
(2000) 04 BOM CK 0003
In the Bombay High Court
Case No : Criminal Appeal No. 319 of 1996

Anil Tulshiram Walare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-04-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2000) 102 BOMLR 399

Hon'ble Judges : Vishnu Sahai, J;P.V. Kakade, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.V. Kakade, J.—The appellant has preferred this appeal against the Judgment and Order dated 28th November, 1995, passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No. 140 of 1993, wherein the appellant was convicted for commission of offence u/s 302 of the Indian Penal Code for murder of his wife and sentenced to suffer imprisonment for life and to pay a fine of l. 000/-, in default to undergo further imprisonment for three months.

2. The facts involved in the present case, in brief are thus:-

The appellant was married to deceased Indubai and they were living together at village Lakhgaon in District Nashik. The appellant's brother Eknath was also residing in the neighbourhood with his family members. In the evening, at about 6.00 or 6.30 p.m. on 22nd March, 1995, deceased Indubai was at home along with the appellant, at which time, appellant's niece came to the deceased Indubai and told her that she was called by Eknath and his wife Chandrabhagabai.

Therefore, the appellant and Indubai went to the place of Eknath. Earlier there was some quarrel amongst children due to which there was some exchange of hot words between Eknath and his wife on the one hand and Indubai on the other. The appellant suddenly got angry and kicked deceased Indubai due to which she fell on the ground. Then the appellant picked up a brick lying nearby

and hit Indubai with it as a result of which she was injured near her right ear. Indubai then rushed to her house as she was afraid that the appellant might assault her again. However, the appellant followed her and at about 7.00 or 7.30 p.m. the appellant poured kerosene on the person of Indubai and set her on fire with a match stick. Indubai raised an alarm due to which the neighbours rushed to rescue her. Eknath and Chandrabhagabai also came to the spot and carried Indubai to the Civil Hospital at Nashik, in injured condition.

The police at the Civil Hospital informed Nashik Road Police Station about admission of Indubai in burnt condition. Necessary station diary entry was made and Special Executive Magistrate was informed to record the dying declaration of Indubai. In the meantime, Police Sub-Inspector Rajdeo went to the hospital and recorded Indubai's statement at 12.25 a.m. on which basis offence u/s 307 of the Indian Penal Code was registered against the appellant at about 7.30 p.m. at Nashik Road Police Station, on 23rd March, 1995.

In the meantime, Special Executive Magistrate Baviskar had gone to the hospital and recorded dying declaration of Indubai vide Exhibit 28, at about 12.30 p. m. on the same day. In her F.I.R. as well as dying declaration Indubai squarely attributed authorship of the crime to the appellant stating that he had poured kerosene upon her and set her on fire.

Indubai succumbed to the burn injuries on 24th March, 1995. The body was sent for autopsy which was performed by Dr. Wadgaonkar, who stated that Indubai had suffered 64% burn injuries and cause of death was shock due to said burn injuries. The post-mortem notes were duly issued vide Ex. 18.

In the meantime, the investigation commenced, wherein statements of various witnesses were recorded. Witnesses Manjulabai, mother, of deceased Indubai, witness Shankar, brother of deceased Indubai and witness Ramabai, the neighbour have categorically stated that they were informed by deceased Indubai that it was the appellant who had poured kerosene upon her and set her on fire.

The spot panchanama was prepared by the Investigating Officer, at which time, certain incriminating articles were seized, which were duly sent to the Chemical Analyser for examination whose reports are received and are part of the evidence. On completion of the investigation the charge-sheet was sent to the Court of law against the appellant. The case was committed to the Court of Sessions in usual manner.

3. The appellant pleaded not guilty to the charge framed against him. The defence of the appellant was that of total denial of any criminal liability with which he has been charged.

4. The trial proceeded, in which course, the learned Trial Judge accepted the evidence of two written dying declarations as well as three oral dying declarations against the appellant and proceeded to hold that he was the author

of murder of Indubai and convicted and sentenced him in the aforesaid manner.

Hence the appeal.

5. We have heard learned Counsel for the appellant as well as the Additional Public Prosecutor at length. We have also perused the entire evidence on record thoroughly and have no hesitation in holding that the evidence on record is more than sufficient to bring home the guilt of the appellant, and as such the Trial Court has rightly convicted and sentenced him for the crime.

6. Initially it would be noted that the entire evidence against the appellant is two fold (a) two written dying declarations, including one which was treated as F.I.R. and offence was registered on that basis against the appellant ; and (b) three oral dying declarations of deceased Indubai to various witnesses.

Therefore, it would be just and proper on our part to look into the evidence of dying declarations to appreciate the evidence in its proper perspective.

