikh Jabbar was re-examined after the conclusion of the examination of the defence witness. The trial Court ultimately concluded that the appellant was guilty of the offences alleged against him and imposed the sentence as mentioned in the earlier part of this judgment. On appeal preferred by the appellant, the Division Bench of the High Court confirmed the conviction and sentence imposed on the appellant.

5. We heard Mr. Ajay Sharma, learned counsel for the appellant and also learned counsel appearing for the State. In the course of his submissions, learned counsel for the appellant contended that the trial Court as well as the High Court failed to appreciate the case of the appellant and it was PW 7 Sheikh Jabbar who was responsible for the killing of the deceased and that the appellant was innocent. According to the counsel, it was PW 7 Sheikh Jabbar who inflicted the injuries on the deceased and that on hearing the cries of his wife the appellant rushed to the spot and found PW 7 Sheikh Jabbar assaulting his wife

and thereafter ran away from the scene of occurrence on seeing the appellant. It was further argued that at that point of time, namely, around 4.20 a.m., the appellant had gone out to ease himself and taking advantage of his absence, PW 7 Sheikh Jabbar came and assaulted his wife. It was also submitted on behalf of the appellant that the appellant having witnessed the gruesome attack inflicted on the deceased by PW 7 Sheikh Jabbar he could only recover the knife and that apart from making shouts he was waiting for informing the same to the police authorities.

6. As against the above submission, learned counsel for the State contended that there was no reason for PW 3 the mother of the deceased to come forward with false allegation against the appellant. Learned counsel also pointed out that if really it was PW 7 who was responsible for causing the attack on the deceased, there was no reason why the appellant did not take any steps after the alleged assasult on his wife, to save his wife and also for taking further steps to approach the concerned police.

7. Having heard learned counsel for the appellant as well as that of the State and having perused the judgment impugned in this appeal as well as that of the trial Court, we do find force in the submission of the learned counsel for the State. The case projected by the prosecution was that the incident occurred at about 4.45 a.m. on 20.10.1999 and the eye witness PW 3 who was residing separately in the same house, heard the cries of her daughter and then when she rushed to the room where the deceased and the appellant were living, she found the appellant causing severe injuries on the chest of the deceased with a knife and that she could clearly see the appellant withdrawing the knife on the chest of the deceased after the last blow. She further stated that after inflicting such injuries on the deceased, the appellant rushed out while PW 3 brought PW 7 for help who is stated to have immediately rushed to the spot and thereafter proceeded to the police station for lodging the FIR which was about 25 kms away from the place of occurrence.

8. Having perused the evidence of PW 7 and PW 3 and also the blood stained recovery of materials like bed-sheet, pair of slippers, mat, pillow cover, simple earth, earth mixed with blood, gunny bag, etc. and the clothes worn by the appellant himself who was arrested near his house and in whose possession, the knife was also found, the story of the prosecution as narrated was true and there

was nothing brought out in the cross-examination of either PW 3 or PW 7 to dislodge their version. The medical evidence of PW 4 also confirmed that the manner in which the injuries were inflicted upon the deceased were so serious and severe that resulted in the instantaneous death of the deceased. The evidence of PW 3 in that respect read along with PW 4 , Exh. 21, post morterm report fully confirm the involvement of the appellant in the murder of the deceased and we do not find any good grounds to take a different view. Further, the version of appellant himself as a defence witness rather than supporting his defence fully supported the version of PW 3. The appellant as DW 1 admitted that he did pull out the knife from the chest of his wife though he would claim that the knife was thrust on his wife by PW 7. We are not in a position to accept that part of the version of the appellant for the simple reason that if the said version was true there was no reason why the appellant did not take any steps to either apprehend the assailant then and there or take steps to save the life of his wife by getting necessary medical aid or by reporting the incident to the police to book the culprit. We do not find any other supporting material to accept the said view. On the other hand, the conduct of the appellant in having been found loitering in the street with the blood stained knife in his hand for several hours after the occurence till the police party arrived at the scene to arrest him and recover the blood stained clothes and knife only goes to show that it was the appellant who was responsible for causing the injuries on the deceased pursuant to which the deceased ultimately lost her breath.

9. As far as the issue relating to recalling and re-examination of PW-7 after 313 questioning is concerned, though the said factor does not have any serious impact in the ultimate decision of this Court in confirming the conviction and sentence, we however wish to point out that the said question is no longer Res-integra. We only wish to make a reference to some of the reported decisions of this Court wherein the principle as regards invocation of Section 311 Cr.P.C.(corresponding Section 540 in the earlier Code) has been succinctly set out and leave it at that. To quote a few decisions, in the decision reported in Jamatraj Kewalji Govani Vs. State of Maharashtra -AIR 1968 SC 178 in para 14 it has been held as under:

"14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of

the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction."

10. In the decision reported in Mohanlal Shamji Soni Vs. Union of India and Anr.- 1991 Supp(1) SCC 271 in para 10 has been held as under:

"10. .....In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code(Section 311 of the new Code) are enacted whereunder any court by exercising it discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

"In the decision reported in Raj Deo Sharma(II) Vs. State of Bihar - (1999) 7 SCC 604 in para 9 it has been held as under:

"We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay Case nor in Kartar Singh case such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person."

11. In the decision reported in U.T. of Dadra & Nagar Haveli and Anr. Vs. Fatehsinh Mohansinh Chauhan- (2006) 7 SCC 529 in para 15 it has been held as under:

"15. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 CrPC should resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in the prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice."

12. In such circumstances, we do not find any scope to interfere with the judgment impugned in this appeal by which conviction and sentence came to be confirmed. We do not find any merit in the appeal. Appeal fails and the same is dismissed.