7. It is the prosecution case that the incident took place at about 7.00 or 7.30 p.m. on 22nd March, 1995 at village Lakhgaon. Thereafter appellant's brother Eknath and his wife Chandrabhagabai came on the scene and removed Indubai to Civil Hospital, Nashik in injured condition. The fact that Indubai was admitted in the hospital was immediately informed to Nashik Road Police Station by the police at Civil Hospital, Nashik.

P.S.I. Rajdeo (Ex. 22) has categorically stated that Nashik Road Police Station summoned Special Executive Magistrate Baviskar to record dying declaration of Indubai.

The testimony of witness Baviskar, Special Executive Magistrate (Ex, 26) shows that as summoned, he reached the Civil Hospital at about 12.15 p. m. on 23rd March, 1995 and contacted Dr. Thigale, who in turn, examined the patient and certified that she was in conscious condition and was in a position to give statement. Thereafter Special Executive Magistrate Baviskar started recording the statement in question and answer form, which is at Ex. 28.

The document of dying declaration (Ex. 28), dated 23rd March, 1995, shows that the Medical Officer has made endorsements before and after recording the statement to the effect that the patient was in conscious state and was in a position to give statement. The statement itself is in vernacular, and in answer to question No. 4, Indubai has stated that during the earlier evening at about 7.00 or 7.30 p. m. she and her husband (the appellant) had a quarrel and the appellant had assaulted her with fist blows and kicks and immediately thereafter poured kerosene upon her person and set her on fire with a match stick. The reason given for such act is an earlier quarrel amongst the children and consequent exchange of hot words between Indubai on the one hand and Eknath and Chandrabhagabai on the other. It is very pertinent to note that in the course of her statement she has categorically stated that Eknath and Chandrabhagabai as well as one Gangubai tried to insist that she should tell the police that she had

received burn injuries due to flaring of a stove.

8. We have pondered over the entire contents of the dying declaration recorded by the Special Executive Magistrate and we are satisfied that it is genuine, trustworthy and totally reliable.

9. At this juncture we may note that evidence on record shows that it was the appellant who had informed mother of deceased in the evening of 22nd March, 1995, i.e. immediately after the incident, that there was burst of a stove and due to which Indubai received burn injuries. This appears to be the history also given to the police by none else than appellant himself, and probably by Manjulabai, mother of the deceased at the initial stage before she met deceased Indubai and came to know about the true facts. However, this unsuccessful attempt on the part of the appellant to confuse the issue has proved futile in view of categorical statement given by deceased Indubai in the course of her dying declaration recorded by Special Executive Magistrate vide Exhibit 28.

The evidence of Dr. Thigale also supports the testimony of Special Executive Magistrate, Baviskar in this regard, which is again supported by the endorsements made by the Medical Officer before and after recording of the dying declaration (Ex. 28).

In view of this position, we hold that this dying declaration, by itself, is sufficient to form the foundation to bring home the guilt of the appellant.

10. This aspect apart, it is also on record, that statement of deceased Indubai was recorded by police vide Exhibit 23, which was treated as F.I.R. The perusal of the F.I.R. also corroborates squarely the version given by Indubai in her dying declaration before Special Executive Magistrate.

11. The evidence of two written dying declarations has further found support from the evidence of witnesses Manjulabai, Shankar and Ramabai. Witness Manjulabai is mother of deceased Indubai, whereas Eknath is her brother. Both of them stated that Indubai told them in categorical terms that it was the appellant who had poured kerosene upon her and set her on fire.

The evidence of witness Ramabai also supports the version of relatives of Indubai. Said Ramabai is neighbour and, therefore, is totally an independent witness who has no axe to grind against the appellant. She has also stated in her evidence that she enquired with Indubai as to how she suffered the burn injuries and she was informed that it was the appellant who had poured kerosene upon her and set her on fire.

12. Therefore, in our considered view, the evidence of written dying declarations is conclusive proof against the appellant to bring home the guilt of the appellant. It is needless to mention that the test of dying declaration is to verify its genuineness and reliability on the basis of the available evidence. In the instant case, we find that both the dying declarations are totally reliable and trustworthy. Such evidence has further found support and assurance by testimonial version of

witnesses to whom oral dying declarations were given by deceased Indubai while she was in the hospital. The presence of said witnesses in the hospital was quite natural. The veracity of the testimony of said witnesses also cannot be challenged for a moment as they are mother, brother and neighbour respectively, and have no reason to implicate the appellant falsely. Under the circumstances, we hold that the available evidence before us is sufficient to saddle the appellant with the criminal liability with which he is charged.

13. In the result, we hereby confirm the conviction and sentence passed against the appellant by the Trial Court and dismiss the appeal. The appellant is in jail and shall serve our his sentence.